Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

4 October 2024*

(Reference for a preliminary ruling – Common agricultural policy – Regulation (EU) No 1305/2013 – Regulation (EU) No 1307/2013 – Regulation (EU) No 1308/2013 – Cultivation of hemp (*Cannabis sativa*) – Refusal to issue a permit for the cultivation of hemp using hydroponic systems in an indoor environment)

In Case C-793/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania), made by decision of 23 November 2022, received at the Court on 29 December 2022, in the proceedings

Biohemp Concept SRL

v

Direcția pentru Agricultură Județeană Alba,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fourth Chamber, O. Spineanu-Matei, J.-C. Bonichot and S. Rodin (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 25 January 2024,

after considering the observations submitted on behalf of:

– Biohemp Concept SRL, by M.-E. Coman, avocată,

– the Romanian Government, by R. Antonie, E. Gane and L. Ghiță, acting as Agents,

– the European Commission, by M. Konstantinidis, L. Radu Bouyon and M. ter Haar, acting as Agents,

* Language of the case: Romanian.

after hearing the Opinion of the Advocate General at the sitting on 21 March 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of (i) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608), (ii) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671), and (iii) Articles 35, 36 and 38 TFEU.

2 The request has been made in proceedings between Biohemp Concept SRL and the Direcția pentru Agricultură Județeană Alba (Agriculture Directorate of the Province of Alba, Romania) ('the Agriculture Directorate') concerning the latter's decision partially refusing the application submitted by Biohemp Concept for a permit to cultivate hemp.

Legal context

European Union law

Regulation (EU) No 1305/2013

3 Article 3 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ 2013 L 347, p. 487), as amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 (OJ 2017 L 350, p. 15), provides:

'The EAFRD shall contribute to the Europe 2020 Strategy by promoting sustainable rural development throughout the [European] Union in a manner that complements the other instruments of the [common agricultural policy (CAP)], the cohesion policy and the common fisheries policy. It shall contribute to the development of a Union agricultural sector that is more territorially and environmentally balanced, climate-friendly and resilient and competitive and innovative. It shall also contribute to the development of rural territories.'

4 Article 17(1) of Regulation No 1305/2013 is worded as follows:

'Support under this measure shall cover tangible and/or intangible investments which:

(a) improve the overall performance and sustainability of the agricultural holding;

(b) concern the processing, marketing and/or development of agricultural products covered by Annex I to the TFEU or cotton, except fishery products; the output of the production process may be a product not covered by that Annex; where support is provided in the form of financial instruments, the input may also be a product not covered by that Annex on condition that the investment contributes to one or more of the Union priorities for rural development;

(c) concern infrastructure related to the development, modernisation or adaptation of agriculture and forestry, including access to farm and forest land, land consolidation and improvement, and the supply and saving of energy and water; or

…'

Regulation No 1307/2013

5 Article 32(6) of Regulation No 1307/2013 provides:

'Areas used for the production of hemp shall only be eligible hectares if the varieties used have a tetrahydrocannabinol content not exceeding 0.2%.'

6 Under Article 35(3) of that regulation:

'In order to preserve public health, the [European] Commission shall be empowered to adopt delegated acts in accordance with Article 70 laying down rules making the granting of payments conditional upon the use of certified seeds of certain hemp varieties and the procedure for the determination of hemp varieties and the verification of their tetrahydrocannabinol content referred to in Article 32(6).'

Regulation No 1308/2013

7 Article 1 of Regulation No 1308/2013, entitled 'Scope', provides:

'1. This Regulation establishes a common organisation of the markets for agricultural products, which means all the products listed in Annex I to the Treaties with the exception of the fishery and aquaculture products as defined in Union legislative acts on the common organisation of the markets in fishery and aquaculture products.

2. Agricultural products as defined in paragraph 1 shall be divided into the following sectors as listed in the respective parts of Annex I:

…

(h) flax and hemp, Part VIII;

…'

8 Article 189 of that regulation, entitled 'Imports of hemp', is worded as follows:

'1. The following products may be imported into the Union only if the following conditions are met:

(a) raw true hemp falling within CN code 5302 10 00 meeting the conditions laid down in Article 32(6) and in Article 35(3) of Regulation [No 1307/2013;]

(b) seeds of varieties of hemp falling within CN code ex 1207 99 20 for sowing accompanied by proof that the tetrahydrocannabinol level of the variety concerned does not exceed that fixed in accordance with Article 32(6) and in Article 35(3) of Regulation [No 1307/2013];

(c) hemp seeds other than for sowing, falling within CN code 1207 99 91 and imported only by importers authorised by the Member State in order to ensure that such seeds are not intended for sowing.

