

# Towards the Strengthening of the Legal Framework on the Responsible use of Cannabis

*The Malta Chamber  
Proposals to the White  
Paper*



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## Introduction

On Tuesday 30<sup>th</sup> March 2021, the Government of Malta published the White Paper “Towards the Strengthening of the Legal Framework on the Responsible Use of Cannabis” and opened a period of public consultation on the document. The Malta Chamber has undertaken a thorough analysis of the White Paper in question, receiving feedback and expertise from various parties, and is putting forth its comments and recommendations.

In its analysis The Malta Chamber considered the direct economic implications of the legalisation of recreational cannabis under the proposed framework, as well as those sociological elements that inevitably would have a secondary impact on the labour market and the vitality of the Maltese economy.

This document is split into three as follows:

1. The first part (A) undertaking to communicate The Malta Chamber’s perspective on the different components of the White Paper, analysing them section by section to highlight matters of concern as well as express its agreement where appropriate.
2. The second part (B) will take a comparative approach to the regulation of cannabis in other states to better inform analysis of this White Paper in its international context.
3. The third part (C) of this document will take a constructive approach, putting forward the policy proposals and recommendations of The Malta Chamber on the issue of the legalisation of recreational cannabis based on the conclusions reached.

The Malta Chamber will set out its case to take a cautious, well-researched and science-based approach, regulating the use of cannabis in a manner which ensures that the short- and long-term outcomes of policy reform benefit society at large and the economic well-being of society. In its analysis The Malta Chamber seeks to point out any shortfalls that the White Paper has made in its analysis as well as propose tangible solutions with the ultimate aim of ensuring that the resulting legislation is not based on false information and achieves its stated intended goal of “harm reduction”.

## A. Analysis and Commentary on the Proposed White Paper

### Background

#### *Introduction*

The background section of the Proposed White Paper offers an overall balanced approach to the topic, providing a basic working knowledge of cannabis and its components in an impartial manner. However, the use of the phrase “the personal responsible use of cannabis” under the section entitled “Consumption of Cannabis” would benefit from further clarification under a definition of terms, particularly in terms of what frequency and quantity of cannabis consumption the Government would consider to fall under these parameters.

#### *The Gateway Drug Myth*

The Malta Chamber would consider the assertion in the proposed White Paper that cannabis is not a gateway drug as circumspect and insufficiently substantiated. The White Paper makes reference to studies which allegedly disprove the link between the use of cannabis and harder drugs in later life on the basis that statistical correlation has not proved causation due to a confluence of factors. This assertion, particularly the definitive statement “cannabis use is not related to a higher probability of other drugs” is one which is not a product of scientific consensus and which considers a solely statistical approach in a minority of studies<sup>1</sup>.

A recent study published in *The Journal of Law, Medicine and Ethics* (2020) showed an intersectionality between the use of cannabis in adolescents, and its effects on brain maturation, and a vulnerability to opioid exposure as well as addiction. This interplay is not solely founded in a political impetus as the White Paper suggests but could be a product of the interplay between endogenous opioid and endocannabinoid systems<sup>2</sup>. This study reflects the work of other studies, particularly in the sphere of opioid abuse, which at the very least raises serious questions about the role of cannabis as a primer to addiction to harder drugs in later life. Furthermore, other studies do find a statistical link between the use of cannabis and harder drugs in later life<sup>3 4</sup>.

By relying on the lack of a strong causal link from a statistical perspective in a single study the White Paper is overlooking other underlying biochemical implications of cannabis use, particularly in developmental years. Having said this The Malta Chamber is not endorsing the Reagan drug policy referred to, nor does it believe that further criminalisation of cannabis can assist in this regard. Should sufficient research indicate that a new regulatory framework for cannabis would significantly decrease the number of overall users, and particularly adolescent users, then this might be a case for enacting this framework, but in so doing the government should be conscious of the effect of cannabis on addiction to harder drugs in later life and not dismissive on the basis of inconclusive statistical evidence. Underplaying the harm that making use of recreational cannabis, particularly habitually, can have on the user means that the government runs the risk of overlooking the necessary safeguards that would need to be put in place to combat its adverse effects as well as ignoring the potential impact of proposed reform.

