

Letter of 7 July 2022 from the Minister of Justice and Security and the Minister of Health, Welfare and Sport to the President of the House of Representatives on the Controlled Cannabis Supply Chain Experiment

As promised during the parliamentary committee debate on drugs policy of 12 May 2022, we are informing you about (i) the difficulties experienced by designated growers in obtaining a bank account, and (ii) the commitment set out in the coalition agreement to establish criteria in the short term for assessing the outcomes of the experiment.

Status of the experiment

In March of this year¹ we informed the House by letter of the experiment's progress. In early June the first grower began cultivation. The aim is to designate a total of 10 growers who will be permitted to produce a controlled supply of cannabis and hashish. At present, nine growers have been designated.

Further agreements about the experiment were set out in the coalition agreement. One of the commitments in the coalition agreement involves expanding the experiment to include a major city. We have therefore asked the mayors of municipalities with more than 100,000 residents whether they would be interested in participating in the experiment and if they could inform us of their interest before the start of the summer recess. Meanwhile, we are working to amend the legislation to allow the participation of an additional municipality. We expect to be able to submit the proposed amendment to the House shortly after the summer recess.

i. Banking problems encountered by growers participating in the Controlled Cannabis Supply Chain Experiment

In the letter of March 2022, the House was informed that a number of growers participating in the Controlled Cannabis Supply Chain Experiment had encountered problems obtaining a bank account. We have consulted the Ministry of Finance and provide details on the situation below.

The nature and extent of the problems

In recent months our ministries have held talks with the parties involved, including the growers and banks, in order to discuss the problems and find solutions. The ministries' familiarity with the problems is limited, as there are currently not enough specific cases known. As more cases come to light, we will examine the matter in greater detail and will continue discussions with the parties involved.

On the basis of the discussions with a bank and the growers, it appears that banks experience various difficulties with regard to client acceptance policy and/or risk assessment. First, it appears that banks – on the basis of their duties and responsibilities under the Money Laundering and Terrorist Financing (Prevention) Act ('WWFT') – see impediments to providing services to certain growers. These impediments concern, in particular, the origin of the growers' capital and financial resources, their backgrounds, and the structure of the growers' businesses and the businesses of other stakeholders, which is not sufficiently transparent to allow adequate risk management. According to banks, they are caused in part by the limited information banks have concerning the growers. Banks are concerned

¹ Parliamentary Papers, 2021-2022, 24077, no. 489.

that, because of their limited access to information, they will have insufficient oversight of the possible risks associated with the grower throughout the course of the experiment. In particular, banks are concerned they will not be notified of information that the grower is required to provide to the ministers, such as the closure, handover or transfer of the business and any changes in the business structure. Lastly, banks see impediments to providing services to growers owing to the banks' own general terms and conditions or the fact that the grower is not a good match with their client base.

Assessment of the problems

Although a number of growers have encountered problems obtaining a bank account, at this time there does not appear to be a policy of categorical exclusion (i.e. where entire sectors are excluded by all banks), as three growers were able to open a bank account. Several growers have indicated that the approval process at the bank is still ongoing.

In general, as indicated in the letter of 8 September 2021,² it is up to a bank itself to determine its strategy and to decide with which clients to enter into or pursue a business relationship. Under the WWFT, banks are required to make risk assessments and to align their client acceptance policy with these assessments. A bank can also take measures, if needed, to limit risks. Under the WWFT, banks are required to sever ties with an existing client or refuse to take on a new client only if the bank is unable to mitigate the risks identified or if the client does not provide the information that the bank needs in order to make a proper risk assessment. A heightened risk does not mean that an entire group of clients can be categorically refused services.³ The WWFT requires that banks conduct an individual risk assessment for each client. We consider it important that banks consult with the growers to determine exactly what risks are involved, what measures the sector and the individual grower can take and what conditions the bank should then set for individual clients in order to mitigate the remaining risks. In this regard, we also expect the growers to take a constructive approach, which includes taking measures, if needed, to mitigate risks and providing the necessary documentation. Considering that the number of cases notified so far by the growers is limited, it is currently not possible to assess whether banks have in fact conducted an individual risk assessment of the growers and whether it would still be possible to provide services to the growers under certain conditions. On the basis of the cases notified to date, it cannot be determined whether or to what extent it would be useful for the government to play a mediating role between the banks and growers.

On the basis of the Controlled Cannabis Supply Chain Decree, when designating growers we can attach conditions to this designation regarding its use. They could include conditions concerning the timeframe within which the location where the cannabis will be produced must be ready for the start of cultivation or the timeframe within which the actual cultivation must start. If one or more growers fails to comply with the conditions, it could result in the revocation of their designation and the next grower on the waiting list would be designated. In this way, we could ensure that as many growers as possible would be ready by the start of the experiment.

