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**Rules on a uniform experiment with the cultivation and sale of cannabis for recreational use in a controlled cannabis supply chain (Controlled Cannabis Supply Chain Experiment Act)**

**No. 3 Explanatory memorandum**

**General remarks**

1. *Purpose of the bill*

The Controlled Cannabis Supply Chain Experiment Bill is necessary to conduct an experiment with the cultivation and sale of cannabis and cannabis resin for recreational use in a controlled supply chain. A controlled supply chain is one in which these activities take place in accordance with the rules established by or pursuant to this bill. The purpose of this experiment is to determine whether it is possible to establish a decriminalised supply of quality-controlled cannabis or cannabis resin to coffee shops in a controlled supply chain, and the sale thereof in coffee shops, and if so how, and what the effects would be. To improve the readability of this explanatory memorandum, the text will refer exclusively to 'cannabis', but this term should be understood to include cannabis resin.

As noted in the above statement of purpose, this is an 'experiments bill', which means that it will allow derogation from applicable legislation for the duration of the experiment. As a consequence, acts relating to the cultivation and supply of cannabis – sometimes referred to as the 'back door' – and its sale in coffee shops will not be liable to criminal prosecution, providing and insofar as these acts are performed within the framework of the experiment and in accordance with the criteria imposed by or pursuant to the bill.

The experience of local authorities with coffee shops has made it clear that the unregulated 'back door' has undesirable effects because of the related criminogenic influences and possible public health risks arising from the lack of quality control of the cannabis. At the same time, it is unclear whether regulating the 'back door' could eradicate these influences and risks. Meanwhile, public support for a crackdown on illegal cannabis growing appears to be waning, since it is simply unavoidable for cannabis to be grown if its sale is tolerated. In the judicial system, too, courts have indicated to lawmakers that they are constrained by the limits of the toleration policy, as the sale of cannabis is tolerated while those who grow it or have it in stock are convicted and may face eviction, even if the cannabis they are growing is destined for sale in coffee shops.<sup>1</sup> A four-year experiment with a controlled supply chain involving the production of cannabis for delivery to, and sale in, coffee shops can yield knowledge and experience that will shed light on the effects of such a system on public health, crime, public order and safety and public nuisance. To achieve the regulation of the cannabis supply chain as proposed by this bill – from cultivation up to the moment of sale to recreational users – those involved in cannabis growing and related acts within this experiment will not be liable to criminal prosecution. Decriminalising the cultivation and supply of cannabis within the framework of the experiment will enable coffee shops to purchase their cannabis from government-licensed growers. A small-scale experiment with the regulation of the entire cannabis supply chain, including testing whether this supply chain can be controlled, and if so how, and how quality controls can be implemented, can yield experience and information that is relevant to policy choices. An independent committee will evaluate the experiment and report to the Senate and the House of Representatives. It is not possible to speculate about the political decision-making regarding the assessment of the experiment's findings.

As noted above, the government's aim in conducting this experiment is to acquire knowledge of and experience with the regulation of the cultivation and supply of cannabis to coffee shops, and in this way to gain insight into

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<sup>1</sup> See Supreme Court, 28 November 2017, ECLI:NL:GHSHE:2017:5167, NJ 2018/149.

the resulting effects. The way in which the experiment is structured will in part determine the measurable effects. In order to ensure that the experiment is of value, the government considers it important to measure its impact on crime, safety, public nuisance, and public health.

By letter of 23 February 2018,<sup>2</sup> the government informed the House of Representatives of the establishment of the Independent Committee on the Controlled Cannabis Supply Chain Experiment (hereafter: the advisory committee).<sup>3</sup> By letter of 9 March 2018,<sup>4</sup> it clarified the request for advice submitted to this independent advisory committee. The advisory committee was asked to advise on the experiment's design and on the minimum requirements to enable the reliable measurement of its effects, focusing on the scale of the experiment, its feasibility and the need for a baseline measurement and for a control group of municipalities. The advisory committee was also asked to advise on what can and cannot be measured. For instance, whether regulated coffee shops experience a growth or a reduction in customer numbers, whether displacement effects are discernible (with existing consumers taking their custom to other coffee shops), whether the public feels safer or less safe than before in the vicinity of the coffee shops concerned, whether any cannabis is getting into the hands of criminals, and what is needed to supervise the entire system. The advisory report was issued on 20 June 2018 and forwarded by the government to the House of Representatives.<sup>5</sup> The advisory report and the government's response to it<sup>6</sup> serve as the basis for the order in council which, together with the bill under discussion, forms the legal basis for the experiment.

### This bill provides for the establishment of a Guidance and Evaluation Committee for the Controlled Cannabis Supply Chain Experiment

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<sup>2</sup> Parliamentary Papers, House of Representatives 2017/18, 24 077, no. 410.

<sup>3</sup> Ministerial Order establishing the controlled cannabis supply chain experiment (Government Gazette 2018, 11571).

<sup>4</sup> Parliamentary Papers, House of Representatives 2017/18, 24 077, no. 411.

<sup>5</sup> House of Representatives, 2017-2018, 24 077, no. 416, Report 'Een experiment met een gesloten cannabisketen' ('An experiment with a controlled cannabis supply chain') issued by the Advisory Committee on the Controlled Cannabis Supply Chain Experiment, 20 June 2018.

<sup>6</sup> This letter of 6 July 2018 from the government, ref. 1374242-178738-VGP, was sent to the House of Representatives when the additional report was drawn up.

<https://www.rijksoverheid.nl/onderwerpen/drugs/documenten/kamerstukken/2018/07/06/kamerbrief-met-reactie-op-rapport-adviescommissie-experiment-gesloten-cannabisketen>.

(hereafter: the guidance committee). Its remit will be to monitor, evaluate and report on the experiment and the resulting effects, and to issue a report on its findings. The guidance committee must be distinguished from the advisory committee referred to above. It will be discussed in more detail in section 4.4 below.

In connection with this guidance committee, the present Explanatory memorandum is also issued on behalf of the Minister of the Interior and Kingdom Relations.

