Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

4 October 2024*

(Reference for a preliminary ruling – Agriculture and fisheries – Organic products – Regulation (EU) 2018/848 – Organic production rules – Article 16 – Labelling – Article 30 – Terms referring to organic production – Article 33 – Organic production logo of the European Union – Conditions of use – Compliance of the product with Regulation 2018/848 – Articles 45 and 48 – Import of products from a third country for the purpose of placing them on the market within the European Union as organic products – Equivalence of the production rules of that third country with the rules of Regulation 2018/848 – Use of the third country's organic production logo)

In Case C-240/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 9 December 2022, received at the Court on 17 April 2023, in the proceedings

Herbaria Kräuterparadies GmbH

v

Freistaat Bayern,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, K. Jürimäe, C. Lycourgos, E. Regan, T. von Danwitz, Z. Csehi, Presidents of Chambers, S. Rodin, L.S. Rossi (Rapporteur), I. Jarukaitis, A. Kumin, N. Jääskinen, I. Ziemele and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: N. Mundhenke, Administrator,

having regard to the written procedure and further to the hearing on 18 March 2024,

after considering the observations submitted on behalf of:

– Herbaria Kräuterparadies GmbH, by H. Schmidt, Rechtsanwalt,

– Freistaat Bayern, by C. Diroll, C. Novak and J. Vogel, acting as Agents,

* Language of the case: German.

– the European Parliament, by I. Anagnostopoulou and U. Rösslein, acting as Agents,

– the Council of the European Union, by L. Hamtcheva and R. Meyer, acting as Agents,

– the European Commission, by A.C. Becker and A. Dawes, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 June 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation, on the one hand, of Article 16(1), Article 30(1) and (2), Article 33(1), Article 45(1) and Article 48(1) of, as well as point 2.2.2(f) of Part IV of Annex II to, 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, on the other hand, of Article 20 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Herbaria Kräuterparadies GmbH ('Herbaria') and the Freistaat Bayern (Land of Bavaria, Germany) concerning the prohibition imposed on Herbaria on using the organic production logo of the European Union and terms referring to organic production for the purpose of placing on the market within the European Union a mixture of fruit juice and herb extracts which contains, in addition to organic products, vitamins and ferrous gluconate not coming from organic farming.

Legal context

Regulation (EC) No 834/2007

3 Article 23 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), entitled 'Use of terms referring to organic production', provided, in paragraph 1 thereof:

'For the purposes of this Regulation a product shall be regarded as bearing terms referring to the organic production method where, in the labelling, advertising material or commercial documents, such a product, its ingredients or feed materials are described in terms suggesting to the purchaser that the product, its ingredients or feed materials have been obtained in accordance with the rules laid down in this Regulation. In particular, the terms listed in the Annex, their derivatives or diminutives, such as "bio" and "eco", alone or combined, may be used throughout the Community and in any Community language for the labelling and advertising of products which satisfy the requirements set out under or pursuant to this Regulation.

In the labelling and advertising of live or unprocessed agricultural products terms referring to the organic production method may be used only where, in addition, all the ingredients of that product have also been produced in accordance with the requirements laid down in this Regulation.'

4 Article 33 of Regulation 834/2007, entitled 'Import of products providing equivalent guarantees', provided, in paragraph 2 thereof:

'The [European] Commission may, in accordance with the procedure referred to in Article 37(2), recognise the third countries whose system of production complies with principles and production rules equivalent to those laid down in Titles II, III and IV and whose control measures are of equivalent effectiveness to those laid down in Title V, and establish a list of these countries. The assessment of equivalency shall take into account … guidelines CAC/GL 32 [of the Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods, drawn up by the Codex Alimentarius Commission in the context of the implementation of the mixed programme of the United Nations Food and Agriculture Organisation (FAO) and the World Health Organisation (WHO)].

…'

Regulation (EC) No 889/2008

5 Article 27 of 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), entitled 'Use of certain products and substances in processing of food', provided in paragraph 1 thereof:

'For the purpose of Article 19(2)(b) of Regulation [No 834/2007], only the following substances can be used in the processing of organic food, with the exception of wine:

…

(f) minerals (trace elements included), vitamins, aminoacids, and micronutrients, only authorised as far their use is legally required in the foodstuffs in which they are incorporated.'

Regulation (EC) No 1235/2008

6 Article 7 of Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries (OJ 2008 L 334, p. 25), provided, in paragraph 1 thereof:

'The Commission shall establish a list of recognised third countries in accordance with Article 33(2) of Regulation [No 834/2007]. The list of recognised countries is set out in Annex III to this Regulation. …'

Implementing Regulation (EU) No 126/2012

7 Commission Implementing Regulation (EU) No 126/2012 of 14 February 2012 amending Regulation (EC) No 889/2008 as regards documentary evidence and amending Regulation (EC) No 1235/2008 as regards the arrangements for imports of organic products from the United States of America (OJ 2012 L 41, p. 5) placed the United States of America on the list of recognised third countries, in Annex III to Regulation No 1235/2008.

