

**A COMPARATIVE APPROACH TO THE LEGALISATION OF  
MARIJUANA IN MALTA - AN ANALYSIS OF POLICIES AND ECONOMIC  
EFFECTS OF REGULATION.**

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**ABSTRACT**

The global movement of decriminalisation of marijuana has in recent years transitioned into one of legalisation of the drug for recreational use. This submission seeks to engage in a comparative analysis of a number of jurisdictions which have, to varying degrees, legalised recreational marijuana so as to provide for a foundation on which the discussion on legalisation of recreational marijuana in Malta may be had. The analysis is one of policy and its social, as well as, economic impact.

**KEYWORDS:** LEGALISATION OF RECREATIONAL MARIJUANA – MALTA –  
ECONOMIC POLICY

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**1. Marijuana Legislation**

With the recent legalisation of medical marijuana in Malta, it is likely that discussions on the recreational use of cannabis will follow in the near future.<sup>426</sup> The aim of this paper is to provide for all those interested in having and participating in said discussion, a detailed and comparative analysis of the laws of foreign jurisdictions on the recreational use of marijuana. The jurisdictions which shall be analysed are two U.S states; California and Colorado, Portugal and the Netherlands. While it is important to keep in mind that the aforementioned jurisdictions are all distinct in their own right, they will all undergo an analysis based on three main aspects; the purchase and sale, the possession and consumption, and the cultivation of marijuana. Along with said analysis, importance will also be given to the economic benefits which arise directly from the recreational marijuana industry; namely those from sales, taxation, jobs and tourism.

**1.1. Malta**

**1.1.1 Laws relating to Cannabis for Recreational Use**

Maltese drug laws were last updated in 2018 through the amendments of the Drug Dependence (Treatment not Imprisonment) Act, Chapter 537 of the Laws of Malta (hereinafter the “Drug Dependence Act”). First promulgated in 2015, this act sought to

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<sup>426</sup> Allied Ltd, 'Cabinet Approves Medical Cannabis' (*Times of Malta*, 2017) <<https://www.timesofmalta.com/articles/view/20171113/local/cabinet-approves-medical-cannabis.662957>> accessed 4 March 2018.

replace punishment and incarceration for the possession of small quantities of illicit drugs for personal use with treatment and rehabilitation.<sup>427</sup>

The sale of marijuana in Malta remains a criminal offence as per the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta (hereinafter the “Drug Ordinance”). The Drug Ordinance calls for prison sentences and fines to be given to those found guilty of the offences outlined within it, with the different types of punishments being listed under Article 22. For the sale of drugs under this ordinance, the punishments range from imprisonment of between 4 to 30 years and a fine between €2,329.37 and €116,468.67.<sup>428</sup> This being said, such jail time would only be given if the court determines that for reasons ranging from quantity of drugs to the age of the offender, that life imprisonment would not be appropriate.<sup>429</sup> With regard to all other drug related offences under the Drugs Ordinance,<sup>430</sup> the sentence to be given if guilty would include imprisonment for a period between 12 months and 10 years as well as a fine between €465.87 and €23,293.73.<sup>431</sup>

Following the promulgation of the Drug Dependence Act, the laws surrounding the possession of all drugs for personal use were greatly overhauled. Under this act, anyone caught in possession of an illicit drug<sup>432</sup> shall be liable to fines ranging between €75 and €125, or between €50 and €100 in the case of cannabis.<sup>433</sup> Such people will not appear in front of a Court, rather, they will appear before the Commissioner for Justice.<sup>434</sup> If, however, a person is convicted of subsequent crime of simple possession within two years of the previous conviction, the Commissioner for Justice shall order

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<sup>427</sup> Drug Dependence Act, Chapter 537 of the Laws of Malta.

<sup>428</sup> Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, Article 22(2)(a)(i)(aa).

<sup>429</sup> *ibid* Article 22(2)(a)(i).

<sup>430</sup> Such offences include but are not limited to the sale of equipment meant for use in drug production and the transport of illicit drugs

<sup>431</sup> *ibid* Article 22(2)(a)(ii).

