Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

4 October 2024*

(Reference for a preliminary ruling – Agriculture – Organic production and labelling of organic products – Regulation (EU) 2018/848 – Use of certain products and substances in organic production and their listing – Derogation – Implementing Regulation (EU) 2021/1165 – Annex II – Concepts of 'factory farming' and 'landless livestock production' – Consumer confidence – Animal welfare – Respect for the environment and the climate – Criteria)

In Case C-228/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 12 April 2023, received at the Court on 12 April 2023, in the proceedings

Association AFAÏA

v

Institut national de l'origine et de la qualité (INAO),

intervener:

Ministre de l'Agriculture et de l'Alimentation,

THE COURT (First Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, T. von Danwitz, P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 21 February 2024,

after considering the observations submitted on behalf of:

– AFAÏA, by B. Le Bret, R. Rard, avocats, and A. Tricaud, acting as expert,

* Language of the case: French.

– the French Government, by G. Bain, J.-L. Carré, B. Fodda and M. de Lisi, acting as Agents,

– the Finnish Government, by M. Pere, acting as Agent,

– the European Commission, by A. Dawes and B. Hofstötter, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 April 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Annex II to Commission Implementing Regulation (EU) 2021/1165 of 15 July 2021 authorising certain products and substances for use in organic production and establishing their lists (OJ 2021 L 253, p. 13) ('Implementing Regulation 2021/1165'), adopted for the purpose of implementing Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products, and repealing Council Regulation (EC) No 834/2007 (OJ 2018 L 150, p. 1 and corrigendum OJ 2019 L 305, p. 59) ('Regulation 2018/848').

2 The request has been made in proceedings between the association AFAÏA, which is a French trade association for the protection of the collective interests of organic fertiliser producers ('AFAÏA'), and the Institut national de l'origine et de la qualité (INAO) (National Institute of Origin and Quality (INAO), France) ('the INAO'), which is a French public administrative institution, concerning the definition of the concept of 'factory farming' used by the INAO in its reading guide for the application of Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ 2007 L 189, p. 1) and Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2008 L 250, p. 1) ('the reading guide').

Legal context

The EIA Directive

3 Article 2(1) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1) ('the EIA Directive'), provides:

'Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.'

4 Article 4(1) of that directive provides:

‘Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.’

5 Under point 17 of Annex I to that directive:

‘Installations for the intensive rearing of poultry or pigs with more than:

(a) 85 000 places for broilers, 60 000 places for hens;

(b) 3 000 places for production pigs (over 30 kg); or

(c) 900 places for sows.’

Directive 2018/848

6 Recitals 1, 2, 4, 6, 15, 40, 43, 44, 63 and 123 of Regulation 2018/848 state:

‘(1) Organic production is an overall system of farm management and food production that combines best environmental and climate action practices, a high level of biodiversity, the preservation of natural resources and the application of high animal welfare standards and high production standards in line with the demand of a growing number of consumers for products produced using natural substances and processes. Organic production thus plays a dual societal role, where: on the one hand, it provides for a specific market responding to consumer demand for organic products and, on the other hand, it delivers publicly available goods that contribute to the protection of the environment and animal welfare, as well as to rural development.

(2) The observance of high standards for health, the environment and animal welfare in the production of organic products is intrinsic to the high quality of those products. As underlined in the communication of the [European] Commission of 28 May 2009 on agricultural product quality policy, organic production forms part of the Union’s agricultural product quality schemes, together with geographical indications and traditional specialities guaranteed in accordance with Regulation (EU) No 1151/2012 of the European Parliament and of the Council [of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1)] and products of the outermost regions of the Union in accordance with Regulation (EU) No 228/2013 of the European Parliament and of the Council [of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 (OJ 2013 L 78, p. 23)]. In this sense, organic production pursues the same objectives within the common agricultural policy (“CAP”), which are inherent to all the agricultural product quality schemes of the Union.

…

(4) Furthermore, organic production is a system that contributes to the integration of environmental protection requirements into the CAP and that promotes sustainable agricultural production. …

…

(6) In view of the objectives of the Union's organic production policy, the legal framework established for implementing that policy should aim at ensuring fair competition and the proper functioning of the internal market in organic products, at maintaining and justifying consumer confidence in products labelled as organic, and at providing conditions under which the policy can progress in line with production and market developments.