Regulation 2018/848

8 Recitals 6, 9, 15, 17, 73, 77 to 79, 93, 95, 96, 108 and 123 of Regulation 2018/848 state:

'(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.

…

(9) Given the dynamic evolution of the organic sector, [Regulation No 834/2007] identified the need for a future review of the Union rules on organic production, taking into account the experience gained from the application of those rules. The results of that review carried out by the Commission show that the Union legal framework governing organic production should be improved to provide for rules that correspond to the high expectations of consumers and that guarantee sufficient clarity for those to whom they are addressed. Regulation [No 834/2007] should be therefore repealed and replaced by a new Regulation.

…

(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.

…

(17) This Regulation should provide the basis for the sustainable development of organic production and its positive effects on the environment, while ensuring the effective functioning of the internal market in organic products and fair competition, thereby helping farmers to achieve a fair income, ensuring consumer confidence, protecting consumer interest and encouraging short distribution channels and local production. Those objectives should be achieved through compliance with general and specific principles and general and detailed production rules applicable to organic production.

…

(73) The labelling of agricultural products and foodstuffs should be subject to the general rules laid down in [Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18)], and in particular to the

provisions aimed at preventing labelling that might confuse or mislead consumers. In addition, specific provisions relating to the labelling of organic and in-conversion products should be laid down in this Regulation. They should protect both the interests of operators in having their products correctly identified on the market and in enjoying conditions of fair competition, and the interests of consumers in being able to make informed choices.

…

(77) In order to create clarity for consumers throughout the Union market, the use of the organic production logo of the European Union should be obligatory for all organic prepacked food produced within the Union. In addition, it should be possible to use that logo on a voluntary basis in the case of non-prepacked organic products that are produced within the Union and in the case of any organic products imported from third countries, as well as for information and educational purposes. The model of the organic production logo of the European Union should be set out.

(78) However, in order not to mislead consumers as to the organic nature of the entire product, it is appropriate to limit the use of that logo to products which contain only, or almost only, organic ingredients. It should therefore not be allowed to use it in the labelling of in-conversion products or processed products of which less than 95% by weight of their ingredients of agricultural origin are organic.

(79) To avoid any possible confusion among consumers about the Union or non-Union origin of a product, whenever the organic production logo of the European Union is used, consumers should be informed about the place where the agricultural raw materials of which the product is composed have been farmed. In that context, it should be allowed to refer to aquaculture in the label of products from organic aquaculture instead of referring to agriculture.

…

(93) The experience with the arrangements for the import of organic products into the Union under Regulation [No 834/2007] has shown that there is a need to revise those arrangements in order to respond to consumer expectations that imported organic products meet standards as high as those of the Union, as well as in order to better ensure the access of Union organic products to the international market. In addition, it is necessary to provide clarity regarding the rules applicable to export of organic products, in particular by establishing organic export certificates.

…

(95) It should remain possible for organic products to have access to the Union market where such products do not comply with the Union rules on organic production but come from third countries whose organic production and control systems have been recognised as equivalent to those of the Union. However, the recognition of equivalence of third countries, as laid down in Regulation [No 834/2007], should only be granted through international agreements between the Union and those third countries, where a reciprocal recognition of equivalence would be also pursued for the Union.

(96) Third countries recognised for the purpose of equivalence under Regulation [No 834/2007] should continue to be recognised as such under this Regulation, for a limited period necessary to ensure a smooth transition to the scheme of recognition through an international agreement, provided that they continue to ensure that their organic production and control rules are equivalent to the relevant Union rules in force and that they fulfil all requirements relating to the supervision of their recognition by the Commission. That supervision should be based in particular on the annual reports those recognised third countries send to the Commission.

…

(108) It is necessary to lay down measures to ensure a smooth transition to the legal framework governing the import of organic and in-conversion products into the Union as modified by this Regulation.

…

(123) Since the objectives of this Regulation, 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, cannot be sufficiently achieved by the Member States themselves but can rather, by reason of the required harmonisation of the rules on organic production, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.'

9 Regulation 2018/848 consists in nine chapters, including Chapter I, entitled 'Subject matter, scope and definitions', which contains Articles 1 to 3, Chapter III, entitled 'Production rules', which contains Articles 9 to 29, Chapter IV, entitled 'Labelling', which contains Articles 30 to 34, and Chapter VII, entitled 'Trade with third countries', which contains Articles 44 to 49.

10 Article 2 of Regulation 2018/848, entitled 'Scope', provides, in paragraph 1 thereof:

'This Regulation applies to the following products originating from agriculture, including aquaculture and beekeeping, as listed in Annex I to the [FEU Treaty] and to products originating from those products, where such products are, or are intended to be, produced, prepared, labelled, distributed, placed on the market, imported into or exported from the Union:

(a) live or unprocessed agricultural products, including seeds and other plant reproductive material;

(b) processed agricultural products for use as food;

(c) feed.

…'

11 Article 3 of that regulation, entitled 'Definitions', provides:

'For the purposes of this Regulation, the following definitions apply:

…

(64) "equivalence" means meeting the same objectives and principles by applying rules which ensure the same level of assurance of conformity;

…'

12 Article 16 of that regulation, entitled 'Production rules for processed food', is worded as follows:

'1. Operators that produce processed food shall comply, in particular, with the detailed production rules set out in Part IV of Annex II and in any implementing acts referred to in paragraph 3 of this Article.