<sup>432</sup> The maximum allowed quantities of illicit drugs for qualification under this provision are as follows: 3.5 grams of cannabis, 2 grams of other drugs and 2 pills of ecstasy

<sup>433</sup> Drug Dependence Act, Chapter 537 of the Laws of Malta, Article 4.

<sup>434</sup> Established by the Commissioners for Justice Act, Chapter 291 of the Laws of Malta.

the person to appear in front of the Drug Offenders Rehabilitation Board.<sup>435</sup> This being said, if the drug possessed was cannabis, then the Commissioner for Justice shall only send the person convicted in front of the aforementioned board if they believe that said person is also abusing or is likely to also abuse other prohibited drugs.<sup>436</sup> 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.<sup>437</sup>

On the issue of cultivation, the Drug Dependence Act instituted a system whereby if a person is found guilty of cultivating not more than one cannabis plant for personal use, then said person will not have to face the mandatory prison sentences as laid out in the Drugs Ordinance.<sup>438</sup> If however, the person in question was cultivating more than one plant or if the court determines that any cultivation was for the purpose of sale, then Article 22 of the Drug Ordinance applies with the person being liable to the same punishments as someone guilty of selling cannabis.<sup>439</sup>

While recent amendments have made strides in decriminalising personal use of recreational marijuana, this is not to say that more cannot be done. In fact, Magistrate Dr Natasha Galea Sciberras noted that while the reforms were welcome, some laws in place were still “draconian” in nature.<sup>440</sup> One of her concerns is related to the issue of cultivation of cannabis, whereby if someone is found to be growing two plants for personal use, this would still amount to “aggravated possession” under the current laws and make that person liable to a prison sentence.

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<sup>435</sup> Drug Dependence Act, Chapter 537 of the Laws of Malta, Article 5.

<sup>436</sup> *ibid.*

<sup>437</sup> ‘New Drugs Reform Law Into Force Today– What Has Changed?’ (*MaltaToday.com.mt*, 2015) <[https://www.maltatoday.com.mt/news/national/51881/new\\_drugs\\_reform\\_law\\_into\\_force\\_today\\_what\\_has\\_changed](https://www.maltatoday.com.mt/news/national/51881/new_drugs_reform_law_into_force_today_what_has_changed)> accessed 4 March 2018.

<sup>438</sup> Drug Dependence Act, Chapter 537 of the Laws of Malta, Article 7.

<sup>439</sup> Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, Article 22(2)(a)(i).

<sup>440</sup> Allied Ltd, ‘Two Years After Drugs Law Reform’ (*Times of Malta*, 2017) <<https://www.timesofmalta.com/articles/view/20170520/editorial/Two-years-after-drugs-law-reform.648442>> accessed 4 March 2018.

A recent notable analysis of the drug situation in Malta can be found in the EU 2017 Drug Report, which gives an overview of said situation up to the year 2015.<sup>441</sup> One of the things noted in this report is that out of the 472 drug related offences which happened in 2015, an overwhelming 76% were related to simple possession (possession for personal use) while only the remaining quarter were offences related to supply.<sup>442</sup> The majority of the simple possession offences were related to cannabis, the most commonly used drug for people aged 18-65, the majority of whom are male.<sup>443</sup>

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.<sup>444</sup> 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. The number of persons entering heroin treatment for the first time is the lowest from the three most commonly used narcotics (cannabis, cocaine and heroin) at 66 people in 2015, although it is the drug with the most number of entrants at 1296, eight times greater than those seeking cannabis treatment.<sup>445</sup> It is 30-34 year olds and 45-49 year olds who are the most likely to die due to overdose, although it should be noted that a total of 8 people died from drug related overdoses in Malta in 2015.<sup>446</sup> 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.<sup>447</sup> 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%.<sup>448</sup>

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<sup>441</sup> *Malta Country Drug Report 2017* (2017)

<[http://www.emcdda.europa.eu/system/files/publications/4513/TD0616154ENN.pdf\\_en](http://www.emcdda.europa.eu/system/files/publications/4513/TD0616154ENN.pdf_en)>  
accessed 4 March 2018.