## 2. *Background information*

This bill arises from the Coalition Agreement ‘Confidence in the Future’.<sup>7</sup> The coalition agreement announced legislation to conduct a uniform experiment with the tolerated cultivation of cannabis plants for recreational use:

The government will introduce legislation, if possible within six months, on uniform experiments with tolerated cultivation of cannabis plants for recreational use. The experiments will be carried out in six to ten large and medium-sized municipalities, with the aim of determining whether and how controlled cannabis can be legally supplied to coffee shops and what the effects of this would be. After these experiments have been independently evaluated, the government will consider what action to take.<sup>8</sup>

The pledge made in the coalition agreement arose from a long-standing debate on the effects of the toleration policy on the sale of cannabis in coffee shops. The Netherlands currently has 573 coffee shops, spread among 103 municipalities.<sup>9</sup> The toleration policy means that, provided coffee shops have been licensed locally to do business and keep to the criteria in the Opium Act Instructions of the Public Prosecution Service

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<sup>7</sup> People’s Party for Freedom and Democracy (VVD), Christian Democratic Alliance (CDA), Democrats ‘66 (D66) and Christian Union (CU), ‘Confidence in the Future: 2017-2021 Coalition Agreement’. Annexe to Parliamentary Papers, House of Representatives 2017/18, 34700, no. 34. Also available in English at <https://www.government.nl/documents/publications/2017/10/10/coalition-agreement-confidence-in-the-future>.

<sup>8</sup> See p 5.

<sup>9</sup> Parliamentary Papers, House of Representatives 2016/17, 24 077, no. 397.

(OM) and any supplementary criteria imposed by local authorities, the sale of cannabis to consumers in these coffee shops is tolerated. However, the production and trade of cannabis is not tolerated. The public and local authorities have increasingly drawn attention to the problems arising from the limited scope of the government's toleration policy. In particular, local administrators highlight the problems caused by the fact that the sale of cannabis to consumers in coffee shops is tolerated, while the procurement by coffee shops of cannabis for sale to customers is not. In 2015 an administrative working group on the modernisation of cannabis policy drew up a report commissioned by the board of the Association of Netherlands Municipalities. This report, 'Het failliet van het gedogen: Op weg naar de cannabiswet' ('The failure of toleration: towards a cannabis act'), emphasised the problems that are experienced. These problems include the ties between tolerated coffee shops and organised crime, the safety hazards at locations where cannabis is grown illegally, and the negative impact on the quality of life in already weak and vulnerable neighbourhoods. In addition, too little is known about the composition of the cannabis that is sold.<sup>10</sup>

On 22 February 2017, the House of Representatives adopted the private member's bill proposed by MP Vera Bergkamp seeking to amend the Opium Act for the purpose of tolerating the cultivation of cannabis and its sale to coffee shops in a controlled supply chain (Controlled Cannabis Supply Chain Experiment Bill).<sup>11</sup> This bill regulates the toleration of the production of cannabis and cannabis resin and the sale thereof to coffee shops by means of a controlled supply chain. Under the proposed terms, commercial cannabis growers who comply with certain conditions can receive a temporary exemption order from the minister and will therefore not be liable to criminal prosecution. The same applies to coffee shop owners, who may receive a temporary exemption order for the sale of cannabis from the mayor of their municipality. On 15 November 2017, the MP who introduced this bill informed the Senate that she intended to defer

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<sup>10</sup> See section 3 of that report.

<sup>11</sup> Parliamentary Papers, Senate 2016/17, 34 165, A.

her response to the provisional report, pending the elaboration of the experiment promised in the coalition agreement as referred to in this bill.<sup>12</sup>

The fact that the experiment is taking place now has to do with several factors. Reports of problems with the current toleration policy are not just coming from local administrators. Similar signals have been received from the judicial system. In addition, developments in other countries, including Canada, the United States and Uruguay, have enhanced the topicality of the issue in the Netherlands. The government has chosen to first conduct an experiment and measure the effects on public health, crime, public safety and public nuisance before deciding on the future course of its policy on coffee shops. Analysing effects is essential, since the government has little experience with the regulated cultivation and sale of cannabis. Assumptions regarding the positive or negative effects of regulating the cannabis supply chain cannot yet be based on sufficient grounds to serve as a point of departure for new policy. Conducting an experiment with the regulation of the entire cannabis supply chain can change this.

### 3. *Main points of the bill*

The point of departure for the Legislative Drafting Instructions is that experimental regulations at the level of an order in council, involving derogations from acts of parliament, require a specific legal basis (Legislative Drafting Instructions 2.41). At the legislative level, the following factors must in any case be regulated: the purpose, scope and period of validity of the experimental legislation. It is also necessary to determine the specific parts of legislation from which the experimental legislation may derogate. Since this bill provides for derogations from an act of parliament – the Opium Act – with regard to certain acts and subject to strict conditions, specific statutory regulations will be drawn up in accordance with the Instructions. The bill provides for the necessary delegation provisions for the experiment's further elaboration by order in council.

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<sup>12</sup> Parliamentary Papers, Senate 2017/18, 34 165, C.

To make it possible to conduct the experiment with the cultivation and sale of cannabis in a controlled supply chain, the bill provides for the following elements.

The bill defines the duration and the purpose of the experiment and provides a basis for the Minister for Medical Care and the Minister of Justice and Security to designate growers to cultivate cannabis for the experiment. The intention is to designate five to ten growers in accordance with the advisory committee's recommendations. The cannabis will be supplied to and sold by coffee shops in at most ten municipalities. The participating municipalities will be designated by order in council. The government believes that this number of municipalities will make it possible to arrive at sound, meaningful conclusions regarding the effects on public health, crime, public safety and public nuisance. The advisory committee will also make recommendations in due course on the municipalities to be selected. In doing so, it will take account of factors such as the need to ensure a varied geographical spread, population size, and the number of coffee shops in the participating municipalities, in order to ensure that the experiment possesses methodological value.

The system will create a controlled cannabis supply chain, since designated growers will be permitted to supply cannabis only to the coffee shops in the participating municipalities, and the coffee shops will be permitted only to sell cannabis grown by designated growers. In other words, during the execution phase of the experiment, the participating coffee shop owners will not be permitted to sell cannabis obtained from any other source.

The prohibition that section 3 of the Opium Act imposes on the aforementioned acts (cultivation, delivery and sale) and the other acts enumerated in that section under B and C, will be declared inapplicable during the experiment so that the designated growers and other persons taking part in this experiment (such as transport personnel) cannot be prosecuted for committing a criminal offence. This naturally applies only

insofar as they keep to the requirements that are imposed on those actions by or pursuant to the proposed legislation.

As noted in section 1 above, the experiment will span a limited period of time and will consist of three phases. The first – the preparation phase – starts with the entry into force of the bill under consideration and the order in council based on it. The preparation phase will last until a time to be determined by the Minister of Justice and Security and the Minister for Medical Care and published in the Government Gazette. This phase will be used *inter alia* for designating the grower or growers who are to take part in the experiment and to enable growers, municipalities, coffee shops and other participants in the experiment to make the necessary preparations. Also during this phase, the guidance committee will prepare to monitor and evaluate the experiment. Partly on the basis of the advisory opinion of the advisory committee, it is estimated that these preparations will take at least a year. To retain a degree of flexibility, the government proposes that the time at which the preparation phase concludes and the experimental phase begins will be determined by separate order of the aforementioned ministers. This flexibility will ensure that the preparations are truly completed before the experimental phase begins.