…

3. The Commission may adopt implementing acts laying down the techniques authorised in the processing of food products.

…'

13 In the words of Article 30 of Regulation 2018/848, entitled 'Use of terms referring to organic production':

'1. For the purposes of this Regulation, a product shall be regarded as bearing terms referring to organic production where, in the labelling, advertising material or commercial documents, such a product, its ingredients or feed materials used for its production are described in terms suggesting to the purchaser that the product, ingredients or feed materials have been produced in accordance with this Regulation. In particular, the terms listed in Annex IV and their derivatives and diminutives, such as "bio" and "eco", whether alone or in combination, may be used throughout the Union and in any language listed in that Annex for the labelling and advertising of products referred to in Article 2(1) which comply with this Regulation.

2. For the products referred to in Article 2(1), the terms referred to in paragraph 1 of this Article shall not be used anywhere in the Union, in any language listed in Annex IV, for the labelling, advertising material or commercial documents of a product which does not comply with this Regulation.

…'

14 Article 32 of that regulation, entitled 'Compulsory indications', provides, in paragraph 2 thereof:

'Where the organic production logo of the European Union is used, an indication of the place where the agricultural raw materials of which the product is composed have been farmed shall appear in the same visual field as the logo and shall take one of the following forms, as appropriate:

(a) "EU Agriculture", where the agricultural raw material has been farmed in the Union;

(b) "non-EU Agriculture", where the agricultural raw material has been farmed in third countries;

(c) "EU/non-EU Agriculture", where a part of the agricultural raw materials has been farmed in the Union and a part of it has been farmed in a third country.

…'

15 Article 33 of that same regulation, entitled 'Organic production logo of the European Union', is worded as follows:

'1. The organic production logo of the European Union may be used in the labelling, presentation and advertising of products which comply with this Regulation.

…

2. Except where used in accordance with the second subparagraph of paragraph 1, the organic production logo of the European Union is an official attestation in accordance with Articles 86 and 91 of [Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ 2017 L 95, p. 1)].

…

5. National logos and private logos may be used in the labelling, presentation and advertising of products which comply with this Regulation.'

16 Article 45 of Regulation 2018/848, entitled 'Import of organic and in-conversion products', provides, in paragraph 1 thereof:

'A product may be imported from a third country for the purpose of placing that product on the market within the Union as an organic product or as an in-conversion product, provided that the following three conditions are met:

(a) the product is a product as referred to in Article 2(1);

(b) one of the following applies:
   (i) the product complies with Chapters II, III and IV of this Regulation, and all operators and groups of operators referred to in Article 36, including exporters in the third country concerned, have been subject to controls by control authorities or control bodies recognised in accordance with Article 46, and those authorities or bodies have provided all such operators, groups of operators and exporters with a certificate confirming that they comply with this Regulation;

(ii) in cases where the product comes from a third country which is recognised in accordance with Article 47, that product complies with the conditions laid down in the relevant trade agreement; or

(iii) in cases where the product comes from a third country which is recognised in accordance with Article 48, that product complies with the equivalent production and control rules of that third country and is imported with a certificate of inspection confirming this compliance that was issued by the competent authorities, control authorities or control bodies of that third country; and

(c) the operators in third countries are able at any time to provide the importers and the national authorities in the Union and in those third countries with information allowing the identification of the operators that are their suppliers and the control authorities or control bodies of those suppliers, with a view to ensuring the traceability of the organic or in-conversion product concerned. That information shall also be made available to the control authorities or control bodies of the importers.'

17 Under Article 47 of that regulation, entitled 'Equivalence under a trade agreement':

'A recognised third country referred to in point (b)(ii) of Article 45(1) is a third country which the Union has recognised under a trade agreement as having a system of production meeting the same objectives and principles by applying rules which ensure the same level of assurance of conformity as those of the Union.'

18 Article 48 of Regulation 2018/848, entitled 'Equivalence under Regulation (EC) No 834/2007', provides:

'1. A recognised third country referred to in point (b)(iii) of Article 45(1) is a third country which has been recognised for the purposes of equivalence under Article 33(2) of Regulation [No 834/2007], including those recognised under the transitional measure provided for in Article 58 of this Regulation.

That recognition shall expire on 31 December 2025.

2. On the basis of annual reports to be sent to the Commission, by 31 March of each year, by the third countries referred to in paragraph 1 regarding the implementation and enforcement of the control measures established by them, and in the light of any other information received, the Commission shall ensure appropriate supervision of the recognised third countries by regularly reviewing their recognition. For this purpose, the Commission may request the assistance of Member States. The nature of the supervision shall be determined on the basis of an assessment of the likelihood of non-compliance, taking into account in particular the volume of exports to the Union from the third country concerned, the results of the monitoring and supervisory activities carried out by the competent authority and the results of previous controls. The Commission shall regularly report to the European Parliament and the Council [of the European Union] on the outcome of its review.