<sup>442</sup> *ibid*, p.4

<sup>443</sup> *ibid*, p.5

<sup>444</sup> *ibid*.

<sup>445</sup> *ibid*, p.6

<sup>446</sup> *ibid*, p.8

<sup>447</sup> *ibid*, p.15

<sup>448</sup> *ibid*.

### 1.1.2 Laws relating to Cannabis for Medicinal Use

The Drug Dependence Act as amended through Act No. V of 2018 allows for medical practitioners to prescribe, if no other option is viable, medical preparations of cannabis.<sup>449</sup> To this end, the promulgation of the Production of Cannabis for Medicinal and Research Purposes Act, Chapter 578 of the Laws of Malta (hereinafter the “Production of Cannabis Act”) allowed for procurement of licences to produce cannabis. Such licences are given by the Malta Enterprise, with strict control over the entire production process.<sup>450</sup>

The legality of medicinal cannabis neither precludes nor necessitates the legality of recreational cannabis. Nonetheless, the trend of legalisation of recreational use post legalisation of medical use of cannabis is to be noted, with the legalisation of medical cannabis often indicating a shift in public opinion with regards to cannabis in general.<sup>451</sup> This shift can be seen in Malta, with recently appointed Parliamentary Secretary for Equality and Reforms Hon. Rosianne Cutajar attesting to the need for implementation of cannabis reform.<sup>452</sup>

## 1.2. The United States of America

### 1.2.1. Colorado

The first state in the United States of America to pass comprehensive legislation on the legalisation of recreational marijuana was Colorado in 2012 through a referendum. With the passing of Amendment 64, adults 21 or older in Colorado can legally possess

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<sup>449</sup> Drug Dependence Act, Chapter 537 of the Laws of Malta, Article 10.

<sup>450</sup> *ibid*

<sup>451</sup> 'How Medical Marijuana Is Opening The Door To Recreational Cannabis' (Forbes.com, 2018) <<https://www.forbes.com/sites/jordanwaldrep/2018/09/12/how-medical-marijuana-is-opening-the-door-to-recreational-cannabis/#a0ea784cc76e>> accessed 20 February 2020.

<sup>452</sup> '[WATCH] New Parliamentary Secretary Rosianne Cutajar Says It's Time To Implement Cannabis Reform' (MaltaToday.com.mt, 2020) <[https://www.maltatoday.com.mt/news/national/99767/watch\\_rosianne\\_cutajar\\_says\\_its\\_time\\_to\\_implement\\_cannabis\\_reform#.Xk62ApNKhQI](https://www.maltatoday.com.mt/news/national/99767/watch_rosianne_cutajar_says_its_time_to_implement_cannabis_reform#.Xk62ApNKhQI)> accessed 20 February 2020.

one ounce (28.5 grams) of marijuana, with any more resulting in legal penalties.<sup>453</sup> Despite legalisation on a state-wide level, the law allows for cities, counties, schools, universities and employers to impose their own rules and consequences.<sup>454</sup>

On the topic of buying marijuana, it should be noted that one must present a valid identification card (ID) proving they're 21 or over to purchase cannabis.<sup>455</sup> 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.<sup>456</sup> While only licensed retailers can sell marijuana, it is possible for individuals over 21 to share up to an ounce of marijuana with other persons over 21.<sup>457</sup> 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.<sup>458</sup> 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.<sup>459</sup> State Law also provides that marijuana businesses are required to sell all marijuana products in packaging that's resealable, child-resistant and non-see-through.<sup>460</sup> Another protective measure applied by this state is that all retail marijuana products are required to be labelled with a red *THC* symbol.  
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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

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<sup>453</sup> 'Marijuana Laws In Colorado' (*Colorado Pot Guide*, 2017)  
<<https://www.coloradopotguide.com/marijuana-laws-in-colorado/>> accessed 5 March 2018.

<sup>454</sup> *ibid.*

<sup>455</sup> *ibid.*

<sup>456</sup> *ibid.*

<sup>457</sup> *ibid.*

<sup>458</sup> *ibid.*

<sup>459</sup> 'Marijuana Laws In Colorado' (*Colorado Pot Guide*, 2017)  
<<https://www.coloradopotguide.com/marijuana-laws-in-colorado/>> accessed 5 March 2018.