² Letter to parliament of 8 September 2021 in response to the *Het Financieele Dagblad* newspaper article 'Rabobank sluit kleine autodealers uit vanwege risico's op witwassen' [Rabobank refuses services to small-scale car dealers due to risk of money laundering], reference no. 2021-0000180721.

³ DNB Guidance on the WWFT and the Sanctions Act 2020, p. 23.

Possible solutions

As described above, banks may not categorically refuse services to specific groups of clients; it is expected that banks will enter into discussions with growers who are participating in the experiment in order to ascertain what mitigating measures could be taken to limit possible risks. As previously stated, at this time we have insufficient details of specific cases, meaning it would currently not be useful for the government to play a mediating role.

We are, however, in discussions with parties involved and are looking into whether it would be possible to improve banks' access to information concerning the growers, for example through a voluntary agreement on the matter. The question has arisen from within the sector as to whether business-related or other information concerning the designated growers could be shared among central government, banks and growers. Banks must also conduct screenings of existing clients. The bank in question is concerned that it will not be possible to conduct a proper screening of the grower during the experiment due to a lack of information. This includes information that the grower is required to provide to the ministers (article 31 of the Controlled Cannabis Supply Chain Experiment Decree), such as the actual or intended closure, handover or transfer of the business, changes in the business structure or in the relationships within the company or the failure to comply with the other rules or regulations laid down by or pursuant to the law. It also concerns situations in which a grower is not or no longer able to comply with the requirements under environment and planning law. That notwithstanding, there is no guarantee that providing this information will actually lead to growers obtaining a bank account because other obstacles may still stand in the way of this.

Furthermore, in general if a bank refuses to provide a grower with a bank account despite the grower's opinion that possible mitigating measures could be taken, the grower can bring the case before the court. To do so, the grower does not need a formal decision of refusal from the bank.

Exploring possibilities for departure from existing legislation

During the parliamentary committee debate on drugs policy of 12 May 2022, member of parliament Joost Sneller (Democrats '66) was promised that the exploration of solutions would include the possibility of departing from existing legislation by providing scope for experimentation (regulatory sandbox). There are two possible forms this could take; we looked into both and believe that neither offers the solution we need. Below we provide further information on both forms.

- 1) *Eliminating the duty of confidentiality with regard to participating growers insofar as it relates to the probity screening so that this information can be shared with the banks*

The first possible scope for experimentation involves amending section 28 of the Public Administration (Probity Screening) Act ('BIBOB') to eliminate the duty of confidentiality with regard to the parties involved in relation to probity screenings, thereby allowing the results of the screening of a designated grower to be shared with banks. After all, all growers participating in the experiment have already been screened under the BIBOB.

In our view, this is not a desirable solution. Even if the content of the confidential recommendations made on the basis of probity screenings were disclosed to banks, the banks would still likely not have the information they need for a risk

assessment pursuant to the WWFT. A probity screening cannot replace the individual risk assessment of a client. The recommendations made on the basis of the screening do not provide a response to all of the questions banks must answer for their own risk assessment of clients. The difference between the BIBOB and WWFT is further explained in the appendix to this letter. Furthermore, changing the duty of confidentiality is an extreme solution, considering the very sensitive personal data about the growers and third parties involved that is contained in the recommendation. Lastly, a legislative amendment of this nature is time-consuming and does not offer a solution in the short term.

2) *Taking legislative measures to exempt designated growers from the WWFT*

The second possible scope for experimentation involves modifying the Controlled Cannabis Supply Chain Experiment Act in relation to the WWFT. Among other things, the WWFT sets requirements for banks regarding the risk assessment of clients. Through experiments legislation, exceptions can be made to parts of the WWFT (taking into account the relevant EU legislation) and to the requirements regarding the risk assessment of clients, so that banks may rely on the recommendations made on the basis of the probity screening and the client's designation as a grower in the experiment.

It is our view that it is not desirable to automatically exempt all designated growers from banks' requirements under the WWFT in the approval process. Although it is true that an extensive probity screening is conducted in the context of growers' designation within the experiment, the screening focuses on the parties involved, their backgrounds and their relationship to the grower or growers; it is not primarily aimed at identifying the financial flows as such. That is why it is desirable that the banks continue to play an independent role pursuant to the WWFT. Furthermore, to facilitate such an exemption for designated growers in the legislation, it would have to be made clear which parts of the law they are temporarily exempt from and the risks with regard to money laundering that are considered acceptable in that context would have to be specifically described. The cases notified by the growers provide insufficient insight into this. Lastly, a legislative amendment of this nature is also time-consuming and does not offer a solution in the short term.

ii. Criteria for assessing the outcomes of the experiment

The coalition agreement states that in the near future criteria will be established for assessing the outcomes of the experiment in terms of crime, public health and prevention. This is especially important in view of the fact that the government stated in the coalition agreement that it intends to submit its position on the evaluation report of the experiment to the House and the Senate in 2024. It is therefore important to have an indication of what information will be available in 2024.