Then follows the experimental phase, during which the experiment actually takes place. This will last four years, during which time cannabis can be grown, supplied to coffee shops operating in the participating municipalities, and sold there, within the framework of the experiment. The period has been set at four years because of the risk that an experiment of shorter duration might yield insufficient insight into the effects. The experimental phase will start – and in principle, end – at the same time in all participating municipalities. The four-year experiment will be followed by a phasing-out period that must be completed within six months. That is to say, within that period a return must be effected to the situation that existed before the experiment began, or in any case to a situation in which there is full compliance with the toleration criteria under the current policy. The phasing-out period is intended to prevent those taking part in the experiment from suddenly finding themselves in violation of the law

immediately after the experimental phase. It is not intended to anticipate the outcome of the evaluation or any further decision-making on the basis of this evaluation.

The bill under consideration does provide scope for the duration of the experiment to be changed by order in council. This creates a degree of flexibility in order to give participants legal certainty. This accords with the Legislative Drafting Instructions on this point, which state that if it is decided after the end of an experiment to convert the experiment into generally applicable legislation, provision must be made for a temporary extension of the experiment. From the viewpoint of legal certainty it may be undesirable, and also less efficient, to reinstate the old regime for a short period of time in the areas involved in the experiment. In such a case, the experimental regulations should continue to apply until the amended legislation has entered into force, in accordance with instruction 2.42 of the Legislative Drafting Instructions. However, the experimental phase and phasing-out period may not last longer than six years in total.

No later than eight months before the end of the experimental phase, the guidance committee should draw up an evaluation report with the findings arising from the experiment and send it to the ministers. Within four months after that, the government will send its response to the report to the Senate and the House of Representatives. The evaluation will be conducted during the experimental phase, so that any further decision-making based on it can take place before the start of the phasing-out period. This keeps open the possibility of submitting to parliament any follow-up steps the government may deem desirable for its consideration.

As noted above, the details of the experiment will be elaborated by order in council. To fully guarantee parliament's involvement in the drafting of that order in council, a preliminary parliamentary scrutiny procedure is provided for in the bill.

#### *4. Specific parts of the experiment*

##### *4.1 Participating municipalities*

As noted in section 3, the cannabis grown for the experiment will be supplied to, and sold in, coffee shops in six to ten large and medium-sized municipalities. The advisory committee did not recommend any specific number of municipalities. It takes the view that this cannot be determined until the research team to be appointed has drawn up detailed plans for the experiment. It nonetheless suggests that in order to achieve sufficient variety, considerably more than six to ten municipalities will be needed. The committee endorses the government's point of departure that in order to measure the effects in a meaningful way, the experiment needs to include sufficient variety as regards types of municipalities and geographical spread. In this regard, the committee considers it essential that, alongside the participating municipalities, effects are also studied in a control group of other municipalities.

The government has made a wide-ranging appraisal of the issues from different vantage points. It has emphatically taken account of existing international and European law and the concerns expressed by neighbouring countries regarding possible cross-border effects, as well as the consequences for monitoring and enforcement, capacity and resources. The government therefore considers it important to keep to a manageable experiment in six to ten municipalities, as announced in the coalition agreement. The government believes that with this number of municipalities, it will be possible to draw meaningful conclusions as to whether the supply chain can truly be controlled, and regarding the effects on public health, crime, public safety, and public nuisance, which will also have relevance in an international and European context. The government will adopt the committee's suggestion of designating a control group of other municipalities, besides those taking part in the experiment. Once the effects have been measured, they will be compared with the situation in adjacent municipalities and municipalities without coffee shops, as well as national trends as reported in existing monitoring instruments.

Only individual municipalities can take part. As noted during the meeting of 20 December 2017 between the permanent parliamentary committees on Justice and Security and on Health, Welfare and Sport and the Minister for Medical Care and Sport and the Minister of Justice and Security, there is no scope for a regional partnership of municipalities. The basic principle underlying the experiment is that its execution should be uniform: that is, in principle it will be set up along the same lines in every participating municipality. This uniformity is essential to make it possible to compare the results between participating and non-participating municipalities and to draw representative conclusions. In this way, the government hopes to gain insight into the consequences for public health, public order and safety, and crime of having cannabis grown and supplied to coffee shops in a controlled supply chain. The scope of the experiment as described above is considered both sufficient and manageable.

Given the prevailing political context, the municipalities in which the experiment will be conducted will be designated by order in council, since this will guarantee parliament's involvement, through the preliminary parliamentary scrutiny procedure that applies to orders in council. The advisory committee has been asked to advise on which municipalities should take part in the experiment in the autumn of 2018. This advisory opinion will serve as the basis for the designation of the municipalities.

To promote manageability and enforceability, the government intends to insist that all coffee shops in each participating municipality take part in the experiment, in line with the advisory committee's recommendation. Additional rules governing participation by coffee shops will be set. The bill under discussion will include a provision giving the mayor the power to impose an order subject to enforcement action on coffee shop owners who fail to comply with the applicable requirements. This means that in an extreme case, a coffee shop that does not comply with the rules can be closed down. These provisions will be elaborated in close consultation with the local authorities.

It is important to emphasise that outside the bounds of this experiment, the current policy on coffee shops will continue to apply in full in all

municipalities with coffee shops. The current criminal investigation and prosecution policy relating to the illegal cultivation of cannabis will likewise remain in force unchanged.

#### *4.2 The cultivation of cannabis for the purposes of the experiment*

The coffee shops in the participating municipalities need to be supplied with quality-controlled cannabis. In addition, there must be a sufficient volume of cannabis available in sufficient varieties to stock coffee shops with a representative supply. To this end, the bill provides for the designation of one or more growers. It is important that there be enough growers to prevent anyone acquiring a monopoly position, to increase the likelihood that a sufficient range of cannabis varieties will be available and to ensure continuity of supply. The designation of one or more growers will be based on a transparent procedure in which genuine competition is ensured. The criteria and the procedural details will be laid down by order in council. The same order in council will also define the grounds on which an application to be designated as a grower can be rejected and the grounds on which a designation can be revoked. The procedure will in any case include some kind of screening of each potential or existing grower, and the power to reject an application, or to revoke a designation, in the event of a negative outcome. It is intended that the selection procedure will include screening using the instruments of the Public Administration (Probity Screening) Act, so as to reveal whether there is any danger that a grower might abuse a designation to engage in criminal activity.

In this connection, the bill provides for an amendment of the Public Administration (Probity Screening) Act. In addition, the order in council will provide that the cannabis must be grown within Dutch territory because cultivation must be supervised by the Dutch authorities. The designation of a cannabis grower and the rejection of an application for such designation are decisions open to objection and application for judicial review. The designated grower or growers will cultivate cannabis only for the purposes of this experiment and must provide a reliable product, the quality and composition of which they have expertly established.