2. This Article shall apply without prejudice to more restrictive rules adopted by Member States in compliance with the TFEU and the obligations under the [World Trade Organisation] Agreement on Agriculture.'

9 Annex I to Regulation No 1308/2013, entitled 'List of products referred to in Article 1(2)', includes, in particular, in Part VIII, under CN code 5302, 'true hemp (*Cannabis sativa* L.) raw or processed but not spun; tow and waste of true hemp (including yarn waste and garnetted stock)'.

Delegated Regulation (EU) No 639/2014

10 Article 9 of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation (OJ 2014 L 181, p. 1), as amended by Commission Delegated Regulation (EU) 2018/707 of 28 February 2018 (OJ 2018 L 119, p. 1), provided:

'1. For the purposes of Article 32(6) of Regulation [No 1307/2013], the eligibility of areas used for the production of hemp shall be subject to the use of seed of the varieties listed in the "Common Catalogue of Varieties of Agricultural Plant Species" on 15 March of the year in respect of which the payment is granted and published in accordance with Article 17 of Council Directive 2002/53/EC [of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ 2002 L 193, p. 1)]. …

2. Member States shall establish the system for determining the Δ9-tetrahydrocannabinol content (hereinafter referred to as "THC content") in hemp varieties, which allows them to apply the method set out in Annex III.

…'

Romanian law

Law No 18/1991

11 Article 2 of legea nr. 18/1991 a fondului funciar (Law No 18/1991 on immovable property) of 19 February 1991 (*Monitorul Oficial al României*, Part I, No 1 of 5 January 1998), in the version applicable to the dispute in the main proceedings, is worded as follows:

'Depending on its use, land is:

(a) land for agricultural use, namely:

– productive agricultural land – arable land, vineyards, orchards, vine and fruit tree nurseries, hops and mulberry plantations, pasture, meadows, greenhouses, photovoltaic greenhouses, seedbeds and similar;

– land with coppice vegetation where it does not form part of silvicultural operations, afforested pasture;

– land occupied by agrozootechnical buildings and facilities, aquaculture and soil improvement facilities, roads of the rural road network, farm/agricultural roads and those connecting estates, platforms and storage areas necessary for agricultural production;

– non-productive land which can be given over to, and used for, agricultural production.'

Law No 339/2005

12 Under Article 12(4) of legea nr. 339/2005 privind regimul juridic al plantelor, substanțelor și preparatelor stupefiante și psihotrop (Law No 339/2005 on the legal rules governing psychotropic plants, narcotics and substances) of 29 November 2005 (*Monitorul Oficial al României*, Part I, No 1095 of 5 December 2005):

'Authorised cannabis and opium poppy growers shall be required to sow land they hold only with the seed varieties registered in the "official catalogue of crop varieties and hybrids of Romania" or in the catalogues [of the European Union], produced by establishments authorised by the Ministry of Agriculture, Forestry and Rural Development, through the regional seed control and certification authorities.'

Detailed rules for the implementation of Law No 339/2005

13 Article 4(5) of Hotărârea nr. 1915 pentru aprobarea Normelor metodologice de aplicare a prevederilor Legii nr. 339/2005 (Decision No 1915 approving the detailed rules for the implementation of Law No 339/2005) of 22 December 2006 (*Monitorul Oficial al României*, Part I, No 18 of 11 January 2007) ('the detailed rules for the implementation of Law No 339/2005') provides:

'With a view to the grant of a permit for the cultivation of plants containing narcotic and psychotropic substances intended for industrial and/or food use, for scientific or technical research, or for the production of seeds, producers must submit an application to the agriculture

directorate of the relevant province or of the city of Bucharest [Romania]. The application shall be accompanied by the following documents, in either original or copy form, depending on the purpose of the permit:

…

(b) the deed of ownership, records or certificates of possession or any other act proving that the area of agricultural land is being lawfully used;

…'

The dispute in the main proceedings and the question referred for a preliminary ruling

14 On 14 January 2021, Biohemp Concept lodged an application with the Agriculture Directorate for a permit to cultivate hemp on an area of 0.54 hectares.

