Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 21 March 2024[1]

Case C-793/22

Biohemp Concept SRL
v
Direcția pentru Agricultură Județeană Alba

(Request for a preliminary ruling from the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania))

(Preliminary ruling proceedings – Common agricultural policy – Regulations (EU) No 1307/2013 and (EU) No 1308/2013 – Hemp cultivation – Concept of agricultural area – Exclusion of land occupied by agricultural and livestock constructions and facilities used for agricultural production needs – Prohibition of the cultivation of hemp using a hydroponic system in an indoor environment – Increased level of cannabidiol (CBD) in the hemp – Protection of public health)

1. The cultivation of hemp is permitted within the framework of the Common Agricultural Policy (CAP), subject to limitations aimed at ensuring that only varieties are planted that, on account of their low levels of psychoactive cannabinoids, are not suitable for the production of cannabis and other similar narcotic drugs.

2. In this reference for a preliminary ruling, the Court of Justice is required to rule on the compatibility with EU law of a measure adopted by the Romanian authorities which prohibits the cultivation of hemp in an indoor space fitted with a hydroponic system.

[1] Original language: Spanish.

I. Legal framework

A. European Union law

1. Regulation (EU) No 1307/2013 [2]

3. Recital 28 reads:

'As regards hemp, specific measures should be kept to ensure that illegal crops cannot be hidden among the crops eligible for the basic payment, thereby adversely affecting the market for hemp. Hence, payments should continue to be granted only for areas sown with varieties of hemp offering certain guarantees with regard to its psychotropic substance content.'

4. Article 4 ('Definitions and related provisions') is worded as follows:

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

…

(c) "agricultural activity" means:

(i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes,

…

(d) "agricultural products" means the products, with the exception of fishery products, listed in Annex I to the Treaties as well as cotton;

(e) "agricultural area" means any area taken up by arable land, permanent grassland and permanent pasture, or permanent crops;

(f) "arable land" means land cultivated for crop production or areas available for crop production but lying fallow, including areas set aside in accordance with Articles 22, 23 and 24 of Regulation (EC) No 1257/1999, with Article 39 of Regulation (EC) No 1698/2005 and with Article 28 of Regulation (EU) No 1305/2013, irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;

…'

5. Article 32 ('Activation of payment entitlements') provides:

'1. Support under the basic payment scheme shall be granted to farmers, by means of declaration in accordance with Article 33(1), upon activation of a payment entitlement per eligible hectare in the Member State where it has been allocated. …

[2] Regulation 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).

2. For the purposes of this Title, "eligible hectare" means:

(a) any agricultural area of the holding, including areas that were not in good agricultural condition on 30 June 2003 in Member States acceding to the Union on 1 May 2004 that opted upon accession to apply the single area payment scheme, that is used for an agricultural activity or, where the area is also used for non-agricultural activities, is predominantly used for agricultural activities; …

…

3. For the purposes of point (a) of paragraph 2:

(a) where an agricultural area of a holding is also used for non-agricultural activities, that area shall be considered to be used predominantly for agricultural activities provided that those agricultural activities can be exercised without being significantly hampered by the intensity, nature, duration and timing of the non-agricultural activities;

(b) Member States may draw up a list of areas which are predominantly used for non-agricultural activities.

Member States shall establish criteria for the implementation of this paragraph on their territory.

4. Areas shall be considered to be eligible hectares only if they comply with the definition of eligible hectare throughout the calendar year, except in the case of *force majeure* or exceptional circumstances.

…

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

2. Regulation (EU) No 1308/2013 [3]

6. In accordance with Article 1 ('Scope'):

'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;

[3] Regulation 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).

…’

7. Part VIII of Annex I (‘List of products referred to in Article 1(2)’) includes ‘true hemp (*Cannabis sativa* L.)’ with CN code 5302.

8. Article 189 (‘Imports of hemp’) provides:

‘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 (EU) 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 (EU) 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 WTO Agreement on Agriculture.’

B. Romanian law

1. Law 18/1991 on immovable property[4]

9. Article 2(a) states:

‘Depending on its use, land is:

(a) land used for agricultural purposes, namely:

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

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

– land occupied by agriculture and livestock constructions 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.’

