

In Spain there is no specific law regulating the production, marketing, import, export and consumption of CBD products, thus the performance of such activities in Spain is subject to the provisions of current national laws and the interpretation of international conventions and applicable court decisions (jurisprudence).

The cultivation of the cannabis plant, regardless of its THC content, is subject to the regulations of the 1961 Single Convention. This was signed and ratified by Spain on 3 February 1966 in the Law 17/1967 of 8 April 1967, which updates the current regulations on narcotic drugs, adapting them to the provisions of the Single Convention, and the Order of 7 May 1963, which lays down the rules for the cultivation of medicinal plants related to narcotic drugs.

Cannabis is generally considered to be a narcotic drug and is included in Schedule I of the Single Convention. Consequently, use is controlled and the cultivation of the cannabis plant is exclusively for industrial (fibre and seeds) or horticultural purposes, as established in Article 28 of the Single Convention and Article 9 of Law 17/1967.

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As a consequence of the above, the cultivation of the cannabis plant is very restricted and requires prior authorization from the Spanish Agency for Medicines and Health Products (AEMPS)¹ unless the crops are intended for industrial purposes (exclusively for obtaining fibre, grain and/or seed) provided that they are free of the active narcotic substance. That is to say that the European Union limit of 0.2 tetrahydrocannabinol (THC) is not exceeded until January 1, 2023 and of 0.3 after that date.

For this percentage not to be exceeded, the European Union requires that to be able to cultivate industrial hemp, certified seeds must be registered in the common catalogue of varieties of agricultural plant species of the European Union, or varieties with a Provisional Marketing Authorisation (PMA), according to the Commission Decision 2004/842/EC of 1 December 2004, whose main characteristic is that the THC concentration is limited to 0.2%. As established in the EU Regulation 2021/2115 of December 2, 2021.

Therefore, the production, manufacture, export, import, distribution, trade, use and possession of cannabis should be limited, as stated in Article 4(c) of the Single Convention,



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Likewise, he is Secretary of the Board of Directors of many companies providing legal advice and compliance. He is also a member of the Barcelona's Bar Association since 2001.

Academic Background

- Law degree (University of Barcelona).
- Master's program of International Business Law from the ESADE Business and Law School.
- Postgraduate in Corporate Law from the Barcelona Bar Association.
- Course of accountancy for lawyers at the Abat Oliba University.

to medical and scientific purposes, and its use for any other purpose is prohibited.

The interest in hemp and its expansion in Spain has led the Ministry of Agriculture, Fisheries and Food (MAPA) to release an informative note on the main conditioning factors of this agricultural activity in the country, especially in relation to the rise of cannabidiol (CBD).

This note differentiates between those crops for which it is not necessary to obtain authorisation from the AEMPS (Agencia Española del Medicamento y Productos Sanitarios) and which are intended for the industrial production of fibre, grain and seed with a tetrahydrocannabinol (THC) content of 0.2% or less,



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and those crops for research and/or medical purposes that do require authorisation from the AEMPS.

As a consequence of the illegal use of the cannabis plant as it is considered a narcotic drug in Spain, it is only possible to extract CBD from the non-controlled parts of the plant; that is, from the seeds or from the leaves not attached to the tops and it is not permitted to extract CBD from the flower or bud of the plant.

Having analysed the legal status of cannabis, it is necessary to determine and analyse which uses of the cannabinoid called Cannabidiol (CBD) are permitted in Spain, especially in food, food supplements and cosmetics.

TOP TIPS

On ensuring commercial success in your jurisdiction

- ✓ The lack of clear regulation means that there are still grey areas. A detailed analysis of the business to be carried out in Spain would be necessary to be able to make a correct interpretation of each assumption and its possible legal fit.
- ✓ The legal landscape in Spain could change shortly and it is important be updated regularly.

In Spain, natural or synthetic substances included in Schedule I and II of the Single Convention are considered to be narcotic drugs.

CBD is listed as a novel food in the European Union. As CBD is classified as a non-authorized novel food in the European Union, the manufacture and marketing of foodstuffs containing CBD for human consumption is prohibited in Spain.

CBD oil and any other product containing CBD cannot be used as a food supplement or marketed as such in Spain or Europe as it is classified as a novel food.

The manufacture of cosmetics with CBD extracted from the cannabis flower is not allowed in Spain as the AEPMS considers that products with CBD obtained as cannabis extract are included in Schedule I. In Spain it is only possible to manufacture cosmetics with CBD from the non-controlled parts of the cannabis plant, that is, the seeds and leaves.

The legality of production in Spain of cosmetics with CBD extracted from the cannabis flower imported from a member state of the European Union where the extraction is legal and its traceability can be demonstrated could be sustained.

Cosmetics containing CBD extracted from the controlled parts of the cannabis plant can be marketed in Spain provided that the CBD has been legally produced in another European Union member state and its traceability can be demonstrated.

Products containing CBD, consisting of gummies and waters, cannot be manufactured and marketed in Spain as foodstuffs, as CBD is considered a novel food, unless they have been authorized as novel food.

Skin care products with CBD could be manufactured and marketed in Spain, as long as their THC content is lower than 0.2%. The CBD extraction comes from the non-controlled part of the hemp plant (leaves and seeds) and the product is for topical application.

The topical CBD products manufactured in Spain, understood as cosmetic, could be considered legal if the CBD extraction were to come from the non-controlled parts of the cannabis plant, that is, the seeds or the leaves not attached to the tops.