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<sup>1</sup> Debunking the “Gateway” Myth, Drug Policy Alliance 2017

<[https://drugpolicy.org/sites/default/files/DebunkingGatewayMyth\\_NY\\_0.pdf](https://drugpolicy.org/sites/default/files/DebunkingGatewayMyth_NY_0.pdf)>

<sup>2</sup> ArthurRobin Williams, 'Cannabis as a Gateway Drug for Opioid Use Disorder' [2020] 48 *The Journal of Law, Medicine & Ethics* 268-274

<sup>3</sup> HansOlav Melberg et al, 'Is cannabis a gateway to hard drugs?' [2010] 38(3) *Empirical Economics* 598-599

<sup>4</sup> van Ours JC, 'Is Cannabis a stepping-stone for Cocaine' [2003] 22 *J Health Econ* 539–554

## The International Context

This section of the White Paper offers a concise and valid analysis of Malta's international legal commitments on the issue of the legalisation of cannabis. Having taken these obligations into account The Malta Chamber would like to ask for further insight on the Government's plan to modify and regularise its position and in particular whether Malta will be:

1. Triggering the denunciation process envisioned under article 46 of the *Single Convention on Narcotic Drugs, 1961*.<sup>5</sup>
2. Triggering the denunciation process envisioned under article 29 of *The Convention on Psychotropic Substances, 1971*.<sup>6</sup>
3. Seeking a partial withdrawal from *The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* in terms of the provisions under Article 3 and Article 14 on the prohibition on growing cannabis plants or whether a denunciation notification will be given under Article 30. It is the Malta Chamber's understanding that the Government will remain firmly opposed to the overseas trafficking of recreational cannabis and that under the terms of the proposed legislation border enforcement prohibiting the entry or exit of recreational cannabis will be unaffected. Clarification on this point would facilitate better understanding of the Government's intentions.<sup>7</sup>

In terms of the considerations which the government puts forth following the preliminary ruling in the Kanavape case (C-663/18), The Malta Chamber understands that this ruling may necessitate regulatory reform in terms of ensuring that the treatment of CBD products with a negligible THC level does not contravene European Union law. Having acknowledged the probable necessity for this reform, The Malta Chamber would like to highlight that this obligation to legalise CBD products, which are lacking in psychoactive components, should not be equated to an obligation to legalise the possession and cultivation of cannabis plants, particularly given that these have varying levels of THC which in all cases greatly exceed the 0.2% THC level under consideration in the referred to case.

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<sup>5</sup> UN General Assembly, 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, 9 December 1975, A/RES/3444

<sup>6</sup> UN General Assembly, 1971 Convention on Psychotropic Substances, 9 December 1975, A/RES/3443

<sup>7</sup> UN Economic and Social Council (ECOSOC), United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 19 December 1988

## The Local Context

In the introduction to this section of the White Paper, the Government gives some statistical information on the prevalence of cannabis use in Malta and states that it would like to “eradicate the stigma surrounding cannabis”. The Malta Chamber unreservedly agrees that the stigma surrounding cannabis users should be eradicated, particularly given its counterproductive impact on outreach to those making debilitating use of cannabis as well as the unintended consequence of glamourising its use in the context of anti-social rebellion in adolescents. However, The Malta Chamber does not agree that cannabis itself should be normalised as an everyday commodity particularly in light of its proven detrimental effects as outlined in the Background Section of the White Paper. In the case that after the necessary careful consideration cannabis is legalised, The Malta Chamber believes that it should be regulated, as discussed in the Section entitled Recommendations, and discouraged as a potentially addictive substance with detrimental effects for physical and mental health when used habitually. In this context, one can draw the parallel to the Government’s approach on tobacco and how, while this industry is legal, it is also heavily regulated and its consumption is actively discouraged through awareness campaigns. Similarly, The Malta Chamber believes that the branding of any cannabis products which the government legalises should be highly restricted and the advertising of such products should be banned. This approach has also been taken in other countries that legalised the sale of cannabis such as Canada.

Otherwise, this section provides an accurate and informative insight into the current local legal framework regulating cannabis, indicating the advance made in recent years targeting the effective decriminalisation of up to 3.5g of cannabis as well as the modification of the Dangerous Drugs Ordinance to allow for flexibility on the use of effective terms of imprisonment for those caught in possession of cannabis for personal use. The Malta Chamber considers these changes as positive developments and affirms its belief that imprisonment for possession of cannabis for personal use is not only excessive but also counterproductive.

## Proposals

### *1. Decriminalisation of up to 7 grams of cannabis possession*

The first proposal that the government put forward, that of the decriminalisation of up to 7 grams of cannabis possession would effectively mean that it would be legal to possess the equivalent of at least 14 joints of cannabis<sup>8</sup>. Beyond the argument that this may reflect a lack of concern on the negative impacts of cannabis consumption, a point which will be dealt with under the *Further Considerations on the Proposed White Paper* sub-section of this policy paper, this proposal raises concerns on the ease of enforcement. The White Paper states that:

“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”.<sup>9</sup>

This statement begs the question of what guidelines The Malta Police Force will be given to be able to determine reasonable suspicion of sale and whether any standard operating procedures have been drafted in this respect. Under this proposed framework an individual can possess on their person up to 21 joints, each containing 32 grams of cannabis, and not fall foul of any laws prohibiting the sale of cannabis, nor can they be interrogated unless there is such a reasonable suspicion. The Malta Chamber would like to emphasise the need to elaborate on this proposal and outline the tools available to The Malta Police Force to establish reasonable suspicion and to investigate the illicit sale of cannabis to be able to make arrests further along the chain of production.