…

(15) Research projects have demonstrated that consumer confidence is crucial in the market for organic food. In the long run, rules that are not trustworthy can jeopardise public confidence and lead to market failure. Therefore, the sustainable development of organic production in the Union should be based on sound production rules which are harmonised at Union level and which meet operators' and consumers' expectations regarding the quality of organic products and compliance with the principles and rules laid down in this Regulation.

…

(40) As livestock production naturally involves the management of agricultural land, where manure is used to nourish crop production, landless livestock production should be prohibited, except in the case of beekeeping. …

…

(43) Animal health management should mainly be based on the prevention of disease. In addition, specific cleaning and disinfection measures should be applied. The preventive use of chemically synthesised allopathic medicinal products, including antibiotics, should not be permitted in organic production. In the event of sickness or injury of an animal requiring immediate treatment, the use of such products should be limited to the minimum necessary to re-establish the well-being of the animal. …

(44) Organic livestock housing conditions and husbandry practices should satisfy the behavioural needs of the animals and should ensure a high level of animal welfare, certain aspects of which should go beyond the Union animal welfare standards applicable to livestock production in general. In most cases, livestock should have permanent access to open-air areas for exercise. Any suffering, pain or distress should be avoided, or should be kept to a minimum at all stages of the animals' lives. Tethering and mutilation, such as tail-docking for sheep, beak trimming in the first three days of life and disbudding, should only be possible if allowed by competent authorities, and only under certain conditions.

…

(63) The use in organic production of certain products or substances as active substances to be used in plant protection products falling within the scope of Regulation (EC) No 1107/2009 [of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1)], fertilisers, soil conditioners, nutrients, non-organic

components of animal nutrition of various origin, feed additives, processing aids and products for cleaning and disinfection should be limited to the minimum and made subject to the specific conditions laid down in this Regulation. …

…

(123) … the objectives of this Regulation [are], in particular fair competition and the proper functioning of the internal market in organic products, as well as ensuring consumer confidence in those products and in the organic production logo of the European Union …'

7 Article 3(1) of Regulation 2018/848 provides that 'organic production' means 'the use of … production methods that comply with this Regulation at all stages of production, preparation and distribution'.

8 Article 4 of that regulation mentions, among the general objectives of organic production:

'(a) contributing to protection of the environment and the climate;

(b) maintaining the long-term fertility of soils;

(c) contributing to a high level of biodiversity;

(d) substantially contributing to a non-toxic environment;

(e) contributing to high animal welfare standards and, in particular, to meeting the species-specific behavioural needs of animals;

…'

9 Under Article 5 of that regulation, entitled 'General principles':

'Organic production is a sustainable management system that is based on the following general principles:

(a) respect for nature's systems and cycles and the sustainment and enhancement of the state of the soil, the water and the air, of the health of plants and animals, and of the balance between them;

…

(d) the production of a wide variety of high-quality food and other agricultural and aquaculture products that respond to consumers' demand for goods that are produced by the use of processes that do not harm the environment, human health, plant health or animal health and welfare;

(e) ensuring the integrity of organic production at all stages of the production, preparation and distribution of food and feed;

…

(g) the restriction of the use of external inputs; where external inputs are required or the appropriate management practices and methods referred to in point (f) do not exist, the external inputs shall be limited to:
(i) inputs from organic production; …
(ii) natural or naturally derived substances;

…

…

(j) the observance of a high level of animal welfare respecting species-specific needs.'

10 Article 6 of that regulation provides:

'As regards agricultural activities and aquaculture, organic production shall, in particular, be based on the following specific principles:

(a) the maintenance and enhancement of soil life and natural soil fertility, soil stability, soil water retention and soil biodiversity, preventing and combating loss of soil organic matter, soil compaction and soil erosion, and the nourishing of plants primarily through the soil ecosystem;

(b) the limitation of the use of non-renewable resources and external inputs to a minimum;

…

(k) the practice of site-adapted and land-related livestock production;

(l) the application of animal husbandry practices which enhance the immune system and strengthen the natural defence against diseases, including regular exercise and access to open air areas and pastures;

…'

11 The first subparagraph of Article 9(3) of Regulation 2018/848 provides:

'For the purposes and uses referred to in Articles 24 and 25 and in Annex II, only products and substances that have been authorised pursuant to those provisions may be used in organic production, provided that their use in non-organic production has also been authorised in accordance with the relevant provisions of Union law and, where applicable, in accordance with national provisions based on Union law.'