The advisory committee made some suggestions for the criteria to be met by the product, cultivation, growers, storage, testing, packaging and transport. This is an expensive product that must not in any circumstances be allowed to fall into the hands of criminals. Additional rules on these matters will be laid down by order in council, taking account of the advisory committee's suggestions.

#### 4.3 *Sale of cannabis in coffee shops*

The cannabis cultivated for the experiment will be supplied to coffee shops in the participating municipalities, after which sales can commence. These coffee shops will be subject, in any case, to the existing 'AHOJ-G' criteria as referred to in the Opium Act Instructions. This means that for the applicable coffee shops, the following rules will in any case apply:

- no advertising other than a brief notice on the premises in question;
- no hard drugs in stock or for sale;
- no public nuisance, including nuisance parking, noise, litter or customers loitering in front of or near the premises;
- no sale or admission to minors (minimum age: 18);
- no sale of large amounts in a single transaction, i.e. not more than appropriate for personal use (5 grams).

The government intends to include a maximum quantity of permissible trading stock in the order in council. For public safety considerations, the government considers it irresponsible not to set a ceiling for the maximum trading stock. Additional requirements may be imposed locally. Under the current toleration policy, the extent to which the residence criterion – prohibiting non-residents of the Netherlands from entering coffee shops – is enforced is left up to the local authorities to decide. The question of how the residence criterion should be applied in the participating coffee shops was one of the issues that the advisory committee was asked to address. This point is discussed in section 5 below.

Besides the criteria listed above in relation to cannabis sales, additional

conditions will apply in the framework of the experiment. Current policy is geared towards discouraging cannabis use. This means that efforts will be made to inform the public about the risks associated with cannabis use. Such information will be provided in both participating and non-participating municipalities. Efforts will be made to discourage cannabis use in the coffee shops of the participating municipalities. Coffee shop staff must actively point out the risks of cannabis use to their customers. By including this condition, the government seeks to prevent the experiment creating a 'pull factor' by normalising cannabis use. The importance of adequate information and preventive interventions was also included in the advisory committee's recommendations.

#### *4.4 Controlled cannabis supply chain experiment: guidance and evaluation committee*

The bill provides for the establishment of a guidance committee, as referred to above. The guidance committee will have the task of monitoring and evaluating the experiment, and issuing a report on its findings. It will also supervise the research team or consortium that is to be appointed, which will flesh out the way in which the effects are to be measured, in terms of both substance and methodology. The guidance committee will report to the Minister for Medical Care and the Minister of Justice and Security.

With this experiment, the government seeks to acquire knowledge of, and experience with, the regulation of the cultivation and supply of cannabis to coffee shops, and to gain insight into the resulting effects. As noted in section 1, the advisory committee was asked to advise on the question of which effects can be measured and on how to measure them. The committee's recommendations in this connection will serve as the basis for the further elaboration of the impact assessment.

The Advisory Bodies Framework Act will apply to the guidance committee, since this committee will be classified as an advisory body within the meaning of section 1 (a) of that Act. The provisions of sections 4 and 8 of the Advisory Bodies Framework Act regarding the appointment and remit

of the guidance committee are fulfilled by section 9 of the bill under discussion. The other provisions of the Advisory Bodies Framework Act (when talking about guidance committees) will also apply (to the guidance committee) and will therefore be taken into account in the further elaboration of the guidance committee's remit.

#### 5. *Aspects relating to international and European law*

The cultivation and sale of cannabis are regulated by international and European law. The Single Convention on Narcotic Drugs, concluded in New York on 30 March 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs adopted in Geneva on 30 March 1972 (Dutch Treaty Series 1987, 90) permits the cultivation and sale of cannabis exclusively for medical or scientific purposes and obliges signatory states to make any violation of its rules a criminal offence (article 2, paragraph 5 (b) and article 4 (c)). The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concluded in Vienna on 20 December 1988 (Dutch Treaty Series 1990, 94)<sup>13</sup> confirms these obligations (article 3, paragraph 1 (a) of the Convention against Illicit Traffic).

Where European law is concerned, the first relevant provision is article 71, paragraph 2 of the Convention concluded at Schengen on 19 June 1990 implementing the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at their common borders, signed at Schengen on 14 June 1985 (Dutch Treaty Series 1990, 145 and OJEU 2000, L 239). This provision obliges states to undertake to prevent and punish by administrative and penal measures the sale, supply, and handing over of narcotic drugs and psychotropic substances.<sup>14</sup> Also applicable is Council Framework Decision

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<sup>13</sup> The Single Convention entered into effect for the Netherlands, in its amended form, on 28 June 1987; the UN Convention against Illicit Trade entered into effect for the Netherlands on 7 December 1993.

<sup>14</sup> The Convention implementing the Schengen Agreement is part of EU law, as follows from Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis (OJEC 1999, L 167).

2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJEU 2004, L 335). Articles 2 and 4 of that Framework Decision confirm the obligations imposed in the UN Conventions and harmonise at a minimum level the maximum custodial sentences by which the prohibited acts must be punishable.

The past decade has seen a shift of opinion regarding the fight against the use of drugs in general, and cannabis in particular. There is a growing trend to change the sanctions on the use of narcotic drugs by imposing alternative sanctions instead of custodial sentences. According to the treaties' monitoring body, the International Narcotics Control Board (INCB), the treaties are sufficiently flexible to accommodate alternative sanctions in these cases. In some countries, opinions are changing in this respect. In Uruguay this has led to regulated cultivation and sale of cannabis. In Canada the Senate recently passed a law legalising the recreational use of cannabis.

The government views the plans set out in the coalition agreement aimed at conducting an experiment to test the effects of a controlled cannabis supply chain partly in the light of this shifting international context in which new solutions for the recreational use of cannabis are becoming acceptable. After all, it has become clear from local administrators' experience with coffee shops that the unregulated 'back door' has undesirable effects on account of the risks posed to public health and the related criminogenic influences. At the same time, it is unclear whether regulating the back door could eradicate those influences. By experimenting for a limited time with a controlled supply chain of cannabis that is produced for delivery to, and sale in, coffee shops it will be possible to gain insight into the ensuing effects on public health, crime, public safety and public order. The government sees this as an adequate and proportional way of obtaining that insight.

