

LEGALISATION OF MARIJUANA

TACKLING THE NOTION OF
LEGALISATION THROUGH
A COMPARATIVE
ANALYSIS OF BOTH LEGAL
AND SOCIAL ASPECTS
AND THEIR EFFECTS ON
COUNTRIES



10th October, 2017

President of The European Law Students' Association, ELSA Malta, Mr Daniel Vella,

The Parliamentary Secretariat for Reforms, Citizenship and Simplification applauds ELSA Malta's commitment and drive to research, analyse and debate sensitive issues such as the legalisation of marijuana.

As an important stakeholder in national discussions such as the upcoming reform in recreational marijuana use, ELSA Malta's contributions are essential to an ongoing healthy debate and the sharing of ideas. Thus the Parliamentary Secretariat for Reforms, Citizenship and Simplification looks forward to ELSA Malta's research on other topics of public interest.

Best regards,

Julia Farrugia Portelli
Parliamentary Secretary for Reforms, Citizenship and Simplification

Acknowledgements

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ELSA Malta's Legal & Social Policy Organising Committee

Foreword

Having been a topic discussed vigorously and involving much controversy, ELSA Malta's Social and Legal Policy Committee proudly presents its research on the Legalisation of Marijuana. ELSA Malta feels like this topic has been kept under public scrutiny for too long; which is why it sought to get the ball rolling and set the table for debate on the subject as well as offer our own practical solutions.

To allow for an intelligent debate, ELSA Malta has taken a look at countries at the forefront of legalisation and analysed both the good and the bad in order to make sense of what can be achieved through legalisation as well as the risks associated with such a change. With this in mind, ELSA Malta strives to take on change in a controlled and collected manner, and inform both students and the general population alike of how such change may affect the everyday individual. More so, we endeavour to encourage legislators in taking calculated measures and looking at the topic from a wider perspective than would normally be looked at locally. This comparative view is the pinnacle of what makes ELSA Malta stand out in the academic world, for change is not something that can be brought about easily, but only through the patience to educate the population and ensure that such a transition is a safe one.

Naturally, this project would not have been possible without a dedicated team of writers who put countless hours of research into this project. With this in mind, I would like to thank Brendan Hewer, Liam Axisa, Matteo Alessando, Natalia Camilleri and Tim Vella for their patience and hard-work throughout this project; it was a pleasure working with you all. My appreciation also goes out to the ELSA Malta Executive Board, who have debated thoroughly with me and raised highly valid points, all of which affected the final outcome of this paper.

On behalf of the ELSA Malta Social Policy office, we hope you enjoy reading this publication as much as we enjoyed working on it; finding out suggestions thought-provoking and taking them into consideration in any debates which you may have on the topic. Lastly, we earnestly hope that our message of proactivity has reached you all; for it is only when we all make a collective effort to bring about change that it can be achieved precisely.

Jake Camilleri
Director for Social Policy and Legal Publications
1st October 2017.

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Abstract

The legalisation of marijuana has become a much debated topic as of recently, bringing about opposing opinions throughout the island. It is for this reason that ELSA Malta sought to delve further into the topic and offer a comparative view with which we hope to broaden our readers' horizons and arm them with the knowledge required to form a logical and unbiased opinion on the matter.

This comparative aspect is essential to bring about a mentality that is not limited to our island; we must learn to analyse the direction in which more modern countries are going and try to take back the best of what they have to offer. That being said, it is understandable to have focused primarily on the legal model used by California and Colorado. Apart from this, the project also involves the Netherlands and Portugal, analysing the benefits of both of these whilst not shying away from the possible downsides. The main scope of the paper would be to analyse how other countries have benefited from the legalisation of marijuana, whilst pointing out how said countries tackle legalisation from the legal perspective. Legal perspective aside, ELSA Malta also strives to focus on the social aspect of any topic, in this case how legalisation is deemed socially by the countries in question and the social benefits or downfalls brought about by this change.

When discussing change, one of the most fundamental aspects to discuss is how that change is going to affect the nation positively. With this in mind ELSA Malta notes that economic benefit is not the only variable in the equation, with factors such as public satisfaction, life expectancy birth rate and other variables being left out. Rather, ELSA Malta feels that the medical field should not be tackled by this paper, seeing as how we are a student organisation whose main focus is on Human Rights and other Legal issues. With this in mind, various economic models employed by other countries were analysed throughout the paper, seeing how the legalisation of marijuana affected each country on a fiscal level.

Change is a notion which may be hard to wrap one's head around at times. Despite this, ELSA Malta seeks to promote change in a healthy manner, focusing on a shift in mentality rather than a drastic change throughout the island. For this reason, this paper also seeks to shift the stigma related to marijuana and looks into the possibility or tackling substance abuse as a public health issue rather than a criminal one. One may be surprised by how such a slight change in mentality can have a domino effect on country, setting in motion a chain of events which in the long run may bring about positive outcomes.

That being said, ELSA Malta does not seek to over-inflate the value of any topic, but rather offer a level-headed study on various aspects related to the topic in question. For this reason we have chosen to include certain outcomes encountered throughout our research, feeling that the lack of them would sway the final outcome of our paper and muddle the neutrality which ELSA Malta strives to achieve.

Finally, ELSA Malta hopes that this paper inspires its readers to take a more proactive approach when discussing an evident, pivotal change within our country. Whilst legislative changes are fundamental for society to advance, true acceptance of change lies within how it is perceived by the general society.

Introduction

Recent developments in the country have pushed it towards the notion of legalisation of marijuana, which is held to be tackled by the Government in the coming months. That being said, this paper aims to promote various legal models to students and legislators alike and allow for a well-versed opinion on the matter. Such an opinion may be used to promote legislators to take certain action instead of an alternate option, keeping in mind that this should be backed up by feasibility studies in order to produce a physical manifestation of the outcome.

The main countries which this paper was based on are California, Colorado and Portugal; that isn't to say that other countries such as the Netherlands do not have their place within our paper. As is evident, the paper brings about totally different cultures and attempts to merge the best points from them all. That being said, this is no easy feat; different countries will face different problems even if the same legal model is used. This should only further encourage legislators to take an active role in the matter and discuss various scenarios and how such scenarios will affect the island differently.

To begin with, this paper provides for the current decriminalised system in Malta from 3 main aspects: the possession & sale of marijuana, cultivation & possession of marijuana and lastly, the cultivation of it. This three-tier model shall be further implemented throughout the paper, including countries such as Colorado, California, Portugal and more. ELSA Malta feels like splitting up the issue of legalisation into 3 distinct sub-topics is a safe way to understand how each sub-topic is interlinked with certain issues relating to drug use. Understanding how a change in one of these sub-topics will affect the country differently and varying the way in which they are legalised will produce different effects which we feel should be analysed further and considered down the line.

Furthermore, the legal position of the chosen countries was also analysed and commented upon, showing how different parts of the previously mentioned sub-topics affect the country. What one must consider is that the issue of legalisation is not one which should be tackled at once, but should be implemented in stages. It is for this reason that ELSA Malta feels that a limbo period be introduced during the legislative process. During such a period, the Government has the ability to test legislation and alter it to cater for different scenarios which may occur.

Another aspect which was tackled was the economic benefit available directly from marijuana related sources. Whilst we realise that benefit should not only be weighed by the fiscal increase a country receives, attempting to mention all of the numerous aspects that benefit a country would be impossible. For this reason, we have chosen to focus on the benefit derived from sale, tax, jobs and tourism mostly. That being said, ELSA Malta is also an organisation that focuses on social issues and hence have looked into the possibility of a shift in mentality. By this, we mean taking into account the stance held by Portugal where substance abuse is treated as a public health problem not merely a criminal problem. This slight change has shown to have a positive effect on the country and hence deserves further insight.

To conclude, ELSA Malta feels like the legalisation of marijuana will bring about numerous benefits, not merely limited to the medical scene. Keeping this in mind, ELSA Malta urges legislators to take heed of how more modern countries have tackled the situation in order to allow for a more comprehensive view on how to move forward.

The Current Situation in Malta.

Drug laws in Malta were amended in 2015, with an attempt at decriminalisation of personal use. There are now more lenient penalties on simple possession but the police are still allowed to interrogate.¹

Purchase and Sale of Marijuana

In accordance with the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, sale of marijuana remains a criminal offence. The same legislation calls for prison sentences and fines to be given to those found guilty. While progress has been made when it comes to laws on the possession of cannabis, trafficking laws have remained resilient. Such laws have generally come into use in the busts of minor cannabis trafficking and not the drug baron busts they should target, with arrests of various Maltese youths in the summer of 2017 on marijuana charges.

