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CANNABIS & CBD

A Global Regulatory Trends Overview of the Regulations in the Medicinal, Nutritional, and Recreational Markets

FLN GUIDE

THE NETHERLANDS

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Background

The Netherlands has 570 (so-called) coffeeshops, spread over 102 municipalities. The government tolerates the sale of cannabis by these coffeeshops to consumers. However, the production and supply of this cannabis to coffeeshops is not tolerated and is illegal. This Dutch way of handling soft drugs like cannabis was once unique in Europe and across the world. This tolerance policy was for a long time generally regarded as the most suitable way to regulate the use of soft drugs and limit health risks for users. The idea behind the tolerance policy is that soft drugs like cannabis are less damaging to health than hard drugs, which makes it possible to apply less strict rules.

In the 1970s, this tolerance policy for the sale of cannabis in coffeeshops was introduced to separate the markets for hard and soft drugs. But this separation has also caused problems. More and more, society is drawing attention to the problems caused by the tolerance policy. Mayors in particular have indicated that they experience problems in their municipalities because of this. For example, in the area of public order, public health and subversive crime.

This is different for *Cannabis sativa* L. extracts and other cannabis-based products containing cannabinoids, such as cannabidiol (CBD). The use of CBD in food products is as such legal in the Netherlands. A recent clarification of the EU Novel Food Catalogue however states that products containing CBD are considered novel foods, as a history of safe use has not been demonstrated.

This applies both to the extracts themselves and to the products to which they are added as ingredients. For example, when CBD is added to hempseed oil, a marketing authorization is required and the product can no longer be marketed in the Netherlands. The novel food status also applies to extracts from other plants containing cannabinoids and to synthetically obtained cannabinoids.

New developments on cannabis

Given the issues that have risen regarding sustainability of the tolerance policy, the

government has been putting a small-scale experiment in places since 2020. The experiment must make clear whether it is possible to supply coffeeshops with quality-controlled hemp in a closed coffeeshop chain and what the effects are on public order and public health. The purpose of the experiment is therefore to see if and how growers can supply quality-controlled cannabis to coffeeshops in a decriminalized way.

Legislation has been adjusted in such a way that cultivation, distribution and sales within the experiment are no longer punishable. This is done by the Act on the Experiment Closed Coffeeshop Chain and lower legislation based on that Act.⁴⁷ In the meantime Dutch parliament is working on new legislation to give this experiment a permanent basis in the Dutch Opium Act and therefore permanently decriminalize the selling of soft drugs.⁴⁸ The results of the experiment are to be taken into account in this legislative process.

During the experiment, coffeeshops in 10 participating municipalities sell regulated, quality-controlled cannabis. This cannabis is produced by a maximum of 10 selected growers. The first 7 growers have recently been chosen through a selection procedure and are currently setting up their cultivation facilities.⁴⁹

Recreational

Anyone in the Netherlands is allowed to possess and/or use:

- 5 grams maximum of cannabis;
- a maximum of 5 hemp plants.

For the sale of cannabis, coffeeshops must adhere to rules (the tolerance criteria⁵⁰). A coffeeshop owner must meet the following conditions⁵¹:

- No more than 5 grams of soft drugs per day per person may be sold;
- No hard drugs may be sold;
- No soft drugs may be sold to minors;
- Minors may not be admitted to a coffee shop;
- Alcohol must not be served;
- Drugs and the coffee shop may not be advertised;
- No nuisance may be caused to the surrounding area;
- The commercial stock may not exceed 500 grams;
- No admittance to or sale to anyone other than residents of the Netherlands;
- Sale of soft drugs remains punishable.

In the case that coffeeshop owners do not comply with the conditions, they can be prosecuted and the mayor can (temporarily) close the coffeeshop. In order to prevent nuisance, municipalities can impose additional requirements on a coffee shop. For

⁴⁷wetten.nl - Regeling - Wet experiment gesloten coffeeshopketen - BWBR0042818 (overheid.nl)

⁴⁸[Kamerstuk 34165, nr. A](https://kamerstukken.nl) | [Overheid.nl](https://overheid.nl) > [Officiële bekendmakingen \(officiële bekendmakingen.nl\)](https://overheid.nl)

⁴⁹[Inrichting eerste 7 teeltbedrijven wietexperiment begonnen](https://nieuwsbericht.rijksoverheid.nl) | [Nieuwsbericht](https://nieuwsbericht.rijksoverheid.nl) | [Rijksoverheid.nl](https://rijksoverheid.nl)

⁵⁰[Gedoogbeleid softdrugs en coffeeshops](https://gedoogbeleid.rijksoverheid.nl) | [Drugs](https://gedoogbeleid.rijksoverheid.nl) | [Rijksoverheid.nl](https://rijksoverheid.nl)

⁵¹These are the (so-called) ahojgi-criteria as stipulated in paragraph 3.4 of the Guidelines Opium Act, wetten.nl - [Regeling - Aanwijzing Opiumwet - BWBR0036356 \(overheid.nl\)](https://wetten.nl)

example, adjusted opening hours or a larger distance to schools.