The government appreciates that the provisions of international law enumerated above are relevant to the proposed experiment. In this context, it is important to emphasise that the substance and duration of

the experiment are laid down in law, which ensures that it cannot lead to an irreversible situation. For the rest, declaring section 3 (B) and (C) of the Opium Act inapplicable is not based at this time on any changing insight regarding the punishable nature of the acts concerned. The aim here is simply to ensure that the participants in the experiment are not liable to criminal prosecution. Given the extent of the experiment, this is an extremely limited and purely national derogation from the legislation and other instruments cited above. Furthermore, the proposed experiment provides for a highly scientific evaluation, guaranteed by law. The experiment is therefore expected to yield new scientific insights. In this light, the government considers the experiment – given its objective – justifiable. However, the government deems it essential to provide full and timely information to the Netherlands' neighbours, other EU member states, the relevant EU Evaluation Committee and the INCB. The government has already concluded an agreement with the INCB to this effect.

In addition to the provisions of European law aimed at curbing drug use, outlined above, the proposed experiment with a controlled cannabis supply chain also impinges on other aspects of European law. For instance, it has already been mentioned that it is unclear to what extent the residence criterion could continue to apply in the municipalities participating in the experiment. According to this criterion, which has applied in all Dutch municipalities since 1 January 2013 on the basis of the Opium Act Instructions, only residents of the Netherlands have access to coffee shops. In the *Josemans* case, the European Court of Justice (ECJ) ruled that the application of this criterion is not incompatible with the principle of non-discrimination and the freedoms of movement that exist within the European Single Market. According to the ECJ's ruling, this was because the sale of narcotic drugs was illegal, which meant that there were no legal 'economic and commercial channels' involved. Against that background, the plaintiff, who ran a coffee shop in Maastricht, could not invoke the said freedoms or the principle of non-discrimination.<sup>15</sup> The

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<sup>15</sup> ECJ, *Josemans*, case C-137/05 (16 December 2010) para. 54.

proposed experiment will similarly not involve any legal economic and commercial channels as referred to in the said ruling. That those who will be growing, supplying, and selling cannabis in the controlled supply chain will be exempt from prosecution, in the framework of the experiment, is simply to make their participation in the experiment possible. It is not based at this time on any changing insight regarding the punishable nature of the acts concerned. The ECJ's considerations in the *Josemans* ruling are therefore also applicable to the experiment.

The advisory committee has recommended that the experiment leave scope for differences in the way in which municipalities enforce the residence criterion, depending on factors such as regional relations and effective action to combat public nuisance. It will therefore be left up to the local authorities to decide, as under the current toleration policy, to what extent the residence criterion will be enforced. In view of the international context, the government considers it essential to enforce the residence criterion in border municipalities. This is because the residence criterion helps to prevent drugs tourism, which is also the main argument used in justification of the residence criterion in the current toleration policy.

It follows from the above that since no legal economic and commercial channels are at issue here, the designation of licensed growers does not impinge on aspects of European law.

#### 6. *Government policy on the provisions of the experiment*

The bill proposes an experiment and therefore constitutes experimental legislation. It was drafted in accordance with the government's current policy on experimental legislation.<sup>16</sup> This policy, which is enshrined in instruction 2.6 of the Legislative Drafting Instructions, prescribes a number of criteria that experimental legislation must fulfil. One criterion states that it is permissible to opt for experimental legislation only if there is an expectation that meaningful experiments are possible. In our view, this

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<sup>16</sup> Interministerial Legislative Consultative Group on Experimental Provisions: 'Het proberen waard. Eindrapport van het Interdepartementaal wetgevingsberaad inzake experimenteerbepalingen' ('Worth a try: Final report of the Interministerial legislative consultative group on experimental provisions'; The Hague 2000). Available at <http://www.kcwj.nl>.

requirement is fulfilled by the experiment involving the cultivation and sale of cannabis in a controlled supply chain, provided the experiment fulfils certain preconditions. For instance, the experiment must be carried out uniformly – in municipalities which differ in terms of type of municipality and geographical spread – if any representative conclusions are to be drawn concerning the consequences for public health, public nuisance and crime. This will make it clear to what extent the cultivation and sale of cannabis in a regulated, controlled supply chain could provide an alternative to the current toleration policy.

It is also essential to observe the principles of equality and legal certainty. Experimental legislation leads to derogations from existing legislation in specific situations. The bill under discussion makes it clear what these derogations are, and the order in council will clarify the specific situations in more detail, so that they are apparent to all. This also fulfils the criterion of legal certainty, which requires that it be clear to individuals and enterprises what rules apply to them. In addition, the temporary nature of the experiment must be articulated. This criterion too is fulfilled by the bill: first, because of the inclusion of a sunset clause, namely a provision stating that the proposed act will lapse four years and six months after the start of the experimental phase (unless determined otherwise by order in council); and second, because the duration of the experiment and the duration of the separate phases are specified in the bill. A final condition is that it must be clear how the evaluation of the experiment will take place. This criterion too is fulfilled. Not only does the bill provide for the establishment of a guidance committee, which will be responsible for monitoring and evaluating the experiment, but it also provides for the guidance committee's remit to be expanded by order in council if needs be.

#### *7. Monitoring and enforcement*

As described in section 3 above, it was judged to be necessary for the experiment that no one will be prosecuted under section 3 of the Opium Act in respect of the acts enumerated under (B) and (C) of that section, insofar as these acts take place within the framework of the experiment

under discussion involving the cultivation and sale of cannabis and in accordance with the requirements that are imposed on those acts by or pursuant to this bill. At the same time, it is important to ensure that participants cannot use the experiment to commit prohibited acts with cannabis with impunity. For that reason, growers and coffee shop owners (and others, such as transport personnel) will be exempt from prosecution for acts they perform in the framework of the experiment only if they adhere to the requirements that are imposed on those acts by or pursuant to this bill. This means that if they do not keep to these requirements, section 3 of the Opium Act will apply to them in full.

Any failure to comply with the requirements imposed by or pursuant to this bill will therefore be liable to enforcement under both criminal and administrative law. The basis for enforcement under administrative law is enshrined in sections 8 to 10 of the bill. Section 8 defines the legal basis for designating persons who will be responsible for monitoring compliance with the law. Who those individuals will be depends on the additional requirements that are yet to be formulated for participation in the experiment. Not until these requirements are clear will it be possible to determine which individuals would be most suitable to monitor compliance. It is conceivable, in any case, that the task will involve staff from a range of disciplines. Sections 9 and 10 confer powers for the imposition of an order subject to enforcement action in the event of non-compliance with the applicable requirements. Section 9 provides for these powers in a general sense for the Minister for Medical Care and the Minister of Justice and Security, while section 10 does so specifically for the mayors of the designated municipalities with respect to coffee shop owners. In an extreme case, the participation of a grower or a municipality in the experiment can be terminated. In the case of a grower, such a decision can be made by the Minister for Medical Care and the Minister of Justice and Security; where a municipality is concerned, the order in council will define the conditions under which participation can be suspended or terminated.

