

CANNABIS FOR RECREATIONAL AND MEDICAL USE

INTERNATIONAL REGULATION OF CANNABIS AND CBD

PORTUGAL

I. INTRODUCTION

Cannabis plant and its derived products have a large actual or potential application field, ranging from food and feed, textile fibers and seeds, medical or veterinary medicinal use, cosmetics, flavourings, food and feed additives to recreational use, amongst others.

From an agricultural perspective cannabis production based on the plant *cannabis sativa*, has a clear economic interest that should not be underestimated and has increasingly come under attention of governments and legislators all over the world.

The main scope of this article is the Portuguese legal framework on the use of cannabis in recreational and medical settings, since all other uses are basically addressed by European law and are common to all Member States ¹ with no national exceptionality.

¹ For further analysis see the [“Overview of the EU acquis applicable to cannabis in its different forms and components”](#)

II. RECREATIONAL USE

In Portugal, the main law on the control, use and trafficking of narcotic drugs, psychotropic substances and precursors is Decree Law No 15/93, of 22 January.

This law regulates several aspects regarding penalties and criminal investigation of drug related activities, clearly distinguishing between drug use and drug trafficking.

Controlled substances are annexed to this decree law and divided in six lists. List 1 is divided into: opiates; coca derivatives; cannabis and derivatives. List 2 is divided into: hallucinogenic; amphetamines; barbiturates. List 3 includes preparations with controlled substances. List 4 includes tranquillisers and analgesics. List 5 and 6 contain precursors.

Before 2001, drug use and drug possession regardless of the motivation behind the offence was a criminal offence punishable with imprisonment.

In 2001 a new legal framework decriminalising the use and possession for use of all illicit drugs (including cannabis) was adopted, under Law No 30/2000, of 29 November.

Since Law 30/2000 came into force, consuming, purchasing and holding for personal use drugs and psychotropic substances (included in the lists annexed to Decree Law 15/93) have ceased to be a crime as long as the amounts concerned do not exceed the average amount necessary for personal consumption during a 10 day period

Possession of an amount of drug exceeding the average amount necessary for personal consumption during a 10 days period continues to be a crime and is therefore punished according to article 40 of Decree Law 15/93 of 22 January.

The average daily amount for personal consumption was established by subsequent legislation, based on the active principle of each drug or psychotropic substance.

Although sanctions can still be applied, these are no longer the purpose of the Commission in charge of cases of illicit drug use/ possession (CDTs – Comissão para a Dissuasão da Toxicodependência) received from the police, when more serious offences are not at stake (sale, trafficking). Rehabilitation and treatment of drug addiction is its main objective.

The courts are no longer responsible for dealing with these cases of consumption, acquisition and holding for personal use of drugs and psychotropic substances.

Cannabis comes under the same legal framework that is applicable to other controlled drugs.

Unfortunately, sourcing of the product to consumers continues to be a crime of trafficking (art. 21 of Decree law 15/93) and therefore an exclusive and profitable market for criminals.

Cannabis accessories (i.e., rolling papers, or wraps, holders, pipes, water pipes, bongs and vaporisers) come under no specific regulation, and therefore its trade is legal.

III. MEDICAL USE

The legal framework on the authorization of medicinal products, substances or preparations based on the plant “cannabis sativa” for medical use was laid down in Law No 33/2018 of 18 July, which also established medical prescriptions and sale in pharmacies. This law was further regulated by Decree Law No 8/2019 of 15 January and Ministerial Order No. 83/2021 of 15 April.

Medicinal products, substances or preparations based on cannabis are subject to a previous authorization issued by the national authority INFARMED – Autoridade Nacional do Medicamento e Produtos de Saúde, I.P.

INFARMED, I.P., is the national competent authority in charge of supervising and ruling all activities pertaining to cultivation, production, extraction and manufacture, wholesale trade, distribution to pharmacies, import and export, transit, acquisition, sales and delivery of medicines, substances and preparations based on the plant of cannabis for human medical use.

Placing on the market medicines and substances or preparations based on cannabis for medical use equally requires a marketing authorization issued by INFARMED.

Consumption of medicinal products, substances or preparations based on cannabis for human use require a medical prescription and these products are sold exclusively in pharmacies.

As to the labelling of these medicines and substances or preparations based on cannabis, there are two different cases:

- For products classified as medicine for human use, the rules applicable to medicinal products laid down in Decree Law No. 176/2006 of 30 August, Decree Law No. 97/2015 of 1 June and Decree Law No. 282/95 of 26 October shall apply.
- For substances and preparations for human use based on cannabis certain information is mandatory and must be written in Portuguese on the label: name of the product, nature of the substance/preparation, ingredients, pharmaceutical formula, sell-by date, storage conditions, instructions for use, batch and authorization registry number.

Special notices for the user are also mandatory for these products, including possible side effects and warnings about the risk of developing addiction.

All imports of cannabis derived medicinal products, substances and preparations are subject to a previous authorization issued by INFARMED for each operation. Only licensed operators can carry out the activity of import/export of medicines for human or veterinary use and substances and preparations based on cannabis.

Regarding the agriculture production of cannabis for industrial purposes, national legislation lays down that the variety cultivated must have a THC content under 0,2% and be included on the Common Catalogue of Varieties.

Unfortunately, the national framework on agriculture production for industrial purposes followed the rules on the use of hemp products as feed applicable in the European Union, that is allowed provided that the content of THC and Cannabidiol does not exceed the threshold set in the regulation on contaminants and undesirable substances.

IV. TRENDS

Currently there are two draft bills being discussed in Parliament on legalising recreational consumption, cultivation of a limited number of plants, production, distribution, importation and marketing of the plant, substances and preparations of cannabis, without medical prescription.

Since the two main parties of the political spectrum are not fundamentally opposed to a liberalisation in a greater or lesser degree, future legalisation of the recreational use of cannabis is to be expected.

Be that as it may, the national drug strategy clearly prioritises treating and rehabilitating drug addicts, promoting treatment over punishment.

It is regrettable that this strategy of openness to new ideas regarding cannabis does not extend to other illicit drugs in order to allow its legal and controlled sourcing, involving health services and pharmacies, instead of leaving the market in the hands of drug traffickers.

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