



ReLeaf Malta's contribution to the consultative process launched by the Government of Malta on the White Paper, Towards the Strengthening of the Legal Framework on the Responsible Use of Cannabis.

General overview

The White Paper proposed by the Maltese Government is an important development in this country's long road towards increased social justice and individual freedoms. The White Paper is also an innovative initial approach to move towards a more humane, just and inclusive Maltese society. As has been attested numerous times, people who consume, cultivate and share cannabis are not criminals and legislative measures, whilst promoting the general well-being of society, need to address the injustices, discrimination and long standing unfounded stereotypes frequently associated with cannabis.

In the year 2021, Malta is joining a number of other European Union member states and world countries in recognising that the criminalisation of people who cultivate, consume and share a substance in a private and responsible manner goes against the fundamental rights and freedoms enshrined in the UN Declaration of Human Rights and the EU Charter of Fundamental Rights. The present prohibition approach has also been directly linked to the failed and very costly attempt (both in terms of monetary and human cost) at curtailing substance use and continues to provide a fertile and very lucrative market for criminal organizations involved in the illicit cultivation, transportation and smuggling of substances.

As has been attested by a number of evidence based researched documents explaining the negative effects of the 'war on drugs'[\[1\]](#) the current approach has been directly attributed to exacerbating the health, psychological, economic, legal and social status for non-violent citizens. The recently published EU Drugs Strategy 2021-2025[\[2\]](#) is also inviting member states to take a

more informed approach to drug policy and develop legislative measures that address this social phenomenon within a framework that guarantees that; *“The coherent, effective and efficient implementation of measures should both ensure a high level of human health protection, social stability and security, and contribute to awareness raising. Any potential unintended negative consequences associated with the implementation of the actions should be minimised, and human rights and sustainable development promoted.”*

As highlighted by the National Drug Situation in Malta report 2019, *“The majority of cases in the criminal court that were decided in 2016 revolved around drug possession, with the highest number of cases attributed to the possession of cannabis”* and that with regard to the jail terms handed down for possession, 27 were related to cannabis. The report also states that a similar reality was present in 2017, with statistical data provided by the police indicating that *“most Drug Law Offence’s in 2017 were related to possession, with the majority of these related to cannabis”*.

Taking into consideration (i) the core principles of public health, social equity and justice, proportionality and the individual’s freedom to take responsible choices, (ii) sentiments expressed in the international documents quoted above, (iii) the human, social and collective cost of persecuting and incarcerating a non-violent person whose only crime is that of cultivating, consuming and sharing the cannabis plant, and (iv) the provisions included in the White Paper on the responsible use of Cannabis, ReLeaf Malta is hereby submitting a number of observations and suggestions to further contribute to the core sentiments of this proposed legislative change;

1) Decriminalisation of up to 7 grams of cannabis possession

This is a positive development and highlights the Government’s commitment to shift a larger margin of people away from any administrative or criminal consequences for small amounts of cannabis possession. However, the white paper does not specify what happens to the cannabis being found on the person. Is this confiscated by the police? Is the police required to give a receipt of the amounts confiscated?

Another important question is the definition and parameters used by the local police force and the AFM to **stop and search** a moving vehicle (roadblock) or a person (stop and search in the street) and what parameters will be used to consider a case as having **‘reasonable suspicion’** of trafficking, sale, import or export.

Reference is made to Article 5 and Article 8 of the European Convention of Human Rights (ECHR), more specifically the right to liberty and security and the right to respect for private and

family life. Furthermore, quoting various court cases Article 5, part B point 13 of the ECHR provides that;

“ An element of coercion in the exercise of police powers of stop and search is indicative of a deprivation of liberty, notwithstanding the short duration of the measure (Krupko and Others v. Russia, § 36; Foka v. Turkey, § 78; Gillan and Quinton v. the United Kingdom, § 57; Shimovolos v. Russia, § 50; Brega and Others v. Moldova. § 43).”

