

## **Alert** | Regulatory & Administrative Law



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### **Free Movement of Goods in the EU: Lawfully Produced CBD in One Member State Cannot Be Banned in Another EU Member State**

The rules on the free movement of goods within the European Union (Articles 34 and 36 of the Treaty on the Functioning of the European Union, TFEU) “must be interpreted as precluding national legislation which prohibits the marketing of CBD lawfully produced in another Member State when it is extracted from the *Cannabis sativa* plant in its entirety and not solely from its fibre and seeds”, ruled the Court of Justice of the European Union (CJEU) in its judgement of 19 November 2020 ([Case C-663/18](#)). The individual Member States can still implement restrictive legislation if that legislation is appropriate for securing the attainment of the objective of protecting public health and does not go beyond what is necessary for that purpose.

The CJEU rendered its judgement in a case that was referred for prejudicial questions by a French court. The referring French court had to decide an appeal on whether CBD that was (lawfully) produced in the Czech Republic and shipped to France to be packaged and sold in cartridges for electronic cigarettes could be marketed in France. In the first instance, the directors of the company that imported the CBD, which was extracted from the entire plant, into France and marketed it were sentenced to suspended terms of imprisonment of 18 months and 15 months, together with a fine of EUR 10,000.00 each. Pursuant to French law, only the fibre and seeds of hemp may be put to commercial use. The French court of appeal, however, questioned the conformity of this French ban with EU law and put this question to the CJEU.

According to the CJEU, the CBD in this matter does not qualify as a “narcotic drug”. Unlike tetrahydrocannabinol (commonly called THC), another hemp cannabinoid, the CBD in this instance does not appear to have any psychotropic or harmful effect on human health. As a result, the TFEU provisions on the free movement of goods prohibit the French ban on the products that were lawfully produced in the Czech Republic. Under article 34 TFEU, quantitative restrictions on imports (and all measures having equivalent effect) are prohibited between Member States. Pursuant to Article 36 TFEU, Article 34 TFEU does not preclude restrictions justified on grounds of, inter alia, public health.

Such public health risk must, however, to put it briefly, be sufficiently established and not be based purely on hypothetical considerations, according to the CJEU. It is ultimately up to the referring French court to decide on this. The French court of appeal therefore must re-assess the criminal sentence vis-a-vis the directors and review the ban on products made from the entire hemp plant in France, while respecting the judgement of the CJEU.

This judgement is a clear signal that EU law provides strong protection for free movement of CBD within the EU. Producers and importers of CBD in the EU should, however, remain cautious with respect to (additional) restrictions in individual Member States.

*\* This GT Alert is limited to non-U.S. matters and law.*

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