The White Paper further proposes that those found in possession of amounts between 7 and 28 grams should be subject to proceedings before the Commissioner for Justice. Whilst The Malta Chamber has no issue with those charged with possession for personal use being subject to such proceedings, we would like to seek clarification on the reason why 28 grams has been chosen as the cut-off point and whether there is any scientific or anecdotal evidence that indicates that this is an ideal range for such measures.

This section also contains the following statement:

“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.”

The procurement of cannabis under the new framework is not an incidental issue which should be tackled after the proposal of the white paper but is perhaps the most important issue that can be raised. The mentioned study is essential and the results from this study should not solely indicate the best models to distance responsible users from the illicit market, but should also be understood in the light of further studies on the efficacy of the proposed framework in its entirety, particularly the legalisation of the specified amounts and the lessons to be learnt from other jurisdictions. This point will be further tackled under the sections entitled *Conclusions* and *White Paper Recommendations by The Malta Chamber*.

By proposing the effective legalisation of cannabis for personal use and simultaneously omitting to present a functional framework for the procurement of the drug, the Government would be giving the green light to a potential increase in demand from those deterred by the current repercussions of cannabis possession while not providing a legal supply. This confluence of policies ensures that the already considerable, illicit market for narcotic substances in Malta will become a thriving industry, further compounded by the impairment of The Malta Police Force to interrogate low level distributors found in possession of amounts which are split into 7 gram portions within the legal limit and can therefore bypass enforcement .

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<sup>8</sup> C Zeisser et al., 'A 'standard joint'? The role of quantity in predicting cannabis-related problems' [2012] 20(1) *Addiction Research and Theory* 82

<sup>9</sup> Towards the Strengthening of the Legal Framework on the Responsible Use of Cannabis White Paper, Page 14

## *II. Personal cultivation and private consumption*

The proposal to legalise the growing of up to 4 cannabis plants for one's own personal use is effectively the only legal means of procuring cannabis envisioned under the White Paper. The White Paper makes the claim that this cultivation should occur in one's own home and should also be consumed in the same household. The White Paper does not indicate what regulation will take place on the growing of such plants, and how this regulation would be enforced given that the plants should not be visible to the public, and that presumably The Malta Police Force would not have probable cause to obtain a search warrant or assume that any cannabis grown contravenes regulation given that the possession of the plant is legal. The White Paper further does not indicate how the seeds for these plants will be legally procured and which strains of the cannabis plant would be legal, nor does it specify the maximum percentage of THC that would be legal in a plant or how this may be readily detected by end users. These matters would require careful consideration, cautious and controlled implementation and consistent monitoring following the introduction of any such legislation given the proven, significant adverse effects that THC can have particularly in terms of the mental health of users.

In the absence of the legal supply indicated under the previous sub-section, the legalisation of the cultivation of up to 4 plants is likely to be used to further shield the illicit drug trade. A study on the yield of cannabis plants grown indoors found that in one year a plant can yield up to 1.3kg, with the average yield of a good crop standing at approximately 881g per plant per year.<sup>10</sup> Extrapolated over four plants this means that each household could legally be producing three and a half kilos of fresh cannabis a year. Given that this cannabis bud is usually dried, this would amount to slightly less than a kilo of product, depending on the drying process. This would mean that each household could have a year's supply that would equate to 5 to 8 blunts per day. These numbers not only enable excessive and daily use of cannabis, which is The Malta Chamber's understanding that the government wishes to disincentivise, but also guarantees that an individual who is growing a legal number of plants is likely to have in his possession an illegal amount of cannabis upon harvesting the buds for use. This incongruity in the proposed framework would need to be clarified to avoid legal uncertainty. Furthermore, the government should specify whether the amounts indicated are of dry buds, and what this amount would equate to in fresh cannabis, cannabis resin and cannabis oil.

## *III. Expungement of criminal records*

On the matter of the expungement of criminal records The Malta Chamber is in agreement with the expungement of criminal records for those who committed crimes which are no longer considered to be crimes under any iteration of the proposed legislation.