[4] Legea nr. 18/1991, din 19 februarie 1991, a fondului funciar (Law No 18/1991 of 19 February 1991 on immovable property) (Monitorul Oficial al României, Part I, No 1 of 5 January 1998), as subsequently amended. ‘Law 18/1991’.

2. Law 339/2005 [5]

10. In accordance with Article 12:

'(1) The cultivation of plants containing substances subject to control under national legislation shall be authorised only if they are processed for technical purposes for the production of stalks, fibre, seeds and oil for medical and scientific purposes and only with the authorisation of the Ministry of Agriculture, Forestry and Rural Development, issued through the provincial directorates of agriculture and rural development or the Municipality of Bucharest, on the basis of the annual estimates drawn up in accordance with the provisions of Article 42(1)(e) of this Law and the rules for its implementation.

…

(4) 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 Communities, produced by establishments authorised by the Ministry of Agriculture, Forestry and Rural Development, through the regional seed control and certification authorities.'

3. Rules for the implementation of Law 339/2005 [6]

11. Article 4(5)(b) provides:

'With a view to the granting of a permit for the cultivation of plants containing narcotic and psychotropic substances for use in industry and/or in food, in the scientific or technical field or for the production of seeds, producers must submit an application to the provincial directorates of agriculture or the Municipality of Bucharest … 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;

…'

II. Facts, dispute and question referred for a preliminary ruling

12. On 14 January 2021, Biohemp Concept SRL ('Biohemp') applied to the Provincial Directorate of Agriculture, Alba (Romania) ('the provincial authority') for a permit to cultivate hemp (*Cannabis sativa* L.) on an area of 0.54 hectares.

[5] Legea nr. 339 din 29 noiembrie 2005 privind regimul juridic al plantelor, substanțelor și preparatelor stupefiante și psihotrope (Monitorul Oficial al României, Part I, No 1095 of 5 December 2005) (Law No 339 of 29 November 2005 on the legal rules governing narcotic and psychotropic plants, substances and preparations). 'Law 339/2005'.

[6] Normele metodologice din 22 decembrie 2006 de aplicare a prevederilor Legii nr. 339/2005 privind regimul juridic al plantelor, substanțelor și preparatelor stupefiante și psihotrope (Rules of 22 December 2006 for the implementation of Law No 339/2005 on the legal rules governing narcotic and psychotropic plants, substances and preparations), adopted by Government Decree No 1915/2006 (Monitorul Oficial al României, Part I, No 18 of 11 January 2007), as amended. 'Rules for the implementation of Law 339/2005'.

13. On 27 January 2021, the provincial authority issued a permit for an area of only 0.50 hectares. However, the provincial authority refused to issue a permit for the area of 0.04 hectares on the ground that it was not agricultural land but rather a building for agricultural and livestock purposes which did not satisfy the conditions laid down in Article 4(5)(b) of the Rules for the implementation of Law 339/2005.

14. Biohemp lodged a complaint against the decision of 27 January 2021, which the provincial authority dismissed on 17 February 2021.

15. On 13 April 2021, Biohemp brought an action before the Tribunalul Alba (Regional Court, Alba, Romania), seeking a permit for the full area of 0.54 hectares.

16. The first-instance court dismissed Biohemp's action, relying essentially on arguments concerning the application of the national provisions. [7]

17. Biohemp appealed to the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania) arguing, as relevant points, that it intends to grow hemp with a legal concentration of tetrahydrocannabinol [8] of up to 0.2% in that 400 m^2 covered space, using a hydroponic system.

18. Biohemp asserted, in the same vein, that the cultivation of hemp in covered spaces produces plants with a cannabidiol [9] content of between 12 and 14%, whereas hemp grown in an open field (on agricultural land) has a CBD content of up to 1%. Hemp processors have a marked preference for buying hemp grown in covered spaces because of the much higher CBD content.

19. Based on those data, the appeal lodged relies on grounds relating to both national law [10] and EU law. As regards the latter, in addition to the case-law cited in the appeal, [11] Biohemp states that no provision of EU law stipulates that hemp must be cultivated only in open fields, from which it follows that it may be produced in covered spaces, namely, greenhouses, glasshouses and similar structures. By limiting the cultivation of hemp to open fields, the provincial authority is refusing to recognise an industry that has already been recognised by the European Commission and, therefore, is denying Romanian farmers access to the internal market, contrary to the FEU Treaty.