…'

19 Annex II to Regulation 2018/848 includes Part IV, relating to processed food production rules. Point 2.2.2 of Part IV is worded as follows:

‘In the processing of food, the following products and substances may be used:

…

(f) minerals (trace elements included), vitamins, amino acids and micronutrients, provided that:
(i) their use in food for normal consumption is “directly legally required”, in the meaning of being directly required by provisions of Union law or provisions of national law compatible with Union law, with the consequence that the food cannot be placed at all on the market as food for normal consumption if those minerals, vitamins, amino acids or micronutrients are not added; …

…’

20 Annex IV to Regulation 2018/848, entitled ‘Terms referred to in Article 30’, is worded as follows:

‘BG: биологичен.

ES: ecológico, biológico, orgánico.

CS: ekologické, biologické.

DA: økologisk.

DE: ökologisch, biologisch.

ET: mahe, ökoloogiline.

EL: βιολογικό.

EN: organic.

FR: biologique.

GA: orgánach.

HR: ekološki.

IT: biologico.

LV: bioloģisks, ekoloģisks.

LT: ekologiškas.

LU: biologesch, ökologesch,

HU: ökológiai.

MT: organiku.

NL: biologisch.

PL: ekologiczne.

PT: biológico.

RO: ecologic.

SK: ekologické, biologické.

SL: ekološki.

FI: luonnonmukainen.

SV: ekologisk.’

Regulation (EU) 2020/1693

21 Recital 7 of Regulation (EU) 2020/1693 of the European Parliament and of the Council of 11 November 2020 amending Regulation (EU) 2018/848 on organic production and labelling of organic products as regards its date of application and certain other dates referred to in that Regulation (OJ 2020 L 381, p. 1) states:

‘The COVID-19 pandemic and the related public health crisis also present an unprecedented challenge to third countries and for operators based in third countries. Consequently, for third countries that have been recognised as equivalent under Article 33(2) of [Regulation No 834/2007], it is appropriate to extend the date of expiry of their recognition by one year to 31 December 2026 so that such third countries have enough time to change their status, either by concluding a trade agreement with the Union or through full compliance by their operators with Regulation [2018/848], without unnecessary trade disruptions for organic products.’

22 Article 1 of Regulation 2020/1693 provides:

‘Regulation [2018/848] is amended as follows:

…

(2) in the second subparagraph of Article 48(1), the date “31 December 2025” is replaced by “ 31 December 2026”.

…’

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

23 Herbaria produces a beverage called ‘Blutquick’, comprising a mixture of fruit juice and organically produced herbs. Non-plant vitamins and ferrous gluconate are added to that beverage, which is marketed as a food supplement. The packaging shows the organic production logo of the European Union, the national organic label and a reference to the fact that the ingredients come from ‘controlled organic agriculture’.

24 By decision of 18 January 2012, the Bayerische Landesanstalt für Landwirtschaft (Bavarian Regional Office for Agriculture, Germany) ordered, inter alia, that Herbaria remove from the labelling, advertising and marketing of ‘Blutquick’, before 1 December 2012, the reference to organic production protected under Article 23 of Regulation No 834/2007, on the ground that,

under the provisions of that regulation and of Article 27(1)(f) of Regulation No 889/2008, vitamins and minerals could be added to processed products bearing the description 'organic' only if their use was legally required. According to the Bavarian Regional Office for Agriculture, that was not the case for 'Blutquick'.

25 Herbaria brought an action against that decision before the Bayerisches Verwaltungsgericht München (Bavarian Administrative Court, Munich, Germany), which referred a number of questions to the Court of Justice on the interpretation of Article 27(1)(f) of that regulation.

26 In the light of the answers to those questions, provided by the Court in the judgment of 5 November 2014, *Herbaria Kräuterparadies* (C-137/13, EU:C:2014:2335), the Bayerisches Verwaltungsgericht München (Bavarian Administrative Court, Munich) dismissed that action brought by Herbaria.

27 The appeal against that decision was dismissed by judgment of 29 July 2021, against which Herbaria lodged an appeal on a point of law before the Bundesverwaltungsgericht (Federal Administrative Court, Germany), the referring court.

28 That court states that since the decision of 18 January 2012 of the Bavarian Regional Office for Agriculture is an administrative act having permanent effect, it follows from the national case-law that that court is required to resolve the dispute before it on the basis of the law applicable at the time when it gives its ruling. Consequently, Regulation No 834/2007 is no longer applicable *ratione temporis*, as it was replaced by Regulation 2018/848.

29 Before the referring court, Herbaria no longer denies that the addition of vitamins and minerals to Blutquick is not legally required and that, therefore, that product does not comply with Article 16(1) of Regulation 2018/848 and point 2.2.2(f)(i) of Part IV of Annex II thereto, which, in essence, replaced Article 27(1)(f) of Regulation No 889/2008. Thus, according to the referring court, it is not disputed that Article 33(1), Article 33(5) and Article 30(1) of Regulation 2018/848 prohibit Blutquick from using, respectively, the organic production logo of the European Union, the national organic label and terms referring to organic production.

