

TOWARDS THE STRENGTHENING OF THE LEGAL FRAMEWORK ON THE RESPONSIBLE USE OF CANNABIS

WHITE PAPER

March 2021



**GOVERNMENT
OF MALTA**

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ISSUED BY THE GOVERNMENT OF MALTA
VALLETTA, MALTA

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FOREWORD


Cannabis use is nothing new: for thousands of years, cannabis has been used by civilizations across the globe for a variety of purposes: from the medicinal, to the religious, and recreational. The criminalisation of cannabis, on the other hand, is a much more recent phenomenon, and a relatively anomalous one.

Government recognises that cannabis use in Malta is found across numerous social groups. With a great sense of responsibility and justice, Government believes the consumption of the cannabis plant, despite the potential risks related to one's health, should not lead to the criminalisation of the responsible cannabis user.

Important steps have already been taken to combat the stigma surrounding cannabis use. We have also ensured access to medicinal products which relieve suffering, and have strived to ensure that the penalties related to cannabis consumption and possession are proportionate and just.

In the spirit of harm reduction and responsibility, and following several studies and consultation with professionals and entities working in this sector, we are presenting a set of proposals to the public, with the aim of ensuring that our laws and policies serve society best.

We invite you to reflect on this White Paper, and send your submissions during this period.



**This White Paper reflects
government's vision for a fairer
legal system for responsible
cannabis users.**

**Nothing in this White Paper is
intended to encourage, promote, or
in any way lead to the consumption
of cannabis.**

BACKGROUND

What is cannabis?

The cannabis plant is a plant which can be found around the world, and for centuries, has been used by various civilizations (be it for medicinal, social, religious, or recreative purposes). Primarily, cannabis use gives the user a sense of euphoria (known as a high), relaxation, and a heightened sense of perception to one's surroundings. Other effects may include a sense of fatigue and paranoia.

Cannabis is a **natural** plant from which one can derive a variety of extracts or products. As a plant, cannabis can be identified by the shape of its leaves and buds. This is its most recognisable form, and is commonly known as hash or marijuana. Cannabis can also be found in its **resin** form, which is a concentrate, compressed form of its resinous components. It can also be found as **hash oil**, which is the solvent extract of the plant. The cannabis plant is composed of hundreds of natural chemical substances, known as **cannabinoids**. These are chemical compounds which act on the body and the brain's endocannabinoid system.¹

Tetrahydrocannabinol (THC) is a well-known cannabinoid, and the main composite responsible for the plant's psychoactive effect. In contrast, the **Cannabidiol (CBD)** cannabinoid is not psychoactive.

Consumption of cannabis

The cannabis plant is consumed by means of various methods and for various reasons. For the purposes of this White Paper, **the personal responsible use of cannabis** will be discussed.

The most common method of cannabis consumption is smoking, however, cannabis can also be vaped, eaten as an edible, or drunk as a tea.

¹ For more information on the body's endocannabinoid system:
<http://norml.org/library/item/introduction-to-the-endocannabinoid-system>

Cannabis and health

Cannabis use can be **both dangerous or beneficial** to one's physical or psychological health. Given that cannabis is classified as illegal in most states, there is a wealth of research on the negative effects of cannabis, and limited research on its therapeutic benefits. In recent years, as the movement for the liberalisation of cannabis progressed, scientific research has also expanded into the **therapeutic and medicinal benefits of cannabis**. The impact of cannabis on one's health depends on **various factors**, including the user's physical and psychological health, age, his and his family's medical history, as well as the frequency of use, and the type and quality of the cannabis being consumed.