<sup>460</sup> 'Laws About Marijuana Use | Colorado Marijuana' (*Colorado.gov*, 2017)  
<<https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>> accessed 5 March 2018.

<sup>461</sup> *ibid.*

resorts, concert venues, businesses, restaurants, cafes or bars and common areas of apartment buildings.<sup>462</sup> Due to the fact that marijuana remains listed as a Schedule I Drug under federal law,<sup>463</sup> 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.<sup>464</sup> 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.<sup>465</sup>

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.<sup>466</sup> Up until the end of December 2017, a total of six plants were allowed per adult over 21 in a Colorado household, with a maximum of three plants flowering at a time.<sup>467</sup> As of January 2018 however, a cap of 12 cannabis plants per residence was set with such cap applying irrespective of how many people reside in the household.<sup>468</sup> Such plants should be grown in an enclosed and locked area so as to prevent any minors from accessing it.<sup>469</sup>

It should be also 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

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<sup>462</sup> 'Laws About Marijuana Use | Colorado Marijuana' (*Colorado.gov*, 2017)  
 <<https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>> accessed 5 March 2018.

<sup>463</sup> '21 U.S. Code § 812 - Schedules Of Controlled Substances' (*lawschool.cornell.edu*/, 2017)  
 <<https://www.law.cornell.edu/uscode/text/21/812>> accessed 5 March 2018.

<sup>464</sup> 'Laws About Marijuana Use | Colorado Marijuana' (*Colorado.gov*, 2017)  
 <<https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>> accessed 5 March 2018.

<sup>465</sup> *ibid*

<sup>466</sup> 'Home Grow Laws | Colorado Marijuana' (*Colorado.gov*, 2017)  
 <<https://www.colorado.gov/pacific/marijuana/home-grow-laws>> accessed 5 March 2018.

<sup>467</sup> *ibid*

<sup>468</sup> *ibid*

<sup>469</sup> *ibid*

sort of such discrimination.<sup>470</sup> Laws have also been updated to include marijuana DUI, setting the limit to 5 nano-grams per millilitre of blood.<sup>471</sup>

### 1.2.2. California

Recreational marijuana was legalised in California by popular vote via the Control, Regulate and Tax Adult Use of Marijuana Act [AUMA] (also known as Proposition 64), which took place on the 8th of November 2016, after being the first state to legalise medical marijuana in 1996.<sup>472</sup> The current legislation allows for the sale, use, possession, share and home cultivation of cannabis by all adults over 21.<sup>473</sup>

Up until January 1st, 2018, there were no operating marijuana dispensaries as the state government had not yet issued the respective licences. So as to address this limbo period, legislators pushed for the establishment of a sharing economy while the legal market was being set up.<sup>474</sup> Upon being given a license, pot shops will be prohibited from the sale or consumption of alcohol or tobacco within their stores.<sup>475</sup> AUMA provides that upon the creation of the legal market, individuals over 21 will be able to engage in the purchase and sale of cannabis as long as they provide the required ID. It also requires all shops selling recreational cannabis to adhere to distributional industry standards on testing, packaging and labelling, which are to be phased in throughout 2018.<sup>476</sup> Marijuana packaging is now required to provide the net weight, origin, age,

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<sup>470</sup> 'Laws About Marijuana Use | Colorado Marijuana' (*Colorado.gov*, 2017) <<https://www.colorado.gov/pacific/marijuana/laws-about-marijuana-use>> accessed 5 March 2018.

<sup>471</sup> 'Marijuana Laws In Colorado' (*Colorado Pot Guide*, 2017) <<https://www.coloradopotguide.com/marijuana-laws-in-colorado/>> accessed 5 March 2018.

<sup>472</sup> 'What To Know About Marijuana Legalization In California' (*Time.com*, 2017) <<http://time.com/4565438/california-marijuana-faq-rules-prop-64/>> accessed 5 March 2018.

<sup>473</sup> 'Know Your Rights Post-Prop. 64' (*Times-standard.com*, 2017) <<http://www.times-standard.com/article/NJ/20161107/NEWS/161109826>> accessed 5 March 2018.

