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ICEERS' contribution to the open consultation launched by the Government of Malta on the White Paper

“Towards the Strengthening of the Legal Framework on the Responsible Use of Cannabis”

About ICEERS

The International Center for Ethnobotanical Education, Research and Service (ICEERS) is a non-governmental organization based in Barcelona (Spain) dedicated to 1) studying and promoting public policy based on scientific evidence and human rights; 2) conducting scientific research into and education on the effects, risks and potential benefits of ethnobotanicals used for centuries by indigenous societies in ceremonial practices that have nowadays become widespread in our globalized society; 3) the protection of the indigenous ethnobotanical practices and their environment.

ICEERS is a recognized organization that holds consultative status with ECOSOC and subsidiary bodies at the United Nations, and has actively worked for the harmonization and better implementation of drug policies that are evidence-based and inclusive of human rights, social justice, gender perspective and sustainability.

ICEERS' mission has included extensive work on cannabis policy and cannabis regulation. In recent years, when drug policy approaches around the world have diversified greatly, our Foundation has been involved in international drug policy discussions, particularly in Europe and the Americas, through participation in different expert committees, working as consultants with governments, lecturing at international drug policy congresses, conducting scientific research, developing technical reports and organizing spaces for debate and learning for national and international communities. Our extensive experience in the field of cannabis policies and laws has encouraged us to provide inputs to the process of public consultation that the Maltese Government has recently opened.

About this policy input

In the case of this public consultation, we have chosen to concentrate our efforts in providing inputs regarding the cannabis users' associations (widely known as cannabis social clubs, CSC) model, a bottom-up social process that has emerged, flourished and developed in Spain during the last twenty years and have revealed as a unique path to provide a cannabis markets regulation in a well-balanced, middle-ground between a mere free market economy and a strict State control, incorporating a broad participation of civil society and with a great potential for reducing risks related to adult cannabis use.

Although the CSC model has also been implemented in other countries like Belgium, the United Kingdom or Uruguay, it has been within the Spanish context in which it firstly emerged and where it has developed most fully, including attempts to regulation at the regional level. This model has also been 'exported' to multiple jurisdictions where the debate on cannabis regulation has emerged in the political sphere.

The authors of this report, Constanza Sánchez and Òscar Parés, has researched and published on this issue for more than a decade. This policy input is mainly based in the following research work that we have carried out in recent years. These are attached on this submission's email, for your consultation:

- Òscar Parés and José Carlos Bouso (2015), 'Innovation Born of Necessity. Pioneering Drug Policy in Catalonia,' *Lessons for Drug Policy Series*, Global Drug Policy Program, Open Society Foundations.
- Tom Decorte, Mafalda Pardal, Rosario Queirolo, María Fernanda Boidi, Constanza Sánchez Avilés, Òscar Parés Franquero (2017), 'Regulating Cannabis Social Clubs: A comparative analysis of legal and self-regulatory practices in Spain, Belgium and Uruguay', *International Journal of Drug Policy*, Volume 43, pp. 44-56.
- Constanza Sánchez, Michael Collins (2018), "Better to Ask Forgiveness Than Permission: Spain's Sub-national Approach to Drug Policy", *Policy Brief 12*, Swansea: Global Drug Policy Observatory.
- Òscar Parés et al. (2019), "Use and Habits of the Protagonists of the Story: Cannabis Social Clubs in Barcelona", *Journal of Drug Issues*, Vol. 49: 4, pp. 607-624.
- Mafalda Pardal, Tom Decorte, Melissa Bone, Òscar Parés, Julia Johansson (2020), "Mapping Cannabis Social Clubs in Europe", *European Journal of Criminology*, pp. 1-24.
- Xabier Araña, Òscar Parés (2020) "Cannabis Social Clubs in Spain: Recent legal developments" in Decorte, T, Lenton, S, Wilkins, C (eds) *Legalizing Cannabis: Experiences, Lessons and Scenarios*, Abingdon: Routledge, pp. 307-322.