The most common effects related of cannabis include:

- Euphoria (high);
- Sociability;
- Happiness and laughter;
- Mild pain relief;
- Increased heart rate;
- Impairment of short-term memory;
- Fatigue or nausea;
- Paranoia or anxiety.²

The Gateway Drug myth

In the 1980s, US President Reagan's administration popularised the theory that cannabis use is the bridge – or gate – leading to the use of harder drugs. The demonisation of cannabis as the 'gateway drug' led to the widespread, severe criminalisation of the possession and personal use of cannabis. Over the years, various scientific journals debunked this theory. This research showed cannabis, as the most widely used illicit substance, is of course more likely to be used by persons who also make consume hard drugs. Such correlation, however, cannot be correctly defined as causation, and therefore, cannabis use is not related to a higher probability of other drugs.³

² Effects of cannabis <<https://www.drugsand.me/en/drugs/cannabis/>>

³ Debunking the "Gateway" Myth, Drug Policy Alliance 2017
<https://drugpolicy.org/sites/default/files/DebunkingGatewayMyth_NY_0.pdf>

THE INTERNATIONAL CONTEXT

Malta's international commitments

Malta ratified three United Nations Conventions, which shape the international law framework of the global drug control regime:

- The Single Convention on Narcotic Drugs, 1961 (SCND);
- The Convention on Psychotropic Substances, 1971; and
- The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

These international treaties make it **mandatory** for states to criminalise the production, sale, and possession of cannabis for non-medicinal or scientific purposes. In the context of these treaties, therefore, **the legalisation of cannabis is not permitted**.

By means of its Council Framework Decision 2004/757/JHA of 25 October 2004, and the Convention implementing the Schengen Agreement of 14 June 1985, the European Union also adopted the abovementioned Conventions in respect of the minimum criteria in the area of illicit drug trafficking. It follows therefore that Malta, as a Member State, is also doubly obliged to follow suit.

Recent developments

The status of cannabis in the United Nations Conventions

In 2018, the World Health Organization (WHO) Expert Committee on Drug Dependence took on a critical review of cannabis and cannabis related substances in the context of their dependence producing properties, and impact on one's health.

The Committee made several recommendations, including **the removal of cannabis and cannabis resin from Schedule IV of the SCND**, given the discrepancy in harm between cannabis and other drugs found in the same Schedule (e.g. heroin). The **descheduling of CBD** was also recommended, given its lack of psychoactive effects.

These recommendations were studied by the UN Commission on Narcotic Drugs, and in December 2020, the Commission deliberated and voted to remove cannabis and cannabis resin from Schedule IV of the SCND.

The Kanavape case (C-663/18)⁴

In November 2020, the European Court of Justice was requested to give a preliminary ruling on the sale and distribution of a hemp oil electronic cigarette, which was composed of CBD (a non-psychoactive cannabinoid), and THC levels of less than 0.2%. This came in on the heels of the 2019 WHO recommendation to the United Nations:

“pure cannabidiol (CBD) should not be scheduled within the international drug control conventions by adding a footnote to the entry for cannabis and cannabis resin in Schedule I of the 1961 Convention to read “Preparations containing predominantly cannabidiol and not more than 02% of THC are not under international control.”

In its ruling, the Court considered that CBD, as a cannabis sativa extract, did not constitute a narcotic drug, and therefore, the principle of free movement of goods between Member State applies.

This preliminary ruling impacts other Member States like Malta in the sense that the manufacture, sale, or importation of CBD products **should not be deemed illegal**. To this end, a clear distinction between CBD and THC is required.

As reflected in this White Paper’s proposals, these developments require a re-evaluation and updating of the Maltese legal framework, to ensure conformity with the European Court’s ruling.

⁴ Case C-663/18
<<http://curia.europa.eu/juris/document/document.jsf?text=&docid=233925&pageIndex=0&doclang=MT&mode=lst&dir=&occ=first&part=1&cid=260662>>

THE LOCAL CONTEXT

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)'s 2019 Report on Malta revealed that cannabis is most frequently used and seized drug locally, and although on a small scale, it is also the only known illegal substance which is produced in Malta.⁵

This is echoed by the EMCDDA's European School Survey Project on Alcohol and other Drugs (ESPAD), which named cannabis as the most accessible drug for students in the countries surveyed, including Malta.⁶

In the same year, MaltaToday published a survey showing how at least 9.3% of Maltese have smoked cannabis at least once in their life. This figure is considered to be a very conservative one, given that the stigma surrounding cannabis use would prevent most from admitting to consuming it.

The same survey also reported that a substantial number of individuals in Malta believe that cannabis causes more harm than alcohol, a myth which was debunked by several scientific reports and journals. This amplifies the need for educational campaigns giving factual information on the topic, so as to eradicate the stigma surrounding cannabis.