7 The court of first instance decided that it was irrelevant that Biohemp had at its disposal the whole of the 0.54 hectare area recorded in the agricultural register, since the applicable provisions refer to the legal use of 'agricultural land'. The building cannot be treated as agricultural land within the meaning of Article 4(5)(b) of the Rules for the implementation of Law 339/2005. That article does not refer to land 'for agricultural purposes' but rather, *stricto sensu*, to productive agricultural land as referred to in Article 2(a), first indent, of Law 18/1991.

8 'THC'.

9 'CBD'.

10 Biohemp claimed that Law 339/2005 does not impose any restriction as to the place where hemp may be grown. The Rules for the implementation of Law 339/2005 refer only to the concept of agricultural land, not to the concept of productive agricultural land. Therefore, a broad interpretation of the concept of agricultural land as land used for agricultural purposes, as provided for in Article 2(a) of Law No 18/1991, is correct. In addition, although at the time when it was built and entered in the land register the 400 m^2 building had an agricultural and livestock purpose, it has been renovated and is currently used as a covered space for plant cultivation. That is apparent from the certificate attesting its entry in the agricultural register, issued by the municipality of Pianu (Romania).

11 Biohemp relies on the judgments of 16 January 2003, *Hammarsten* (C-462/01, EU:C:2003:33; 'the judgment in *Hammarsten*'); and of 19 November 2020, *B S and C A (Marketing of cannabidiol (CBD))* (C-663/18, EU:C:2020:938; 'the judgment in *B. S. and C. A. (Marketing of cannabidiol (CBD))*'; and also on the order of 11 July 2008, *Babanov* (C-207/08, EU:C:2008:407).

20. The provincial authority contests Biohemp's claim, also putting forward arguments based on national law [12] and on EU law. In the latter arguments, it submits, in summary, that:

– Hemp with a THC content of less than 0.2%, grown in Romania and monitored by the Ministry of Agriculture and Rural Development, is a field crop which complies with growing technology that adheres to scientific literature, in places where the needs of the plant in relation to the climate and the soil are guaranteed.

– It is apparent from procedure A for taking samples to determine the THC content, as set out in points 2.1 ('Samples') and 2.2 ('Sample size') of Annex III to Commission Delegated Regulation (EU) No 639/2014 [13] that hemp is grown in fields.

21. Against that background, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) has referred 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?'

III. Procedure before the Court of Justice

22. The request for a preliminary ruling was received at the Registry of the Court of Justice on 29 December 2022.

23. Written observations were lodged by the Romanian Government and the Commission. [14] Both those parties and Biohemp appeared at the hearing held on 25 January 2024.

IV. Assessment

A. Admissibility

24. The Romanian Government argues that the question referred for a preliminary ruling is inadmissible as regards the interpretation of Articles 35 and 36 TFEU. It relies, in support of its plea, on the case-law of the Court on purely internal situations [15] and the absence from the order for reference of any explanations concerning the connection between either article and the dispute.

[12] For the purposes of issuing the permit, the applicable rules require the lodging of documents relating to productive agricultural land, and not buildings. The concept of 'agricultural land' must be interpreted strictly, that is to say, as productive agricultural land under Law 18/1991. If it were to be interpreted broadly, it would also be possible to grow hemp on other categories of land used for agricultural purposes (such as land with coppice vegetation or non-productive land), which is not possible. Agricultural land differs from land occupied by agricultural and livestock buildings and facilities, both of which are subcategories of the category of land used for agricultural purposes.

[13] Commission Delegated Regulation 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). Annex III ('Union method for the quantitative determination of the Δ9-tetrahydrocannabinol content in hemp varieties') was incorporated by Commission Delegated Regulation (EU) 2017/1155 of 15 February 2017 amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp … and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council (OJ 2017 L 167, p. 1).

[14] The provincial authority submitted written observations out of time, and therefore the Court refused to accept them.

[15] Judgment of 15 November 2016, *Ullens de Schooten* (C-268/15, EU:C:2016:874, paragraph 55). 'The judgment in *Ullens de Schooten*'.

