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EU Court of Justice (“ECJ”) rules that CBD is not a narcotic **ECJ Ruling opens up the French market for Cannibidiol products, derived directly from hemp plants.**

In November 2020 the ECJ ruled that CBD must no longer be regarded as a narcotic drug, even under the 1961 UN Single Convention definitions, as decided in the long-running French Kanavape case (an e-cigarette containing CBD oil imported from the Czech Republic). **This ruling applies whether or not CBD is extracted from hemp flowers.**

This ruling may have deeper consequences for the CBD industry in Europe. For example, currently synthetic cannabinoids only are allowed in cosmetic products as CBD extracted from plants has until now been considered a narcotic under the terms of international conventions. Hence the European Commission’s preliminary view that CBD was a narcotic in those terms and so could not be used in foods.

This latest ruling therefore determines that EU member states cannot stop the free movement of goods within the EU on the basis that CBD is now not judged a narcotic. The judges in the Luxembourg court found that national legislation – for example limitations in France saying only CBD extracted from fibre and seeds of hemp may be put to commercial use – is trumped by EU provisions (Articles 34 and 36 of the Treaty on the Functioning of the European Union (TFEU)) that guarantee the free movement of goods within the union. **Furthermore, flower-derived CBD products have now been deemed to have no harmful effects.**

In Summary: The ECJ’s judgement represents a massive victory for the CBD industry. The court largely followed the opinion of the advocate general of the ECJ as it does in most instances.

However, the ECJ went further this time – for example in pointing out the possible limitations on French national courts using public health justifications to limit the sale of CBD. This decision will come as a welcome relief to the industry. And it could have further significant implications going forward. It is hard to see the European Commission’s stance on CBD being a narcotic under UN Convention definitions continuing, given the ECJ’s assessment of specifically that issue.

Conclusion: This ruling paves the way for expanded distribution of CBD-based products, and legitimises many applications of CBD as now deemed non-narcotic within the EU.

It also suggests that the European Commission will need to reverse its opposition to the addition of hemp flower-derived CBD extracts in consumer products.

Expect the UK and Switzerland to follow suit accordingly...

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