Possession and Consumption of Marijuana

The police will prosecute people caught with small quantities of drugs (3.5g of cannabis, 2g of other drugs and two pills of ecstasy). Such users will be subjected to fines ranging between €65 and €125, or between €50 and €100 in the case of cannabis. However, they will not appear in court but rather before a Justice Commissioner, Sedqa social worker Victoria Scicluna. Nonetheless, the police will still be able to detain people caught with small quantities of drugs for up to 48 hours, so as to extract information related to drug trafficking.

Cultivation of Marijuana

Cultivation of a cannabis plant for personal use is no longer punishable by a mandatory prison sentence or suspended sentence. Also, the Dangerous Drug Ordinance outlaws the manufacture and distribution of any equipment the intention of which is to aid in the cultivation of marijuana.

Other Legislation on Marijuana

It should be noted that none of these laws will not apply to prisoners, pregnant women, people undergoing drug rehabilitation, or people caught selling drugs to minors, or next to schools and youth clubs.

European Union Drug Report 2017

The EU 2017 Drug Report gives an overview of the drug situation in Malta up to the year 2015. This reports highlights, inter alia, drug supply, use and drug policy.²

¹ 'New Drugs Reform Law Into Force Today– What Has Changed?' (*MaltaToday.com.mt*, 2015) <http://www.maltatoday.com.mt/news/national/51881/new_drugs_reform_law_into_force_today_what_has_changed#.Wbb9BZPhrdc> accessed 11 September 2017.

² *Malta Country Drug Report 2017* (2017) <http://www.emcdda.europa.eu/system/files/publications/4513/TD0616154ENN.pdf_en> accessed 5 October 2017.

One of the things noted by this report is that out of the 472 drug law offences which happened in 2015, an overwhelming 76% were related to simple possession, or possession for personal use while the remaining quarter were offences related to supply.³

It should be noted that the majority simple possession offences were related to cannabis, the drug which is most commonly used by people aged 18-65, the majority of whom are male.⁴ When it comes to drug use by 15-16 year olds, Malta ranked above the EU average in the percentage of alcohol use and heavy episodic drinking, with almost half Maltese respondents confirming they had done the latter in the 30 days prior to the survey.⁵

On the topic of hard drugs, the report found that Malta has a relatively high percentage of high-risk opioid use at 6 per 1000 population, the most prevalent of which being heroin. This being said, the number of persons entering heroin treatment for the first time is the lowest from the three most commonly use narcotics, (cannabis, cocaine and heroin) at 66 people in 2015, although it is the drug with the most number of entrants at 1296, five times greater than people seeking cocaine treatment and eight times greater than those seeking cannabis treatment.⁶ It is 30-34 year olds and 45-49 year olds who are the most likely to die due to overdose, although this figure is misleading as a total of 8 people died from overdose in Malta in 2015.⁷

From the almost 500 drug seizures in 2015, the most common drug seized was cannabis resin at 70 kg followed by cocaine at 21 kg. The report also noted the low potency/purity of Maltese illicit drugs when compared to the EU range while the price of drugs ranged from cheap to medium relative to the same range.⁸ The potency of cannabis resin was found to be between 4-11%, very low on the spectrum with the highest potency in the EU being that of 87%.⁹

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

A Comparative Analysis on the Implementations of Legalisation.

Colorado

With the passing of Amendment 64, adults 21 or older in Colorado can legally possess one ounce (28.5 grams) of marijuana.¹⁰ Any more than the stipulated amount will result in legal charges and fines.¹¹ Despite legalisation on a state-wide level, the law allows for cities, counties, schools, universities and employers to impose their own rules and consequences.¹²

Purchase and Sale of Marijuana

On the topic of buying marijuana, it should be noted that one must present a valid ID proving they're 21 or over to purchase cannabis.¹³ It is illegal for anyone under 21 to buy, have or use marijuana with the giving, selling or sharing of marijuana to such persons constituting a felony.¹⁴ Only licensed retailers can sell marijuana while individuals over 21 may share up to an ounce of marijuana with other persons over 21.¹⁵ These aforementioned retailers can only conduct the sale of marijuana in a 'restricted portion' of their store; its name due to the fact that no one under the age of 21 is allowed there.¹⁶ Under state laws, retail marijuana businesses can be open only between 8:00 a.m. and 12:00 a.m., although different municipalities can require stricter hours of operation; such as Denver only allowing marijuana retailers to stay open till 10:00 p.m.¹⁷ State Law also provides that marijuana businesses are required to sell all marijuana products in packaging that's re-sealable, child-resistant and non-see-through.¹⁸ Also, all retail marijuana products are required to be labelled with a red *THC* symbol.¹⁹

Possession and Consumption of Marijuana

Despite legalisation of the drug, public use of marijuana remains illegal and this includes both indoor and outdoor venues inter alia; parks and amusement parks, ski resorts, concert venues, businesses, restaurants, cafes or bars and common areas of apartment buildings.²⁰

¹⁰ 'Marijuana Laws in Colorado' (*Colorado Pot Guide*, 2017) <<https://www.coloradopotguide.com/marijuana-laws-in-colorado/>> accessed 10 September 2017.

¹¹ 'Laws about Marijuana Use | Colorado Marijuana' (*Colorado.gov*, 2017)

<<https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>> accessed 10 September 2017.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ 'Marijuana Laws in Colorado' (*Colorado Pot Guide*, 2017) <<https://www.coloradopotguide.com/marijuana-laws-in-colorado/>> accessed 10 September 2017.

¹⁸ 'Laws about Marijuana Use | Colorado Marijuana' (*Colorado.gov*, 2017)

<<https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>> accessed 10 September 2017.

¹⁹ Ibid.

²⁰ 'Laws about Marijuana Use | Colorado Marijuana' (*Colorado.gov*, 2017)

<<https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>> accessed 10 September 2017.

Due to the fact that marijuana remains listed as a Schedule I Drug under federal law,²¹ use on federal land (i.e. national parks and national forests) also remains illegal. Marijuana can up till now only be used on private property, however property owners can ban the use and possession of marijuana in their properties.²² This extends to any type of private property holder including landlords and hoteliers.²³ Consumption of recreational marijuana by pregnant women may also have legal consequences, with Colorado law requiring hospitals who come across babies who test positive for THC to notify child protective services.²⁴

Cultivation of Marijuana

According to the law, Coloradans can legally grow marijuana in their homes for personal use as long as home grown marijuana products are not sold.²⁵ Up to six plants are allowed per adult over 21 in a Colorado household, with a maximum of three plants flowering at a time.²⁶ Such plants should be grown in an enclosed and locked area so as to prevent any minors from accessing it.²⁷ It should be here noted that as of January 2018, there will be a cap of 12 marijuana plants per residence irrespective of how many people reside there.²⁸

Other Legislation on Marijuana

It should be noted that Colorado Law still allows for employers to test for marijuana and make employment decisions based on drug test results, with this only affecting recreational marijuana users as medical marijuana users are exempt from any sort of such discrimination.²⁹ Laws have also been updated to include marijuana DUI, setting the limit to 5 nanograms per millilitre of blood.³⁰

²¹ '21 U.S. Code § 812 - Schedules of Controlled Substances' (*lawschool.cornell.edu/*, 2017) <<https://www.law.cornell.edu/uscode/text/21/812>> accessed 10 September 2017.

²² 'Laws about Marijuana Use | Colorado Marijuana' (*Colorado.gov*, 2017) <<https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>> accessed 10 September 2017.

²³ Ibid.

²⁴ Ibid.

²⁵ 'Home Grow Laws | Colorado Marijuana' (*Colorado.gov*, 2017) <<https://www.colorado.gov/pacific/marijuana/home-grow-laws>> accessed 10 September 2017.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ 'Laws about Marijuana Use | Colorado Marijuana' (*Colorado.gov*, 2017) <<https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>> accessed 10 September 2017.

³⁰ 'Marijuana Laws in Colorado' (*Colorado Pot Guide*, 2017) <<https://www.coloradopotguide.com/marijuana-laws-in-colorado/>> accessed 10 September 2017.

Portugal

In 2001, the Portuguese government decided to amend its drug policy to turn it into a more lenient system by adopting Law 30/2000³¹ which may be found in Decree Law 15/93. Ever since cannabis has been decriminalized in Portugal, statistics show that the use of hard drugs has decreased vividly over the years.

Individuals who possess small quantities of cannabis (or other types of drugs) within the limits of the law over a ten day period shall not be considered to be offenders of the law and hence will not be subject to criminal penalties. Unlike Dutch law, Portuguese law prohibits the cultivation of cannabis plants including crops which are cultivated only for individual use.