25. According to the Court, the general rule is that the provisions of the FEU Treaty relating to fundamental freedoms do not apply, in principle, to a situation which is confined in all respects within a single Member State.[16] However, that general rule is subject to four exceptions, in accordance with which, even where the situation concerned is internal, it is possible to request the interpretation of provisions of EU law. The features of those exceptions are set out in the judgment in *Ullens de Schooten*,[17] and it is not necessary to transcribe them here.

26. To enable the interpretation of EU law in the case of a purely internal situation, the Court requires that the specific factors that allow a link to be established between the subject or circumstances of a dispute, confined in all respects within a single Member State, and the provisions of EU law the interpretation of which is requested, must be apparent from the order for reference.

27. It is thus for the referring court to indicate in what way, despite its purely domestic character, the dispute has a connecting factor with the provisions of EU law on the fundamental freedoms that makes the preliminary ruling on interpretation necessary for it to give judgment.[18]

28. In this case, the freedom of establishment (the Romanian legislation prohibits the pursuit of the independent economic activity of hemp grower in indoor spaces) and the free movement of goods (Biohemp cannot produce, in indoor spaces, hemp for export to other Member States where there is a demand for this product) may, theoretically, be affected.

29. The order for reference contains no arguments regarding the need for an interpretation of Articles 35 and 36 TFEU (or Article 49 TFEU on freedom of establishment). The referring court merely states that Biohemp claims to have concluded contracts for the sale of its hemp with processors established in other Member States.

30. In those circumstances, the Court may not provide the referring court with an interpretation of Articles 35 and 36 TFEU which may be useful for the purpose of deciding on the proceedings[19] and the question referred for a preliminary ruling is inadmissible in so far as it concerns those articles.

31. In addition, the Romanian Government contends that the question is also inadmissible as regards the interpretation of Article 38 TFEU, but its plea cannot be upheld.

32. Article 38 TFEU is the first provision of primary law governing the CAP, the objectives of which are enshrined in Article 39 TFEU. Unlike the articles cited above, both articles are relevant to this reference because they constitute the reference framework for the interpretation of Regulations No 1307/2013 and No 1308/2013, which are the subject of the national court's question. For the purposes of applying the rules of the CAP, it is irrelevant whether or not the situation concerned is purely internal.

[16] The judgment in *Ullens de Schooten*, paragraph 47, and judgment of 18 January 2022, *Thelen Technopark Berlin* (C-261/20, EU:C:2022:33, paragraph 50).

[17] The judgment in *Ullens de Schooten*, paragraphs 50 to 53. See also judgment of 20 September 2018, *Fremoluc* (C-343/17, EU:C:2018:754, paragraph 20).

[18] The judgment in *Ullens de Schooten*, paragraphs 54 and 55, and judgment of 2 March 2023, *Bursa Română de Mărfuri* (C-394/21, EU:C:2023:146, paragraphs 50 and 51).

[19] Judgments of 19 April 2018, *Consorzio Italian Management and Catania Multiservizi* (C-152/17, EU:C:2018:264, paragraph 22), and of 2 September 2021, *Irish Ferries* (C-570/19, EU:C:2021:664, paragraph 133).

33. At the hearing, Biohemp stated that it had requested permission to cultivate hemp on an area of 0.54 hectares, [20] but it acknowledged that it had not applied for the direct payment provided for in Regulation No 1307/2013.

34. In the light of that acknowledgement, it is necessary to consider whether the resolution of the dispute requires the Court to interpret – as the referring court wishes – the provisions of Regulation No 1307/2013, which provides for direct payments to farmers under support schemes within the framework of the CAP.

35. It is, in principle, for the referring court to assess whether the questions it refers are necessary for the purpose of giving a decision on the dispute. [21] However, the Court of Justice may rule that those questions are inadmissible if it finds them to be hypothetical or irrelevant for that purpose. [22]

36. The Romanian legislation requires a permit to plant hemp because this product contains, to a greater or lesser degree, narcotic substances which may lead to the production of drugs. The provisions of Regulation No 1307/2013 would be applicable to that permit if, at the same time or later, Biohemp had applied for a direct payment for its holding.