30 However, Herbaria submits that, under the latter regulation, a foodstuff comparable to Blutquick, imported from the United States of America, is not subject to such a prohibition.

31 Further, following an agreement concluded in 2012 by exchange of letters between the Commission and the US Department of Agriculture, the United States was included in the list of third countries whose production rules are equivalent to those provided for in Regulation No 834/2007, in accordance with Article 33(1) of that regulation. That inclusion would allow, now under Article 45(1)(b)(iii) of Regulation 2018/848, products competing with those marketed by Herbaria, and originating in the United States, to be placed on the market in the European Union as organic products. The latter could, it is argued, bear the organic production logo of the European Union and terms referring to organic production, provided only that they comply with the production rules of that third country, that is to say, even where they do not comply with the production rules of EU law. This, in Herbaria's submission, would constitute unequal treatment contrary to Article 20 of the Charter.

32 The Land of Bavaria contends that Herbaria's interpretation of Regulation 2018/848 is incorrect and that, in actual fact, a product originating in the United States can bear the organic production logo of the European Union only if it satisfies the production rules laid down in that regulation, with the result that there is thus no difference in treatment with a product manufactured in the European Union.

33 The referring court has doubts, first of all, as to whether a product imported from the United States may bear the organic production logo of the European Union even though it does not comply in every respect with the requirements laid down in Regulation 2018/848.

34 Next, if that should actually be the case, the referring court asks whether that would not constitute unequal treatment under Article 20 of the Charter and, if so, whether such unequal treatment might be justified in the light of the recognition of the equivalence of the production and control rules applicable in the United States for the products in question or by the objective of facilitating trade pursued by such recognition of equivalence.

35 Last, the referring court considers that a similar question arises in relation to the use of terms referring to organic production, as referred to in Article 30(1) of Regulation 2018/848.

36 In those circumstances the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 33(1) of [Regulation 2018/848] to be interpreted as meaning that the organic production logo of the European Union may be used for a processed foodstuff which is imported under the conditions laid down in Article 45(1) of [Regulation 2018/848] for the purpose of placing it on the market within the Union as an organic product, but, because it contains, in addition to plant products, minerals and vitamins of non-plant origin, does not meet the requirements of Article 16(1) of [Regulation 2018/848] in conjunction with Annex II, Part IV, point 2.2.2(f)[,] thereto?

(2) If Question 1 is to be answered in the affirmative, does it follow from Article 20 of [the Charter] that the organic production logo of the European Union may be used for a processed foodstuff if it originates from the European Union and complies with the equivalent production and control provisions of a third country recognised in accordance with Article 48(1) of [Regulation 2018/848], but does not meet the requirements of Article 16(1) of [Regulation 2018/848] in conjunction with Annex II, Part IV, point 2.2.2(f)[,] thereto?

(3) Does it follow from Article 20 of [the Charter] that such a processed product originating from the European Union may bear terms referring to organic production, in accordance with Article 30(1) of [Regulation 2018/848], without using the organic production logo of the European Union?'

The application to reopen the oral part of the procedure

37 Following the delivery of the Advocate General's Opinion, Herbaria, by document lodged at the Court Registry on 26 June 2024, applied for the oral part of the procedure to be reopened.

38 In support of its application, Herbaria submits that the Advocate General's Opinion contains several inaccurate matters of law or of fact liable to mislead the Court. Moreover, such matters, which the Advocate General considered to be decisive for the answer to the questions referred for a preliminary ruling, were not debated at the hearing between the parties to the main proceedings or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

39 Thus, first, the Advocate General erred in stating that there are 'indications accompanying' the organic production logo of the European Union mentioning the origin of the raw material and the place of manufacture of a product, with the result that, where that logo is used, consumers are always informed of the fact that that product comes from the United States. Second, the Advocate General misinterpreted the Codex Alimentarius Guidelines, referred to in Article 33(2) of Regulation No 834/2007.

40 It should, in the first place, be observed that, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his or her involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (judgment of 18 January 2024, *CROSS Zlín*, C-303/22, EU:C:2024:60, paragraph 36 and the case-law cited).

41 It should also be borne in mind that neither the Statute of the Court of Justice of the European Union nor the Rules of Procedure of the Court of Justice make provision for the parties to the main proceedings and the interested persons referred to in Article 23 of that Statute to respond to an Advocate General's Opinion. As a consequence, the fact that a party to the main proceedings or an interested person disagrees with the Advocate General's Opinion, irrespective of the questions examined in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (see, to that effect, judgment of 18 January 2024, *CROSS Zlín*, C-303/22, EU:C:2024:60, paragraph 37 and the case-law cited).

42 Herbaria cannot, therefore, validly justify its application to reopen the oral part of the procedure by criticising the merits of certain passages of the Advocate General's Opinion.

43 In the second place, pursuant to Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

44 In the present case, however, it should be noted that the interested persons who participated in the present proceedings have been able to set out, during both the written and oral stages of the procedure, the matters of law which they considered relevant to enable the Court to interpret the provisions of EU law which are the subject of the questions referred by the national court. In that respect, the Court considers that it has all the information necessary to rule on the present request for a preliminary ruling and that none of the matters raised by Herbaria in support of its application to reopen the oral part of the procedure justifies such a reopening pursuant to Article 83 of the Rules of Procedure.