Due to this prohibition, individuals wanting the drug need to seek it from the black market i.e. illegal means. This may be the reason why Portugal's black market generates one fifth of the country's economy. Drug trafficking is a punishable offence under Portuguese law and hence legalising the use of marijuana but not its cultivation tends to stand as inflexible. Nevertheless, the laws of decriminalization have been broadly acknowledged as effective, and Portugal's position has enhanced discussion amongst other governments since 'it became the first European country to officially abolish all criminal penalties for personal possession of drugs, including marijuana, cocaine, heroin and methamphetamine.'³²

Purchase and Sale of Marijuana

Both the purchase and sale of cannabis in Portugal remains illegal.³³ Under Portuguese law cannabis related trafficking crimes are punishable by custodial sentences of between 4 and 12 years.³⁴ Portugal is also one of the few European nations to criminalise cannabis seeds as sale and possession of non-European hemp seeds is banned and so is equipment for cultivation.³⁵

Possession and Consumption of Marijuana

Law 30/2000 formally decriminalised the consumption and possession of all illegal drugs as long as they are found in small quantities and for personal use.³⁶ Consumption and use are both still considered to be civil offences, and may be punishable by fines or rehabilitation orders, but in practice many cases are suspended.³⁷

³¹ This law sets out rules concerning narcotic drugs and psychotropic substances which are not prescribed by a doctor or medical professional.

³² Linda Mooney, *Understanding Social Problems* (Cengage Learning 2014) 95

³³ 'Legal Status Of Cannabis In Portugal – An Overview' (*Sensi Seeds Blog*, 2017) <<https://sensiseeds.com/en/blog/legal-status-cannabis-portugal-overview/>> accessed 10 September 2017.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

In cases where the amount in question exceeds that deemed necessary for personal use, that is, three days' worth of cannabis to an individual user (i.e. cannabis 2.5g per day, hashish 0.5g per day and delta-9-THC 0.05g per day), those found guilty may be subject to up to one year's imprisonment and a fine.³⁸

In cases which people are found with small quantities of drugs, the drugs will be seized and the case transmitted to a local Commission charged with implementing a rehabilitation strategy with the latter not being compulsory.³⁹

Cultivation of Marijuana

Cultivation of cannabis is also illegal in Portugal, even a few plants intended for personal use.⁴⁰ In fact, Law 30/2000 specified that while custodial sentences for drugs were to be repealed, cultivation was to be accepted from this. Motions to decriminalise the cultivation of small amounts of cannabis for personal use have been rejected by the Government and this has forced consumers to rely on criminal means of supply.⁴¹

European Union Drug Report 2017

The EU 2017 Drug Report gives an overview of the drug situation in Portugal up to the year 2015. This reports highlights, inter alia, drug supply, use and drug policy.⁴² In the year 2015, Portugal saw a total of 16,102 drug law offences, with a 36%/64% split between simple possession and possession with intent to traffic.⁴³ The majority of these offence were linked to cannabis, followed by heroin and cocaine related offences. The most common age group for substance abuse is that of 15-24 years old, although use of drugs other than cannabis remains low, with males constituting a much higher percentage of users when compared to females.⁴⁴ Portugal is also below the EU average when it comes to narcotic use by students aged 15-16, with youths responding positively to have had heavy episodic drinking in the 30 days prior to the survey being slightly more than half the average.⁴⁵

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ 'Home-Grown Cannabis Law Rejected' (*Theportugalnews.com*, 2017)

<<http://www.theportugalnews.com/news/home-grown-cannabis-law-rejected/28438>> accessed 10 September 2017.

⁴² *Portugal Country Drug Report 2017* (2017)

<http://www.emcdda.europa.eu/system/files/publications/4508/TD0116918ENN.pdf_en> accessed 5 October 2017.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

The report also finds that treatment for hard opioids, namely heroin, has decreased while treatment for those who primarily use cannabis has almost doubled.⁴⁶ Nonetheless as of 2015 the highest denomination of people seeking drug treatment are those whose primary narcotic is heroin, followed by cannabis and cocaine. From the 40 people who died due to overdose in 2015, the majority were between the ages of 40-44, with this age group along with the 45-49 and 55-59 age groups being above the EU average.⁴⁷ According to a survey carried out among the adult prison population, 69% of them report lifetime drug use, with 8% of the inmates stating they've also used cocaine or heroin during imprisonment.⁴⁸

Due to its colonial history and geographical location, Portugal serves as an entry point for illicit drugs into Europe from Latin America, namely cannabis and cocaine.⁴⁹ From the over 7000 drugs seizures which happened in 2015, cannabi resin made up the largest seizures, however only amounting to a total of 2,412 kg. On the other hand, while around 1000 cocaine seizure took place in 2015, the amount of cocaine seized amounted to 6,029 kg, the largest amount of any particular illicit drug seized.⁵⁰ While no data was recovered by the report on the range of prices for illicit drugs, the potency/purity of drugs was found to range similarly with the EU range, from as low as <1% (Herbal Cannabis) to as high as 99% (Amphetamine).⁵¹

California

Recreational marijuana was legalised in California by popular vote via Proposition 64 (full name being Control, Regulate and Tax Adult Use of Marijuana Act [AUMA]) which took place on November 8 2016, after being the first state to legalise medical marijuana in 1996.⁵² The current proto-legislation allows for the use, possession, share and home cultivation of cannabis by all adults over 21.⁵³

Purchase and Sale of Marijuana

The use of the term 'share' is important as one cannot legally buy marijuana in California yet, with the state hoping that a sharing economy emerges while it sets up the legal market.⁵⁴ This is to be the case till January 1st 2018, the deadline at which the state has to start issuing licences to pot shops.⁵⁵

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² 'What To Know about Marijuana Legalization in California' (*Time.com*, 2017) <<http://time.com/4565438/california-marijuana-faq-rules-prop-64/>> accessed 10 September 2017.

⁵³ 'Know Your Rights Post-Prop. 64' (*Times-standard.com*, 2017) <<http://www.times-standard.com/article/NJ/20161107/NEWS/161109826>> accessed 10 September 2017.

⁵⁴ 'What To Know about Marijuana Legalization in California' (*Time.com*, 2017) <<http://time.com/4565438/california-marijuana-faq-rules-prop-64/>> accessed 10 September 2017.

⁵⁵ Ibid.

Upon being given a license, pot shops will be prohibited from the sale or consumption of alcohol or tobacco within their stores.⁵⁶ AUMA provide that upon the creation of the legal market, individuals over 21 will be able to engage in the purchase and sale of cannabis. It requires strict adherence to yet to be established distributional industry standards on testing, packaging and labelling. Marijuana packaging is now required to provide the net weight, origin, age, and type of the product, as well as the milligram amount per serving of tetrahydrocannabinol, cannabidiol, other cannabinoids, and also if any pesticides were used during cultivation.⁵⁷ The penalty for unlicensed sale of marijuana is now reduced from four years in state prison to six months in county jail.⁵⁸

Possession and Consumption of Marijuana

AUMA allows adults over the age of 21 to possess up to an ounce (28.5 grams) of marijuana flower or 8 grams of marijuana extract.⁵⁹ Smoking marijuana in public is subject to a \$100 fine while driving under the influence of marijuana remains illegal.⁶⁰ If underage persons are found in possession of marijuana, the new law establishes the act as an infraction and punishable by a compulsory drug counselling program and community service.⁶¹

Cultivation of Marijuana

On the topic of cultivation, adults are allowed to cultivate up to six marijuana plants inside their homes.⁶² Cultivation however, is only allowed in an enclosed and locked area of a residence.⁶³ The law also says that while different cities and towns within California can prohibit the growing of marijuana, these cannot keep the person from growing marijuana inside their home. As long as the cultivation remains personal, it remains legal.⁶⁴

⁵⁶ Ibid.

⁵⁷ '6 Ways Recreational Pot Will Change California — And 7 Ways It won't' (*KQED News*, 2016) <<https://ww2.kqed.org/news/2016/11/08/6-ways-recreational-pot-would-change-california-and-7-ways-it-wouldnt/>> accessed 11 September 2017.

⁵⁸ 'Control, Regulate, and Tax Adult Use of Marijuana Act (Amendment #1).' (*Lao.ca.gov*, 2015) <<http://www.lao.ca.gov/BallotAnalysis/Initiative/2015-103>> accessed 11 September 2017.

⁵⁹ 'What To Know about Marijuana Legalization in California' (*Time.com*, 2017) <<http://time.com/4565438/california-marijuana-faq-rules-prop-64/>> accessed 10 September 2017.

⁶⁰ '6 Ways Recreational Pot Will Change California — And 7 Ways It won't' (*KQED News*, 2016) <<https://ww2.kqed.org/news/2016/11/08/6-ways-recreational-pot-would-change-california-and-7-ways-it-wouldnt/>> accessed 11 September 2017.

⁶¹ Control, Regulate, and Tax Adult Use of Marijuana Act (Amendment #1).' (*Lao.ca.gov*, 2015) <<http://www.lao.ca.gov/BallotAnalysis/Initiative/2015-103>> accessed 11 September 2017.

⁶² 'What To Know about Marijuana Legalization in California' (*Time.com*, 2017) <<http://time.com/4565438/california-marijuana-faq-rules-prop-64/>> accessed 10 September 2017.