## *IV. The distinction between CBD and THC at law*

The Malta Chamber agrees that this distinction and amendment is necessary particularly the development of the jurisprudence of European Union courts.

## *V. The prohibition of cannabis consumption in public*

While The Malta Chamber agrees that the consumption of cannabis in public should be prohibited, the parallel drawn with smoking tobacco in prohibited places is not congruous. Whilst the effects of second-hand smoke from tobacco are harmful to the bystander's health, inhalation of cannabis second-hand smoke can lead to the individual experiencing psychoactive elements of cannabis use potentially rendering them incapable of driving, amongst other functions<sup>11</sup>. Given the increased risk to bystander's wellbeing The Malta Chamber feels that in the event that this White Paper is adopted the administrative fine should be significantly greater than that for tobacco.

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<sup>10</sup> Glenys Knight and others, 'The results of an experimental indoor hydroponic Cannabis growing study, using the 'Screen of Green' (ScrOG) method-Yield, tetrahydrocannabinol (THC) and DNA analysis' [2010] 202(1) Forensic Science International 36.

<sup>11</sup> J Röhrich and others, 'Concentrations of delta9-tetrahydrocannabinol and 11-nor-9-carboxytetrahydrocannabinol in blood and urine after passive exposure to Cannabis smoke in a coffee shop' [2010] 34(4) Journal of Analytical Toxicology.

#### *VI. Administrative measures for minors*

The Malta Chamber agrees that minors should not be treated criminally for the possession of cannabis for personal use but should be directed to receive the necessary treatment as outlined in the White Paper.

#### *VII. A dedicated Cannabis Authority*

The Malta Chamber would like to request further information on the role and scope of the Cannabis Authority, as it is unclear at this point whether this indicates that the procurement of cannabis will be a legalised and regulated industry and what the role of the Cannabis Authority would look like in this eventuality.

#### *III. Education*

Whilst the Malta Chamber broadly agrees with the need of further education in this field, further clarity is necessary on what the Government considers to be the benefits of the use of recreational cannabis which should be mentioned in such an educational campaign. If the government intends to take an approach to the legalisation of cannabis that is akin to that of the legal framework surrounding tobacco as indicated under Section V, then The Malta Chamber believes that such campaigns should focus on clarifying the legal limits of cannabis use and emphasising the risks surrounding recreational use as opposed to medicinal use. In the process of eradicating the stigma around cannabis users care should be taken not to create an effective marketing campaign for the normalisation of use of psychoactive substances.

## Further Considerations on the Proposed White Paper

The Proposed White Paper makes no reference to employment related issues, particularly on the expected impact on employers and the regulatory framework that will develop surrounding the operating of heavy machinery and automotive vehicles. The Malta Chamber would like to communicate its concern at this oversight particularly given that there seems to have been no input from the Occupational Health and Safety Authority on any tools that would need to be made available to employers to correctly detect the signs that an individual is under the influence and therefore cannot engage in any actions that may put their colleagues at risk.

In view of the government's efforts to "eliminate the stigma" surrounding cannabis The Malta Chamber is seeking clarification on whether companies will be allowed to have a zero-tolerance policy for substance abuse by employees, and in this framework what would employers' rights be to monitor and enforce this policy.

This White Paper is also lacking in any indication of the duration of the psychoactive effects of cannabis and what tools will be made available to The Malta Police Force and other enforcement agencies to ensure accurate road-side testing of whether the driver is under the influence of cannabis.

On a general note, while The Malta Chamber maintains an open mind on the issue of the legalisation of cannabis, we must express our concern that the tone of the White Paper seems to be proposing a move from a highly stigmatised and potentially ineffective framework on the use of cannabis, to a framework which feels rushed and incomplete, and which substantially overlooks the negative effects of cannabis on the user.

The implementation into legislation of the White Paper in its current format could cause far-reaching issues in terms of the proliferation of the black market for cannabis, the difficulties which authorities face in prosecuting illicit cannabis dealers and manufacturers, the potential effect on employer/employee relationships in the Maltese economy, the undermining of the international standing of the highly regulated medical cannabis industry in Malta as well as the ability of drug treatment centres to effectively target those making use of debilitating use of cannabis.

These issues as well as their solutions will be tackled in the sections entitled *Conclusions* and *Proposals*. The Malta Chamber believes that any changes to the legal framework surrounding the use of cannabis for recreational use should be evidence based and supported by substantial research, drawing on international parallels as well as by conducting local research to predict the potential effects of implementation in Malta. The Malta Chamber believes that above all else Malta should not take a hasty approach and legalise the possession and cultivation of cannabis without the necessary expansive regulatory framework to ensure the wellbeing of the economy, the preservation of social order, the curbing of criminality and above all else the wellbeing of the individual.