45 In those circumstances, the Court considers, after hearing the Advocate General, that there is no need to order that the oral part of the procedure be reopened.

Consideration of the questions referred

The first question

46 According to the settled case-law of the Court, in the procedure laid down in Article 267 TFEU, which provides for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to decide the case before it. With that in mind, the Court may have to reformulate the questions referred to it. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 21 September 2023, *Juan*, C-164/22, EU:C:2023:684, paragraph 24 and the case-law cited).

47 In the wording of its first question, the referring court mentions only Article 33(1) of Regulation 2018/848, governing the use of the organic production logo of the European Union. However, it is apparent from the request for a preliminary ruling and – in particular from the grounds relating to the third question – that the referring court considers the first question referred also raises a similar question with regard to Article 30(2) of that regulation, governing the use of the terms referring to organic production.

48 Thus, in order to provide a useful answer to the referring court, it must be held that, by its first question, that court wishes, in essence, to ascertain whether Article 30(2) and Article 33(1) of Regulation 2018/848 must be interpreted as meaning that the organic production logo of the European Union and terms referring to organic production may be used for a processed foodstuff imported from a third country under the conditions laid down in Article 45(1)(b)(iii) and Article 48(1) of that regulation for the purpose of placing it on the market within the European Union as an organic product, although, because that foodstuff contains minerals and vitamins of non-plant origin, it does not meet the requirements of Article 16(1) of that regulation, read in conjunction with point 2.2.2(f) of Part IV of Annex II thereto.

The use of the organic production logo of the European Union and terms referring to organic production

49 It must be noted at the outset that, in accordance with Article 2(1) thereof, Regulation 2018/848 applies to the products covered by that provision, in particular where they are produced in or imported into the European Union, or are intended to be so produced or imported.

50 According to the wording of Article 30(2) and Article 33(1) of Regulation 2018/848, the use of terms referring to organic production and the use of the organic production logo of the European Union are authorised only for products which comply with that regulation.

51 That wording thus tends to indicate, as the Advocate General observed, in essence, in points 67 to 72 of his Opinion, that those terms and logo may be used for organic products, whether they are manufactured in the European Union or imported from a third country for the purpose of being placed on the market in the European Union as organic products, only in so far as they comply with the requirements laid down in that regulation, in particular in Chapters II and III thereof.

52 That being so, according to the Court's settled case-law, it is necessary, when interpreting a provision of EU law, to consider not only its wording but also its context and the objectives of the legislation of which it forms part (judgment of 29 July 2024, *Belgian Association of Tax Lawyers and Other*s, C-623/22, EU:C:2024:639, paragraph 94 and the case-law cited).

53 As regards, in the first place, that context, it should be noted that Regulation 2018/848 introduces a distinction between products manufactured in the European Union and those imported from a third country, for the purposes of their being placed on the market in the European Union as organic products.

54 First, as regards, in particular, processed foodstuffs produced in the European Union, they must, pursuant to Article 16(1) thereof, comply with the detailed production rules set out in Part IV of Annex II to that regulation and in any implementing acts referred to in Article 16(3) of that regulation.

55 Second, Article 45 of Regulation 2018/848 lays down the cumulative conditions which a product which is not manufactured in the European Union must meet in order to be imported from a third country and placed on the market in the European Union as an organic product.

56 Thus, first of all, Article 45(1)(a) of Regulation 2018/848 requires the imported product to be a product as referred to in Article 2(1) of that regulation.

57 Next, Article 45(1)(c) of that regulation requires, in essence, that the operators in third countries are able to provide the importers and the national authorities in the European Union and in those third countries with any information necessary with a view to ensuring the traceability of the product in question.

58 Last, in accordance with Article 45(1)(b) of Regulation 2018/848, a product imported from a third country must meet one of the conditions laid down in that provision.

59 Thus, first, in the situation referred to in Article 45(1)(b)(i) of Regulation 2018/848, that product must, in essence, comply with the provisions of Chapters II, III and IV of that regulation and, therefore, in particular, with the production rules contained in Chapter III of that regulation and the labelling rules laid down in Chapter IV thereof.

60 Second, in the situation referred to in Article 45(1)(b)(ii) of Regulation 2018/848, in cases where the product comes from a third country which is recognised in accordance with Article 47 of that regulation, it must comply with the conditions laid down in the relevant trade agreement.

61 Third, in the situation referred to in Article 45(1)(b)(iii) of Regulation 2018/848, in cases where the product comes from a third country which is recognised, for the purposes of equivalence, in accordance with Article 48(1) of that regulation, the product must comply with the equivalent

production and control rules of that third country and be imported with a certificate of inspection, issued by the competent authorities, with the control authorities or control bodies of that third country confirming the compliance of that product.

62 It follows from the very wording of Article 45(1)(b) of Regulation 2018/848 that the three conditions laid down, respectively, in points (i) to (iii) of that provision are alternative conditions, with the result that it is sufficient that only one of those alternative conditions be met in order for the product imported from a third country to be placed on the market in the European Union as an organic product, if it also fulfils the other two conditions laid down in Article 45(1)(a) and (c) of that regulation.