12 Under Article 12(1) of that regulation:

'Operators that produce plants or plant products shall comply, in particular, with the detailed rules set out in Part I of Annex II.'

13 Article 24 of that regulation, entitled 'Authorisation of products and substances for use in organic production', provides:

'1. The Commission may authorise certain products and substances for use in organic production, and shall include any such authorised products and substances in restrictive lists, for the following purposes:

…

(b) as fertilisers, soil conditioners and nutrients;

…'

14 Annex II to that regulation includes Part I, entitled 'Plant production rules', which provides:

'…

1.9.2. The fertility and biological activity of the soil shall be maintained and increased:

…

(c) in all cases, by the application of livestock manure or organic matter, both preferably composted, from organic production.

…

1.9.3. Where the nutritional needs of plants cannot be met by the measures provided for in points 1.9.1 and 1.9.2, only fertilisers and soil conditioners that have been authorised pursuant to Article 24 for use in organic production shall be used, and only to the extent necessary. …'

Implementing Regulation 2021/1165

15 Article 2 of Implementing Regulation 2021/1165 reads as follows:

'For the purposes of point (b) of Article 24(1) of Regulation [2018/848], only the products and substances listed in Annex II to this Regulation may be used in organic production as fertilisers, soil conditioners and nutrients for plant nutrition … provided that they are compliant with the relevant provisions of Union law …'

16 Annex II to that implementing regulation provides:

'Fertilisers, soil conditioners and nutrients … listed in this Annex may be used in organic production, provided that they are compliant with

– the relevant Union and national legislations on fertilising products, in particular, where applicable, Regulation (EC) 2003/2003 [of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (OJ 2003 L 304, p. 1)] and Regulation (EU) 2019/1009 [of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC)

No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (OJ 2019 L 170, p. 1)]; and

– Union legislation on animal by-products, in particular Regulation (EC) No 1069/2009 [of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (OJ 2009 L 300, p. 1)] and [Commission] Regulation (EU) No 142/2011 [of 25 February 2011 implementing Regulation (EC) No 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ 2011 L 54, p. 1)], in particular Annexes V and XI.

In accordance with point 1.9.6 of Part I of Annex II to Regulation [2018/848], preparations of micro-organisms may be used to improve the overall condition of the soil or to improve the availability of nutrients in the soil or in the crops.

They may only be used according to the specifications and restrictions of use of those respective Union and national legislations. More restrictive conditions for use in organic production are specified in the right column of the tables.

Name Compound products or products containing only materials listed hereunder	Description, specific conditions and limits
Farmyard manure	product comprising a mixture of animal excrements and vegetable matter (animal bedding and feed material) factory farming origin forbidden
Dried farmyard manure and dehydrated poultry manure	factory farming origin forbidden
Composted animal excrements, including poultry manure and composted farmyard manure included	factory farming origin forbidden
Liquid animal excrements	use after controlled fermentation and/or appropriate dilution factory farming origin forbidden

…’

The facts of the main proceedings and the questions referred for a preliminary ruling

17 It is apparent from the request for a preliminary ruling that, in January 2020, the INAO amended its reading guide. On that occasion, it interpreted the prohibition, laid down in Annex I to Regulation No 889/2008 and now appearing in Annex II to Implementing Regulation 2021/1165, of the use, on organic land, of fertilisers and soil conditioners of animal origin which are of ‘factory farming origin’ as excluding manure ‘from livestock raised in integral slatted or grid systems and exceeding the thresholds defined in Annex I to Directive [2011/92]’, and manure from ‘livestock raised in cages and exceeding’ those thresholds.

18 Before the Conseil d'État (Council of State, France), which is the referring court, AFAÏA sought annulment of the decision of 4 February 2020 by which the INAO rejected its application for amendment of the reading guide in so far as that guide defined the concept of 'factory farming' used therein and that the INAO should be ordered to amend that guide accordingly within one month of notification of the decision of that court and to attach to the amendment at issue publicity measures to show that the interpretation of that concept contained in that guide was no longer in force.

19 The INAO contends that, in the reading guide, it drew the conclusions from the change in terminology made by the EU legislature in the French version of Regulations No 834/2007 and No 889/2008, repealed by Regulation 2018/848, in so far as the legislature replaced the concept of 'factory farming' ('élevage industriel') with the concept of 'landless livestock production' ('élevage hors sol') which appeared in the regulation preceding Regulations No 834/2007 and No 889/2008. By interpreting the concept of 'factory farming' as referring to the livestock housing conditions, both in terms of freedom to move and access to outdoor spaces and in terms of stocking density, and by following the ordinary meaning of that concept, that is to say, as referring to the mechanisation of processes and mass production, the French authorities intended to exclude holdings whose size and farming conditions are incompatible with the objectives of Regulation 2018/848, including animal welfare and consumer confidence in the organic production chain.