15 On 27 January 2021, that authority issued the requested permit for an area of 0.50 hectares and, on the same day, informed Biohemp Concept that the non-authorised 0.04 hectares were not agricultural land but rather a building intended for agrozootechnical use which did not satisfy the conditions laid down in Article 4(5)(b) of the detailed rules for the implementation of Law No 339/2005.

16 Biohemp Concept filed an administrative complaint with the Agriculture Directorate challenging that refusal, claiming that the building in question was used, at the time of submission of that complaint, as a covered space for the cultivation of plants, as is apparent from the certificate issued on 3 February 2021 by the municipality of Pianu (Romania). It acknowledged that the building in question was originally intended for agrozootechnical use.

17 On 17 February 2021, the Agriculture Directorate rejected that complaint.

18 On 13 April 2021, Biohemp Concept brought an action before the Tribunalul Alba (Regional Court, Alba, Romania). In support of its action, it claimed inter alia that the Agriculture Directorate's refusal to grant a permit in respect of the area of 0.04 hectares was based primarily on a restrictive and, therefore, incorrect interpretation of the concept of 'area of agricultural land' within the meaning of Romanian law, which includes land occupied by agrozootechnical constructions or facilities necessary for agricultural production.

19 The Tribunalul Alba (Regional Court, Alba) found that Biohemp Concept's action was unfounded because the area of 0.04 hectares occupied by industrial and administrative buildings intended for agrozootechnical use did not, as such, satisfy the conditions laid down in Article 4(5)(b) of the detailed rules for the implementation of Law No 339/2005. It held that those buildings could not be treated as an 'area of agricultural land', within the meaning of that provision, since the intention of the Romanian legislature was to permit the cultivation of plants containing narcotic and psychotropic substances intended for industrial and food use, in the medical, scientific or technical fields, or for the production of seeds, only on productive agricultural land as defined by Law No 18/1991.

20 Biohemp Concept lodged an appeal against the judgment of the court of first instance before the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania), which is the referring court.

21 According to Biohemp Concept, the concept of 'area of agricultural land', within the meaning of the detailed rules for the implementation of Law No 339/2005, cannot be interpreted as meaning that a permit to cultivate plants containing narcotic and psychotropic substances intended for certain uses may be issued only for agricultural land in the strict sense. On the contrary, that concept should be understood as referring to land for agricultural use. The cultivation in covered spaces of hemp with a THC content not exceeding the legal limit of 0.2% makes it possible to produce plants with a cannabidiol concentration of between 12 and 14%, whereas, for hemp grown in open fields, that concentration does not exceed 1%.

22 The referring court expresses doubts as to whether, in the case of cultivation using hydroponic systems in an indoor environment, national legislation restricting the grant of a permit for the cultivation of hemp (*Cannabis sativa*) is compatible with EU law.

23 In those circumstances, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Regulations Nos 1307/2013 and 1308/2013 and Articles 35, 36 and 38 TFEU be interpreted as precluding national legislation in so far as it prohibits the cultivation of hemp (*Cannabis sativa*) in hydroponic systems in indoor environments prepared for that purpose?'

Consideration of the question referred

Admissibility

24 The Romanian Government disputes the admissibility of the question referred for a preliminary ruling in so far as it concerns the interpretation of Articles 35, 36 and 38 TFEU.

25 As regards the interpretation of Articles 35 and 36 TFEU, the Romanian Government states, first, that it is not clear from the request for a preliminary ruling whether Biohemp Concept seeks a permit for the hydroponic cultivation of hemp for export to other Member States and, secondly, that there is no link between the national legislation applicable in the main proceedings and those provisions.

26 It must be recalled that the procedure provided for by Article 267 TFEU is an instrument for cooperation between the Court and the national courts by means of which the Court provides national courts with the criteria of interpretation of EU law which they need in order to decide the disputes before them. In the context of that cooperation, it is for the national court before which the dispute has been brought, which alone has direct knowledge of the facts giving rise to the dispute and must assume responsibility for the subsequent judicial decision, to determine both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 7 December 2023, *mBank (Consumer declaration)*, C-140/22, EU:C:2023:965, paragraph 47 and the case-law cited).

27 However, the Court cannot rule on a question referred for a preliminary ruling where it is quite obvious that the interpretation of a rule of EU law that is sought by a national court bears no relation to the actual facts or purpose of the dispute before that national court, where the problem is hypothetical, or where the Court does not have before it the factual or legal material

necessary to give a useful answer to the questions submitted to it (judgment of 29 February 2024, *Staatssecretaris van Justitie en Veiligheid (Mutual trust in the event of transfer)*, C-392/22, EU:C:2024:195, paragraph 84 and the case-law cited).