1. What are cannabis users' associations?

Cannabis users' associations (or cannabis social clubs, CSC) have been defined in several of our publications:

"The term CSC encompasses in practice different realities in the Spanish context, even though they all share the fact of being legally constituted registered, non-profit associations of adult cannabis consumers that collectively cultivate cannabis plants to meet their personal needs. CSCs are an alternative conceived by civil society to respond to current drug policies that persecute cannabis users and growers, although in the case of Spain drug use is not criminally punished and is only banned in public spaces. Thus, users organize to provide themselves with cannabis without resorting to the underground market, through self-management of the complete cycle of production and distribution."¹

"Those associations are typically defined as small non-profit collectives where cannabis is produced and distributed among a closed circuit of adult cannabis consumers. This model was initiated by cannabis users to prevent cannabis consumers from being involved in illegal activities and assures that certain requirements concerning public health and safety are fulfilled. The values

¹ Constanza Sánchez, Michael Collins (2018), p. 9.

of transparency, democracy and non-profitability are essential characteristics of the model, and points at its potential for harm reduction.”²

2. How this model emerged and flourished in Spain? The legal and policy context.

Likewise, in multiple publications we have explained in detail how the CSC model arose and what is its legal framework in Spain:

“These associations found legal guidance via a report that the government of Andalusia requested from a group of jurists, known as the Muñoz and Soto Report. Published in 2001, this report applied the Supreme Court’s jurisprudence on shared consumption to cannabis dispensation, concluding that, if a set of requirements were met, there existed margin to use and dispense cannabis without breaking the law. As mentioned above, that doctrine refers to a closed circuit of specific and previous cannabis users, none of the participants can make profit, and the amounts distributed must be for immediate consumption.”³

“In Spain, the applicable legislation draws an important distinction between private and public use or possession: in private spaces possession is not penalized. Also, the limits of domestic legislation and its relationship with the cannabis association model have generated much discussion, to which two legal analyses by Spanish academics have made an important contribution. These scholars have sketched a general framework under which cannabis associations functioning would be compatible with the applicable legislation.”⁴

3. Why is the cannabis users’ associations model interesting to include in the Maltese White Paper?

Since the Maltese Government considers to regulate self-cultivation and private consumption of cannabis, we want to highlight the potential of cannabis users’ associations as a public policy. Those non-commercial points of sale could therefore offer an interesting ‘middle ground’ solution to avoid some of the potential risks associated with a commercial cannabis market or an illicit market. This model could also have considerable policy relevance in terms of facilitating and / or co-creating harm reduction initiatives with other drug policy stakeholders. The CSC model could also provide a social space for additional *peer to peer* support for both recreational and medicinal cannabis users.

4. How a regulation of cannabis users’ associations would look like in practice?

From our previous participation in CSC regulation proposals and policy inputs in Spain, we share below an example of what we believe a public regulation of CSC should include, for your interest and as a way to see how this would work in practice. This example is based on regulatory texts

² Xabier Araña, Òscar Parés (2020).

³ Constanza Sánchez, Michael Collins (2018), p. 9.

⁴ Mafalda Pardal et al. (2020).

produced for the 2017 Catalan Law of Cannabis users' associations⁵ and the proposal of the *Grupo de Estudio de Políticas sobre el Cannabis*⁶:

CHAPTER XX

Cannabis users' associations

Article X. General provisions.

1. Cannabis users may group together in associative entities to supply their consumption in a self-managed way, in the search to improve the quality of the product, reduce costs or have complementary social objectives.
2. The constitution of user associations will be non-profit and its special regulation will be subject to the provisions of Law XX (*insert here the Maltese law regulating the Right of Association, as well as other relevant regulations developing this matter*).

Article X. Obligations of users' associations.

1. Users' associations must incorporate the following specific rules into their statutes:
 - a) Associated members must be over 18 years of age and have full legal capacity.
 - b) The acquisition of the status of associated member will require the endorsement of a previously associated person, the explicit request of the interested person and the passing of a 'grace period' to withdraw cannabis of at least 15 days.
 - c) The endorsement will not be required for associated members who decide to use cannabis for duly justified medical needs. The conditions and the way to prove the need to consume cannabis for medicinal reasons must be established through the regulations issued by (*the relevant National authority on cannabis regulation*).
 - d) The association must request and obtain the license for activity and / or other required permits for the opening of its headquarters before the municipal authorities.
 - e) Associations must notify the (*National authority*) the start of their activities.
2. The associations of people who use cannabis must, in their operation:
 - a) Provide members with information on their objectives, on the responsible use of cannabis, and on risk reduction.
 - b) Check the identity and associate status of those people entering the association's premises.
 - c) Make reviews every six months to adapt its production to the real demand of the associated members enrolled in the self-supply program.
 - d) Obtain an expert technical report of each crop, which must be prepared by an external agronomist with a degree in Agricultural Engineering or or with an equivalent degree, who determines that the crop forecasts conform to the consumption forecasts established the (*National authority*).
 - e) Guarantee that all spaces and activities of the association are safe spaces for women and other gender identities.