⁶³ Ibid.

⁶⁴ 'Control, Regulate, and Tax Adult Use of Marijuana Act (Amendment #1).' (*Lao.ca.gov*, 2015) <<http://www.lao.ca.gov/BallotAnalysis/Initiative/2015-103>> accessed 11 September 2017.

Other Legislation on Marijuana

It will be the newly created Bureau of Marijuana Control's job to provide a full transparent seed-to-sale tracking system to consumers.⁶⁵ Other state agencies which will regulate cannabis include: the California Department of Public Health (to license and monitor manufacturing of marijuana edibles) and the California State Water Resources Control Board (to regulate the environmental impacts of marijuana growing on water quality).⁶⁶ Other state bodies include the California Department of Pesticide Regulation⁶⁷, the California Department of Fish and Wildlife⁶⁸ and the California Department of Food and Agriculture^{69, 70}.

In addition, there will exist a 15% excise tax together with \$9.25 per ounce of flower or \$2.75 per ounce of leaf while such revenue paid into the new California Marijuana Tax Fund will allocate 60% of outflows to youth programs, 20% to environmental damage clean-up and 20% to public safety.⁷¹

Netherlands

The provisions of the 1976 Act of the Netherlands were the first stepping stones towards a decriminalization policy of marijuana. The Dutch government believes that the drug in question is not a dangerous drug and does not carry dangerous risks after its consumption.

The Opium Act⁷² differentiates between hard drugs such as heroin and cocaine and soft drugs such as marijuana and hashish which have less serious hazards (to none) than the aforementioned. Hence, the Dutch government does not punish those who use the substance recreationally or medically. On the other hand, the possession of certain hard drugs which can be found in the Opium Act is a punishable offence where people are encouraged to seek help and treatment for their drug abuses. Although the sale, possession or use of marijuana is still considered to be a criminal offence, the Dutch Public Prosecution Service will not prosecute the offender in question if certain procedures and laws are followed.

The Directive for the Prosecution of Opium Act Offences lays out the set of rules for the legal use and possession of soft drugs⁷³ including the use and possession of marijuana.

⁶⁵ 'Faq's | Cannabis' (*Cannabis.ca.gov*, 2017) <<https://cannabis.ca.gov/faqs/>> accessed 11 September 2017.

⁶⁶ 'Prop 64 Analysis | Official Voter Information Guide | California Secretary Of State' (*Voterguide.sos.ca.gov*, 2017) <<http://voterguide.sos.ca.gov/en/propositions/64/analysis.htm>> accessed 11 September 2017.

⁶⁷ to regulate nutrients and pesticides utilised for marijuana cultivation

⁶⁸ to regulate cultivation-related impacts on local environments

⁶⁹ to license and regulate marijuana cultivation

⁷⁰ 'Prop 64 Analysis | Official Voter Information Guide | California Secretary Of State' (*Voterguide.sos.ca.gov*, 2017) <<http://voterguide.sos.ca.gov/en/propositions/64/analysis.htm>> accessed 11 September 2017.

⁷¹ 'Bill Text - AB-1135 California Marijuana Tax Fund.' (*Leginfo.legislature.ca.gov*, 2017) <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1135> accessed 11 September 2017.

⁷² The Dutch Opium Act also known as the Narcotics Act is a part of Dutch law which covers all sorts of psychotropic drugs including hard drugs and soft drugs. The Act allows the possession of marijuana up to five grams. This act also changed the nature of the criminalization of marijuana.

⁷³ Article 21 of the Directive for the Prosecution of Opium Act Offences.

A person may legally possess up to five grams of marijuana and may also cultivate up to five plants of cannabis for personal use. Any individual who possesses a small quantity of marijuana which is within the limits of the will not be treated as a punishable offence under Dutch Law.

Offenders carrying illegal amounts of soft drugs will be prosecuted with fines, community service or a very short prison sentence, depending on the severity of the case. The Opium Act also sets out regulations which need to be followed by coffee shops regarding the sale of marijuana and hashish. Apart from the fact that the Dutch government considers marijuana to be mild when comparing it to harder drugs, it also once believed that youths and young adults would still experiment with drugs whether the latter are legal or illegal. Hence the legalisation of marijuana has encouraged them to try marijuana rather than hazardous drugs such as heroin and cocaine.

The main reasons for legalising the soft drug were set out by the Baan Commission which mostly were

“the prevention or alleviation of social and individual risks caused by drug use, a rational relation between those risks and policy measures, policy measures [which] must also take into account the risks of legal recreational and medical drugs, repressive measures against drug trafficking [and] the inadequacy of criminal law with respect to other aspects.”⁷⁴

Many authors believe that the merciful policy regulating the use of marijuana derives from the Constitution of Netherlands, specifically Article 10(1)⁷⁵ which states that ‘everyone shall have the right to have respect for his privacy, without prejudice to restrictions laid down by or pursuant to Act of Parliament. This emphasises the fact that the Constitution of Netherlands promotes individual choosing, self-sovereignty and liberty and verifies why possession of marijuana is not a serious crime under Dutch law. Furthermore, one of the main aims for the Netherland’s current drug policy is to safeguard the population’s health. In fact, the government tries to step away from severe punishments due to drug possession and instead upholds rehabilitation facilities and treatment.

Despite having a reputation as the go to place for a legal high, cannabis is currently illegal in the Netherlands. Nonetheless, as of February 2017, Dutch lawmakers approved legislation that would cultivation of marijuana for commercial purposes. The highly popular coffee shops currently operate in a grey area of the law.

⁷⁴ Benjamin Dolan, 'National Drug Policy: The Netherlands ' (*Sencanada Website*, 2001).
<<https://sencanada.ca/content/sen/committee/371/ille/library/dolin1-e.htm>> accessed 6 September 2017.

⁷⁵ The Constitution of the Kingdom of the Netherlands, 2008.

Purchase and Sale of Marijuana

In the Netherlands, coffee shops are permitted to sell cannabis under certain strict conditions. A coffee shop is the name given to marijuana retailers in the Netherlands, stores in which cannabis may be sold but no alcoholic drinks may be sold or consumed.⁷⁶ Such shops are allowed to store a maximum of 500g of cannabis at any given moment but are only permitted to sell up to 5g of marijuana in a single transaction.⁷⁷ Nonetheless, cultivation of marijuana remains illegal, and as such coffee shop owners employ third party buyers who source the cannabis and bring it into the shop.⁷⁸ While this act remains illegal, once the cannabis enters the coffee shop the authorities tolerate it as long as the 500g limit is adhered to.⁷⁹ The term 'toleration' is key to understanding the Dutch cannabis situation from a legal perspective, as while the sale of soft drugs in general remains a criminal offence, the Public Prosecution Service does not prosecute as long as said coffee shops abide by the set 'toleration criteria'.⁸⁰

Coffee shop owners are only permitted to sell cannabis products to adults aged 18 or older who, depending on the municipality, might also have to be residents of the Netherlands.⁸¹ Interestingly, coffee shops are also forbidden from advertising any soft drug, in hope of reducing the appeal this might have to both locals and drug tourists.⁸² Municipalities also determine whether to allow coffee shops to even operate, along with any other rules they would want to impose.⁸³

Possession and Consumption of Marijuana

The Public Prosecution Service neither prosecutes citizens for possession of small quantities of small drugs, these being up to 5g of cannabis and up to 5 cannabis plants.⁸⁴ The consumption of cannabis is also tolerated by the Dutch authorities as long as this is done either in coffee shops or in one's home albeit without any children present.⁸⁵

⁷⁶ 'Toleration Policy Regarding Soft Drugs and Coffee Shops | Drugs | Government.NL' (*Government.nl*) <<https://www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops>> accessed 11 September 2017.

⁷⁷ Ibid.

⁷⁸ Gavin Haines, 'Everything You Need to Know about Smoking Marijuana in the Netherlands' (*The Telegraph*, 2017) <<http://www.telegraph.co.uk/travel/destinations/europe/netherlands/amsterdam/articles/everything-you-need-to-know-about-smoking-marijuana-in-the-netherlands/>> accessed 11 September 2017.

⁷⁹ Ibid.

⁸⁰ 'Toleration Policy Regarding Soft Drugs and Coffee Shops | Drugs | Government.NL' (*Government.nl*) <<https://www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops>> accessed 11 September 2017.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ 'Where You Can Smoke And Where You Can't – Amsterdam Coffeeshops FAQ' (*Amsterdam Travel Guide*) <<http://www.amsterdamlogue.com/amsterdam-coffeeshops-faq-where-you-can-smoke-and-where-you-cant.html>> accessed 11 September 2017.