28 In that regard, Article 94 of the Rules of Procedure of the Court of Justice requires every request for a preliminary ruling to contain 'a summary of the subject matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the questions are based', 'the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law', and 'a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of European Union law, and the relationship between those provisions and the national legislation applicable to the main proceedings'.

29 In the present case, the request for a preliminary ruling does not state with the requisite clarity and degree of precision why the referring court considers that an interpretation of Articles 35 and 36 TFEU is necessary to enable it to decide the dispute that has been brought before it.

30 Nor does that request contain a sufficiently specific account of the facts on which the question referred for a preliminary ruling is based, as regards Articles 35 and 36 TFEU.

31 Therefore, in so far as the question referred for a preliminary ruling concerns the interpretation of Articles 35 and 36 TFEU, it is inadmissible.

32 As regards the interpretation of Article 38 TFEU, the Romanian Government submits that the request for a preliminary ruling does not contain the information necessary to enable the Court to give a useful answer for the interpretation of that provision.

33 It should be noted that Article 38 TFEU provides, in paragraph 1, that the European Union is to define and implement a common agriculture and fisheries policy, and, in paragraph 3, that the products subject to the provisions of Articles 39 to 44 TFEU, relating to agriculture and fisheries, are listed in Annex I TFEU. That annex includes, in Chapter 57, true hemp (*Cannabis sativa*), raw or processed but not spun, and tow and waste of true hemp (including pulled or garnetted rags or ropes).

34 Article 39 TFEU defines the objectives of the CAP.

35 In so far as Regulation No 1308/2013 establishes, according to Article 1(1) thereof, a common organisation of the markets (CMO) for the products listed in that annex and provides, in Article 189(1), that raw true hemp may be imported into the European Union only if it satisfies inter alia the conditions laid down in Article 32(6) and Article 35(3) of Regulation No 1307/2013, those regulations must be interpreted in the light of Articles 38 and 39 TFEU.

36 Accordingly, in so far as the question referred for a preliminary ruling concerns the interpretation of Article 38 TFEU, it is admissible.

Substance

37 By its question, the referring court asks, in essence, whether EU law relating to the CAP must be interpreted as precluding a prohibition, in a Member State, on the cultivation of hemp (*Cannabis sativa*) using hydroponic systems in an indoor environment.

38 As a preliminary point, it should be noted, as the Advocate General observed in point 69 of his Opinion, that a hydroponic system is a cultivation system in which the plant roots are supplied with a nutrient solution dissolved in water, which contains the chemical substances needed for the development of plants which can grow in an aqueous medium, without the need for soil.

39 As is apparent from Article 1 of Regulation No 1308/2013, the cultivation of hemp falls under the CMO established by that regulation for agricultural products.

40 As regards, in particular, the cultivation of hemp using hydroponic systems in an indoor environment, it must be observed that that regulation does not expressly exclude such cultivation systems from its scope. Furthermore, in the light of the fact that those systems are appropriate for contributing to the achievement of the objectives of the CAP, set out in Article 39(1) TFEU, Regulation No 1308/2013 cannot be interpreted as excluding those systems, implicitly and in a generalised manner, from the scope of the CMO which it establishes.

41 As is clear from settled case-law, where there is a regulation on the CMO in a given sector, the Member States are under an obligation to refrain from taking any measures which might undermine or create exceptions to it. Rules which interfere with the proper functioning of a CMO are also incompatible with such common organisation, even if the matter in question has not been exhaustively regulated by it (judgment of 13 November 2019, *Lietuvos Respublikos Seimo narių grupė*, C-2/18, EU:C:2019:962, paragraph 29 and the case-law cited).

42 It is also settled case-law that CMOs are based on the concept of an open market to which every producer has free access under conditions of effective competition (judgment of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraph 22 and the case-law cited).

43 Consequently, it is necessary to examine whether a refusal to grant a permit for the cultivation of hemp using hydroponic systems in an indoor environment, such as that at issue in the main proceedings, undermines the CMO of which raw hemp (*Cannabis sativa*) forms part, established by Regulation No 1308/2013. In particular, it must be ascertained whether such a refusal limits the access of farmers who use hydroponic systems in an indoor environment to the hemp market under conditions of effective competition.