63 Of those three alternative conditions, only the condition referred to in Article 45(1)(b)(i) of Regulation 2018/848 requires the imported product to comply with the provisions of Chapters II, III and IV of that regulation.

64 Consequently, a product corresponding to the situation referred to in Article 45(1)(b)(iii) of Regulation 2018/848, although not complying with all the production rules laid down in Chapter III of that regulation, could be placed on the market in the European Union as an organic product, provided that it is a product from a third country recognised by the European Union for the purposes of equivalence under Article 33(2) of Regulation No 834/2007 – to which Article 48(1) of Regulation 2018/848 refers – and complies in particular with the production rules in force in that third country which have been considered by the European Union to be equivalent to those set out in Chapter III.

65 It must be noted in that regard that the concept of 'equivalence' is defined in point 64 of Article 3 of Regulation 2018/848 as meaning meeting the same objectives and principles by applying rules which ensure the same level of assurance of conformity.

66 Consequently, the reference, in Article 45(1)(b)(iii) of Regulation 2018/848, to the equivalence of the production rules of the third country concerned necessarily presupposes that the rules in force in that third country pursue the same objectives and observe the same principles as those resulting from the provisions of Chapter II of Regulation 2018/848. As regards the production rules set out in Chapter III of that regulation, it is apparent from that definition that the legislation of that third country does not have to be identical to the legislation of the European Union, but must ensure the 'same level of assurance of conformity' as that required by the latter in respect of products manufactured in the European Union.

67 As has been noted in paragraph 50 above, Article 30(2) and Article 33(1) of Regulation 2018/848 authorise the use, respectively, of terms referring to organic production and the organic production logo of the European Union only for products which comply with that regulation.

68 By contrast, no provision of Regulation 2018/848 permits the use of those terms or that logo for products from third countries recognised for the purposes of equivalence, which, although they may be imported into the European Union pursuant to Article 45(1)(b)(ii) or (iii) of that regulation, do not, however, comply with the production rules laid down in that regulation.

69 The literal interpretation of Article 30(2) and Article 33(1) of Regulation 2018/848, set out in paragraph 50 above, is thus supported in particular by the structure of Article 45(1)(b) of that regulation. Indeed, the EU legislature intended to distinguish, within the products imported as organic products, between, on the one hand, those which comply with Chapters II, III and IV of

Regulation 2018/848 and, on the other hand, those which are governed by equivalent rules in their country of origin, recognised as such, either under a trade agreement or under a unilateral EU measure.

70 In the second place, that interpretation is confirmed by the objectives of Regulation 2018/848, and in particular of its provisions on the labelling of organic products, which include Article 30(2) and Article 33(1) thereof.

71 First of all, as is apparent from recitals 6, 9 and 123 of Regulation 2018/848, the legal framework established for implementing the common agricultural policy, of which that regulation forms part in terms of the instruments referred to in Article 43(2) TFEU, should aim at ensuring fair competition in the internal market in organic products, as well as maintaining and justifying consumer confidence in products labelled as organic. To that end, the EU legislature intended to provide for rules that correspond to the high expectations of consumers in that area and that guarantee sufficient clarity for those to whom they are addressed. It is in that context that it stated, in recital 15 of Regulation 2018/848, that consumer confidence is crucial in the market for organic food and, in turn in recital 17 thereof, that that regulation seeks in particular to ensure consumer confidence and to protect the consumer interest.

72 Next, it is apparent from recital 73 of Regulation 2018/848 that the objective of that regulation's provisions on labelling, including those relating to the use of the organic production logo of the European Union and terms referring to organic production, is to protect both the interests of operators in having their products correctly identified on the market in organic products and in enjoying conditions of fair competition, and the interests of consumers in being able to make informed choices between products offered to them.

73 Last, as regards, in particular, the organic production logo of the European Union, recitals 77 to 79 of Regulation 2018/848 underline the EU legislature's intention that the use of that logo should be regulated in such a way as (i) to create clarity for consumers throughout the European Union market, (ii) not to mislead consumers as to the organic nature of the entire product concerned and (iii) to avoid any possible confusion among them about the Union or non-Union origin of a product.

74 In the present case, as is apparent from paragraphs 64 to 67 above, it follows from the choice made by the EU legislature that products imported from third countries under the equivalence regime provided for in Article 45(1)(b)(iii) of Regulation 2018/848 may be placed on the market in the European Union as organic products even when they do not meet all the requirements laid down by that regulation, in particular in Chapters II and III thereof. By contrast, products manufactured in the European Union must meet all those requirements in order to be able to be placed on the market as organic products.

75 In that context, to allow terms referring to organic production and the organic production logo of the European Union to be used, on the internal market in organic products, both for products which have been manufactured in the European Union or in third countries in compliance with the production rules laid down in Regulation 2018/848 and for products which have been manufactured in third countries according to standards merely equivalent to those production rules, would harm fair competition within the internal market in organic products and give rise to ambiguity that could mislead consumers.