## B. A Comparative Approach to Cannabis Regulation

In attempting to take a fact-based and evidentiary approach to the topic of Cannabis Regulation The Malta Chamber conducted a brief overview of the regulatory framework in states that legalised, decriminalised or otherwise permitted the use of recreational cannabis. This research was intended to highlight any lessons which could be learned and applied to a potential reform of Cannabis legislation in Malta. In analysing these jurisdictions, care was taken to represent statistics gathered in an impartial manner with full context to their background. For the user's ease of referral all information gathered has been duly referenced. The legislator should also have recourse to analyse the legal context of other jurisdictions such as Portugal, particularly with regard to a preliminary decriminalisation approach. This analysis has not been included to keep the focus of this Section on the comparative approach to cannabis legalisation.

### The Dominion of Canada

As of October 2018, possession, and cultivation of cannabis for recreational use was legalised in Canada through the *Cannabis Act*. It is worth noting that due to Canada's constitutional structure provinces were given considerable discretion in the implementation of the framework and therefore all information refers to what is permissible at the federal level without specification of provincial law.

Under the Canadian framework the metric used is that of dried cannabis with a standard conversion for all other forms of cannabis to the dried cannabis for reference to this law. In this respect one gram of dried cannabis is equivalent to 5 grams of fresh cannabis, 15 grams of edible product, 70 grams of liquid product, 0/25 grams of concentrates and 1 cannabis plant seed. The utilisation of this conversion system allows the regulator to set out a clear cut and simple system of equivalence which is of considerable assistance to law enforcement who need to establish legal limits.<sup>12</sup>

A summary of the regulation in Canada under the new framework is as follows, an adult can:

- possess up to 30 grams of legal cannabis, dried or equivalent in public.
- share up to 30 grams of legal cannabis with other adults.
- buy dried or fresh cannabis and cannabis oil from a licensed retailer.
- purchase cannabis online from federally licensed producers.
- grow, from licensed seed or seedlings, up to 4 cannabis plants per residence.
- make cannabis products, such as food and drinks, but cannot make concentrates<sup>13</sup>.

The legalisation is still fairly recent for statistical purposes, with much of 2020 data still unavailable. Data from Statistics Canada gave some indication of emerging trends. Whereas in 2018 only 10.7% of cannabis users report legal cannabis as their only source of cannabis, this rose to 29.4% in 2019 as a result of legalisation<sup>14</sup>. This trend is expected to have continued to rise; however, it clearly illustrates that legalising the supply of cannabis is not a quick fix solution. The intermittent period between the legalisation of the possession of the substance and the setting up of a regulated industry to supply users, allowed the illicit drug market in Canada to retain a sizeable portion of the market. This, coupled with the fact that there was an increase post-legalisation in the number of people who made use of cannabis at least once within a three-month period, means that at least in the short term the government runs the risk of increasing the market size without adequate legal supply.

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<sup>12</sup> Government of Canada, 'Cannabis Act' (Justice Laws Website, 16 April 2021) <<https://laws-lois.justice.gc.ca/eng/acts/C-24.5/>> accessed 24 April 2021.

<sup>13</sup> Government of Canada, 'Cannabis Legalization and Regulation' (Department of Justice, 3 February 2021) <<https://www.justice.gc.ca/eng/cj-jp/cannabis/>> accessed 24 April 2021.

<sup>14</sup> Government of Canada, 'Table 3 Number and percentage of consumers who accessed cannabis from each source, by before or after legalization and province, household population aged 15 or older, Canada (provinces only), 2018 and 2019' (Statistics Canada, 19 February 2020) <<https://www150.statcan.gc.ca/n1/pub/82-003-x/2020002/article/00002/tbl/tbl03-eng.htm>> accessed 22 April 2021.

Analysis of the situation shows that the regulated cannabis industry was operating a substantial disadvantage to existing drug supply networks, facing high regulatory costs, and struggling to scale up production to lower the price point of their product. This would indicate that should the government proceed with the legalisation of the possession of cannabis and wish to avoid the growth of the illicit drug trade in Malta it should take a gradual approach where legalisation of possession does not come into effect until significantly after the regulation for the production of legal cannabis has been finalised and legal supply has had the opportunity to calibrate itself to the new market through a thorough monitoring mechanism.

In all eventualities the government should at all costs avoid implementing the current framework set out in the White Paper whereby the only definitive legal supply is cultivation of cannabis in households. In the case of Canada where various supply lines for legal cannabis have been put in place, the illicit cannabis industry still dominates a large share of the market, let alone what the result would be for Malta if it took the approach that possession of cannabis should be legal, but that personal cultivation would satisfy this newly legal demand.