44 As the Commission observed at the hearing, without being challenged by its fellow participants, and as the Advocate General also notes in points 74 to 77 of his Opinion, such a system of cultivation may generate higher yields, use fewer water resources, reduce the amount of land needed for cultivation because there can be several harvests over a given period of time, be less dependent on climatology than cultivation in open fields, and be less affected by pests.

45 Therefore, on account of those characteristics, that system of cultivation is capable of meeting several objectives of the CAP, set out in Article 39(1) TFEU, in particular those set out, first, in point (a) of that provision, namely ‘to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour’, secondly, in point (d) of that provision, namely ‘to assure the availability of supplies’, and, thirdly, in point (e) of that provision, namely ‘to ensure that supplies reach consumers at reasonable prices’.

46 As the Commission also observed at the hearing, because of those characteristics, investments in hemp cultivation using hydroponic systems in an indoor environment may qualify for support of the kind referred to in Article 17 of Regulation No 1305/2013.

47 A refusal to grant a permit such as the refusal at issue in the main proceedings has the effect of excluding farmers who use hydroponic systems in an indoor environment from the hemp market. Such a refusal is therefore liable to undermine competition by preventing some farmers, such as Biohemp Concept, from taking advantage of those systems, which are aimed at ensuring optimum use of production factors and thus boost productivity in hemp farming (see, by analogy, judgment of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraph 21).

48 The competitive disadvantage suffered by those farmers is compounded by the fact that the prohibition at issue is liable to deprive them of the possibility of claiming support, provided for under the CAP, for investments in connection with those systems.

49 In those circumstances, and without there being any need to examine whether or not indoor spaces used for the hydroponic cultivation of hemp are caught by the concept of 'areas' in Article 32(6) of Regulation No 1307/2013, to which Article 189 of Regulation No 1308/2013 refers, it must be held that a measure prohibiting the cultivation of hemp using hydroponic systems in an indoor environment, such as that resulting from the refusal to grant a permit at issue in the main proceedings, undermines the CMO established by the latter regulation, unless it is justified by an objective of general interest covered by that CMO which takes precedence over those mentioned in paragraph 45 above.

50 Furthermore, even if such a measure cannot be justified by an objective of general interest covered by that CMO and therefore undermines the CMO, it is possible that it may be maintained. In that regard, it should be recalled that the establishment of a CMO does not prevent Member States from applying national rules intended to attain an objective relating to the general interest other than those covered by that CMO, even if those rules are likely to have an effect on the functioning of the common market in the sector concerned (judgment of 13 November 2019, *Lietuvos Respublikos Seimo narių grupė*, C-2/18, EU:C:2019:962, paragraph 30 and the case-law cited).

51 In both cases referred to in paragraphs 49 and 50 above, the measure must, in accordance with the principle of proportionality, be appropriate for attaining the objective it pursues and not go beyond what is necessary in order to attain that objective (see, to that effect, judgment of 13 November 2019, *Lietuvos Respublikos Seimo narių grupė*, C-2/18, EU:C:2019:962, paragraph 56 and the case-law cited), which it is for the referring court to assess.

52 The Romanian Government submits, first, that the prohibition on the cultivation of hemp using hydroponic systems in an indoor environment pursues the objective of protecting public health since, according to scientific analyses, that cultivation system carries the risk of the THC content limit laid down in Article 32(6) of Regulation No 1307/2013 being exceeded in hemp plants cultivated in that way, and, secondly, that where that cultivation system is used, the level of that substance cannot be monitored effectively either before or after those plants are harvested.

53 In that regard, it should be noted that, under Article 189(1) of Regulation No 1308/2013, raw true hemp falling within CN code 5302 10 00 may be imported into the European Union only if it satisfies inter alia the conditions laid down in Article 32(6) and Article 35(3) of Regulation No 1307/2013.

54 Article 32(6) of Regulation No 1307/2013 provides that areas used for the production of hemp are eligible hectares within the meaning of that regulation only if the varieties used have a THC content not exceeding 0.2%.

55 It is apparent from the foregoing that, as regards the cultivation of hemp, the EU legislature has paid particular attention to the objective of protecting public health. Although that objective of general interest must, admittedly, be weighed against the objectives of the CAP recalled in paragraph 45 above (see, to that effect, judgment of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraph 28), it nevertheless follows from the threshold of 0.2% THC content set by the EU legislature that the objective of protecting public health must take precedence over those other objectives if it transpires, as the Romanian Government asserts, that that threshold is more easily exceeded in the case of the cultivation of hemp using hydroponic systems in an indoor environment and that it is, moreover, excessively difficult to monitor compliance with that threshold in the case of the cultivation of hemp using such systems.