As noted above, in order to prevent any abuse of participation in the experiment, it is essential that in the event of any non-compliance with the requirements, the full force of the provisions of the Opium Act be brought to bear on the offender. Depending on the violation, action will be taken either under administrative or criminal law. In the event of an extremely serious violation, it will be deemed appropriate to take action under both administrative law – by terminating the offender’s participation in the experiment – and criminal law. It is essential to prevent a situation where the Public Prosecution Service judges it to be in the public interest to prosecute a grower or coffee shop owner who is not taking part in the experiment, but considers otherwise with regard to a grower or coffee shop owner who is taking part in the experiment. The experiment is not intended to create any legal inequality or arbitrariness in this regard. To ensure effective coordination, cooperation agreements will be concluded between the Public Prosecution Service and investigating officers on the one hand, and those charged with monitoring compliance with the law under section 8 of the bill on the other. These agreements will also relate to any potential concurrence of legal protection if criminal and administrative proceedings are initiated at the same time. It may be added that such concurrence would not be unique to this experiment, given the current scope for mayors to initiate administrative proceedings under section 13 (b) of the Opium Act against anyone contravening that Act. This section of the Opium Act will not apply within the experiment, but the bill nonetheless accords similar powers to mayors of designated municipalities in respect of coffee shop owners. For further details, reference may be made to the explanatory notes on sections 3 and 10, below.

#### *8. Consultation*

The bill was sent to the following bodies for consultation purposes: the national police, the Board of Procurators General (hereafter: ‘the Board’), the Council for the Judiciary, and the Association of Netherlands Municipalities (hereafter: ‘the VNG’).

The responses received from these bodies included several questions on the details of the experiment. For instance, they queried whether the growers would be screened, and if so by whom and on what basis, and whether the price of the cannabis they grow will be set by the government. With regard to the municipalities, one of the questions related to the ceiling to be set for a coffee shop's maximum trading stock.

Where possible, this explanatory memorandum clarifies the way in which the advisory committee's recommendations will be incorporated into the details of the order in council. We are aware that the bill and this explanatory memorandum cannot provide a comprehensive overview. The consultations on the forthcoming order in council will provide a more complete picture.

The following observations may be made regarding the responses received.

The national police recommended assigning responsibility for monitoring the acts performed in the framework of the experiment to the Health and Youth Care Inspectorate (hereafter: 'the IGJ'), in partnership with the Netherlands Food and Consumer Product Safety Authority, thus limiting police involvement to the investigation of criminal offences. The Board too focused on the details of the monitoring of the experiment and likewise advocated limiting the role of the police. It also emphasised the importance of creating a basis for sharing information in relation to monitoring and enforcement activities within the experiment. The structure of the monitoring and enforcement procedures is one of the subjects about which the advisory committee was asked to make recommendations. The recommendations of the national police and the Board will be taken into account in the final decision-making on this issue. In addition, the national police advised that private security personnel be hired to protect the growers and coffee shop owners. The Board likewise drew attention to the safety of growers and other facilitators in the system, citing the possibility of extortion and intimidation by criminals. Preventive measures to guard against burglary and robbery should certainly be the responsibility of the entrepreneur. At the same time, the government's

responsibility to protect individuals and enterprises in the event of a specific threat or an impending public order disturbance. The details of the relevant procedures as set forth in the order in council will in any case be drafted in consultation with the national police and the Board.

The Board further noted that it is unclear whether the additional requirements to be imposed on acts involving cannabis within the experiment could potentially influence efforts to maintain public order in a municipality or to tackle crime related to soft drugs. The government also wants to know whether the experiment will impact on efforts to maintain public order or fight crime and will instruct the guidance committee to monitor and evaluate any such influences.

The response of the Council for the Judiciary led, among other things, to additions to the sections on the relationship between the experiment and international law and the relationship between criminal and administrative enforcement. It also made it clear that the designation of one or more growers constitutes a decision within the meaning of section 1:3 of the General Administrative Law Act. The Council also asked several questions on how the procedure to designate one or more growers is to be structured. The proposed consultation version of the bill stated that this would take the form of a European tendering procedure. This will not be the case, however, since the cultivation of the cannabis will not take place on the basis of a public contract. This obviates the need to reply to the Council's questions in this connection. As noted in section 4.2 above, the grower or growers will of course be selected in accordance with a transparent and fair designation procedure.

The Council proposed expanding section 3 of the bill to include a provision stating that the prohibition laid down in section 11a of the Opium Act will likewise not apply during the experiment. In our view, however, making such an addition to section 3 is superfluous and/or undesirable, for the following reasons. The preparatory acts enumerated in section 11a are designated as criminal offences because the person in question knows, or has reasonable grounds to suspect, that the substances or items involved are to be used in committing an offence under section 11,

subsection 3 or 5 of the Opium Act. The penalty carried by section 11, subsection 3 relates to the intentional violation of the prohibition laid down in section 3 (B) of the Opium Act, which prohibition has already been declared inapplicable in section 3, subsection 1 of the proposed bill. For this reason, declaring section 11a inapplicable is superfluous. A similar argument applies to the penalty carried by section 11, subsection 5. Furthermore, the penalty carried by section 11, subsection 5 also relates in part to the prohibition enshrined in section 3 (A) and (D) of the Opium Act, which is not altered in consequence of this bill.

The VNG identified a number of points that need to be worked out in more detail. The details of the experiment will be clarified as soon as the order in council is ready. The government wishes to emphasise that the experiment will be conducted on a uniform basis and on a limited scale in order to obtain experience with a controlled cannabis supply chain. Differences in execution will remain possible to a limited degree. Other forms of distribution and sale fall outside the scope of this objective. However, it will be possible for new coffee shops to open up and sell cannabis. Regarding the temporary nature of the experiment, besides the comments already made on this point in section 3 above, the following remarks are in order. Experimental legislation contains a sunset clause, which prescribes that the legislation will remain in force only for a limited time. In the case of the experiment under discussion, the proposed bill not only declares certain provisions of legislation inapplicable, but also includes a basis for additional legislation. New situations will be created, with rights and obligations for entrepreneurs and government bodies. For this reason, the proposed bill provides for a transitional phase to prevent the experiment coming to an abrupt end. This transitional phase, between the end of the experiment and the renewed applicability of the legislation that has been declared temporarily inapplicable, gives all those concerned time to return to the current national policy on coffee shops. A phasing-out period is a form of transitional law. The experiment will run for four years. Without this phasing-out period, those taking part in the experiment would immediately find themselves in violation of the law at the end of those four years, since the experimental legislation will cease to apply at that point.

The IGJ has not yet assessed the bill to determine whether its provisions can be duly monitored and enforced, but will conduct such an assessment in respect of the forthcoming order in council and the details of the experiment it contains.