<sup>474</sup> 'What To Know About Marijuana Legalization In California' (*Time.com*, 2017) <<http://time.com/4565438/california-marijuana-faq-rules-prop-64/>> accessed 5 March 2018.

<sup>475</sup> *ibid.*

<sup>476</sup> 'Everything To Know About California Marijuana Laws Kicking In Jan. 1, 2018 - The Cannifornian' (*The Cannifornian*, 2017) <<http://www.thecannifornian.com/cannabis-culture/everything-know-california-marijuana-laws-kicking-jan-1-2018/>> accessed 5 March 2018.

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.<sup>477</sup> Further regulation also requires licensed marijuana businesses to post a copy of their permits in public view, with consumers being able to look up said business on state government registries like the Bureau of Cannabis Control.<sup>478</sup> Also of note is that the penalty for unlicensed sale of marijuana is now reduced from four years in state prison to six months in county jail.<sup>479</sup>

When it comes to possession, 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.<sup>480</sup> Smoking marijuana in public remains illegal and whoever does so is subject to a \$100-\$250 fine. The State's policy towards marijuana and driving is similar to its take on alcohol and driving; with driving under the influence of marijuana, consuming marijuana while driving and having an open container of marijuana in the vehicle being illegal.<sup>481</sup> If underage persons are found in possession of marijuana, the new law establishes the act as an infraction and punishable by a compulsory drug counseling program and community service.<sup>482</sup>

On the topic of cultivation, adults over the age of 21 are allowed to cultivate up to six cannabis plants per household.<sup>483</sup> Cultivation however, is only allowed in an indoor or outdoor enclosed and locked area of a residence with any marijuana grown in excess of the 1 ounce legal for adults to carry having to be hidden in a secure place away from

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<sup>477</sup> *ibid.*

<sup>478</sup> *ibid.*

<sup>479</sup> '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 5 March 2018.

<sup>480</sup> 'What To Know About Marijuana Legalization In California' (*Time.com*, 2017) <<http://time.com/4565438/california-marijuana-faq-rules-prop-64/>> accessed 5 March 2018.

<sup>481</sup> '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 5 March 2018.

<sup>482</sup> '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 5 March 2018.

<sup>483</sup> 'What To Know About Marijuana Legalization In California' (*Time.com*, 2017) <<http://time.com/4565438/california-marijuana-faq-rules-prop-64/>> accessed 5 March 2018.

public view.<sup>484</sup> The law also says that while different cities and towns within California can prohibit the outside growing of marijuana, these cannot keep the person from growing marijuana inside their home. As long as the cultivation remains personal, it remains legal.<sup>485</sup>

The newly instituted Bureau of Marijuana Control's purpose is to provide a fully transparent seed-to-sale tracking system to consumers.<sup>486</sup> Other state agencies which 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).<sup>487</sup> Other state bodies include the California Department of Pesticide Regulation<sup>488</sup>, the California Department of Fish and Wildlife<sup>489</sup> and the California Department of Food and Agriculture<sup>490</sup>.<sup>491</sup> In addition, there will be phased in 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 be allocated to youth programs (60%), to environmental damage clean-ups (20%) and to public safety (20%).<sup>492</sup>

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<sup>484</sup> *ibid.*

<sup>485</sup> '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 5 March 2018.

<sup>486</sup> 'Faqs | Cannabis' (*Cannabis.ca.gov*, 2017) <<https://cannabis.ca.gov/faqs/>> accessed 5 March 2018.

<sup>487</sup> '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 5 March 2018.

<sup>488</sup> to regulate nutrients and pesticides utilised for marijuana cultivation

<sup>489</sup> to regulate cultivation-related impacts on local environments

<sup>490</sup> to license and regulate marijuana cultivation

<sup>491</sup> '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 5 March 2018.

<sup>492</sup> 'Bill Text - AB-1135 California Marijuana Tax Fund.' (*Leginfo.legislature.ca.gov*, 2017) <[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB1135](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1135)> accessed 5 March 2018.