56 In that regard, it should be recalled that, under the precautionary principle, if there is uncertainty as to the existence or extent of risks to human health, a Member State must be able to take protective measures without having to wait until the reality of those risks becomes fully apparent. In particular, Member States must be able to take any measure capable of reducing, as far as possible, a health risk (judgment of 5 December 2023, *Nordic Info*, C-128/22, EU:C:2023:951, paragraph 79 and the case-law cited).

57 It is true that, when imposing restrictive measures on public health grounds, Member States must be able to adduce appropriate evidence to show that they have indeed carried out an analysis of the appropriateness, necessity and proportionality of the measures at issue and to present any other evidence substantiating their arguments. Such a burden of proof cannot, however, extend to creating the requirement that the competent national authorities must prove, positively, that no other conceivable measure could enable the legitimate objective pursued to be attained under the same conditions (judgment of 5 December 2023, *Nordic Info*, C-128/22, EU:C:2023:951, paragraph 80 and the case-law cited).

58 Thus, the referring court, which has sole jurisdiction to assess the facts of the main proceedings, is required, in the first place, to determine whether the scientific analyses relied on by the Romanian Government in its observations demonstrate that uncertainty remains as to the existence of an increased risk of the THC content limit, laid down in Article 32(6) of Regulation No 1307/2013, being exceeded in hemp plants of varieties published in the 'Common Catalogue of Varieties of Agricultural Plant Species' as a result of those plants being cultivated using hydroponic systems in an indoor environment.

59 In the second place, as regards the appropriateness of prohibiting the cultivation of hemp using hydroponic systems in an indoor environment for attaining the objective of protecting public health, it must be borne in mind that, according to settled case-law, a restrictive measure such as that at issue in the main proceedings can be regarded as capable of securing the public health objective pursued only if it genuinely reflects a concern to attain that objective and is

implemented in a consistent and systematic manner (see, to that effect, judgment of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraph 37 and the case-law cited).

60 Although it is common ground that prohibiting that system of hemp cultivation removes all risk of the THC content limit laid down in Article 32(6) of Regulation No 1307/2013 being exceeded in hemp plants and thus genuinely reflects a concern to attain the objective of protecting public health, it will be for the referring court to determine whether, as Biohemp Concept claims, provinces in Romania other than Alba allow that system, which would undermine the consistent and systematic implementation of that objective.

61 In the third place, the referring court will have to examine whether, as recalled in paragraph 51 above, prohibiting the cultivation of hemp using hydroponic systems in an indoor environment does not go beyond what is necessary to attain the objective of protecting public health pursued, in the light of the objectives of the CAP set out in Article 39(1) TFEU and the proper functioning of the CMO. That prohibition must be regarded as going beyond what is necessary if the objective of protecting public health can be as effectively protected by less restrictive measures (see, to that effect, judgment of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraphs 40 and 41).

62 To that end, the referring court will be required inter alia to assess whether on-the-spot checks – conducted with a frequency and in a manner which may reasonably be expected of a competent authority – of the THC content of hemp plants cultivated using hydroponic systems in an indoor environment would enable the objective of protecting public health to be attained as effectively as a prohibition on cultivating hemp using such systems.

63 In the light of the foregoing, the answer to the question referred is that EU law relating to the CAP must be interpreted as not precluding a prohibition, in a Member State, on the cultivation of hemp (*Cannabis sativa*) using hydroponic systems in an indoor environment, provided that that prohibition is an appropriate means of securing the objective of protecting public health and that, in the light of the objectives of the CAP and the proper functioning of the CMO, it does not go beyond what is necessary to attain the objective of protecting public health.

Costs

64 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 (Fourth Chamber) hereby rules:

EU law relating to the common agricultural policy must be interpreted as not precluding a prohibition, in a Member State, on the cultivation of hemp (*Cannabis sativa*) using hydroponic systems in an indoor environment, provided that that prohibition is an appropriate means of securing the objective of protecting public health and that, in the light of the objectives of the common agricultural policy and the proper functioning of the common organisation of the markets, it does not go beyond what is necessary to attain the objective of protecting public health.

[Signatures]