20 The referring court observes that it is apparent from the relevant provisions of Regulation 2018/848 and of Implementing Regulation 2021/1165 that, for organic crop production, livestock manure used for soil fertilisation must in principle itself originate from organic production, but that where this is not sufficient to cover the nutritional needs of crops, and only to the extent necessary, fertilisers and soil conditioners permitted for organic farming, as defined in Annex II to that regulation, may be used.

21 It also follows from those provisions that, in organic livestock production, landless production is prohibited, cages, boxes and slatted flat decks cannot be used to raise any livestock species and livestock housing must, for bovine, ovine and porcine animals, have a solid laying or rest area which is not slatted, for poultry, at least one third of the floor area must be solid and not of slatted or of grid construction, and for laying hens, a sufficiently large part of the floor area must be available for the collection of bird droppings. Nonetheless, those factors alone are not sufficient to determine whether the concept of 'factory farming' in Annex II to Implementing Regulation 2021/1165, must be equated with the concept of 'landless livestock production', and whether, failing that, it necessarily includes, above a certain number of animals, the use of systems composed entirely of slats, grids or cages.

22 The referring court notes that the concept of 'factory farming' ('élevage industriel'), used in the French version of Implementing Regulation 2021/1165, is not defined by that regulation, nor by Regulation 2018/848, nor by the earlier regulations which used that concept. Although that concept appears in most of the language versions of that implementing regulation, some versions include the concept of 'landless livestock production' ('élevage hors sol'), a concept which is likewise not defined in that regulation or in that implementing regulation.

23 That court also states that it is apparent from the note adopted by the expert group, which was convened by the Commission in May 2021 to determine the scope of the concept of 'factory farming', that, if it is not possible to give a precise definition, the application of that concept should be based on a set of indicia.

24 The referring court also notes that the abovementioned divergence between the different language versions of Implementing Regulation 2021/1165 already existed between the language versions of Regulation No 889/2008, and that the concept of 'factory farming' is interpreted differently in different Member States.

25 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Annex II to [Implementing Regulation 2021/1165], which was adopted to implement Regulation [2018/848], to be interpreted as meaning that the concept of factory farming contained therein is equivalent to that of landless livestock production?

(2) If the concept of factory farming is distinct from the concept of landless livestock production, what criteria must be used to determine whether a livestock holding must be categorised as factory farming within the meaning of Annex II to [Implementing] Regulation [2021/1165]?'

Consideration of the questions referred

The first question

26 By its first question, the referring court asks, in essence, whether the third paragraph of Annex II to Implementing Regulation 2021/1165 must be interpreted as meaning that, as regards preparations of micro-organisms which may be used to improve the overall condition of the soil or the availability of nutrients in the soil or the crops, the expression 'factory farming origin forbidden', used in the table set out in that annex, amounts to a prohibition only of preparations from 'landless' livestock production.

27 It should be noted, as a preliminary point, that that implementing regulation was adopted on the basis of Regulation 2018/848, Article 12 of which provides that operators producing plants or plant products are to comply, in particular, with the detailed rules set out in Part I of Annex II to that regulation.

28 Point 1.9.1 of Part I provides, in respect of soil management and fertilisation, that in organic plant production, use should be made of tillage and cultivation practices which preserve or increase soil organic matter, enhance soil stability and its biodiversity, and prevent its compaction and erosion. In accordance with point 1.9.2(c) of Part I, the fertility and biological activity of the soil shall be maintained and increased, in principle, by the application of livestock manure or organic matter, both preferably composted, from organic production.

29 That said, as is apparent from point 1.9.3 of Part I, where the nutritional needs of plants cannot be met by the measures provided for in points 1.9.1 and 1.9.2, only fertilisers and soil conditioners that have been authorised pursuant to Article 24 of Regulation 2018/848 for use in organic production are to be used, and only to the extent necessary.

30 Under Article 24(1)(b) of that regulation, the Commission may authorise certain products and substances for use in organic production and, subsequently, include those authorised products and substances in restrictive lists as fertilisers, soil conditioners and nutrients.