The government wants to counteract nuisance and criminality related to coffeeshops and drug dealing. Therefore, only residents of the Netherlands are allowed to visit a coffeeshop and buy cannabis there. A resident is someone who has his/her (residential) address in a Dutch municipality and who is therefore registered there. The coffeeshop owner is required to verify that he admits only residents of the Netherlands of 18 years and older.

Medical

Under the Opium Act, all actions involving substances covered by the Opium Act are prohibited unless an exemption has been granted. For example, it is forbidden to have on hand, deliver, transport or sell substances that are on list I or list II of the Opium Act. Cannabis is on list II of this Act. An Opium dispensation can be granted by Farmatec in close cooperation with the Office of Medical Cannabis (BMC), both part of the Ministry of Public Health.⁵² It may concern the cultivation of medicinal cannabis.

The BMC is a government organization responsible for the production of cannabis for medicinal and scientific purposes.⁵³ Pharmacists, hospitals and research institutes such as universities can contact the BMC for legal medicinal cannabis. The BMC provides the following products and services:

- Medicinal cannabis within the Netherlands to pharmacies, dispensing physicians and veterinarians;
- Medicinal cannabis to institutions and agencies in other countries if the authorities of those countries agree;
- (Medicinal) Cannabis for scientific research;
- Import and export of cannabis and cannabis resin;
- Opium exemptions for cannabis and cannabis resin.

Patients gain access to these products via a prescription.

Branding and marketing

The tolerance policy provides for far-reaching regulation: under strict conditions the sale of soft drugs in coffeeshops is tolerated. The background to this is that the government wishes to discourage the possession of cannabis for personal use, because of the health risks involved, and wants to prevent users, when purchasing cannabis, from coming into contact with drugs that have a greater health risk (hard drugs). Therefore, paragraph 3.4 of the Guidelines Opium Act stipulates that it is prohibited by law to advertise the selling of cannabis (related) products. This means no form of advertising other than a brief indication on the premises concerned.⁵⁴

The tolerance policy does not allow selling cannabis online. Several of the conditions cannot be checked and/or met, for example the conditions that the buyer is over 18 years old, that it is not allowed to sell more than 5 grams per person and the condition

⁵²[Home | Farmatec](#) this website also contains further information about applying for an import or export exemption (only for exemption holders) and information about how to report this to the government

⁵³[Office of Medicinal Cannabis | The Office of Medicinal Cannabis \(cannabisbureau.nl\)](#)

⁵⁴[wetten.nl - Regeling - Aanwijzing Opiumwet - BWBR0036356 \(overheid.nl\)](#)

that there will not be more than 500 grams of cannabis in store. The fact is, however, that the public prosecution finds it hard to find and charge webshop owners and selling cannabis online is widespread. At the moment no action is being taken against online cannabis outlets.

As for CBD, there are several rulings of the Dutch Advertising Code Committee (prior to the moment food products containing CBD are considered novel foods). CBD is increasingly being used as (an ingredient of) a food supplement. However, as soon as CBD is promoted in a way that it can heal the user of the product, CBD products must be considered medicinal products within the meaning of Section 1(1)(b) of the Dutch Medicines Act.

Under Section 84(1) of the Medicines Act, advertising for or promoting a medicine for which no marketing authorization has been granted, is prohibited. As long as no marketing authorization has been granted for the recommended CBD products, any statement stating the healing effect of the CBD product is not allowed. In case the commendation of the CBD food supplement is accompanied by (allusions to) a medical content, such statements are also in breach of Article 5.2 of the Dutch Advertising Code, which stipulates that advertising with such content is not allowed for health products.⁵⁵

Edibles

Edibles containing cannabis are allowed in the Netherlands as long as the amount of cannabis does not exceed the amount the tolerance policy allows. That means that any edible can only contain 5 grams of cannabis.

CBD in products is not regulated in general, apart from the fact that products that contain CBD are considered novel foods and cannot be marketed without authorization. For other requirements, it will depend on the specific category of product. As for edibles, foods and food supplements, extracts from cannabis, CBD and products made from them are considered as a novel food or potentially novel food (e.g., hemp oil) and can be marketed only under the respective EU legal regulations.

Cannabis Accessories

This category of products concern smoking, vaping and other accessories, which are devices, which can be used for consumption of all kinds of preparations, including cannabis. As such, these products are not illegal and there is no specific regulation in this area. It is only necessary to comply with general rules of promotions and sale of products.

Future Challenges

For the Netherlands, future challenges lie in the results of the current experiment on the closed coffeeshop chain. Is the Netherlands based on these results going to definitely decriminalize growing, selling and using cannabis and to what extent? As there are no results yet, it is difficult to predict what the outcome of this process will be. That there is a wish to decriminalize the growing and selling of soft drugs as soon as it is deemed prudent, that is a certainty.

⁵⁵Advertising Code Committee 4 June 2019, [2019/00310](#)