Germany’s evolving framework for cannabis legalization and regulation: Select comments based on science and policy experiences for public health

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Germany’s federal (centre-left coalition) government is moving to implement the legalization of the non-medical use and supply of cannabis. Since 2012, several jurisdictions have done so (e.g., Uruguay, 19 US states, Canada, Malta, Thailand) or proposed (e.g., New Zealand) this policy reform, commonly for public health and safety objectives. Germany will be the first G-20 nation and European Community member doing so, and therefore set important precedents. Basic parameters of Germany’s regulatory plans have been outlined by its Federal Ministry of Health in charge of the legislation. The blueprint allows for selected comments on main regulatory issues, specifically based on experiences with cannabis legalization under different regulatory models implemented—and, to some degree, evaluated—in other jurisdictions. Overall, Germany’s legalization framework is public health-oriented in goals, while allowing commercial cannabis production and distribution. Thereby it starkly resembles the regulatory approaches adopted elsewhere (e.g., Canada), yet an essential question is to which degree proposed regulations will effectively serve to advance public health goals.

Germany initially proposed to impose a general (15%) THC-content cap on legally available cannabis products. This was motivated by concerns that high-THC products are associated with increased risks for a variety of adverse health outcomes, including cannabis dependence and/or mental health problems. The proposed limit has since been abandoned, yet it raises questions for practical feasibility and impacts for legalization-policy. THC-content of cannabis products consumed has increased considerably beyond 15%, with cannabis flower commonly containing 15–25% THC or more and cannabis extracts 40–90% THC. The proposed cap would have meant that many consumers of higher THC-level products, which disproportionately include higher-risk users, would likely not purchase their cannabis from the legal (quality-controlled) market. This, in turn, would help to maintain demand for illegal cannabis products and a continuation of illegal cannabis markets contrary to interests of public health and safety. Rather, regulators should focus on limiting THC-content per cannabis-unit sold and providing consumer-oriented education about ways to reduce the risks for adverse health associated with higher-THC product use.

The second issue concerns regulations for youth. A general age-limit of 18 years for legal cannabis use and access is proposed to protect youth; this seems generally sensible but it raises questions about regulatory coherence across substances in a setting where alcohol use/sales are legal for ages 16 and up. Cannabis use prevalence among those under 18 is lower in Germany than, for example, in Canada (10% vs. 30%) but likely to continue after legalization. There appears to be no intention to impose criminal penalties for continued under-age cannabis use unlike in Canada, where this may be subject to youth justice enforcement which excludes youth from legalization’s protections against excessive and arbitrary social harms. Furthermore, questions arise regarding the (preliminary) proposal in Germany to restrict legal cannabis sales for young adults 18–21 years only to cannabis products containing 10% THC-content. Younger cannabis users may be more vulnerable to the adverse neurobiological/cognitive effects of high-THC cannabis consumption but most evidence comes from studies of adolescent cannabis users 16 years or less involved in intensive, high-frequency use; in addition, similar risks exist for alcohol. Therefore, the limits considered appear arbitrary and uncertain to produce desired effects.

Third, Germany’s proposed cannabis retail distribution system provides an uneasy mix of restrictive and open access under the CC BY-NC-ND license (http://creativecommons.org/licenses/by-nc-nd/4.0/).
difficult-to-enforce provisions. On one end, it will allow the sale of legal cannabis products in licensed ‘cannabis-only’ storefronts (and via online sales) with the presumed aim of minimising the co-availability and/use of cannabis and other substances. This goal however seems unlikely to be achieved in a policy setting where alcohol and tobacco products are easily available in supermarkets, gas stations and kiosks. The retail protections may furthermore be undermined by allowing the (albeit limited) ‘home-growing’ of several cannabis plants by adult consumers. While such provisions are often advocated by opponents of commercialized cannabis production and sale, they are hard to regulate and enforce. Moreover, they provide opportunities for misuse (e.g., by minors) and diversion and therefore are arguably not consistent with a public health-oriented approach to cannabis legalisation.

Germany’s draft regulation framework for cannabis legalization illustrates an unavoidable tension between conflicting goals, namely restrictive use and availability provisions intended to protect public health that may enable the illicit market to continue; and provisions that aim to minimise the illicit market while risking to help regular use by an industry that operates for-profit. No ‘golden recipe’ for reconciling these goals exists. Many regulatory parameters will depend on setting/context and require ‘trial-and-error’, underscoring the necessity for systematic monitoring and policy adjustments as needed. Germany’s cannabis legalization framework is still evolving; once implemented, it can provide valuable evidence on the feasibility and impact of different cannabis policy and regulations options, especially for other jurisdictions considering similar reforms.

Contributors
Profs. Fischer and Hall jointly developed the concept for, and contributed to data presented and related interpretation in the paper. Prof. Fischer led the writing. Prof. Hall conducted substantive review and editing of the commentary. Both authors approved the final version of the paper submitted.

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