31 Those fertilisers, soil conditioners and nutrients are the subject of Annex II to Implementing Regulation 2021/1165, the second paragraph of which provides that, in accordance with point 1.9.6 of Part I of Annex II to Regulation 2018/848, preparations of micro-organisms may be used to improve the overall condition of the soil or to improve the availability of nutrients in the soil or in the crops.

32 Under the third paragraph of that annex, those preparations may be used only in accordance with the specifications and restrictions on the use set out in the respective national and EU legislation. More restrictive conditions for use in organic production are specified in the right column of the table in that paragraph.

33 That table specifies that, in organic production, 'factory farming origin' is prohibited for products like farmyard manure, dried farmyard manure and dehydrated poultry manure, composted animal excrements, including poultry manure and composted farmyard manure as well as liquid animal excrements.

34 Thus, it follows from a combined reading of the abovementioned provisions of Regulation 2018/848 and Implementing Regulation 2021/1165 that operators who produce plants or plant products in organic production may, by way of derogation and only to the extent necessary, use certain products and substances of non-organic production authorised by the Commission, namely those mentioned in the preceding paragraph of this judgment, provided that those products and substances do not come from 'factory farming'.

35 The referring court's questions are explained, in particular by the fact that the expression 'factory farming' and the expression 'landless livestock production' are both present in the different language versions of Regulation 2018/848 and of Implementing Regulation 2021/1165, and that they have been used alternately or successively in the regulations preceding the latter two acts.

36 It should be noted that, in the French-language version of Implementing Regulation 2021/1165, Annex II of the latter uses one and the same expression, namely '*provenance d'élevages industriels interdite*' ('factory farming origin forbidden'). Most of the other language versions of that annex, such as the German, Estonian, Greek, English, Italian or Romanian version, also use one and the same expression (respectively, '*Erzeugnis darf nicht aus industrieller Tierhaltung stammen*', '*tööstuslikust tootmisest pärit toote kasutamine on keelatud*', '*η προέλευση από εντατικοποιημένη εκτροφή απαγορεύεται*', '*factory farming origin forbidden*', '*proibiti se proveniente da allevamenti industriali*' and '*provenienţa din ferme industriale este interzisă*'), the meaning of which corresponds to that of the expression used in the French-language version, or the expressions close to 'intensive production' or to 'large-scale production', in the Bulgarian, Spanish or Czech versions (respectively, '*забранен е произходът от интензивни животновъдни стопанства*', '*Prohibida la procedencia de ganaderías intensivas*' and '*Nesmí pocházet z velkochovu*').

37 However, three language versions of that annex, namely the Danish, Dutch and Portuguese versions, use the separate concepts of 'land-free livestock production' or 'landless livestock production' (respectively, '*ikke fra jordløst husdyrbrug*', '*Het product mag niet afkomstig zijn van niet-grondgebonden veehouderij*' and '*Proibidos os produtos provenientes das explorações pecuárias "sem terra"*').

38 In that regard, it should be recalled that since all language versions of an EU act must, in principle, be recognised as having the same value, in the case of divergence between those versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgment of 15 June 2023, *Saint-Louis Sucre (Recognition of a producer organisation)*, C-183/22, EU:C:2023:486, paragraph 28 and the case-law cited).

39 Furthermore, in accordance with the Court's case-law, it follows from the need for a uniform application of EU law and from the principle of equality, that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union; that interpretation must take into account the context of the provision and the purpose of the relevant regulations (judgments of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11, and of 30 March 2023, *Hauptpersonalrat der Lehrerinnen und Lehrer*, C-34/21, EU:C:2023:270, paragraph 40).

40 Indeed, a fundamentally different approach may give rise to differences between the Member States which might hinder the functioning of the internal market (see, to that effect, judgment of 18 November 2021, *Visma Enterprise*, C-306/20, EU:C:2021:935, paragraph 38).

41 In the present case, it is apparent, specifically from the documents before the Court, that, in the light of the equally divergent versions of the applicable provisions prior to the relevant provisions of Implementing Regulation 2021/1165, some Member States treat the concept of 'factory farming' in the same way as that of 'landless livestock production', whereas other Member States distinguish between the two concepts and define the concept of 'factory farming' by reference to technical requirements and to thresholds on the number of animals, which vary, or even also to feeding requirements. Such differences are liable to distort competition and undermine the achievement of the objectives of EU policy on organic production and on the environment.