## The Oriental Republic of Uruguay

Uruguay was the first state to legalise cannabis for recreational use in 2012, putting in place a regulated system where registered users could obtain a limited amount of legal cannabis per week from licensed pharmacies. While statistics on the use of cannabis before and after legalisation in Uruguay are not as readily available as those for Canada there are some lessons which can be learned from the legislative process undertaken which can be applicable to Malta. The government of Uruguay put in place strict regulations on the amount of THC which legal cannabis could contain and further required prospective legal consumers to register. Through this registration process the government ensured that no sale of cannabis was permitted without identifying a registered user who could not be sold more than 10 grams of cannabis a month<sup>15</sup>. This limit was put in place to safeguard the health of consumers and minimise the risk of excessive use. It also allowed the government to have visibility of patterns of cannabis use. Implementing a system similar to this in Malta would enable the government to keep track of the size of the cannabis industry and ensure that the quality and quantity of the product reaching the individual consumer is not excessive. While home-growing is allowed under the new law, all home-growers must be registered with the state regulator who also determines which strains of cannabis can be grown.<sup>16</sup>

Similarly to Canada, Uruguay faced some difficulties when it came to producing an adequate supply of legal cannabis with the added issue that pharmacies selling cannabis for recreational use faced resistance from banks. These banks, many of whom depend on US banks for their lending needs and who were subject to pressure from these lenders, were forced to offer to pharmacies an ultimatum; stop selling cannabis or lose your bank account.<sup>17</sup> This has led to a small minority of pharmacies stocking legal cannabis and a further impediment to the acquisition of legal cannabis. Should the government move forward with its plans to legalise cannabis it should explore any issues that may arise with the financing of any licensed retailers of the product.

## The Netherlands

Under Dutch law the possession, production and sale of cannabis is a criminal offence, but under the “toleration policy” of the Dutch government the sale of small amounts of cannabis will not be prosecuted.<sup>18</sup> This has led to a *de facto* state of legalisation where criminal offences are openly committed and not prosecuted. The Malta Chamber believes that this model should be avoided at all costs due to the fact that it allows the demand for cannabis to grow whilst ignoring the legislator’s duty to regulate safe supply in a legal environment that is

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<sup>15</sup> John Walsh and Geoff Ramsey, *Uruguay’s Drug Policy: Major Innovations, Major Challenges, Improving Global Drug Policy: Comparative Perspectives and UNGASS 2016* (Center for 21st Century Security and Intelligence Latin America Initiative 2016) 7.

<sup>16</sup> *Ibid.*

<sup>17</sup> Maybin Simon, 'Uruguay: The world’s marijuana pioneer' (BBC News, 4th April) <<https://www.bbc.com/news/business-47785648>> accessed 23 April 2021.

<sup>18</sup> Government of the Netherlands, 'Am I committing a criminal offence if I possess, produce or deal in drugs?' (*Drugs*, 10 February 2020) <<https://www.government.nl/topics/drugs/am-i-committing-a-criminal-offence-if-i-possess-produce-or-deal-in-drugs>> accessed 27 April 2021.



equivalent to legalisation. This drug policy has led to The Netherlands developing into, what many residents believe is a, narco-state with some estimates valuing the illegal cannabis sector at €4.8 billion a year<sup>19</sup>.

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<sup>19</sup> Maybin Simon, 'Is the Netherlands becoming a narco-state?' (BBC News, 19th December)  
<<https://www.bbc.com/news/amp/world-europe-50821542>> accessed 25 April 2021.

## C. Conclusions of The Malta Chamber

Following the analysis carried out on the White Paper “Towards the Strengthening of the Legal Framework on the Responsible Use of Cannabis”, The Malta Chamber believes that a wider perspective is required, and more in-depth research should be undertaken as a prerequisite to further legislative development. Future versions of this paper should be substantiated by this research for it to be sound enough for further consideration.

### Health & Safety at the Workplace

Employers need the necessary assurances that recreational use does not impact the place of work and the economic aspect of legalising cannabis must be addressed and not overlooked. The OHSa needs to be consulted to ensure that employers are safeguarded from a health and safety and mental health aspect. This means that since the use of the substance can impair productivity and may be a danger to the individual and other employees especially when driving heavy vehicles, handling machinery and in case of psychotic episodes amongst others<sup>20 21</sup>. Cannabis users may also be more vulnerable to chemical agents that affect the respiratory system. Although the presence of cannabis may be detected, it is not easy to determine impairment. In this context it is recommended that:

1. Employers should have substance abuse policies that include alcohol, cannabis and other unprescribed drugs.
2. Risk assessments and training will need to cover the risks posed by cannabis consumption.
3. OHSa Regulations<sup>22</sup> Cap. 424 and the EIRA Regulations<sup>23</sup> Cap. 452 should be amended to reflect the changes that may be caused as a result of this White paper and should also cover the inclusion of mandatory alcohol and cannabis testing following any work-place injuries involving the use of heavy machinery as well as delivery personnel amongst others.