### 1.3. Portugal

In 2001, Portugal overhauled its drugs policy to allow for a system based on treatment rather than punitive penalties, making possession of personal quantities of all drugs, including cannabis, a non-criminal offence.<sup>493</sup> It was a world first and, since then, Portuguese society has experienced both benefits and drawbacks, leading to a present-day stalemate on an area which was not properly dealt with; cultivation.

Both the purchase and sale of cannabis in Portugal remains illegal.<sup>494</sup> Under Portuguese law cannabis related trafficking crimes are punishable by custodial sentences of between 4 and 12 years.<sup>495</sup> 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.<sup>496</sup>

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.<sup>497</sup> 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.<sup>498</sup> 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 at 2.5g per day, hashish at 0.5g per day and delta-9-THC at 0.05g per day), those found guilty may be subject to up to one year's imprisonment and a fine.<sup>499</sup> In cases which people are found with small quantities of drugs, the drugs will be seized and the case transmitted to a local

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<sup>493</sup> *Drug Policy Profiles - Portugal* (2011)

<[http://www.emcdda.europa.eu/system/files/publications/642/PolicyProfile\\_Portugal\\_WEB\\_Final\\_289201.pdf\\_en](http://www.emcdda.europa.eu/system/files/publications/642/PolicyProfile_Portugal_WEB_Final_289201.pdf_en)> accessed 5 March 2018.

<sup>494</sup> 'Legal Status Of Cannabis In Portugal – An Overview' (*Sensi Seeds Blog*, 2017)

<<https://sensiseeds.com/en/blog/legal-status-cannabis-portugal-overview/>> accessed 5 March 2018.

<sup>495</sup> *ibid.*

<sup>496</sup> *ibid.*

<sup>497</sup> *ibid.*

<sup>498</sup> *ibid.*

<sup>499</sup> *ibid.*

Commission charged with implementing a rehabilitation strategy with the latter not being compulsory.<sup>500</sup>

Cultivation of cannabis is also illegal in Portugal, even a few plants intended for personal use.<sup>501</sup> In fact, Law 30/2000 specifies that while custodial sentences for drugs were to be repealed, cultivation was to be exempted 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.<sup>502</sup>

#### 1.4. Netherlands

Despite having a reputation as Europe's 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 legalise cultivation of marijuana for commercial purposes. The highly popular coffee shops currently operate in a grey area of the law.

In the Netherlands, marijuana retailers ('coffee shops') are permitted to sell cannabis under certain strict conditions.<sup>503</sup> 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.<sup>504</sup> 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.<sup>505</sup> While this act remains illegal, once the cannabis enters the coffee

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<sup>500</sup> *ibid.*

<sup>501</sup> *ibid.*

<sup>502</sup> 'Home-Grown Cannabis Law Rejected' (*Theportugalnews.com*, 2017) <<http://www.theportugalnews.com/news/home-grown-cannabis-law-rejected/28438>> accessed 5 March 2018.

<sup>503</sup> '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 5 March 2018.

<sup>504</sup> *ibid.*

<sup>505</sup> Gavin Haines, 'Everything You Need To Know About Smoking Marijuana In The Netherlands' (*The Telegraph*, 2017)

shop the authorities tolerate it as long as the 500g limit is adhered to.<sup>506</sup> 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’.<sup>507</sup> 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.<sup>508</sup> 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.<sup>509</sup> Municipalities also determine whether to allow coffee shops to even operate, along with any other rules they would want to impose.<sup>510</sup>

On the topic of possession, the Public Prosecution Service doesn’t prosecute citizens for possession of small quantities of soft drugs, these being up to 5g of cannabis and up to 5 cannabis plants.<sup>511</sup> 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.<sup>512</sup>

It should be noted however that it is currently against the law to grow cannabis plants throughout the Netherlands. However, due to the presence of the aforementioned toleration policy, in cases where no more than 5 plants are grown for personal

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<<http://www.telegraph.co.uk/travel/destinations/europe/netherlands/amsterdam/articles/everythin-g-you-need-to-know-about-smoking-marijuana-in-the-netherlands/>> accessed 5 March 2018.