Cultivation of Marijuana

It is currently against the law to grow marijuana and cannabis plants. However, due to the presence of the toleration policy, in cases where no more than 5 plants are grown for personal consumption, the police will generally only seize the plants.⁸⁶ Nonetheless, if more than 5 plants are found, the police may prosecute.⁸⁷

Other Legislation on Marijuana

As of February 2017, the lower House of Parliament passed a law which would legalise cultivation of cannabis if this was done for commercial purposes. This law is still awaiting approval by the Senate.⁸⁸ If it becomes legal to cultivate marijuana, coffee shops will no longer have to worry about employing buyers to sneak it through the back door for them. Essentially, the new law would make it cheaper, easier and safer to run a coffee shop.⁸⁹

European Union Drug Report 2017

The EU report for the Netherlands introduces a well-researched analysis of the country's situation regarding its drugs, detailing drug policy, overviews of different drugs and their popularity among citizens, health analyses, prevention and reduction schemes, as well as overviews of drug markets. The Dutch government's policy on drugs is one of reduction, wherein discouragement and elimination of use is sought after for the ultimate scope of improving health and society. The manner in which it is done, however, differs, say, compared to the United States, where the punishment of users is more of a focus than in the Netherlands. This is not to say that its government does not aim at reducing drug manufacture and retailing, as a considerable amount of the Netherlands' GDP is devoted to that alone.

Its objectives range from prevention and rehabilitation, reduction of harm to users, diminishing of public disturbance, to the continuation of the battle against drug production. Use of drugs itself is not illegal, however emphasis is made on the unacceptability of its presence in public places, particularly schools and on public transport. People in possession of List II ('soft') drugs will not be a target for investigation, provided they possess 5g or less of the substance, while those caught with List I ('hard') drugs are not generally investigable at 0.5g or less. Drug statistics give mixed signals in the Netherlands. Cannabis is the Netherlands' most popular drug and its commonest one, while MDMA and cocaine share some relevance among adults and teenagers.

Dutch students were reported to use cannabis and other drugs at a considerably higher rate than those in other European countries.

⁸⁶ 'Toleration Policy Regarding Soft Drugs and Coffee Shops | Drugs | Government.Nl' (*Government.nl*) <<https://www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops>> accessed 11 September 2017.

⁸⁷ Ibid.

⁸⁸ Gavin Haines, 'Everything You Need To Know About Smoking Marijuana In The Netherlands' (*The Telegraph*, 2017) <<http://www.telegraph.co.uk/travel/destinations/europe/netherlands/amsterdam/articles/everything-you-need-to-know-about-smoking-marijuana-in-the-netherlands/>> accessed 11 September 2017.

⁸⁹ Ibid.

In contrast, the data indicate that the occurrence of HIV, hepatitis B virus, and hepatitis C virus infections among users who uptake their drugs by injection is at lower levels than other nations. However, the mortality rate from drug-induced deaths has then increased, at 16.5 deaths per million in 2015. Despite this, it remains yet again lower than the deaths per million in other countries. Measures of prevention include environmental prevention through the reduction of alcohol and tobacco waste, universal prevention through education in secondary schools, as well as NGOs set on preventing drug use in more vulnerable areas. Reduction of harm itself is a vital element of Dutch drug policy, and bases itself in lessening deaths, diseases and emergencies from drugs. These aims are effected through outreach work, low-threshold outlets, and care centres for addicts, whose goal is to maintain a connection with difficult users. Of these two, care centres are the most popular. In the Netherlands, there exist schemes for further aid, such as needle and syringe programmes, drug consumption rooms, and heroin assisted treatment.

Treatment strategy focuses itself on the encouragement of patients, their reintroduction into society, as well as their self-control. Responsibility for this framework is left into the hands of regional and local authority, and forms part of a larger mental healthcare programme. In addition to this, the prisons of the Netherlands have introduced a policy for the purpose of discouraging drug use, by creating environments free of drugs and by also regulating the availability and of such drugs in prisons. The report ends with an analysis of the country's drug markets, describing the cultivation of cannabis and other drugs, as well as its exportation. The Netherlands also experiences heroin and cocaine trafficking as it is a transit country for these substances.

The Economic Benefits of Legalisation

In order to thoroughly assess the effects of legalising marijuana, one must not overlook the importance of its effects on the economy. Through the case studies below, one notices an ongoing positive trend with regards to revenue, as well as job creation within the affected economy. Though Malta is not directly comparable to any of the jurisdictions mentioned, one must note Malta's economic potential (as with Colorado), as well as its already significant yearly influx of tourists, reaching 2 million during 2016⁹⁰. With tourism employing circa 10,300 full-time, and circa 9,800 part-time employees during 2015 while pumping close to 1.65 billion into the economy⁹¹, it would be interesting to evaluate the way in which the two industries would react to each other. It would also be interesting to see whether the legalisation of marijuana would diminish tourism's strong reign over employment, a stunning 26.4% in total.⁹²

⁹⁰ The Malta Independent, 'Tourism 2016; Excellent Results' (2017) <<http://www.independent.com.mt/articles/2017-03-05/newspaper-opinions/Tourism-2016-Excellent-Results-6736171212>> accessed 10 September 2017.

⁹¹ Malta Tourism Authority, 'Tourism in Malta 2015' (Malta Tourism Authority 2016) <<http://www.mta.com.mt/loadfile.ashx?id=f9450553-1787-486f-bcc1-ab7c4c90fb70>> accessed 10 September 2017.

⁹² The Times of Malta, 'Tourism: All about Figures?' (2015) <<https://www.timesofmalta.com/articles/view/20150618/business-news/tourism-all-about-figures.573048>> accessed 10 September 2017.

Such figures would lead one to believe that the legalisation of marijuana would have a positive effect on such numbers, as is the case in California and the Netherlands, with the former even offering marijuana related tours to tourists.

One must also note the significant increase in demand, wherein by 2020 marijuana sales are predicted to overtake cigarette sales in Colorado. It could be assessed that such growth is not necessarily the result of more people consuming marijuana, but rather, a shift from the illegal market to the legal one. Therefore, underground sales which were undocumented and untaxed before may now be traced while producing revenue for the country or state at hand. With this in mind, one must be very cautious with the data available due to a variety of reasons. It is of great importance that one notes that limited resources are available with regards to the topic at hand, as a result of lack of proper documentation, or incorrect resources.

Colorado

In Colorado, where recreational marijuana was recently legalised, the effect on the economy was gargantuan, producing circa 2.4 billion dollars for the economy, as well as creating 18,000 jobs. This also led to the elimination of the unregulated black market while generating three times the revenue that alcohol sales did during the year. It is estimated that marijuana revenues will overtake those of cigarettes by the year 2020. The Marijuana Policy Group's report on Colorado also states that the marijuana industry creates "more output and employment per dollar spent than 90 percent of Colorado industries" while being projected "to grow by 11.3 percent per year through 2020."

Since the industry is effectively self-sufficient, and a localised industry, most of the spending within the industry is reintroduced into the state. The Marijuana Policy Group noted that as a result of this, the industry "generates more local output and employment per dollar spent than almost any other Colorado sector."⁹³

This would also be the case in Malta, wherein the industry would be able to run without the need of huge imports of raw materials, as they would be cultivated locally. One of the problems within Colorado is that the majority of cultivation is exclusively indoors, as a result of which, a great amount of spending goes into electricity, HVAC, and other agricultural products. It would be interesting to note that this problem would not be present within the Maltese scene, as the Mediterranean climate is scientifically proven to be one of the most ideal for the cultivation of the cannabis plant. This would mean that even less money would need to be spent on such items, increasing the output per dollar spent.

It is stated in the Marijuana Policy Group's report that "each dollar spent on retail marijuana generates \$2.40 in state output."⁹⁴ When compared to general retail trade (\$1.88 per dollar), one notes the importance of a localised industry. One may therefore also logically predict a higher input in Malta's case, as a result of the fewer costs of production.

⁹³ Ibid.

⁹⁴ Ibid

The legalisation of marijuana in Colorado has not only created jobs within the industry itself, but also for firms which provide industry-specific services.⁹⁵ Therefore, the same legislation in Malta would require that Maltese firms, particularly law firms, delve into new practices.

On the Availability of Reliable Information

Marijuana is or has been, for a large part of relevant history, an illegal “Class A” or “Schedule 1” narcotic. Most official institutions therefore do not collect or publish data related to its retailing. This makes it notoriously difficult to find trustworthy reports that can be used for the assessment of the feasibility of legalisation for recreational/medicinal use. Recent studies have attempted to record effects by using proxy data or invalid or incorrect assumptions. A number of those studies are shown to come up with critically inaccurate results. For example, until 2014, the marijuana market in Colorado was exclusive to medical patients and inventories and transactions were not consistently studied utilising a standardised seed-to-sale tracking system. Due to this absence of information, it became impossible to judge with certainty how the sale of medical marijuana affected the state economy.