42 In accordance with the case-law referred to in paragraph 38 of the present judgment, it is necessary to examine whether the concepts of 'factory farming' and of 'landless livestock production' have the same meaning, having regard to their usual meaning in everyday language.

43 It should be noted, in that regard, that neither Implementing Regulation 2021/1165 nor any other text of EU law defines the terms 'factory farming' or 'landless livestock production'.

44 According to their usual meaning, the term 'factory' or 'intensive' refers to a form of large-scale production, which is intended to optimise the yield of that activity, in particular by increasing the density of animals on the holding or by shifting, to a greater or lesser degree, away from the surrounding environment through confinement of those animals. Livestock is generally housed and kept under artificially created and controlled conditions, and reared using methods aimed at maximising production in the shortest possible period of time.

45 As the Advocate General has also observed in point 38 of his Opinion, factory farming generally requires high investment, and involves the use of enriched foods and preventative antibiotics. It is characterised by high productivity and may lead to significant environmental pollution. Furthermore, specific protection of animal welfare is not generally one of its priorities.

46 With regard to the concept of 'landless livestock production', it should be noted that point 1.1 of Part II of Annex II to Regulation 2018/848 states that 'landless livestock production' is prohibited where a farmer intending to produce organic livestock does not manage agricultural land and has

not established a written cooperation agreement with a farmer as regards the use of organic production units for that livestock. In addition, Article 16 of Regulation No 889/2008 states that landless livestock production, by which the farmer does not manage the agricultural land and/or has not established a written cooperation agreement with another operator in accordance with Article 3(3) of that regulation, is prohibited.

47 According to its usual meaning in everyday language, 'landless' livestock production corresponds to a type of 'factory' or 'intensive' farming in which the feed supply does not come, for the most part or entirely, from the agricultural holding where the animals are reared.

48 Therefore, although the concepts of 'factory farming' and 'landless livestock production' both refer to the mechanisation of processes of production and to the large-scale nature of that production, it must be held that, contrary to what AFAÏA claims, they do not have the same meaning. As is apparent from paragraphs 44 to 47 of the present judgment, the concept of 'factory farming' is appreciably broader than that of 'landless livestock production' and, therefore, those concepts must be regarded as being different.

49 It is also necessary to examine the general scheme of Annex II to Implementing Regulation 2021/1165 and the purpose of the legislation of which it forms part.

50 As regards the general scheme of that annex, as has been pointed out in paragraphs 27 to 34 of the present judgment, it follows from a combined reading of Article 12(1) and Article 24(1) of, and point 1.9 of Part I of Annex II to, Regulation 2018/848 that operators who produce plants or plant products in organic production may derogate from the rules laid down in that annex and use certain products and substances of non-organic production which have been authorised by the Commission, only to the extent necessary.

51 In that regard, it must be borne in mind that, according to settled case-law, derogating provisions must be interpreted strictly (see, to that effect, judgment of 7 February 2023, *Confédération paysanne and Others* (In vitro *random mutagenesis*), C-688/21, EU:C:2023:75, paragraph 49 and the case-law cited).

52 That applies to the derogation provided for in Annex II to Implementing Regulation 2021/1165, which means that the limits to that derogation, laid down in that annex, namely, inter alia, the prohibition on using preparations from 'factory farming', must, on the contrary, be interpreted broadly.

53 The interpretation, supported by AFAÏA, according to which the concept of 'factory farming' corresponds solely to the concept of 'landless livestock production', results in manure from all 'factory' farming other than 'landless' livestock production being authorised for use in organic farming. That interpretation therefore amounts to a broad interpretation of the scope of that derogation and is therefore contrary to the principle referred to in paragraph 51 of the present judgment.

54 AFAÏA further submits that organic livestock production is intrinsically linked to land use, from which it should be inferred, *a contrario*, that the prohibition at issue in the main proceedings applies only to products from 'landless' livestock production.

55 It is true that, in accordance with the overall approach which characterises organic farming, as set out, in particular in recital 40 of Regulation 2018/848, and as is apparent from the requirements laid down in Article 5(a) and (d) of that regulation, livestock production must be land-related. However, that means only that the 'landless' type of farming is not compatible with the principles of organic farming and, therefore, is purely and simply prohibited in that context.