<sup>506</sup> *ibid.*

<sup>507</sup> ‘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 5 March 2018.

<sup>508</sup> *ibid.*

<sup>509</sup> *ibid.*

<sup>510</sup> *ibid.*

<sup>511</sup> *ibid.*

<sup>512</sup> ‘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 5 March 2018.

consumption, the police will generally only seize the plants.<sup>513</sup> Nonetheless, if more than 5 plants are found, the police may prosecute.<sup>514</sup>

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.<sup>515</sup> 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.<sup>516</sup>

Many authors believe that the merciful policy regulating the use of marijuana derives from the Constitution of Netherlands, specifically Article 10(1)<sup>517</sup> 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 is trying to step away from severe punishments due to drug possession and instead upholds rehabilitation facilities and treatment.

## 2. The Economic Benefits of Legalisation

In order to thoroughly assess the effects of legalising marijuana, one must also look at its effects on the legislating country's economy. Through the case studies below, one

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<sup>513</sup> 'Toleration Policy Regarding Soft Drugs And Coffee Shops | Drugs | Government.NI' (*Government.nl*) <<https://www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops>> accessed 6 March 2018.

<sup>514</sup> *ibid.*

<sup>515</sup> 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/everythin-g-you-need-to-know-about-smoking-marijuana-in-the-netherlands/>> accessed 5 March 2018.

<sup>516</sup> *ibid*

<sup>517</sup> The Constitution of the Kingdom of the Netherlands, 2008

notices an ongoing positive trend with regards to revenue, as well as job creation within the affected economy. While Malta's limited size and population hamper its economic options, one must not overlook Malta's economic potential, as well as its already significant yearly influx of tourists, reaching 2.8 million during 2019.<sup>518</sup> With the tourism industry accounting for 27.1% of GDP,<sup>519</sup> in 2017, it would be interesting to note how this major sector of the Maltese economy would react to a newly introduced cannabis industry.<sup>520</sup> 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. For the purposes of this paper, only the economic effects of legalisation of marijuana for recreational use in Colorado and California shall be expanded upon.

## 2.1. Colorado

The economic effects of legalisation in the state of Colorado produced results which exceeded expectations, producing circa \$2.4 billion for the economy, as well as creating 18,000 jobs. The Marijuana Policy Group's report on Colorado 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 a localised one, most of the spending within said 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.'<sup>521</sup> This would also be the case in Malta,

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<sup>518</sup> National Statistics Office - Malta, 'Inbound Tourism: December 2019' (2020).

<sup>519</sup> This metric includes the wider effects from investment in tourism, with the direct contribution for the year 2017 being 14.2%.

<sup>520</sup> World Travel & Tourism Council, 'Country Report 2018 Malta' (2018) <<https://www.wttc.org/economic-impact/country-analysis/country-reports/>> accessed 20 February 2020.

<sup>521</sup> The Economic Impact Of Marijuana Legalization In Colorado (2016) <<http://www.mjpolicygroup.com/pubs/MPG%20Impact%20of%20Marijuana%20on%20Colorado-Final.pdf>> accessed 6 March 2018.

wherein the industry would be able to run without the need of huge imports of raw materials, as they could 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 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.'<sup>522</sup> One may therefore also logically predict a higher input in Malta's case, as a result of the fewer costs of production.

The growth in demand for marijuana is driven by past black market buyers slowly turning to the legal licensed stores for their cannabis and not in fact an inherent growth in marijuana demand. Simply put, the transition consumers will make from the illicit trade into the legal one will, for the few years following legalisation, lead to the increased demand for marijuana until the regulated market dominates the industry. Growth is also seen in the legal marijuana industry itself, becoming larger than numerous traditional commercial sectors in Colorado, growing at a faster speed than any other sector in the State of Colorado. The 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.

On the topic of excise, marijuana became the second largest source of excise revenue at \$121 million in 2015. It was three times larger than those of alcohol, and also 14% larger than casino revenues. The Marijuana Policy Group predicts that marijuana tax revenues should overcome cigarette excise revenues by 2020, as cigarette sales continue to dwindle. Cigarette revenues still remained the most significant excise source 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. Said 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 reach the 215.7

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<sup>522</sup> *ibid.*

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%.