#### *9. Consequences for the regulatory burden*

The bill will not impose any extra regulatory burden on members of the public or enterprises, as is also confirmed in an advisory opinion of 13 February 2018 issued by the Dutch Advisory Board on Regulatory Burden (ATR). Enterprises that participate in the experiment will need to keep to the applicable rules. These rules will be elaborated, as noted, in an order in council. This order in council will be submitted for consideration to the ATR in due course.

### **Notes on individual sections**

#### *Section 1*

Section 1 contains a number of definitions. These start with the use of the term ‘cannabis’ to embrace the terms ‘cannabis’ (referred to as ‘*hennep*’ in Dutch) and ‘cannabis resin’. In order to emphasise the relationship with the Opium Act, this section includes a reference to Schedule II to the Opium Act. In this Schedule, cannabis (‘*hennep*’) is described as ‘every part of the plant of the genus *Cannabis* (‘*hennep*’) from which the resin has not been removed, except for the seeds’, while cannabis resin (hashish, ‘*hasjies*’ in Dutch) is described as ‘a normal solid compound of the separated resin obtained from plants of the genus *Cannabis* (‘*hennep*’) with flower and leaf fragments of these plants’.

The description of the term ‘coffee shop’ makes it clear that this refers exclusively to a hospitality establishment that does not serve alcoholic beverages, in which cannabis is sold or used. This description was adopted from the Public Prosecution Service’s Opium Act Instructions.

The bill also includes a definition of the term 'controlled cannabis supply chain'. This refers to a supply chain in which the cultivation of cannabis and its delivery to, and sale in, coffee shops and/or any other related act as referred to in section 3 (B) and (C) of the Opium Act takes place.

### *Section 2*

This section defines the objective of the experiment. This ensures that the experiment has a proper legal basis. The decriminalisation of the controlled cannabis supply chain relates exclusively to the prohibitions contained in section 3 (B) and (C) of the Opium Act. Criminal offences defined in other legislation (such as the Criminal Code or tax legislation) remain fully applicable to the acts performed in the framework of the experiment.

### *Section 3*

The first subsection of this section provides that the prohibition as laid down in section 3 of the Opium Act will not apply during the three phases of the experiment in relation to the acts named in parts (B) and (C) of that section. In consequence, all provisions of the Opium Act that refer to these prohibited acts will not apply. As already noted, the lifting of these prohibitions applies only insofar as these acts are performed in compliance with the requirements that are imposed on them by or pursuant to this bill. The acts named in section 3 (A) and (D) of the Opium Act (import, export, and manufacture) are not relevant to the experiment and those prohibitions will therefore continue to apply. In addition, the Opium Act will continue to apply in full to all situations in which the rules governing the experiment do not apply or are violated.

Subsection 2 of this section provides that section 13b of the Opium Act will not apply to acts performed in the framework of the experiment. Section 13b of the Opium Act gives the mayor the power to impose an order subject to enforcement action, if a substance prohibited under the Opium Act is sold, delivered or supplied, or is present for that purpose. In the framework of the experiment, this power is conferred by section 10 of

the proposed bill. Section 13b of the Opium Act can therefore be declared inapplicable in relation to acts performed in the framework of the experiment. It follows that the section nonetheless continues to apply in full in situations involving drugs other than cannabis, for instance, or drugs discovered in a dwelling.

#### *Section 4*

As already noted above, the experiment will have three phases. The preparation phase is not regulated in this section, but will commence with the entry into force of the proposed bill and will last until a date to be determined by the Minister of Justice and Security and the Minister for Medical Care and announced in the Government Gazette. That date marks the beginning of the experimental phase, which will last four years. This will be followed by a phasing-out period, to last no longer than six months. As noted above, the duration of the experiment can be extended by order in council.

#### *Section 5*

Subsection 1 provides the legal basis on which the Minister for Medical Care and the Minister of Justice and Security can designate one or more growers to cultivate cannabis for the purposes of the experiment. As indicated in the general remarks of this memorandum, the intention is to designate five to ten growers.

Subsection 2 provides that rules may be attached to such a designation. The intention is to set out rules that are more generic in nature in the order in council. In addition, it may be necessary to include rules in the designation decision. For instance, the decision must specify matters such as the location to which the relevant designation applies.

Subsection 3 provides for legislative powers to be delegated in a number of cases. Rules will be established by order in council regarding the criteria and procedure for the selection and designation of growers. Grounds for rejecting an application and for revoking a designation must also be regulated by order in council. As noted in section 4.2 above,

provision must be made *inter alia* for potential growers to be screened, besides which it will be determined that the cannabis must be grown within Dutch territory, with a view to supervision. A grower's designation can be revoked if the grower no longer complies with the requirements established by order in council in relation to matters such as the cultivation, operational management, product information and the safety and quality of the cannabis grown, or the rules attached to the grower's designation. This will ensure that growers can only take part in the experiment insofar as they remain in compliance with the applicable rules. Both the rejection of an application for designation and the revocation of a designation are decisions that are open to objection and application for review.

### *Section 6*

This section provides that cannabis will be supplied to and sold in coffee shops located in a maximum of 10 municipalities. This maximum number is thus laid down by law. Which municipalities will take part in the experiment will be laid down by order in council. As already noted in section 4.1 above, this procedure has been chosen because of the political context within which the experiment is to be set up and to ensure parliament's involvement in this regard.

Subsection 2 provides for the delegation of legislative powers to enable an order in council to be issued concerning the situations in which a municipality's participation in the experiment can be temporarily suspended or terminated. This is an 'emergency brake' that will make it possible to halt the experiment, temporarily or permanently, in a given municipality.

Subsection 3 provides for the optional possibility of laying down by order in council the conditions under which the mayor of a participating municipality is competent to impose additional rules governing the execution of the experiment in that municipality. This option should be seen as a safety net, since in principle it is the intention that the experiment should be carried out uniformly in all participating

municipalities. However, it cannot be ruled out that certain locally specific circumstances could make it necessary to impose additional rules in a particular municipality. For instance, in border municipalities it is desirable to supplement the general rules laid down by order in council by allowing the mayor to impose additional rules (for example with regard to the residence criterion; see section 5).

### *Section 7*

This section provides for legislative powers to be delegated in two areas. Subsection 1 includes the grounds for drafting an order in council setting out rules for the experiment. The wording of the first sentence makes it clear that the drafting of an order of council for this purpose is obligatory rather than optional. Subsection 1 enumerates the subjects concerning which it is clear in advance that additional rules must be drawn up. However, since it cannot be entirely ruled out that a subject not yet anticipated may arise and also need to be governed by additional rules, the second sentence is formulated such that the subjects enumerated constitute a non-exhaustive list of subjects to be regulated by order in council.