76 In such a situation, those consumers might consider that a product bearing terms referring to organic production or the organic production logo of the European Union complies with all the requirements laid down by Regulation 2018/848, and in particular in Chapters II and III thereof, whereas it complies merely with production rules of the third country from which it is imported which are equivalent to the production rules of that regulation.

77 In particular, the rationale of that logo consists precisely in informing consumers, in a clear and unambiguous manner, of the fact that the product on which it appears is fully compliant with all the requirements laid down by Regulation 2018/848, and not merely with rules equivalent to that regulation. That is all the more so since that logo is an official attestation of the European Union, in accordance with Article 33(2) of that regulation.

78 The fact highlighted in particular by the Commission that, under Article 32(2) of Regulation 2018/848, where the organic production logo of the European Union is used on a product, an indication must be added specifying the place where the agricultural raw materials of which the product is composed have been farmed, is not sufficient to dispel any ambiguity. Such an indication does not indeed enable the consumer to know whether an imported product complies with the production rules of Regulation 2018/848 or whether it complies merely with production rules equivalent to those of that regulation.

79 Consequently, it must be concluded that a product imported from a third country for the purpose of placing it on the market within the European Union as an organic product pursuant to Article 45(1)(b)(iii) of Regulation 2018/848 may not use for its labelling either the organic production logo of the European Union or, in principle, terms referring to organic production.

The use of the organic production logo of a third country

80 That being so, since Regulation 2018/848 contains, in particular in Chapter VII thereof, provisions governing trade with third countries, that regulation also seeks to introduce a number of rules applicable to international trade in organic products with a view – as the Council correctly stated at the hearing – to facilitating, on the one hand, the provision of such products, the availability of supply and the satisfaction of the growing demand for those products in the European Union and, on the other hand, on the basis of bilateral agreements, the export of such products of Union origin to third countries.

81 It is precisely that context which underlies Article 45(1)(b)(iii) of that regulation, which confers on the Commission the power to recognise that rules of a third country are equivalent to those of Regulation 2018/848.

82 It is apparent from the documents before the Court that certain products imported as organic products, under the equivalence regime referred to in Article 45(1)(b)(iii) of that regulation, bear the organic production logo of the third country from which they are imported, and that such a logo may include terms referring to organic production, such as ‘biologique’, ‘ecológico’ or ‘organic’, or derivatives and diminutives of those terms, such as ‘bio’ or ‘eco’.

83 In that regard, it must be held that the use, for such imported products, of the organic production logo of the third country from which they are imported is not liable to harm fair competition within the internal market in organic products or to give rise to ambiguity that may mislead consumers. Indeed, in addition to the fact that the use of an organic production logo of a third country different from the organic production logo of the European Union does not place the

products concerned on the same level from the point of view of competition, the use of the organic production logo of a third country is also not liable to give the impression that the imported products concerned comply with all the requirements laid down by Regulation 2018/848.

84 It follows that, notwithstanding the conclusion set out in paragraph 79 above, in order to ensure the effectiveness, in particular, of Article 45(1)(b)(iii) of Regulation 2018/848, as well as to preserve the powers which that regulation confers on the Commission, products imported under that provision, which have access to the EU market 'as organic products', must be able to use the organic production logo of the third country from which they come, even where that logo contains terms identical to those referring to organic production, within the meaning of Article 30(1) of that regulation and Annex IV thereto.

85 In the light of the foregoing, the answer to the first question is as follows:

– Article 30(2) and Article 33(1) of Regulation 2018/848 must be interpreted as meaning that neither the organic production logo of the European Union nor, in principle, terms referring to organic production may be used for a processed foodstuff imported from a third country under the conditions laid down in Article 45(1)(b)(iii) and Article 48(1) of that regulation for the purpose of placing it on the market within the European Union as an organic product, where, because that foodstuff contains minerals and vitamins of non-plant origin, it does not meet the requirements of Article 16(1) of that regulation, read in conjunction with point 2.2.2(f) of Part IV of Annex II thereto.

– The organic production logo of that third country may, however, be used in the European Union for such a foodstuff, even where that logo contains terms referring to organic production, within the meaning of Article 30(1) of that regulation and Annex IV thereto.

The second and third questions

86 In view of the answer given to the first question, there is no need to answer the second and third questions.

Costs

87 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 (Grand Chamber) hereby rules:

Article 30(2) and Article 33(1) of 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 neither the organic production logo of the European Union nor, in principle, terms referring to organic production may be used for a processed foodstuff imported from a third country under the conditions laid down in Article 45(1)(b)(iii) and Article 48(1) of that regulation for the purpose of placing it on the

market within the European Union as an organic product, where, because that foodstuff contains minerals and vitamins of non-plant origin, it does not meet the requirements of Article 16(1) of that regulation, read in conjunction with point 2.2.2(f) of Part IV of Annex II thereto.

The organic production logo of that third country may, however, be used in the European Union for such a foodstuff, even where that logo contains terms referring to organic production, within the meaning of Article 30(1) of that regulation and Annex IV thereto.

[Signatures]