The Peculiarity of Marijuana’s Demand

Demand for legal cannabis is meant to grow by 11.3 percent every year through 2020 [Colorado]. The growth is driven by a change in demand, away from illegal, black market demand. It would be facile to misrepresent the impressive growth in marijuana retail sales with an inherent growth in marijuana demand. However, this is not necessarily the case, for the demand has shifted from the previous unlicensed, illegal sellers, to licensed sellers.

It is essential to understand that the large majority of the growth in states where adult-use cannabis is legal is not due to secular growth in demand. It is, instead, a transition from the unregulated market to the regulated market.

Colorado’s Market Performance Post-Legalisation

The legal marijuana industry that of recreational as well as medicinal use, has become larger than numerous traditional commercial sectors in Colorado. While still being smaller than others, the cannabis industry is at the present moment growing at a faster speed than any other sector in the State of Colorado.

The commercial and related activities associated with legal marijuana in Colorado have generated \$2.39 billion in state output, as well as 18,005 new full-time jobs, and \$996 million in sales in 2015, according to the comprehensive study issued by the Marijuana Policy Group in October 2016, conducted on behalf of the Colorado Department of Revenue.

A Localised Industry

⁹⁵ Ibid

Due to the fact that the marijuana industry recently fashioned by Colorado exists solely within the state itself and is entirely localised, and due to the fact that adjacent states around Colorado have not yet taken such a bold legal initiative, spending on marijuana generates more output and employment for every dollar spent than 90 per cent of Colorado industries. These industries often do not owe their inputs to within the borders of the state, but rather outside it.

The same goes for profits created by these same industries, profits that are withheld by corporations outside Colorado. It was found that by implementing the Marijuana Policy Group (hereafter referred to as the MPG)'s "marijuana impact model", only government program spending generates more employment and output for every dollar spent (\$2.42) than the legal cannabis industry (\$2.40). It could be implied that the sector ought to remain as localised as possible for maximum results. Such a demand might be within reasonable limits, considering that the product being discussed is an agricultural one like any other, and requires little to no extra-regional input.

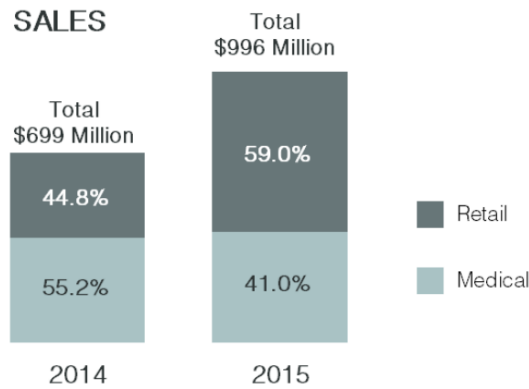
Excise

In 2015, marijuana became the second largest source of excise revenue (\$121 million). They were three times larger than those of alcohol, and also 14 percent larger than casino revenues. The MPG predicts that marijuana tax revenues should be overcoming cigarette excise revenues by 2020, as cigarette sales continue to dwindle.

Cigarette revenues still remained the most significant excise source (\$180.1 million) during 2015, however a negative trend suggesting a decline in cigarette sales might show that within the next few years, marijuana tax revenues might surpass those of cigarettes, provided that the trend in its own sales continues. Combined marijuana excise and sales tax revenues are \$63.4 million in 2014, and \$121.2 million in 2015 (licensing fees are not included within these figures, which in 2014 and 2015 made \$12.7 million and \$14.5 million, in respective order).

Sales for medical marijuana increased a mere 5.4 per cent in 2015 to \$408.4 million, from a previous \$386.0 million the year before. Meanwhile, recreational sales surged forward 87.7 per cent, (\$313.2 million-\$587.8 million). This increase owes its success to a higher tax rate imposed on those products, creating a revenue increase of 91.1 per cent. These gains are being utilised by the Department of Revenue to make up for losses from taxes on other goods. (NB: Marijuana intended for medical use is not an excisable good in Colorado)

Sales



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Total sales value has been projected to reach around \$1.52 billion dollars by the year 2020, for a population of almost 6 million people, and state demand will be said to attain the 215.7 metric ton mark. Market values, however, are diminished somewhat by a decline in prices from competitive elements within the market. 2014 saw \$699 million worth of marijuana being sold, while in the following year, sales increased by 42.4 per cent (\$996 million). Quantities in product rose to around 132.0 metric tons.

The MPG predicts that cannabis demand, as well as sales, shall increase in the coming years, but at a much lower rate than upon initial commencement of the legal retailing of marijuana products.

By 2020, the Colorado market will most likely be wholly saturated, and will grow at a similar pace to other sectors, which rely on the increase of population. The product value is likely to grow at a slower pace, caused by decreasing prices from increased market competition and economies of scale. This decline is said to occur at an average of 7.4 per cent per year until the year 2020.

Tourism

Demand models in the tourism sector are now adapting to include tourists whose purpose for visiting is legal marijuana. This visitor fraction is growing, however, this segment could also underperform if other states legalise marijuana in the near future.

⁹⁶ Taken from the link above.

Jobs

Legalisation of marijuana created 18,005 full-time jobs in 2015. 12,591 of those jobs dealt directly with the cannabis trade, in retail, cultivation, or product manufacture. The rest, 5,414 jobs, came into being through indirect means, as necessitated by the purchase of general business products and services, and through general spending by those involved in the sector.

California

Since the 9th November 2016, recreational use of marijuana has been legal in California. It is also important to note, for the purposes of this paper, that California is the sixth largest economy in the world, with an economic output of 2.46 trillion dollars in 2015.⁹⁷ Though legal retail is expected to start by the 1st of January 2018, the tax rates are already in place. The state of California shall charge 9.25 dollars per ounce of flower (buds), and 2.75 dollars per ounce of leaves (trimmings used for THC-based products). There shall also be a retail tax of 15% subject to amendments in accordance with inflation.⁹⁸

Though a 5 billion dollar boom is predicted for California's economy, it is also stated that roughly 29% of marijuana users may stay away from the legal market at first because of the stricter regulations.⁹⁹ From the same study, by the University of California Agricultural Issues Centre, one may note that illegal marijuana sales are predicted to drop by a staggering 45.5 points (currently at 75% of the market), while legal medical marijuana sales are predicted to drop by 14 point (currently at 25% of the market), with legal recreational marijuana sales are predicted to take up 61.5% of the market.¹⁰⁰

The study went on to state that this new law may attract visitors towards the state, the sole purpose of whose visit would be to purchase and consume recreational marijuana, therefore increasing tourism within the state.¹⁰¹ When the study referred to a survey of 3,250 tourists by commissioned by the Colorado Tourism Office in 2015, it presented the fact that 8% of the respondents had visited a recreational marijuana store. 85% of those 8% (circa 221 respondents) further stated that marijuana was the primary motivator for the trip¹⁰². The study then went on to predict that the same pattern would be present in California, which would logically mean that it would also be present in Malta, with it already being a popular tourist destination.

⁹⁷ Ben Gilbert, 'California Just Legalized Marijuana, And It's Going To Have A Huge Impact On The Economy' *Business Insider* (2016) <<http://www.businessinsider.com/marijuana-california-weed-legal-economy-2016-11>> accessed 12 September 2017.

⁹⁸ Ibid.

⁹⁹ Patrick McGreevy, 'Legal Marijuana Could be A \$5-Billion Boon to California's Economy' *Los Angeles Times* (2017) <<http://www.latimes.com/politics/la-pol-ca-pot-economic-study-20170611-story.html>> accessed 12 September 2017.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

A paper by ICF International, entitled "The Economic Impacts of Marijuana Sales in the State of California"¹⁰³ predicts that even with a low demand, there will be circa 15.8 billion dollars of revenue within the marijuana industry. It should also be noted that these only include revenues within the industry itself, and do not include tax revenues. Tax revenue with the proposed tax rate would generate another 2.2 billion dollars in the scenario of low demand.¹⁰⁴ Approximately 80,000 new jobs would be required to maintain the industry at low demand, including indirectly associated jobs.¹⁰⁵

¹⁰³ Will Cooper, Eliza Johnston and Katie Segal, "The Economic Impacts Of Marijuana Sales in the State Of California" (ICF International 2016).
<https://www.google.com.mt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjT_qy9y6DWAhWEVxQKHHeEyDywQFgg1MAI&url=https%3A%2F%2Fwww.icf.com%2F-%2Fmedia%2Ffiles%2Ficf%2Fwhite-papers%2F2016%2Feconomic_benefits_of_marijuana.pdf&usq=AFQjCNEC4xG9XOa5w91ghGsZc7ie4O-_-A> accessed 12 September 2017.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

Sales and Tax Revenues

A study published last year by ICF International predicts that residents in California could use up between 1,435 and 1,824 tonnes of cannabis, with an estimated \$15.9 billion-\$20.2 billion in sales revenues, every year. If the state tax rate of 7.5 per cent was applied to these revenues, the tax revenue per year will generate between \$1.2 billion and \$1.5 billion. However, with the February 2016 Marijuana Value Tax Act, which maintains an excise tax rate of 15 per cent, revenue estimates would increase to between a minimum of \$2.4 billion and \$3.0 billion per year, double the predicted amount. However, this study is most likely incorrect in its calculation of sales revenues, by oversimplifying the steps required to deduce the average cost of marijuana flower in California.