56 Moreover, it is apparent from Article 6(l) of that regulation that organic farming is also based on the implementation of husbandry practices which enhance the immune system and strengthen natural defences of animals against diseases, including regular exercise and access to open air areas and pastures. Furthermore, that regulation prohibits genetically modified organisms in feed and significantly limits the use of plant protection products.

57 It cannot therefore be asserted that organic farming is characterised solely by a certain method of land management and, therefore, that the ground for the prohibition at issue in the main proceedings is exclusively linked to land use.

58 That farming method is more broadly linked to ethical production methods, as set out, in essence, in recital 2 of Regulation 2018/848 and, in particular to livestock housing conditions, both in terms of freedom to move and access to outdoor spaces, and in terms of stocking density.

59 By declaring on several occasions its intent to observe a high level of animal welfare in organic farming, the EU legislature intended to highlight the fact that that method of agricultural production is characterised by the observance of enhanced standards with regard to animal welfare in all locations and at all stages of production where it is possible further to improve that welfare (see, to that effect, judgment of 26 February 2019, *Œuvre d'assistance aux bêtes d'abattoirs*, C-497/17, EU:C:2019:137, paragraph 38).

60 In the light of those requirements, it cannot be accepted that livestock manure from 'factory' or 'intensive' livestock holdings is authorised as organic manure.

61 That interpretation is supported by the objectives of Regulation 2018/848.

62 It should be noted that, as is apparent from recital 1 of Regulation 2018/848, organic production is an overall system of farm management and food production that combines best environmental and climate action practices, a high level of biodiversity, the preservation of natural resources and the application of high animal welfare standards and high production standards in line with the demand of a growing number of consumers for products produced using natural substances and processes.

63 As provided for in Article 4 of Regulation 2018/848, that method of production is aimed broadly at protection of the environment and the climate, a high level of biodiversity and the maintenance of long-term fertility of soils. It seeks to contribute significantly to a non-toxic environment and to high animal welfare standards and, in particular, to meet species-specific behavioural needs of animals. It also seeks to encourage short distribution channels and local production in the various areas of the European Union, as well as to encourage the preservation of rare and native breeds in danger of extinction.

64 In that regard, it is important to ensure that consumers are reassured that products bearing the organic logo of the European Union have actually been obtained in observance of the highest standards, in particular with regard to respect for the environment and animal welfare (see, to that effect, judgment of 26 February 2019, *Œuvre d'assistance aux bêtes d'abattoirs*, C-497/17, EU:C:2019:137, paragraph 51).

65 As the Advocate General observed, in essence, in points 52 and 54 of his Opinion, it must be held that consumers' legitimate expectations are guaranteed if the manure used in organic farming comes from organic sources or, where that is not sufficient, and only in that case, if non-organic manure is used, provided that the latter does not come from factory farming.

66 Thus, a derogation allowing, broadly, the use of products from factory or intensive farming would clearly run counter to those objectives and would be contrary to the requirements of consistency and to the ethical and environmental principles at the very foundations of organic farming.

67 It should be added that that interpretation is also consistent with the objective pursued by point 1.9.3 of Part I of Annex II to Regulation 2018/848, which is to provide organic farmers with an alternative to organic livestock manure where that is not available, only to the extent necessary and while limiting the presence of undesirable residues in that manure.

68 Therefore, it must be held that the concept of 'factory farming' in Annex II to Implementing Regulation 2021/1165 does not correspond to that of 'landless livestock production' and that the prohibition laid down in that annex covers all 'factory' farming and not only 'landless' livestock production.

69 In the light of the foregoing considerations, the answer to the first question is that the third paragraph of Annex II to Implementing Regulation 2021/1165 must be interpreted as meaning that, as regards preparations of micro-organisms which may be used to improve the overall condition of the soil or the availability of nutrients in the soil or the crops, the expression 'factory farming origin forbidden', used in the table set out in that annex, does not amount to a prohibition only of preparations from 'landless' livestock production, it being specified that, in accordance with that provision, fertilisers, soil conditioners and nutrients the use of which, in organic farming, is prohibited by that annex are those produced from factory farming and not only those from landless livestock production.

The second question

70 By its second question, the referring court asks, in essence, whether the third paragraph of Annex II to Implementing Regulation 2021/1165 must be interpreted as precluding national legislation under which the prohibition of the use, on organic land, of fertilisers and soil conditioners of animal origin which are of 'factory farming origin' covers manure from livestock raised in integral slatted or grid systems and exceeding the thresholds defined in Annex I to the EIA Directive and manure from livestock raised in cages and exceeding those same thresholds.

