



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Deputy Director-General, in charge of Directorates G, H, I

Brussels  
AGRI.DDG3.G.4/ (2021) (9.6.2) 8385952

Dear Personal data redacted,

I would like to thank you for your email of 8 November 2021, addressed to Personal data redacted. Personal data redacted asked me to respond to the questions you raised in your email (below in bold).

***First question: If a Member State allows for a higher THC threshold for hemp than the EU allows for, would the EC do anything to prevent the importation or exportation of hemp that is legal in the Member State but above the EU threshold?***

Hemp is an agricultural product that falls within the scope of Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products<sup>1</sup> (hereafter referred to as ‘CMO Regulation’). The flax and hemp sector covers products listed in Part VIII of Annex I to that Regulation. Article 189(1) of the same Regulation provides the rules for imports into the Union of certain hemp products listed under that Article. Among other criteria, imports into the Union of raw true hemp falling within CN code 5302 10 00 and seeds of varieties of hemp falling within CN code ex 1207 99 20 for sowing are allowed only if the maximum THC level does not exceed 0.2%. In addition, in accordance with Article 189(2) of the same Regulation, Member States may adopt **more restrictive rules** as long as they comply with the Treaty on the Functioning of the European Union and the obligations under the WTO Agreement on Agriculture. The CMO Regulation does not include any specific rules for exports of hemp.

In accordance with Article 89(2) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council<sup>2</sup>, checks should be carried out by Member States to determine if imports of raw true hemp falling within CN code 5302 10 00 and seeds of

<sup>1</sup> [Regulation \(EU\) No 1308/2013](#) of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

<sup>2</sup> [Regulation \(EU\) No 1306/2013](#) of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

Personal data redacted

Tamarind Intelligence  
Personal data redacted

varieties of hemp falling within CN code ex 1207 99 20 for sowing comply with Article 189(1) of Regulation (EU) No 1308/2013.

There are no restrictions for imports into the Union of hemp products that do not fall within the scope of the CMO. Member States may have rules for the placing on the market of hemp products within the Treaty on the Functioning of the European Union and the obligations under the WTO Agreement on Agriculture.

**Second question: What is required (licenses, duties, etc.) to import and export hemp and CBD products to/from non-EU countries?**

Commission Delegated Regulation (EU) 2016/1237<sup>3</sup> and Commission Implementing Regulation (EU) 2016/1239<sup>4</sup> set out the rules for import licences for hemp that falls within the scope of Article 189 of the CMO Regulation. A Member State shall only issue an import licence if all conditions laid down in Article 189(1) and Delegated Regulation (EU) 2016/1237 are fulfilled and if the requirements laid down by the Member State concerned pursuant to Article 189(2) of the CMO Regulation, have been met. Specific rules apply for imported hemp seeds not for sowing, which are specified in Article 9 of Delegated Regulation (EU) 2016/1237.

Following the judgment of the European Court of Justice in Case C-663/18 (ECLI:EU:C:2020:938), CBD is not considered as a psychoactive substance under control within the Union. Normal import rules apply.

Article 11 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>5</sup> lays down provisions on food imported into the Union. On CBD products, if they are qualified as food and intended to be imported into the Union, they shall comply with the relevant requirements of the EU food law.

**Third question: What is required (licenses, duties, etc.) to import and export hemp and CBD products within the EU?**

Hemp products that fall within the scope of the CMO Regulation are subject to the free movement of goods within the internal market set in the Treaty on the Functioning of the European Union (TFEU).

Concerning CBD, following the judgment of the European Court of Justice in Case C-663/18, CBD is not considered a psychoactive substance under control within the Union and therefore the internal market rules should apply to it. In this respect, in particular,

---

<sup>3</sup> [Commission Delegated Regulation \(EU\) 2016/1237](#) of 18 May 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences, amending Commission Regulations (EC) No 2535/2001, (EC) No 1342/2003, (EC) No 2336/2003, (EC) No 951/2006, (EC) No 341/2007 and (EC) No 382/2008 and repealing Commission Regulations (EC) No 2390/98, (EC) No 1345/2005, (EC) No 376/2008 and (EC) No 507/2008 (OJ L 206, 30.7.2016, p. 1).

<sup>4</sup> [Commission Implementing Regulation \(EU\) 2016/1239](#) of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the system of import and export licences (OJ L 206, 30.7.2016, p. 44).

<sup>5</sup> [OJ L 31, 1.2.2002, p. 1.](#)

Article 34 TFEU, which relates to intra-EU imports, prohibits “*quantitative restrictions and all measures having equivalent effect*”. Moreover, barriers imposed by national legislation can be justified only if such measures are necessary to satisfy mandatory requirements or on one of the grounds of public interest laid down in Article 36 TFEU and are proportionate to the legitimate objective pursued.

If a CBD-product is qualified as food, other EU rules such as e.g. Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods<sup>6</sup> and Regulation (EC) No 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods<sup>7</sup>, may apply depending on its use.

This opinion is provided on the basis of the facts set out in your email of 8 November 2021 and expresses the point of view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law, under the Treaty on the Functioning of the European Union, it is the responsibility of the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

Yours faithfully,

Personal data redacted



Michael SCANNELL

---

<sup>6</sup> [Regulation \(EU\) 2015/2283](#) of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 (OJ L 327, 11.12.2015, p. 1).

<sup>7</sup> [Regulation \(EC\) No 1334/2008](#) of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC OJ L 354, 31.12.2008, p. 34)