



HEMP FEDERATION IRELAND

01/12/2022

### **HFI Statement on the Irish High Court Ruling on Hemp published on November 11th 2022**

*Hemp Federation Ireland awaits the Minister for Health's response to [our letter of November 22nd](#) requesting that he address as a matter of urgency the High Court's scientifically unsupported statement on the safety of European foods. Hemp Federation Ireland again urges the Department of Health to issue an immediate clarifying statement to prevent unnecessary alarm in European food consumers and potential damage to the European hemp industry and farms and businesses operating in the sector in all Member States.*

The Minister for Health should not be advising that an EU CAP regulated farm crop and EU food products under EFSA's scientific remit are dangerous drugs unless he has scientific evidence to demonstrate the fact. The Department of Health is aware that the European Food Safety Authority considers *all* CBD extracts equally as food and Ireland's Minister for Health should not be advising otherwise. Natural CBD extracts containing traces of THC are increasingly popular with food consumers throughout Europe and scientifically unsupported claims that they pose a threat to human life and health are inappropriate. If Ireland's Minister for Health has scientific evidence to support claims of a danger to EU food consumers, then the Minister for Health is required to inform the European Commission about it. As matters stand there is no evidence that the EU Commission has been advised of any such danger.

Hemp Federation Ireland has also requested the Food Safety Authority of Ireland (FSAI) and the Health Products Regulatory Authority (HPRA) to publicly confirm the legality of all CBD food products falling

within the remit and scientific competence of the European Food Safety Authority (EFSA). **The European Food Safety Authority is responsible for authorising the scientific safety of all foods on the EU Market and European citizens are among the best protected and informed food consumers in the world.** The World Health Organisation has repeatedly clarified that natural CBD foods and agricultural goods containing traces of THC below 0.2% pose no threat to human health. In line with established safety protocols, EFSA considers all CBD extracts equally as food, including natural plant extracts which contain traces of THC.

The Food Safety Authority of Ireland (FSAI) is responsible for ensuring the safety of foods on the Irish market and for ensuring that EU food and food safety law is correctly applied in Ireland. **FSAI advises that it has no safety concerns regarding the THC content of any food that can possibly be made from the legal EU hemp crop.** Natural hemp foods made from the flowers of the crop have been widely available on the EU market for many decades and FSAI advises that it has no safety concerns regarding the flowers of the crop. FSAI advises that CBD made using the flowers of the crop is a legal, traditional food product in Ireland. FSAI advises that Irish farmers and food business operators are legally entitled to continue to use all parts of their crop to make their products in accordance with EU law.

EU General Food Law Regulation (EC) No 178/2002 sets out the overarching EU framework for the development of food and feed legislation both at Union and national levels. It lays down the requirements and procedures that underpin decision making in all matters of EU food and feed safety, and covers all stages of food and feed production and distribution. **Foods coming under EFSA's scientific remit are by legal definition not drugs and cannot be classified, regulated, or distributed as drugs or medicines in Europe.** All products satisfying the requirements of EU food and food safety law are entitled to rely on the free trade provisions of Articles 34 & 36 of the Treaty Forming the European Union (TFEU). No drug licensing can apply to such foods and they also cannot be circulated on the EU market through distribution channels reserved for medicines.

The Health Products Regulatory Authority (HPRA) is responsible for ensuring the correct interpretation and application of stringent rules governing the distribution of products such as human and veterinary medicines, medical devices, blood and blood components, tissues and cells, organs for transplantation etc on the EU market. **HPRA is not authorised to distribute, designate, describe or recommend the regulation of foods under EFSA's scientific remit as medicines and illegal drugs.** The only way EU foods could ever be regulated as controlled drugs is if accurate scientific evidence confirming they are

drugs (and therefore cannot be foods) has first been provided. As matters stand under EU law, natural CBD food extracts containing THC are foods and therefore they cannot be drugs or medicines.

It is an absolute requirement that Ireland's Minister for Health must immediately inform EU authorities of any scientifically established threat to the life and health of European food consumers. Hemp Federation Ireland's recent communications with EU authorities indicate that they have not been advised that the hemp crop and CBD food extracts containing traces of THC are dangerous drugs. **Hemp Federation Ireland has therefore asked the Minister for Health to confirm that he has produced the required scientific evidence, what that evidence is, and when he informed the European Commission about it.**

If no appropriate scientific evidence exists, the Minister for Health must confirm the scientific authority of EFSA in relation to EU foodstuffs and correctly inform the Oireachtas that EFSA considers all CBD extracts equally as food, including natural extracts containing traces of THC.

In May of this year, the European Commission's Directorate General on Agriculture (DG-AGRI) formally advised that Member States should not be regulating the hemp crop and derived foods as narcotics. The Commission advised that the association of hemp and CBD products with drugs is wrong and mistaken and is **hampering important developments in the sector building on the sustainability credentials of the crop.** According to DG AGRI, the main policy focus for the European hemp sector is the continued production on hemp farms across Europe of *sustainably produced*, natural CBD for use as food, food supplements, food additives and flavourings and for use in cosmetics and other consumer goods <sup>1</sup>.

- The policy advice of the Climate Change Advisory Council and Bord Bia also confirms the importance of hemp and all natural hemp foods in the context of climate change and EU climate policy objectives which are based in IPCC science. The UN also recommends a whole plant approach to the future development of the global industry in order to capture the integrated environmental potentials of the crop and recommends legislative reform to support this approach. Rather than misrepresenting the hemp crop and products as dangerous drugs in the absence of appropriate scientific evidence, Irish authorities should be supporting EU and global climate policy

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<sup>1</sup> <https://twitter.com/HempFedIreland/status/1553736448133718017>

objectives which are relevant to the protection of human life and health and which *are* based in accurate science.

Overall, the Irish Court appears to have been convinced that Ireland is adopting a reasonable approach to a completely unfamiliar crop, in the absence of any established industry, any established regulatory practices, or any legitimate stakeholders. **This understanding appears fundamental to the Court's further reasoning**, including that Ireland should not be forced into "relaxing" what the Court believes is a long established practice of criminalising minute traces of THC in agricultural hemp and derived goods in line with the 1971 Convention. **In reality, Ireland has never maintained any such approach to the THC content in the EU crop and Irish farmers have been encouraged, incentivised and rewarded for making the very products the Minister for Health now insists have always been illegal in Ireland.**

Ireland's Minister for Health is aware that Irish farmers are legally entitled to continue to use all parts of their crop and that EU agricultural policy promotes the continued production of sustainable CBD on farms throughout Europe. The Irish Court appears convinced that Irish farmers would not be disadvantaged compared to their EU Counterparts if they were restricted to using only the fibres and seed of their crop. Such an approach immediately removes 80% of annual Irish farm incomes in the sector. The Court believes that activities such as importing hemp fibre are permitted when in reality they are not. As the Minister for Health issues the farm licences, he is fully aware that Ireland has one of the oldest hemp industries in Europe and that Irish people have been earning their living in the sector for decades. **The Irish High Court somehow comes to believe that no farmers, no industry and no stakeholders have ever existed in Ireland.**

The written judgement doesn't indicate the basis on which the Court came to this understanding, nevertheless, **the long history of hemp production in Ireland and the existence of long standing industry stakeholders implies the existence of legal rights and entitlements and an established regulatory framework corresponding to EU agriculture, food and trade law.** Hemp Federation Ireland is therefore hopeful that the High Court may, in the interests of natural justice, choose to reveal the basis on which it concluded that Irish hemp farmers and operators, some of them earning their livings in the sector for decades, never actually existed.