71 At the outset, it should be noted that, although the concept of 'factory farming', for the purpose of defining the scope of that prohibition, must, in accordance with the case-law referred to in paragraph 39 of the present judgment, be given an autonomous and uniform interpretation, the fact remains that, as EU law currently stands, the criteria to be taken into account in order to

determine whether livestock farming must be categorised as 'factory farming' within the meaning of Annex II to Implementing Regulation 2021/1165 are not the subject of general harmonisation measures.

72 That being so, it follows from the answer to the first question that it is necessary to adopt an interpretation of the concept of 'factory farming' which results in the exclusion of manure from large-scale livestock farming using intensive production methods as an alternative to manure from organic livestock farming.

73 In order to determine the existence of such farming, the analysis of the relevant criteria must be the subject of an overall assessment, bearing in mind that, as a general rule, it is a set of indicia which will be capable of revealing that existence.

74 In that regard, and as the Advocate General observed in points 64, 66 and 80 of his Opinion, criteria such as the livestock rearing system, the mobility of the animals, their density and the availability of land on the livestock holding, productivity and environmental impact may be taken into consideration.

75 The same may be said with regard to the type of feed provided, disease prevention systems and general use either of substances intended to stimulate growth or production, or of hormones or similar substances with a view, inter alia, to controlling reproduction. The preventive use of antibiotics and the use of feed containing genetically modified organisms, prohibited by Regulation 2018/848, may also constitute criteria for the purpose of categorising livestock farming as 'factory' farming.

76 It must be held, in that regard, that the use of cages, boxes and slatted flat decks for rearing animals is a feature of factory farming, as is the use of systems which prevent animals from moving 360 degrees or landless rearing systems.

77 As regards, in particular, the environmental impact of livestock farming, it should be noted that Article 4 of the EIA Directive makes projects listed in Annex I to that directive, which include certain 'installations for the intensive rearing of poultry or pigs', subject to an assessment of their impact on the environment.

78 In that regard, it must be noted, as the Advocate General did in point 69 of his Opinion, that the minimum criteria laid down by those provisions of the EIA Directive, which admittedly relate to environmental impact procedures, may serve as indicators to determine whether a particular type of farming falls under the category of factory farming.

79 That being so, in so far as those criteria refer to those quantitative considerations, they are not sufficient for a holding to come under the category of 'factory farming', with the result that, for that purpose, qualitative criteria such as those referred to in paragraphs 74 to 76 of the present judgment must also be taken into account.

80 In the light of all those considerations, the answer to the second question is that the third paragraph of Annex II to Implementing Regulation 2021/1165 must be interpreted as not precluding national legislation under which the prohibition of the use, on organic land, of fertilisers and soil conditioners of animal origin which are of 'factory farming origin' also covers manure from livestock raised in integral slatted or grid systems and exceeding the thresholds defined in Annex I to the EIA Directive and manure from livestock raised in cages and exceeding

those same thresholds. However, for the purposes of that categorisation, it is necessary to rely on a set of indicia relating, at the very least, to the preservation of animal welfare, respect for biodiversity, and environmental and climate protection.

Costs

81 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **The third paragraph of Annex II to Commission Implementing Regulation (EU) 2021/1165 of 15 July 2021 authorising certain products and substances for use in organic production and establishing their lists, adopted for the purpose of implementing Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007**

   must be interpreted as meaning that, as regards preparations of micro-organisms which may be used to improve the overall condition of the soil or the availability of nutrients in the soil or the crops, the expression 'factory farming origin forbidden', used in the table set out in that annex, does not amount to a prohibition only of preparations from 'landless' livestock production, it being specified that, in accordance with that provision, fertilisers, soil conditioners and nutrients the use of which, in organic farming, is prohibited by that annex are those produced from factory farming and not only those from landless livestock production.

2. **The third paragraph of Annex II to Implementing Regulation 2021/1165**

   must be interpreted as not precluding national legislation under which the prohibition of the use, on organic land, of fertilisers and soil conditioners of animal origin which are of 'factory farming origin' also covers manure from livestock raised in integral slatted or grid systems and exceeding the thresholds defined in Annex I to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, and manure from livestock raised in cages and exceeding those same thresholds. However, for the purposes of that categorisation, it is necessary to rely on a set of indicia relating, at the very least, to the preservation of animal welfare, respect for biodiversity, and environmental and climate protection.

[Signatures]