The MPG, instead, has proposed that the true price ranges somewhere between \$5.03 for medical flower, and \$9.85 for recreational flower (2015), meaning that the market size will most likely be half that predicted by ICF International, somewhere around \$7.2 billion annually. With tax revenues in California reaching around \$120 billion per year, revenues of \$1.08 billion from cannabis should be around 0.9 per cent of the total annual tax

With a Maltese excise tax on cigarettes at 23.4 per cent, making €98 million in 2016 alone, it would not be impossible to perceive an economic benefit of notable significance within the Maltese Islands themselves, had a marijuana policy similar to California's been implemented.

Tourism

Much like Malta, California is well sought after by tourists. In Colorado, the MPG calculated that visitor demand accounts for 7.3 per cent of annual cannabis sales. Using a percentage proportional to the larger size of California, and keeping in mind that the state is the most popular one to visit in America, ICF International has estimated that between 95.4 million and 121.3 million grams will be in demand by visitors annually.

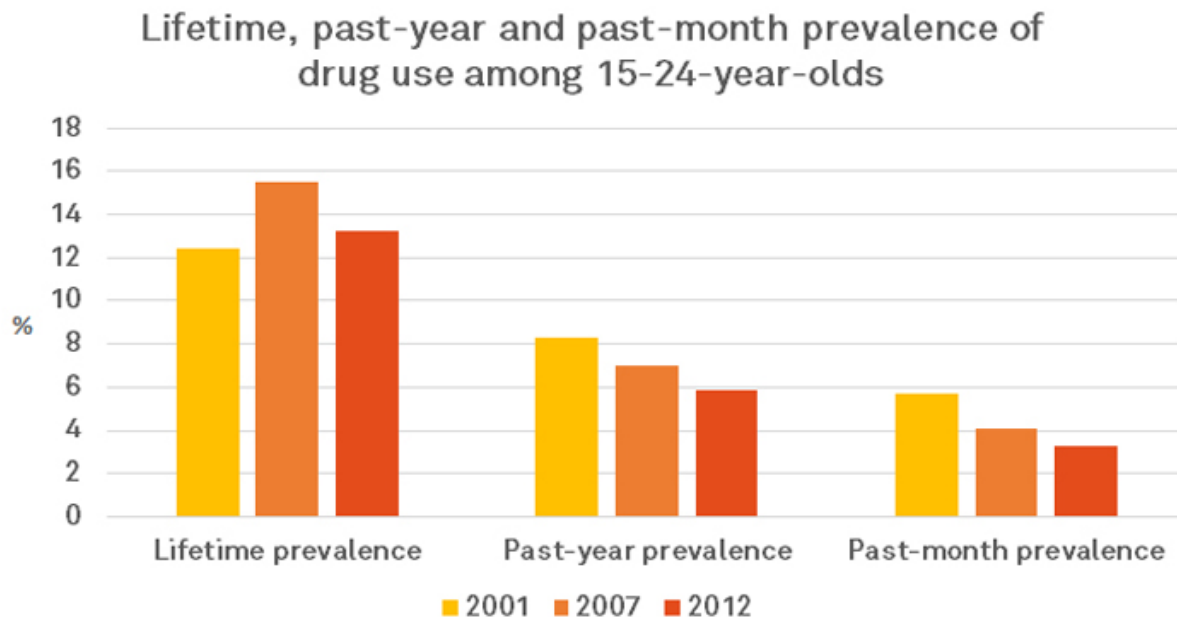
Jobs

Legalisation shall affect the job market positively, generating between 81,000 and 103,000 full-time positions each year, around 56,000 to 71,000 in direct relation, around 9,000 to 12,000 in indirect relation, and around 16,000 to 20,000 in induced and peripheral positions. These range from those involved in cultivation, like trimmers, to those involved in legal advice, like lawyers, to those involved in the construction of new homes and facilities for those employed in the industry.

Changing the Mainstream Perspective

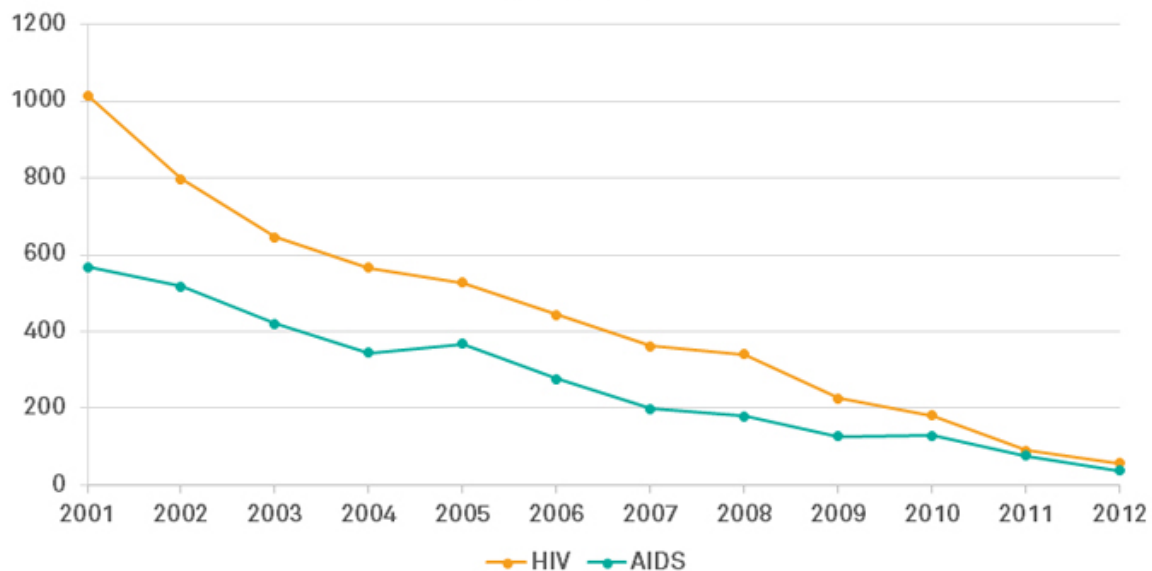
Treating Drug Addiction as a Social & Health Issue rather than a Crime

Portugal in 2001 – prior to the introduction of the law decriminalizing all drugs, 1% of the population was addicted to heroin (100,000 out of 10,000,000 people). This was not only a problem because a relatively large portion of the population was addicted to drugs, but also due to health issues associated with drug use, like sharing needles which led to a drastic rise in HIV cases. The policy existing previously treated all drug users as drug traffickers regardless of the amount involved, there was no distinction between a user and a trafficker. Such an uncompromising approach had no real effect on drug use, in fact ironically the only true effect was an increase in drug use and drug related crime. The chart below illustrates drug use prevalence between the ages of 15 and 24, the ages where drug use is most likely to occur. As is clearly demonstrated by the data, the number of users in this age group has seen a steady decline over the 12 years of the study.



The law in 2001 enabled citizens to possess small amounts of any illicit drug. This law also enabled state resources to shift their focus from policing and prosecution to treatment and rehabilitation. This meant that addicts were far less scared of being prosecuted and were more likely to seek help, and in turn the stigma surrounding them was slowly being broken down. In fact, 90% of resources dedicated to drug problems are spent on treatment and rehabilitation. Decriminalization of all drugs up to a certain amount has resulted in a decrease of drug related deaths of 87.2% in 11 years (80 in 2001 and 16 in 2012). The graph below represents the number of newly diagnosed cases of HIV and AIDS among drug users from 2001 to 2012.

Newly diagnosed cases of HIV and AIDS among people who use drugs



As is evident from the graph, the number of newly diagnosed HIV and AIDS related cases have seen a drastic decrease, in fact they have practically disappeared. The shift from prosecution to harm reduction and treatment resulted in a huge reduction in the number of drug users diagnosed with HIV or aids. These statistics show that rather than an absolute prohibition on all substances (which in practice would be insurmountable because drugs have been used all throughout history and realistically will continue to be used), the state should consider treating drug addiction as an issue of public health and as a social issue in which the primary concern of the state should be helping addicts recover, not prosecuting them on the same terms as traffickers. The first step to helping addicts recover is to give them a method of recourse through which they are not stigmatised and are not portrayed to be outcasts and social rejects. As part of the decriminalisation policy, users picked up by police are taken to the Commission for the Dissuasion of Drug Addiction. When someone is first caught with illegal substances and is not an addict, the case is suspended and sanctions are not applied. Sanctions are only applied on secondary offences as the user would be considered a recidivist. Such sanctions however, are not jail-time but fines, community work or drug rehabilitation programmes. Rather than the individual going to prison and having a criminal record, the users are given treatment and therapy aimed at helping the users overcome their addictions. In fact, 81% of cases brought before the commission are suspended, whereas only 19% have further action taken. Therefore, Portugal and its Dissuasion Commission has replaced its pre-existing laws which treat all kinds of drug use under the same blanket provisions with new laws and structures which reflect the notion that drug use is a health issue and not a criminal one.