### Road Safety and Enforcement

Under the Maltese legislative framework law enforcement requires a probable cause to test a driver for alcohol or drug abuse. This means that The Malta Police Force cannot carry out drug or alcohol testing save on those days, such as New Years’ Eve amongst other similar celebrations, which provide probable cause. The Malta Chamber believes that law enforcement should be further empowered to allow alcohol and drug testing, particularly given the proposed legalisation of an additional mind-altering substance that can lead to road incidents, collisions and even fatalities. The Malta Chamber further believes that at the bare minimum this testing should be mandatory for those who have been involved in any incident involving personal injury. Law enforcement should receive sufficient training as well as road-side testing kits for cannabis to be able to assess whether an individual is above any established legal limit. The Malta Chamber believes that enforcement is essential if the proposed reforms are to be a success, as it will set the difference between a State that is setting out a new regulatory framework that assists law enforcement to target real criminal activity, and a State which is undermining the work of law enforcement by promoting a lax culture around the use of mind-altering substances.

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<sup>20</sup> Adolescent cannabis use, baseline prodromal symptoms and the risk of psychosis, Mustonen et al, BJPpsych, Vol212, Issue 4, March 2018.

<sup>21</sup> Cannabis use and progressive cortical thickness loss in areas rich in CB1 receptors during the first five years of schizophrenia; Rais et al, European Neuropsychopharmacology, December 2010.

<sup>22</sup> Occupation Health & Safety Authority Regulations Cap. 424 of the Laws of Malta available at: [LEGISLATION MALTA](#) [Accessed on 26 April 2021].

<sup>23</sup> Employment and Industrial Relations Act Cap. 452 of the Laws of Malta, available at: [LEGISLATION MALTA](#) [Accessed on 26 April 2021].

## Mental Health Considerations

As attested to in the White Paper and corroborated by medical research, the use of cannabis increases the risk of psychosis and has severe repercussions on brain development in adolescents<sup>24 25 26 27</sup>, which is a harder form of psychosis to treat and recover from<sup>28 29</sup>. This leads to treatment and hospitalisation at Mount Carmel Hospital in most cases. Mount Carmel is a hospital which is already crippled by a serious lack of resources and political will to change the current rehabilitation of persons suffering with mental health issues. In this context it is believed that the lack of control, enforcement and such relaxation of laws, may further exacerbate the situation and pose an increased strain on Malta's Mental Health Services, particularly since psychosis tends to be a very difficult and long-drawn recovery.<sup>30</sup> For this reason, it is essential that the Government carefully considers the short- and long-term impact on adolescent use of cannabis that legalising cannabis may have, and it should be a priority in all cases for the Government to regulate cannabis in such a way that it is harder to access as an adolescent. The degradation of mental health that cannabis can cause is also of concern to employers who may have good staff succumb to such mental disorders, potentially leading to psychotic episodes at the workplace and long medical recovery, thus putting a further strain on employers and colleagues.

## Education

The Malta Chamber recommends the implementation of a strong educational campaign targeting the general public about the consequences of cannabis use, at any age, but even more so in adolescents and young adults. Such an education campaign must not only target potential users but the population at large. Carers and educators need to be empowered to provide arguments based on scientific evidence to counter the perception that cannabis is a recreational and safe drug. This should be similar to educational campaigns on cigarettes and excessive use of alcohol. Moreover, support to parents and carers on how to handle certain issues is also important.

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<sup>24</sup> The health and social effects of non-medical cannabis use, World Health Organisation, 2016.

<sup>25</sup> Brain's synaptic pruning continues into your 20's; Zukermann and Purcell, New Scientist, August 2011.

<sup>26</sup> Persistent cannabis users show neuropsychological decline from childhood to midlife, Meier et al, PNAS October, 2012.

<sup>27</sup> Meta-Analysis of the association between the level of cannabis use and risk of psychosis, Marconi et al, Schizophrenia Bulletin, Volume 42, Issue 5, 1 September 2016.

<sup>28</sup> Adolescent cannabis use, baseline prodromal symptoms and the risk of psychosis, Mustonen et al, BJPsych, Vol212, Issue 4, March 2018.

