



SYNDICAT  
du CHANVRE  
SYNDICAT PROFESSIONNEL DU CHANVRE  
ZA DE L'ESCUДИER  
19270 DONZENAC  
SIRET 889931325 00027

### **Syndicat Professionnel du Chanvre's contribution**

**on the draft French decree implementing article R. 5132-86 of the public health code for cannabis**

**notified in the TRIS database under the number 2021/481/F**

The Syndicat professionnel du chanvre (SPC) gathers the French actors of the hemp sector, medical cannabis and textile hemp, and represents their interests to the public authorities.

The SPC considers that the draft decree notified to the European Commission constitutes an unjustified and non-proportionate quantitative restriction between Member States, contrary to Articles 34 and 36 of the Treaty on the Functioning of the European Union.

The SPC considers that the proposed restrictive measure cannot be considered appropriate to ensure the achievement of the objectives sought, as it does not really meet the concern to achieve them in a coherent and systematic manner.

The SPC therefore invites the European Commission to issue a detailed opinion against this draft decree.

#### **The general ban in the draft decree**

The draft decree aims to regulate the marketing of industrial and commercial hemp on the French territory.

It includes a general and absolute ban on the sale of hemp raw flowers and leaves in any form to consumers:

*"In particular, the sale to consumers of flowers or raw leaves in all their forms, alone or in combination with other ingredients, their possession by consumers and their consumption are prohibited".*

#### **Restriction to the free movement of hemp within the European Union**

As of today, many French and European economic operators (manufacturers, distributors, traders, online shops, brick and mortar stores) are selling hemp flowers and leaves to French consumers.

These products are sold:

- Either in the form of herbal teas or infusions made with flowers, leaves and/or other parts of the hemp plant (sepals), mixed with other plants for infusion.
- Either in the form of raw flowers sold in packaging or in bulk as infusion, consumer goods or herbal products for smoking no containing tobacco.

To manufacture these products, French operators purchase raw materials from farmers and economic operators located in other Member States where the cultivation and sale of industrial and commercial hemp flowers and leaves is permitted (e.g. Austria, Bulgaria, Croatia, Italy, Spain, Estonia, Greece, Lithuania, Hungary, Poland, Portugal, Czech Republic, Slovenia).

The general prohibition on sales to consumers under the proposed decree will therefore have the foreseeable effect of:

- Depriving French and European operators who sell their products directly in France of an important market.
- Putting an end to the purchase of raw materials by French operators from suppliers established in other Member States.

The potential obstacle to intra-Community trade is therefore real, as is the case with any general sales ban.

### **The proposed ban is not justified or proportionate**

The SPC would like to remind that Community law, in particular Regulations 1308/2013<sup>1</sup> and 1307/2013<sup>2</sup> on the common organisations of the markets in agricultural products, authorize the cultivation of industrial and commercial hemp as long as they are authorized varieties and the plant contains less than 0.2% of THC. These regulations do not contain any restrictions on the parts of the plant that can be marketed and therefore do not prohibit the marketing of hemp flowers and leaves.

The text of the draft decree contains no explanation of the grounds of public interest for the envisaged quantitative restriction.

The text of the message accompanying the TRIS notification states that the envisaged decree would be justified by grounds of public order (including maintaining the ability of internal security forces to combat drug trafficking) and consumer protection.

The SPC does not consider these justifications to be admissible in law.

### **Lack of justification and proportionality with regard to public order**

- The regulations on foodstuffs (No. 178/2002) and animal feed (No. 767/2009) referred to in the draft decree already include traceability obligations for economic operators, making it possible to know the origin and destination of products placed on the market. This information

---

<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

<sup>2</sup> Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009

must be made available to the authorities on request. This clearly results from Article 18 of Regulation No. 178/2002 (to which Article 5 of Regulation 767/2009 refers):

*“1. The traceability of food, feed, food-producing animals, and any other substance intended to be, or expected to be, incorporated into a food or feed shall be established at all stages of production, processing and distribution.*

*2. Food and feed business operators shall be able to identify any person from whom they have been supplied with a food, a feed, a food-producing animal, or any substance intended to be, or expected to be, incorporated into a food or feed.*

*To this end, such operators shall have in place systems and procedures which allow for this information to be made available to the competent authorities on demand.*

*3. Food and feed business operators shall have in place systems and procedures to identify the other businesses to which their products have been supplied. This information shall be made available to the competent authorities on demand.*

*4. Food or feed which is placed on the market or is likely to be placed on the market in the Community shall be adequately labelled or identified to facilitate its traceability, through relevant documentation or information in accordance with the relevant requirements of more specific provisions”.*