Survey

The topics of crime, public health and prevention referred to in the coalition agreement are included in the research that is being conducted on the experiment and its effects and, to the extent possible, the government hopes to develop the criteria in line with the research results. The research, commissioned by the Research and Documentation Centre ('WODC'), is being conducted by an

independent research consortium.⁴ Before the start of the experimental phase, the researchers will conduct a baseline survey, and in every year of the experimental phase they will carry out an impact assessment. Using the results of each survey they will draw up a monitoring report. The research team will be supervised by an independent guidance and evaluation committee established by law. The committee's statutory duty is to supervise the experiment research and, on the basis of the evaluation of the experiment, to draw up its own findings and possible recommendations. The legislation⁵ states that the committee must submit this report no later than eight months before the end of the experimental phase (which lasts four years).

The main question of this research is as follows: 'To what extent and in what way is it possible to create a controlled supply chain in which cannabis, controlled only for quality and without the involvement of criminals, is supplied to coffee shops, and what effects does this controlled supply chain have on developments in terms of public order, security, public nuisance and public health in participating municipalities compared to control municipalities?'

To answer this question, research questions have been drawn up and divided into six categories:

1. cultivation and distribution
2. supply and use
3. public nuisance and crime
4. public health
5. working of the controlled supply chain
6. relationship to other developments

These six categories, together with the related research questions, are closely aligned with the three topics specified in the coalition agreement.

Information available in 2024

When drawing up the coalition agreement it was still thought that the experiment could actually start this year with the sale of controlled cannabis and hashish. In March⁶ we regrettably had to acknowledge that starting in 2022 did not appear realistic. On the basis of the estimate of last March, by mid-2024 the experimental phase will have been under way for one year at most. It is currently expected that the first of four annual monitoring reports can be submitted after the summer of 2024. The researchers and the guidance and evaluation committee have indicated that their experience and the international literature show that it is not usually possible to obtain a reliable picture of the effects of policy change so soon after the change has been introduced. Even if significant differences are observed in the first monitoring report compared to the baseline situation, there is the question of whether these differences will still be there in the period after. That is why annual surveys will continue to be conducted. Given this estimate of the researchers and the guidance and evaluation committee, no conclusive findings will be available in 2024 regarding the effects of the experiment on the three topics stated in the coalition agreement, namely crime, public health and prevention. In the light of the above, the researchers have indicated that it will not be possible to submit an evaluation report in 2024 as agreed in the coalition agreement. The guidance and evaluation committee shares this view.

⁴ Parliamentary Papers, 2019, 34997, no. 26.

⁵ Section 11, subsection 3 of the Controlled Cannabis Supply Chain Experiment Act.

⁶ Parliamentary Papers, 2021-2022, 24077, no. 489.

It is therefore important to consider what information could in fact be available in 2024, in order to assess how to move forward. In their research, the research team makes use of interviews with directly and indirectly involved parties, surveys of coffee shop visitors and other cannabis consumers, local residents and coffee shop owners, and existing literature and numerical data regarding the system as a whole.

Attention will also be paid in the interviews and surveys to crime, public health and prevention. After the summer of 2024 the first results of this will be presented in the monitoring report. As indicated by the researchers and the guidance and evaluation committee, however, these results will not yet provide insight into the possible effects of the experiment. The research team expects that, on the basis of the first monitoring report, it will be possible to provide a qualitative picture in 2024 of perceptions of the working of the controlled supply chain in the short term.

In addition to the research results that will become available in 2024, other useful results are also expected in that year. Furthermore, in recent years all parties involved gained valuable experience and learned beneficial lessons during the preparatory phase. This includes experience regarding the selection of growers and the problems that designated growers have encountered in obtaining a location or a bank account. It is expected that during the first year of the experimental phase, parties will continue to gain useful knowledge in all areas. For example, regarding the functioning of the Track and Trace system and consumers' experiences in the coffee shops. The first year will also provide many insights into the supervision of the experiment and the cannabis market that will emerge between coffee shop owners and growers. Furthermore, in recent years valuable knowledge and expertise has been gained with regard to how to set up a quality-controlled supply chain of cannabis and hashish. Under the leadership of Professor André Knottnerus, the advisory committee provided useful recommendations in the two reports⁷ it submitted regarding how to set up such a supply chain. In recent years we also worked closely and exchanged knowledge with parties such as municipalities, supervisory authorities and criminal justice partners, and input and expertise were regularly provided by coffee shop owners and designated growers. In the years ahead we will assess and consolidate the knowledge and experience we have gained in order to make use of these results in the future. International developments and support among involved parties are also important factors to identify.

All of these factors will be considered in their entirety in order to arrive at a clearer and more coherent coffee shop policy in the future. As stated in the coalition agreement, legal and practical preparations will be made so that the outcome of the experiment can be acted on as soon as possible after the experiment's completion.

⁷ Parliamentary Papers, 2018, 24077, no. 416 and 2019, 34997, no. 29.