

Low-THC cannabis products being sold in the EU – key legal issues

Since 2017, herbal cannabis and cannabis oils have been offered for open sale in health food shops or specialist shops in several EU countries, including France, Italy, Luxembourg and Austria. Sales have taken place based on the claim that these products have little or no intoxicating effect and therefore are not controlled under drug laws. The EMCDDA network of national legal correspondents recently addressed this issue.

What do international drug control laws say?

The UN drug control conventions state that unauthorised sale of 'cannabis flowers' and 'extracts and tinctures of cannabis' should be subject to criminal penalties in national drug control laws. Cannabis flowers and extracts usually contain the two cannabinoids THC and CBD, but the percentage of each can vary greatly, by plant variety and by growing technique. THC can cause intoxicating effects, while CBD has been associated with health benefits, though there is little evidence for most conditions that have been studied. The WHO expert committee on drug dependence recently recommended that pure CBD should not be listed under the drug conventions.

Do EU regulations apply?

The EU common agricultural policy subsidises growing certain varieties of the cannabis plant for industrial uses, provided their THC content does not exceed 0.2 %. The EU also has several directives and regulations that might address the sale of low-THC products, including standardised definitions of medicinal products, herbal medicines, food and food supplements, cosmetics, general product safety etc. As classification is usually decided by national regulatory bodies, depending on the country, a cannabis product could potentially be classified as a medicine, a food or a consumer product.

Are national responses similar?

Member States' responses to open sale can range from stating that plant-derived THC- or CBD-containing products are cannabis extracts, and therefore subject to criminal penalties, to stating that some of those products have insignificant psychoactive properties and are therefore at low risk of misuse and unlikely to pose a threat to public health, and so do not require any licence for trade.

First, countries differ in their response towards low-THC products. Some countries state that a product containing less than 0.3% or 0.2% THC is not controlled under drug laws. For others, an unlicensed product must not contain any THC at all. But these quantitative limits may also come with conditions, such as 'originating from an authorised variety of cannabis', 'if not viable for narcotic purposes', 'if not misused'.

In addition, countries have developed different responses towards products containing CBD. There seem to be few quantitative limits to CBD but more conditions. The legality of marketing the product may depend on the source of the CBD, it may depend on the format of the product, and it may depend on how the product is presented.

What do these products contain?

National forensic analyses of 'low-THC' cannabis herb in Italy, Luxembourg and Austria found that they were indeed low in THC. However, some products sold as 'high in CBD' have been found to contain levels of THC that may cause intoxication, which some users would not expect.