<sup>29</sup> Cannabis use and progressive cortical thickness loss in areas rich in CB1 receptors during the first five years of schizophrenia; Rais et al, European Neuropsychopharmacology, December 2010.

<sup>30</sup> National Audit Office, 2018. Performance Audit: A Strategic Overview of Mount Carmel Hospital July 2018. [online] Malta: National Audit Office, pp.15 Section 2.2.8. Available at: <<https://nao.gov.mt/en/recent-publications>> [Accessed 5 May 2021].

## White Paper Recommendations by The Malta Chamber

1. Further clarification on what the government considers to be the guidelines for “the personal responsible use of cannabis” in terms of quantities of cannabis, frequency of use and acceptable THC levels.
2. Further information is required with regard to how the Government plans to regularise its position at international law and whether Malta will be:
  - a) Triggering the denunciation process envisioned under article 46 of the Single Convention on Narcotic Drugs, 1961.
  - b) Triggering the denunciation process envisioned under article 29 of The Convention on Psychotropic Substances, 1971.
  - c) Seeking a partial withdrawal from The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 in terms of the provisions under Article 3 and Article 14 on the prohibition on growing cannabis plants or whether a denunciation notification will be given under Article 30.
3. Further clarification is needed on which legislative amendments the government is considering as necessary to update the current status of CBD products and what impact this may have on the medical cannabis industry in Malta.
4. The Malta Chamber believes that prior to the legalisation of the possession of cannabis for amounts below 7 grams, the government should undertake a number of sequential studies to determine:
  - a) The possible effects of this legalisation in terms of the short- and long- term impacts on the frequency of adolescent cannabis use, awareness of the physical and mental negative consequences of cannabis abuse, and the number of cannabis users in a population as well as their frequency of use.
  - b) What levels of THC should be considered as acceptable in legal cannabis for recreational use keeping in mind the links between THC use and mental health degradation.
  - c) The appropriate means of providing a legal supply for users beyond home-growing, a supply which should include regulated cannabis production as well as licensed cannabis distributors. Any supply chain for legal cannabis should have the ability to be sufficiently competitive to destabilise the illicit drug trade whilst also being sufficiently regulated to ensure that levels of THC are kept within pre-determined parameters and that end users do not have access to amounts which enable addictive use. On this point The Malta Chamber would like further clarity on the role of the proposed Cannabis Authority, particularly what its functions will be in regulating the supply of legal cannabis. As part of this regulatory process The Malta Chamber believes that there should be a ban on the advertising of cannabis products and that the branding used on this products should be highly restricted.
5. Further clarification is necessary on what guidelines will be provided to the Malta Police Force on how they should determine whether the cannabis within the legal limit is for personal use or not, and who should therefore be subject to arrest and questioning.
6. While The Malta Chamber agrees with the proceedings outlined in the White Paper as regards those found in possession for personal use with amounts of 7 – 28 grams, The Malta Chamber recommends that the reason as to why 28 grams has been chosen as the cut-off point is explained further especially if any scientific or anecdotal evidence indicates that this may be the ideal range for such measures.
7. The Malta Chamber requests further clarification to resolve the contradiction between the legal amount of possession outlined in the White Paper and the expected yield of four home-grown cannabis plants. Moreover, the government should clarify how enforcement of home growing will be carried out, otherwise it is recommended that this aspect of the White Paper is eliminated in its entirety.



8. The Malta Chamber recommends that the government specifies whether the amounts indicated throughout the White Paper are of dry buds, and what this amount would equate to in fresh cannabis, cannabis resin and cannabis oil.
9. While agreeing with the prohibition of consumption of cannabis in public The Malta Chamber recommends that the penalties for doing so should be higher than those for tobacco use, given the psychoactive component of second-hand cannabis use and its implications on the second-hand user's safety.
10. The Malta Chamber welcomes the government's proposal to put in place more educational campaigns on cannabis use, stressing however that any "benefits" should arise from scientific fact and be sufficiently contextualised within the negative implications of cannabis use to avoid the normalisation of the use of a psychoactive drug with significant risk factors.
11. In view of the government's efforts to "eliminate the stigma" surrounding cannabis The Malta Chamber is seeking clarification on whether companies will be encouraged to have a zero-tolerance policy for substance abuse by employees, and in this framework what would employers' rights be to monitor and enforce this policy.
12. Law enforcement should be provided with the necessary training, equipment, and regulatory framework to be able to test drivers to ascertain that they are not driving under the influence of cannabis or any other legalised mind-altering substances. Testing for these substances should be mandatory in the cases of workplace or road incidents where an individual has suffered an injury. Any changes should be reflected in national Health and Safety Legislation

## Proposed Way Forward by The Malta Chamber