- The Tobacco Products Directive 2014/40<sup>3</sup> also contains requirements for product identification and traceability throughout the EU to ensure the origin and conformity of smoking products placed on the market and to combat counterfeit products. Such provisions are likely to achieve the public policy objectives implied by the French authorities if they so wish.
- The fact that Member States such as Belgium and Luxembourg have expressly enshrined the application of the Tobacco Products Directive to hemp flowers shows that it is possible to meet the public policy considerations invoked by the French authorities by using existing product regulations that are less restrictive for intra-Community trade.
- Finally, the French authorities themselves indicate on the website of the Interministerial Mission for the Fight against Drugs and Addictive Behavior (MILDECA) that "*work is underway to set up a traceability system for marketed products, from cultivation. This system will have to be designed in consultation with the professionals of the sector, from production to marketing to the final consumer*" ([link](#)). The implementation of such a traceability system constitutes a less restrictive measure to intra-community trade than the envisaged ban.
- Last but not least, there are quick tests available on the market that allow to test the THC content of products and thus to quickly distinguish industrial and commercial hemp from narcotic products. These tests are already used by law enforcement authorities in certain Member States like Spain.

#### **Lack of justification and proportionality with regard to consumer protection and public health**

- The French authorities have not provided any detailed evidence of a possible risk to public health that would justify a general ban on the sale of hemp flowers and leaves to consumers.

---

<sup>3</sup> Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC

- The need to justify restrictive measures by real and detailed scientific evidence was recalled by the Court of Justice in its decision of 19 November 2020 regarding CBD:

*“A decision to prohibit marketing, which indeed constitutes the most restrictive obstacle to trade in products lawfully manufactured and marketed in other Member States, can be adopted only if the real risk alleged for public health appears sufficiently established on the basis of the latest scientific data available at the date of the adoption of such a decision”<sup>4</sup>.*

The French authorities do not justify in their draft decree of any precise, real and detailed evidence posterior to this decision.

- With respect to THC, the SPC further notes that:
  - o In its "Hammarsten" decision of 2003, the European court of justice has already ruled that risks to public health were already taken into account by the regulations on common market organizations:

*“34 However, it is clear from the first two recitals in the preamble to Regulation No 1430/82 that the risks to human health constituted by the use of narcotic drugs have been specifically taken into account within the framework of the common organisation of the market in the hemp sector.*

*35 For that purpose, the second subparagraph of Article 4(1) of Regulation 1308/70 limits the aid granted by the Community to hemp produced from varieties of seeds offering certain guarantees as to the content of intoxicating substances in the products harvested. Those guarantees are determined by the third subparagraph of Article 3(1) of Regulation No 619/71, which sets the maximum permissible THC content for hemp eligible for Community aid”<sup>5</sup>.*

- o The food and feed regulations referred to in the draft decree already include product safety requirements for operators placing such products on the market. This is the case of articles 14 and 15 of regulation no 178/2002 and article 4 of regulation no 767/2009 expressly referred to in the draft decree. These provisions prohibit the placing of dangerous products on the market.
- o Regulation no 1881/2006 setting maximum levels for certain contaminants in foodstuffs can be used to control the THC content of products placed on the market. The European Commission and the Member States are working on the establishment of such thresholds for various hemp products in the framework of the Standing Committee on the Food Chain and Animal Health<sup>6</sup>. Pending the establishment of such thresholds at European level, other Member States have set residual THC limits (e.g. Italy, Denmark).

---

<sup>4</sup> CJEU, 19 Nov. 2020, B S and C A, C-663/18, para. 88

<sup>5</sup> CJEU, 16 Jan. 2003, Hammarsten, C-462/01

<sup>6</sup> SCOPAFF Novel food and Toxicological safety of the food chain, 23 June 2020

- It would therefore be possible for the French authorities to frame the trade of industrial and commercial hemp by less restrictive means, as is the case for example for the cultivation and trade of poppy seeds for food use<sup>7</sup>.
- That being said, it would be contradictory for the French authorities to prohibit the marketing of hemp flowers and leaves because of their THC content, insofar as the proposed decree expressly provides that products containing hemp extracts may have a THC content of 0.2% or less, subject to provisions relating to the safety of food products and animal feed:

*"The delta-9-tetrahydrocannabinol content of extracts of hemp and the products incorporating them shall not exceed 0.2 %, without prejudice to Articles 14 and 15 of Regulation (EC) No 178/2002 and Article 4 of Regulation (EC) No 767/2009".*

- With regard to herbal products for smoking, the Tobacco Products Directive already addresses the public health risk associated with smoking these products, notably through the warnings that must appear on the product label.

The SPC thanks the European Commission for the attention given to this contribution.

---

<sup>7</sup> See in particular European Commission Recommendation 2014/662/EU of 10 September 2014 on good practices to prevent and reduce the presence of opioid alkaloids in poppy seeds and products containing poppy seeds