The legal context

The cannabis plant and all its forms are, to date, considered illegal in Malta. Therefore, the possession (in established quantities), consumption, sale, production, and trafficking are also all criminal offences.⁸

⁵ Malta Country Drug Report 2019, EMCDDA

<<https://www.emcdda.europa.eu/system/files/publications/11328/malta-cdr-2019.pdf>>

⁶ ESPAD Report 2019, Results from the European School Survey Project on Alcohol and Other Drugs

<http://www.espad.org/sites/espad.org/files/2020.3878_EN_04.pdf>

⁷ MaltaToday Survey, 2019

<https://www.maltatoday.com.mt/news/data_and_surveys/92890/cannabis_malta_usage_legalisation_maltatoday#.YCOhmGhKi70>

⁸ Cap. 101 of the Laws of Malta.

Juridical developments

The latest judgments from the Courts of Malta are particularly significant, given that they indicate the **need for progressive amendments** in the legal framework on the responsible use of cannabis.

In the case against Marieclaire Camilleri,⁹ the Court observed that the cultivation of the cannabis plant, even in excess of the current legal limit of one plant (as was the case in question), could be **for the person's exclusive use**. Indeed, this landmark case led to important legislative amendments in this regard, namely, Act IV of 2020, which gave the Court discretion on effective imprisonment, when it is satisfied that the cultivation in question was for the exclusive use of that person.

In the Fabio Ignazzitto case,¹⁰ the accused was found in possession of 118 grams of cannabis, which he claimed was for his own personal use. The Court determined that the law gave no direction on what could be used to determine the use of the substance, and therefore, it could apply its personal discretion. Indeed, the Court considered that from the circumstances of the case, one could indeed determine that the possession of **the substantial amount of cannabis was for the accused's personal use**.

Cannabis possession

The Drug Dependence (Treatment not Imprisonment) Act depenalised the possession of less than 3.5 grams of cannabis. By means of this provision, persons found in possession of said amounts are subject to proceedings before the Commissioner for Justice, and are liable to a fine ranging between €50 to €100.¹¹

Where persons are found guilty of the same offence for a second time, and the Commissioner for Justice considers it necessary, the person may also be made to appear before the Drug Offenders Rehabilitation Board.¹²

⁹ IL-Pulizija vs Marieclaire Camilleri, Appell Nru 303/2019, 11th June 2020.

¹⁰ The Police vs Fabio Ignazzitto, Case 181/2019, 12th October 2020.

¹¹ Cap. 537 of the Laws of Malta, art. 4.

¹² Ibid.

Cultivation

The cultivation of the cannabis plant remains a criminal offence, however, the Court of Criminal Jurisdiction has the discretion to assess the circumstances of the case and determine whether that cultivation was for the accused's personal use, or for trafficking purposes.¹³ In the former case, the meted punishment is considerably lower.

Medicinal cannabis

Preparations of medicinal cannabis are limitedly allowed; can only be prescribed by a licensed registered doctor; and can only be sold by licensed pharmacies.

Moreover, the prescription of medicinal cannabis should be considered as a last resort, and can only be given 'if it is considered that there is no viable alternative to such prescription'.¹⁴ Medicinal cannabis cannot be prescribed in smoking form, and urgent prescriptions are also prohibited. To date, the products available locally are Bedrocan; -Bediol; Pedanios 22/1 sativa; and L-Pedanios 20/1 indica.

The Production of Cannabis for Medicinal and Research Purposes Act regulates the cultivation, processing, use, and importation of cannabis for medicinal purposes. The Medicines Authority regulates all activities related to cannabis for research and medicinal purposes.¹⁵

¹³ Cap. 101 of the Laws of Malta, art. 22.

¹⁴ Cap. 537 of the Laws of Malta, art. 10.