The Marijuana Policy Group 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.

On jobs, the 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 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.<sup>523</sup>

Focusing now on the tourism aspect of legalisation, 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.<sup>524</sup> In 2015, the Colorado Tourism Office commissioned a survey of 3,250 tourists and it found that 8% of the respondents had visited a recreational marijuana store. 85% of those 8% further stated that marijuana was the primary motivator for the trip.<sup>525</sup>

## 2.2. California

First and foremost, one should point out that California is the sixth largest economy in the world, with an economic output of \$2.46 trillion in 2015. The state of California charges \$9.25 per ounce of flower and \$2.75 dollars per ounce of leaves, with a retail

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<sup>523</sup> *ibid.*

<sup>524</sup> *ibid.*

<sup>525</sup> Patrick McGreevy, 'Legal Marijuana Could be A \$5-Billion Boon to California's Economy' Los Angeles Times (2017) accessed 6 March 2018.

tax of 15% subject to amendments in accordance with inflation.<sup>526</sup> It should be noted that since licensed shops began operating as of January 2018, little to no data exists on the actual situation although various studies and speculations have been put forward by researchers and economists. 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.<sup>527</sup> A study conducted by the University of California Agricultural Issues Centre notes that illegal marijuana sales are predicted to drop by a staggering 45.5 points, while legal medical marijuana sales are predicted to drop by 14 points with legal recreational marijuana sales predicted to take up 61.5% of the market.<sup>528</sup>

The Marijuana Policy Group estimates that the legal marijuana market in California will be somewhere around \$7.2 billion annually. With a Maltese excise tax on cigarettes at 23.4%, making €98 million in 2016 alone, it would not be impossible to perceive an economic benefit of notable significance within the Maltese Islands themselves, would a marijuana policy similar to California's be implemented.

Legalisation is also posed to affect the job market positively, generating between 81,000 and 103,000 full-time positions each year; with 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, to those involved in legal advice, and to those involved in the construction of new homes and facilities for those employed in the industry.

Much like Malta, California is well sought after by tourists. In Colorado, the Marijuana Policy Group calculated that visitor demand accounts for 7.3% 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 the United States, ICF International has estimated that between 95.4 million and 121.3 million grams will be in demand by visitors annually. The study went on to state that legalisation may attract visitors towards the state, the sole purpose of whose visit would be to purchase and

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<sup>526</sup> Ben Gilbert, 'California Just Legalized Marijuana, And It's Going To Have A Huge Impact On The Economy' *Business Insider* (2016) accessed 6 March 2018.

<sup>527</sup> Patrick McGreevy, 'Legal Marijuana Could be A \$5-Billion Boon to California's Economy' *Los Angeles Times* (2017) accessed 6 March 2018.

<sup>528</sup> *ibid.*

consume recreational marijuana, thus, increasing tourism within the state.<sup>529</sup> 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.

### 3. Conclusion

Noting the above trends, the legalisation of marijuana for recreational use in Malta would seem like the next inevitable step in the civil liberties expansion started in the 2010s. The aim of this paper was to conduct a comparative analysis of jurisdictions which have already in some form or another legalized marijuana for recreational use. Through the review of jurisdictions with diverse conditions, it follows that there is no single appropriate structure for the legalization of recreational cannabis. If Malta is to follow in the steps of these jurisdictions, as is indicated by certain members of the Executive branch, it would have to be a system catered for the needs of the country.

Through the review of the economic benefits of legalization of marijuana for recreational use, it is clear that while the cannabis industry would likely be a small contributor to the economy, its positive effects cannot be ignored. Nonetheless, and perhaps not tackled due to the fact that it was not in the remit of this paper to do so, the elimination of the black market is a key motive in the process of legalization.

The writer hopes that in the inevitable discussion for the legalisation of recreational cannabis, the talking points stem from points of fact, as noted in the various reviews above, rather than opinion. Any movement towards legalisation should not be done for the sake of such, but with clearly outlined expectations which will benefit the Maltese economy as a whole.

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<sup>529</sup> *ibid.*