The European Convention on Human Rights and Policing Guidelines published by the European Union and the Council of Europe, reporting the ECHR Judgment Gillan and Quinton v. the United Kingdom, explains that:

“The Court readily found that the use of coercive powers to require an individual to submit to a detailed search amounted to a clear interference with the right to respect for private life. In reaching its decision, the Court considering that the element of humiliation and embarrassment involved in the public nature of a search may have, in certain cases, the potential to compound the seriousness of the interference”

Looking at the powers and force permitted to be used by police officers, particularly the decision to consider a particular person or case as constituting ‘reasonable suspicion’ of foul play, the Guidelines explain that:

“widely-framed powers could be misused, not only against demonstrators and protestors, but also against (as suggested by statistics) ethnic minorities”

It will be important for legislatures to properly define what is intended, thus ensuring all stakeholders are made aware what continues to constitute a criminal offence. A simple example is the presence of scales, frequently used by the police to justify trafficking. However, this is not always the case and instead the use of scales should be promoted on harm reduction grounds inviting the person to take a more conscious approach to the amounts consumed and keep track of consumption levels.

The increased margin for possession subject to proceedings before the Commissioner for Justice, now proposed at 28 grams is a very positive initiative and highlights the importance to ensure persons who consume cannabis on a regular basis are not subject to criminal consequences.

However, it is unclear if this amount is being considered to be depenalized on the person in public or if it also includes amounts found at home? A better understanding of the role and powers of the police in this section would provide increased clarity and transparency to the bill.

Proposals
Information on new procedure adopted by the local police when finding 7grams.
Define what constitutes ' reasonable suspicion ' by local police force.
Define powers retained by the police to obtain a private house-hold search warrant.
Define and lay down parameters for stop and search (vehicle and person)
Immediate halt to the use of AFM and police canine section to stop and search vehicles

2) Personal Cultivation and Private consumption

This is an important and brave step the Maltese Government is taking to counter the market monopoly of the illicit market and inviting cannabis consumers to take a responsible approach to their cannabis consumption. The possibility to cultivate cannabis for personal consumption, apart from separating consumers from the illicit market, also contributes to promote responsible and an evidence based approach to the type of cannabis being consumed, particularly THC:CBD levels.

It is unclear how an adult can ensure to be within the parameters of the law when inviting other adults in the privacy of the home. It is well known that cannabis is usually consumed in a social setting and as any other substance consumed in similar settings, the act of sharing is something that occurs frequently. Without moving towards a commercialised approach, will the decriminalised system allow adults to share in the privacy of their household (not in the presence of minors) and consume cannabis together without sale and monetary benefit?

Proposals
Decriminalise the immediate importation of cannabis seeds (including necessary equipment) for personal cultivation , thus ensuring a more expedited approach to distance responsible users from the illicit cannabis market.
Include the possibility of sharing (at no monetary or other valuable exchange) cannabis during the act of private consumption, thus ensuring people consuming cannabis in a group in a private residence are not considered by the police as traffickers.

3) Expungement of criminal records

This is a key part of the document and a very important provision ensuring past errors are quickly redeemed and new provisions ensure no more personal consumers end up with a tainted criminal record. However, the white paper does not speak about people currently imprisoned for

the amounts being proposed, including cultivation, and is also silent on the numerous people still awaiting judgment. It is important the bill includes also provisions for these people unjustly persecuted and if possible enact an immediate legal provision that releases from prison these people and brings to an immediate halt and revocation to the other ongoing pending cases.

Proposals
Immediate release from prison and revocation of ongoing proceedings for non-violent cannabis convictions falling within the parameters of the newly proposed decriminalised system.
Revision of non-violent cannabis jail terms (including for low-scale trafficking) and exploration of alternatives to incarceration.
Creation of a social equity program designed to help those still suffering the negative socio-economic effects of a court case and tainted police conduct to enrol in educational programs or find meaningful employment.

4) The distinction between CBD and THC

This is an important provision and one which will ensure a better understanding of the cannabis plant and how different type of strains and levels of different cannabinoids, particularly CBD and THC relate to the person.

Proposal
Allow the availability of CBD (in all forms) in local prisons and other institutionalised places, especially for persons trying to address problematic substance use.

5) The Prohibition of cannabis consumption in public

The shift from the police having the right to arrest the person and be presented with a fine by the Tribunal towards the issuing of an administrative fine is a positive development that continues to try and shift more people away from the criminal component. Nonetheless, the complete ban of public consumption of cannabis continues to echo discrimination and long-standing myths about cannabis consumers. It is unclear why smoking cannabis in public (not in the presence of minors) where tobacco is permitted will not be treated in the same way. Especially worrying is the lack of possibility to consume cannabis in the privacy of one's terrace or shared roof. Whilst understanding the core purpose of this provision, and therefore the need to not encourage public consumption, it is important to respect equality and privacy, and to promote responsible consumption.