¹⁵ 2019 Annual Report, MMA, <<http://www.medicinesauthority.gov.mt/annualreports>>

Mandate

Government's electoral manifesto pledges the following for the cannabis sector:

*[...] Il-pass li jmiss huwa li nniedu dibattitu nazzjonali dwar jekk u kif għandu jkun hemm passi ulterjuri, fosthom diskussjoni dwar cannabis għall-użu rikreazzjonali*¹⁶

In 2017, Government appointed a Technical Committee to study the local and international context, and make recommendations to improve the present scenario. In parallel, various inter-ministerial meetings were held, ensuring that all relevant entities work towards the same goal. Several meetings with non-governmental organisations, entities, and activists were also held.

In 2020, the Achievers 2020 initiative was launched, aimed at encouraging young persons to create and implement community-based projects. Achievers 2020 focused on encouraging the exploration of various disciplines (e.g. sport, art, and culture) as an outlet for recreation instead of cannabis consumption.

Between 2020 and 2021, Government observed closely the local juridical developments related to cannabis consumption and possession, and, following several studies, this White Paper was finalised.

¹⁶ L-Aqwa Żmien ta' Pajjiżna, Manifest Elettorali 2017, Kap. 9 pt.23:

'[...] the next step is to launch a national debate on whether further steps should be taken, including a debate on recreational cannabis.'

PROPOSALS

On the basis of Malta's current legislative framework; the latest international developments; as well as the latest judgments from the Maltese Courts, Government is presenting the below set of proposals to strengthen the legal framework regulating the responsible use of cannabis in Malta.

These proposals are guided by the principles of justice, proportionality, and the individual's freedom to make responsible choices.

I. Decriminalisation of up to 7 grams of cannabis possession

The 2015 legal amendments on depenalisation were a step in the right direction, and this proposal builds on that framework. It is being proposed that the current limit for adult **possession for personal use** is increased **from 3.5 grams to 7 grams**.

The **full decriminalisation** of this amount is being proposed, that is, adults in possession of 7 grams or less for their personal use **cannot be subject to any legal proceedings, or the imposition of any fine or punishment**.

Therefore, **adults cannot be subject to arrest, or escorted to the General Headquarters / Police Station for interrogation** on the basis of that possession, unless a **reasonable suspicion** of trafficking, sale, import or export by that person arises.

It is also being proposed that the possession of more than 7 grams **but less than 28 grams for one's exclusive personal use** should be subject to proceedings before the Commissioner for Justice, as currently contemplated for the possession of less than 3.5 grams.

The possession of 28 grams or more will remain regulated by existing legislation.

A study on safe methods of procuring cannabis with levels exceeding 0.2% THC is also required, so as to propose models **to distance responsible users from the illicit cannabis market**.

II. Personal cultivation and private consumption

The regulated growing of cannabis for one's personal use detracts users from the illicit cannabis market by giving them the right to grow cannabis plants for their own personal use. The consumption of cannabis in one's own home adds to the **users' wellbeing, giving them a safe, private space to consume cannabis.**

It is being proposed that every residential habitation (household) can grow up to **4 plants**, in a space which is not visible to the public, and which does not emit smells. The cultivated cannabis **cannot be sold**, and can only be consumed in the same habitation. Cannabis **cannot be consumed before minors**, and residents are to ensure that it is stored in places which are **inaccessible to minors** residing in the same habitation.

III. Expungement of criminal records

Government believes that past errors should not lead to present stigmatisation and lost opportunities. It is being proposed that crimes which are no longer considered as such at law should be **removed from one's conduct certificate by means of a simple procedure.**

IV. The distinction between CBD and THC at law

In line with the European Court of Justice's preliminary ruling, a **clear legal distinction between CBD and THC** is being proposed. While the former cannabinoid is not psychoactive and enjoys free movement in EU Member States, the latter, THC, is a psychoactive cannabinoid, and is therefore an illegal substance.

In parallel, amendments to the Dangerous Drugs Ordinance to clearly exclude medicinal cannabis from its sphere of application are being proposed.

V. The prohibition of cannabis consumption in public

It is being proposed that the consumption of cannabis in public should not be allowed in any case. The relative punishment for this breach should be identical to the one imposed for the smoking of tobacco in prohibited spaces, and therefore, an **administrative fine of €233.33**.

VI. Administrative measures for minors

Minors, that is, persons under the age of eighteen, should be **distanced from the criminal justice system as much as possible**. Equally important is distancing minors from cannabis and its potential effects at such a tender age, and **discouraging its use**.