It is also important to appreciate the changes made in the law in 2001 within their wider social context. The argument that reducing (or completely abolishing) penalties for drug users will decrease drug use is very wide of the mark. The changes in the law were accompanied by the generosity of the welfare state and social programs. Countries with weaker welfare states and fewer social programs such as the USA, accompanied with their hard-line, zero-tolerance approach to drug use means that the US has the largest prison population in the world. These factors combined together provide the US with internationally high levels of drug use, high rates of drug related deaths, and excessive rates of HIV among injecting drug users. The Portuguese government not only looked at revising drug laws, but also revising social and economic policies which would be impacted by such a law. So the drop in drug use, drug-related crime and drug-related deaths use cannot be solely attributed to one legal reform, but to a number of these policies which holistically have brought about these results.

For all its benefits however, the Portuguese law in 2001 did have a few shortcomings. It failed to address the issue of supply. The drug trade, completely controlled by drug cartels and organised crime has an estimated worth of €268 billion¹⁰⁶, almost 1% of the world's GDP. An example of the effects of the absolute prohibition on drugs is Colombia, especially during the early 1990s when the drug trade was at its peak and Colombian authorities were focused solely on policing. In fact, the president of Colombia from 1990-1994, Cesar Gaviria said that "You have to look for a solution. We know that just repression, just prohibitionism doesn't work. We know it for certain, we had lived that... Today, and it is a very legitimate issue. I have no doubt that the world is going to move towards regulation instead of prohibition. It is about abandoning something that doesn't work." While Portugal has taken the first steps towards decreasing addiction and helping drug addicts by decriminalising the possession of illicit substances in certain amounts, the United States of America has taken larger steps in regulation and substance control. Colorado has fully legalised cannabis, and within a year of its introduction in 2014, it had already become a \$700 million industry. Cultivation of certain substances such as marijuana is allowed, and in certain instances allowed even on an industrial level, even though Colorado state law requires that every marijuana plant to be tracked throughout the process.

While decriminalisation of the substance as seen in Portugal is necessary to reverse social stigma about the drug and treat it as a social and public health issue, legal control and regulation as seen in the US are required in order to completely remove that drug from the black market and introduce it to mainstream society, while still affording the state the opportunity to control the trade.

¹⁰⁶ United Nations Office on Drugs and Crime's World Drug Report 2005.

Proposals

ELSA Malta proposes that

1. The possibility of the legalisation of cultivation of the cannabis plant for personal use is taken into consideration. This type of legalisation has been seen across the globe, most notably in Catalonia. One need look at scenarios where possession and cultivation of marijuana is legal, within certain limits. As long as the consumption, possession, and cultivation is done in a private space, it is legal for adults. This would mean that adults would no longer need to turn to the black market for the purchase of weed, but rather maintain it themselves. This has many benefits, most formidably that the consumption of synthetic and dangerous impure cannabis would decrease. Apart from the safety of the consumers, this would also mean that less money is leaving the legit economy into the black market, allowing consumers to make legal, taxable purchases with regards to marijuana. This would therefore be beneficial to the state on several counts, as apart from the aforementioned benefits, adults will also seek the privacy of their home or a club when consuming marijuana, therefore decreasing the consumption of marijuana in public.
2. The government should look at and consider the possibility of subletting unused fields to the marijuana industry, were marijuana to be legalised. The government would rent the property from the owners of such fields, and sublet such property to the industry. This would not only make cultivation easier for the marijuana industry, but also introduce money to different sectors of the economy. This would also help make use of land, which is owned but not used. Such funds would also aid the agricultural industry, which though one of the largest in Malta, one which is decreasing by time due to the urbanisation of the island. Such shift in the economy may also help to encourage the public to harbour a more positive view of such industry, and may also allow for the education on such industry to increase; two aspects which are seemingly lacking in Malta.
3. ELSA Malta proposes that there should be a change in the state's attitude towards drugs consumption from being a criminal issue to a public health issue. While a decriminalization of very small quantities of drugs is currently in place, this does not contribute as efficiently to the lessening of addiction as is currently needed. The United Nations Office on Drugs and Crime (UNODC) advises to treat drug addiction as a disease rather than a crime, and the primary goal of the state should be to cure rather than to punish. As such we recommend a policy whereby drug users of addictive substances are given proper care notwithstanding the amount of drugs in their possession. Care should extend to modelling the drug policies of other countries and going beyond. Such policies include hygienic injection rooms and heroin assisted treatment as done in the Netherlands, all happening under medical supervision which would drastically lower overdose mortality.

4. If marijuana were to actually be legalised at a recreational level, the Government of Malta should set up a so called 'sharing economy' till the legal market is established. This is to address the limbo period in between the passing of legislation and the implementation of said legislation on a national level. A 'sharing economy' would allow for recreational cannabis users to share the drug with others of legal age as long as there is no transfer of money or goods in exchange for the cannabis. Such policy was successful in California, a U.S. State which legalised recreational use of marijuana by popular vote in November 2016. The state determined that since licences for marijuana dispensaries were to be issued by latest January 1st 2018, it would be beneficial to allow users to legally share their cannabis till then. The implementation of this policy was first and foremost to limit minor marijuana trafficking arrests, focusing police attention on more pressing matters. Upon implementation of the legal market, the 'sharing economy' policy could be dropped as users would have a safe supply of cannabis from dispensaries.

5. An educational campaign is set up in order for people to understand the true medical effects of the substance, both with regards to benefits and to any and all possible side effects. Collaboration with persons of a medical background would be necessary in order to validate any campaign carried out with the intention of educating. In addition, as well as learning about the effects of the substance, education regarding the proper method of use would be important. Such education could effectively be carried out through the use of a government website, as has been done in California by the California department of Public Health¹⁰⁷. The website provides detailed and helpful information ranging from safe and responsible uses of cannabis to data and reports on drug use effects on the brain. Everything one needs to know about cannabis can be found compiled in this website, and the application of a similar strategy in Malta would not only be hugely beneficial, but also incredibly easy, as such a website already exists. The elements of the website that would need amending are solely those which do not apply outside of our territory and thus the website would need to be 'localised'. What should be emphasised in these educational campaigns are the risks and safeties of using the substance, especially relative to the age of the users. Prolonged use below the age of twenty has been linked with cognitive impairment, and legalising without educating runs the risk of appearing as though the substance can be used openly with no repercussions. As this is obviously not the case, the importance of a campaign cannot be overstated.

6. Should marijuana be legalised at a recreational level, there should be an immediate set up of a public service there to test marijuana purity. Post legalisation, persons of legal age could bring any cannabis they currently possess (up to the legal amount allowed for personal use by the legislation) and have it tested. If the marijuana is found to be impure at a potentially toxic level, it would constitute a reason for a compulsory buyback by the state so as to remove the strain from circulation.

¹⁰⁷ <https://www.cdph.ca.gov/Programs/DO/letstalkcannabis/Pages/LetsTalkCannabis.aspx>.

This would be available to all those who bring in their cannabis for testing, although if the strain is found to be of sufficient purity, the buyback wouldn't be compulsory. The monetary compensation from the buyback should be relative to the purity of the cannabis, with higher purity constituting in higher compensation. The primary aim of this public service would be to eliminate possible toxic cannabis strains from the circulation while also giving cannabis users the opportunity to be aware what type of cannabis they actually have. This service would then be phased out with the introduction of the legal market as dispensaries would have to abide by industry standards.

7. Were marijuana legalised a recreational level, legislation should also be implemented allowing for the amendment of police conduct certificates. This proposed legislation would allow for those users who had been found guilty of marijuana related charges which would not be considered offences under the new law to have said offences removed from their police conduct certificate. The non-registration of a drug conviction is currently unavailable due to Article 7 of the Conduct Certificates Ordinance, Chapter 77 of the Laws of Malta, although other convictions have automatic non-registration as established by the same ordinance. While it is accepted that there shouldn't be retroactivity in criminal laws, implementing such policy would greatly improve the chances of those persons who were previously incarcerated to re-establish themselves as productive members of society. Given the fact that younger people make up a majority of those which would be affected by this proposed policy, this is further incentive to for implementation. Such policy would make it easier for these young people to, inter alia, re-enter the labour market.

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