3. Associations are obliged to keep, and keep up to date and watched, the following registry and control books:

Associates registration book.

Self-supply record book, which must include:

- Book of associates enrolled in the self-supply program.
- Production book
- Transport book
- Distribution book

Article XX. Limits to the annual production of the associations.

⁵ See the full text of the Catalan law here <https://www.boe.es/buscar/act.php?id=BOE-A-2017-9367>. This law was declared null by the Spanish Constitutional Court, which considered that the Parliament of Catalonia had no powers to regulate this matter. The law was in force only four months.

⁶ See GEPCA's website <https://gepca.es/cannabis-a-new-regulation-model/>

The annual production limit of the associations is (*XX kg to be determined*) kilograms of dry flower units. The surplus must be notified to the (*National authority*) and donated to the corresponding institutions for scientific research purposes.

Article XX. Transportation of cannabis to the distribution space of the associations.

1. Associations must comply with the packaging regulations established by the (*National authority*) to guarantee their integrity in the transportation process.
2. The transport of cannabis and any of its products may not be done by means of collective transport.

Article XX. Dispensing to associated members.

1. Associated members may not refer the cannabis that is dispensed to them in a personal capacity to third parties.
2. The dispensing of cannabis must be carried out in a private space, within the scope of the association, with restricted and exclusive access for the associated members.
3. Any form of supply of high alcoholic beverages in the dispensing spaces is prohibited.

Article XX. Limits on the dispensing of cannabis to associated members.

1. The maximum amount of cannabis available for members is (*XX grams to be determined*) grams per month.
2. The maximum amount of cannabis available for members may be increased to supply medical use. The way to justify this circumstance will be subject to the regulations and other regulations established by the (*National authority*).

Article XX. Consumption space for users.

Cannabis users' associations may have a space for consumption, in accordance with the following requirements:

- a) Its opening and start-up must be notified to the (*National authority*).
- b) The space must respect the conditions of private clubs for smokers provided for in (*relevant Maltese laws*).
- c) Any form of supply of alcoholic beverages of high graduation in the spaces of consumption is prohibited.

5. Cannabis users' associations: The potential of a model

We have identified four spheres in which the cannabis users' associations / CSC model can have a positive impact. These are the following:

1. For cannabis users:

- CSC provide private spaces for consumption.
- CSC provide risk reduction services, which encourage a controlled use.
- CSC provide information on the quality of cannabis.
- CSC provide a stable supply.
- CSC can play a leadership role in generating informal social norms and peer training.
- CSC contribute to reduce stigma around cannabis use.

2. For communities:

- Reduction of use and traffic in public spaces.
- Reduction of fines / administrative sanctions.
- Optimization of Law enforcement resources.
- Separation of markets: cannabis users will not be exposed to other illegal substances available in the illicit drug market.
- CSC membership criteria will avoid cannabis tourism and minors.

3. For public institutions:

- CSC are privileged spaces for conducting research and implement risk reduction programs. Also for identifying problematic use.
- The Public health system could transfer therapeutic users to CSC.
- CSC are also spaces for socialization and creation of culture.

4. For society:

- CSC promote civil society participation and policy experimentation.
- In a context of economic crisis with high rates of unemployment, CSC can be a source of employment, tax collection and reduction of public expenditure.

Recommendations

Based on the considerations explained in this report, we recommend to the Maltese government the following:

1. The establishment of a pilot project for the establishment and regulation of cannabis users' associations within the Legal Framework on the Responsible Use of Cannabis.
2. The establishment of consultation and participation processes with the representatives of these associations, in order to promote good practices and establish a code of conduct.
3. The inclusion of cannabis users' associations as key agents for harm and risk reduction related to cannabis use. This process would qualify the associations as official information points on responsible cannabis use and *peer-to-peer* support.

We trust you find this report useful for your legislative process and policy debate. Meanwhile, we remain at your disposal for any additional information you may request, including the provision of technical information and expert testimony in the relevant Commission of Parliament.

Yours Truly,



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