To this end, it is being proposed that minors in possession of cannabis for their personal use **should not be subject to proceedings before the Courts of Criminal Jurisdiction**, but to administrative proceedings before the Commissioner for Justice and the Drug Offenders Rehabilitation Board, as the case may require. Penalties should be of an administrative nature, **not criminal**, and should assist minors in moving away from cannabis use.

In this case, minors **are not to be** subject to arrest, or escorted to the General Headquarters / Police Station for interrogation on the basis of that possession, unless a reasonable suspicion of trafficking, sale, import or export by that person arises.

VII. A dedicated Cannabis Authority

A **governmental authority** responsible for all matters relating to the responsible use of cannabis (excluding medicinal or scientific purposes) is being proposed.

This Authority should have the power to commission studies, propose improvements to the system, propose guidelines, and manage funds emanating from the imposition of administrative fines related to the breach of legal provisions related to cannabis.

VIII. Education

The success of any reform hinges upon the prioritisation of **education** on the matter at hand.

It is clear that a **more effective, holistic educational campaign** on cannabis is required, one which is based on scientific fact and the concept of harm reduction. Educational campaigns should give clear information on the risks and benefits of cannabis use, by means of age appropriate content, and should aim to eradicate the stigma surrounding cannabis by instead promoting research and open dialogue on the cannabis plant.

In parallel, **training** for frontline officials working with cannabis users is proposed, so as to increase awareness on cannabis use and its effects.

CONSULTATION PROCESS

Government is asking the general public to reflect on the proposals presented in this White Paper, and provide input as follows:

1. Where there is an issue with a specific proposal, a direct reference to the proposal is to be made, and comments about what needs to be added or removed are presented as briefly and directly as possible.
2. Where there is an issue that the proposals are silent or too generic about, the concern should first be explained, and ideally formulated in terms of a concrete proposal.

Submissions are to be sent through the following channels:

By email: publicconsultation.mjeg@gov.mt

By post: Cannabis White Paper,
Parliamentary Secretariat for Civil Rights and Reforms,
Auberge d'Aragon, Misraħ Indipendenza Valletta

Submissions should be sent by the **11 May 2021**.

Thank you for your input and interest.

Please be informed that submissions will be published on the webpage of this consultation at the end of the scoping phase. The lead Ministry has sole discretion upon the publication of comments.

Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to the publication of his/her personal data on the grounds that such publication would harm his/her legitimate interests. In this case the contribution may be published in anonymous form. Otherwise the contribution will not be published nor will, in principle, its content be taken into account. Any objections concerning the publication of personal data should be sent to the service responsible for the consultation on the following email address: onlineconsultations@gov.mt.

Data Protection Statement the General Data Protection Regulation and the Data Protection Act (Chapter 586)

The General Data Protection Regulation and the Data Protection Act Chapter 586 regulate the processing of personal data whether held electronically or in manual form. The Ministry for European Affairs and Equality collects only information which is necessary for it to perform its intended functions and is set to fully comply with the Data Protection Principles as set out in the Data Protection Legislation. Verification of the ID number provided will take place as deemed necessary. All personal data provided will be processed according to the General Data Protection Regulation and the Data Protection Act (Cap 586).

Disclosure under the Freedom of Information Act (Chapter 496)

As we are a public authority all documents we hold, including documents related to this public consultation process, may be released following a request to us under the Freedom of Information Act (Chap. 496), unless such request may be subject of an exemption arising from the same Act.

SOURCES AND ADDITIONAL INFORMATION

Legislation and Conventions:

Chapter 101 of the Laws of Malta
Chapter 573 of the Laws of Malta
Chapter 578 of the Laws of Malta – all available on www.legislation.mt.
The Single Convention on Narcotic Drugs, 1961
The Convention on Psychotropic Substances, 1971
The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
– all available on www.unodc.org.

Further information:

Debunking the “Gateway” Myth, Drug Policy Alliance 2017
<https://drugpolicy.org/sites/default/files/DebunkingGatewayMyth_NY_0.pdf>

Effects of cannabis <<https://www.drugsand.me/en/drugs/cannabis/>>

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