The subjects that must at least be regulated by order in council are as follows:

- part (a): this part refers to requirements governing matters such as the cultivation of cannabis for the purposes of the experiment, product information, and the safety and quality of the cannabis grown (under 1°) and requirements to be met by the owners of coffee shops in the participating municipalities, which will in any case include requirements for participation in the experiment, operational management, and the procurement and sale of cannabis, as well as grounds for non-participation in the experiment (under 2°);
- part (b): the data that must be registered for the purposes of the evaluation;
- part (c): this part deals with the phasing out of the experiment. It relates to the six-month period immediately following the end of the experimental phase. The rules to be drawn up for the phasing-out period may contain

obligations for all participants in the controlled cannabis supply chain and are geared towards ensuring an orderly return to the situation that existed before the experiment began. Since a grower's designation can be revoked, and a municipality's participation in the experiment can be terminated prematurely, this part also provides a legal basis for stipulating in the order in council the situations in which the experiment can be phased out prior to the end of the experimental phase.

Subsection 2 provides an optional legal basis for the drafting of a ministerial order governing the execution of the experiment. Such an order could only regulate aspects of execution supplemental to those regulated by order in council. This provision makes it possible for the government to have an instrument at its disposal, within a relatively short space of time, in the event that the experiment requires adjustment. It relates to as yet unforeseeable circumstances with possible adverse effects on matters such as public health or the measurement of the experiment's effects. It therefore serves as a safety net provision to be used only if necessary.

#### *Section 8*

As is customary in the case of legislation, the task of deciding who is to monitor compliance will be delegated to the ministers who are responsible by law and notification of the designation will appear in the Government Gazette. Section 8 provides the basis for this.

#### *Section 9*

For the enforcement of the requirements imposed by or pursuant to sections 6 and 7, the Minister for Medical Care and the Minister of Justice and Security are competent to impose an order subject to enforcement action. They may also impose an order subject to enforcement action to enforce compliance with the obligation enshrined in section 5:20, subsection 1 of the General Administrative Law Act to cooperate with supervisory acts.

#### *Section 10*

In the event that a coffee shop owner fails to abide by the requirements of the experimental regulations, the mayor of the municipality in which the coffee shop concerned is located must be able to intervene. Section 10 therefore provides the mayor with the power to impose an order subject to enforcement action on a coffee shop owner for enforcement purposes. This means that in an extreme case, non-compliance could lead to the closure of the coffee shop concerned.

Section 10 was modelled on section 13b of the Opium Act. That section gives the mayor the power to impose administrative enforcement on the basis of that Act and to close down dwellings or establishments that are open to the public if drugs are being trafficked there.

### *Section 11*

This section covers the guidance committee. Subsection 1 provides for the establishment of the guidance committee and states its remit. The remit of the guidance committee is to monitor and evaluate the experiment and to report on its evaluation to the Minister for Medical Care and the Minister of Justice and Security. On the basis of subsection 3, the evaluation report must be submitted no later than eight months before the end of the experiment. Subsection 2 contains a mandatory basis for delegation for the drafting of additional rules by order in council regarding the performance of its remit by the guidance committee, in order to safeguard the independence and scientific quality of that evaluation. This is important to ensure the success of the experiment, regardless of the report's conclusions.

The order in council is subject to the preliminary parliamentary scrutiny provision in section 13 (see the explanatory notes on that provision).

### *Section 12*

Section 12 contains an obligation for the Minister of Justice and Security and the Minister for Medical Care to furnish the evaluation report that they have received from the guidance committee with a response, including the consequences that the government wishes to attach to the results of the

experiment, and to send these documents, naturally accompanied by the evaluation report itself, to the Senate and the House of Representatives. Section 12 prescribes a four-month period for this, which deviates from the three-month period referred to in section 24 of the Advisory Bodies Framework Act. It is anticipated that a longer time will be required for this response, given the need for particular care in formulating this government response, since this is a subject on which political opinion is sharply divided.

### *Section 13*

Section 13 contains a preliminary parliamentary scrutiny provision according to which the proposal for the order in council to be drawn up pursuant to section 5, subsection 3, section 6, section 7, subsection 1, or section 11, subsection 2 cannot be made until a draft of the text has first been submitted to the Senate and the House of Representatives. This ensures parliament's involvement in the drafting of rules for the elaboration of the experiment, rules on the monitoring and evaluation of the experiment by the guidance committee, and rules on the conclusion of the experiment.

### *Sections 14 and 15*

Section 14 proposes an amendment to section 1, subsection 1 (c) of the Public Administration (Probity Screening) Act according to which this bill will be regulated by that Act. The reason for this is that in the context of the selection procedure that is to lead to the designation of a grower, it is important that an assessment take place on the basis of that Act, so as to reveal whether there is any risk that a designation may be abused for the purposes of criminal activities. This amendment is in line with the situation on the basis of which the instruments under the Public Administration (Probity Screening) Act are already deployed in the context of the granting of an exemption from a prohibition imposed by section 2 or 3 of the Opium Act (see section 1, subsection 1 (c), point (3°) of the Public Administration (Probity Screening) Act). Since this subsection is also amended in section V of the bill amending various acts in relation to the introduction of the

Care Providers Admission Act (Parliamentary Papers, House of Representatives 2016/17, 34 768, no. 2), section 15 provides for a concurrence provision.

#### *Section 16*

This section states the short title by which the act of parliament will be known.

#### *Section 17*

This section contains a provision on the bill's entry into force and a sunset clause, as is customary in experimental legislation. The time of entry into force will be attuned to the government's policy on common commencement dates, as enshrined in the Legislative Drafting Instructions. The bill's entry into force marks the beginning of the preparation phase of the experiment.

Pursuant to the sunset clause, the act of parliament will automatically cease to have effect four years and six months after the time of commencement of the experimental phase, which time will have been announced in the Government Gazette on the basis of section 4, subsection 2 of the bill (unless determined otherwise by order in council). This period is the sum of the following periods: four years during which the actual experiment takes place (section 4, subsection 1), within which time the evaluation report (section 11, subsection 3) and the government's response (section 12) will also be issued, and a subsequent six-month period during which the experiment will be phased out (section 4, subsection 1). The possibility of extension by order in council has been clarified above and is in line with the Legislative Drafting Instructions.

For clarity's sake, it should be emphasised that the total duration of the experiment – from the preparation to the phasing out of the experiment – will inevitably be longer than the period of four years and six months referred to above, since this period does not include the preparation phase. Since the duration of these preparations cannot be fixed in

advance, the total duration of the experiment can likewise not be quantified in advance.

The Minister for Medical Care and Sport,  
Bruno Bruins

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