Another point of concern is the lack of possibility to consume cannabis in restricted adults only events. It is well known that certain large mass events attract people who consume cannabis and it is unfortunate to watch a swarm of police officers and undercover drug squad agents preying and ambushing peaceful persons enjoying music and other entertainment events.

To further ensure a proportionate approach the White Paper should include a provision that provides the special allowance for event organisers (involved in events allowing the entry of only adults and not providing the sale of strong alcoholic beverages) to be given a moratorium for the limited public consumption of cannabis for a limited time frame and in an enclosed and designated area.

Proposal
Allow a moratorium on the limited public consumption of cannabis for adults only events .
Promote responsible consumption and respect for privacy.

6) Administrative measures for minors

This is an important development and one which continues to build on the importance of promoting dialogue, education and health instead of lengthy criminal cases and tainted police records.

It would be interesting to consider on more humanitarian grounds also youths who are victims of abuse and/or hail from a difficult socio-economic background and therefore involved in the sale and trafficking of cannabis. These youths should be assisted and diverted towards education and training.

Proposals
When there is reasonable suspicion of trafficking and the minor is arrested, a focus on human rights and potential elements of abuse and vulnerability experienced by the under-aged person should be placed at the forefront. With the guidance of educators, minors should be shifted towards educational or vocational training schemes , thus ensuring to provide a stable and focused goal during this important developmental stage.
Engage in a non-judgmental approach with minors and young persons who might already be using cannabis and introduce elements of harm reduction , whilst discouraging use and promoting their inclusion and participation in meaningful social interactions such as out-door sports and other leisure activities.

7) A dedicated cannabis authority

The establishment of a cannabis authority is important and will provide a greatly needed platform for research. An interesting provision is also linked to the management of funds generated by the imposition of administrative fines related to the breach of legal provisions related to cannabis. However, more details how this will work out would further increase transparency, including the composition of the Authority and its mandate.

One hopes that the Authority maintains strong human rights indicators, personal privacy and individual freedoms as its guiding ethos and ensures a bottom up and non-commercialised approach continues to be central to the Authority's function and purpose. Therefore, the participation of civil society, especially of organisations representing the voice of people who consume cannabis and international organisations with an expertise in drug policy and international law, is considered important and necessary to ensure the Authority is able to keep an updated outlook on local trends and consumption levels. Furthermore, the work of the Authority will also compliment Malta's diplomatic and political efforts to explain local developments when participating in key regional and international fora such as the UN General Assembly.

Proposals
Definition of the composition and mandate of the Authority
Ensure debates and discussions are made available to the public and promote full transparency of operations and persons engaged to collaborate with the Authority
Include an international office within the Authority , with the aim of maintaining a constant update on legislative and other international developments related to cannabis.
Include the participation and representation in the Board of the Authority of civil society organisations particularly those representing the rights of people who consume cannabis, with the possibility of proposing improvements and changes to the current legislative framework
Ensure the inclusion of experts coming from the human rights field and others specialised in drug policy.
Include a mandate for the Authority to conduct (after 2 years of entering into law) a review and analysis of the effects produced by this initial decriminalised system and propose alternative solutions with the aim of improving the current system and further separating personal consumption, cultivation and sharing of cannabis from the criminal justice system.

8) Education

The educational component is key to ensure people who consume cannabis, but also the public in general and front liners have a better understanding of the benefits and potential risks associated with cannabis. Focusing on principles of harm reduction and sustainable development, including organic, pesticide free and environmentally conscious cultivation practices, a holistic educational campaign needs to ensure an inclusive and non-judgmental approach and encourage open dialogue with people who already use and cultivate cannabis.

Proposal
Develop a national curriculum that is age appropriate, conscious of different people consuming cannabis and therefore different needs, and that utilizes multi-dimensional tools to deliver evidence-based information about cannabis.
Further information on training for front liners would increase transparency and ensure long standing misconceptions about cannabis and cannabis consumers are not replicated and instead replaced with evidence-based research and harm reduction tools.

ReLeaf Malta

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[1] Council of Europe; Costs and Unintended Consequences of drug control policies (2017)
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Amnesty International; Human Rights and Drug Policy: a paradigm shift (2019)
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[2] EU Drugs Strategy and Action Plan 2021-2025
<https://www.consilium.europa.eu/en/press/press-releases/2020/12/18/council-approves-the-eu-drugs-strategy-for-2021-2025/>

Additional references.

https://www.echr.coe.int/documents/guide_art_5_eng.pdf

https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf

https://www.echr.coe.int/Documents/Handbook_European_Convention_Police_ENG.pdf