37. On the other hand, if an undertaking applying for a cultivation permit does not request the direct payment provided for in Regulation No 1307/2013, it could be argued that the regulation is inapplicable and that its interpretation would be of no use for the purposes of deciding on the dispute. In principle, therefore, the reference for a preliminary ruling would be inadmissible as regards the interpretation of that regulation.

38. It would be possible for the Court to avoid that declaration of inadmissibility and to provide the referring court with an interpretation of Regulation No 1307/2013 if it were to find that there is a *necessary* connection between the application for a permit to grow hemp and the substantive rules laid down in that regulation.

39. As I shall explain below, in order to arrive at that conclusion the conditions for accessing a direct payment for the production of hemp must be considered to be applicable to the permit to grow hemp, *even if the producer does not apply for that payment*, since it is a plant with varieties that are suitable for the production of drugs, which may not be grown freely and without monitoring by the authorities.

40. I accept that it is not straightforward to accept that connection but, to my mind, there is no other possibility for declaring that the question referred is admissible as far as the interpretation of Regulation No 1307/2013 is concerned. In case the Court also takes that view, I shall deal with Regulation No 1307/2013.

[20] As stated above, the provincial authority issued the permit only for the land (0.50 hectares) in the open air but not for the indoor area (0.04 hectares) equipped for the cultivation of hemp inside it using a hydroponic watering system.

[21] It falls to the national court, before which the dispute has been brought, to assume responsibility for the subsequent judicial decision and to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions which it submits to the Court (judgments of 26 May 2011, *Stichting Natuur en Milieu and Others*, C-165/09 to C-167/09, EU:C:2011:348, paragraph 47; of 9 September 2015, *X and van Dijk*, C-72/14 and C-197/14, EU:C:2015:564, paragraph 57; and of 12 May 2021, *Altenrhein Luftfahrt*, C-70/20, EU:C:2021:379, paragraph 25).

[22] The Court has regularly pointed out that the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them and that the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered, but rather that it is necessary for the effective resolution of a dispute (judgments of 22 March 2022, *Prokurator Generalny (Disciplinary Chamber of the Supreme Court – Appointment)*, C-508/19, EU:C:2022:201, paragraphs 60 to 62, and of 9 January 2024, *G. and Others (Appointment of judges of the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraphs 62 and 64).

41. In any event, since the referring court has requested the interpretation of Regulation No 1308/2013, Article 1(2)(h) and Article 189(2) of which specifically concern the cultivation of hemp, the reference is admissible in relation to that regulation.

B. Examination of the substance

42. Hemp (*Cannabis sativa* L.) is a species of the family *cannabaceae*. These plants have a high content of several types of phytocannabinoids, concentrated in a viscous sap which is produced in glandular structures known as trichomes.

43. It can be inferred from the information received [23] that the two most important phytocannabinoids in hemp are THC (the main psychoactive component of the plant, which is narcotic) and CBD (which is not regarded as psychoactive or narcotic). It appears, moreover, that CBD reduces the psychoactive effects of THC.

44. A combined reading of Article 38(3) TFEU and Annex I thereto shows that hemp is subject to the CAP.

45. In accordance with Article 1(2)(h) of Regulation No 1308/2013, hemp is included in the common organisation of the markets (CMO) for agricultural products. In accordance with Part VIII of Annex I to that regulation, the hemp sector intended for the production of fibre covers 'true hemp (*Cannabis sativa* L.) raw or processed but not spun; tow and waste of true hemp (including yarn waste and garnetted stock)'.

46. Within the framework of the CAP, only the cultivation of hemp having a low percentage of THC that is not suitable for the production of narcotics is permitted. [24] Industrial hemp has various lawful uses which contribute to the attainment of the objectives of the European Green Deal. [25]

47. Farmers who grow hemp may opt for area-related direct payments (basic payment or single area payment) [26] within the framework of the CAP, provided that they satisfy: (a) the *standard conditions* of eligibility for direct payments laid down in Regulation No 1307/2013; and (b) the *additional specific requirements* which ensure that no illegal hemp cultivation receives support under the CAP:

– As regards the *standard conditions*, the issue in these proceedings is whether an 'indoor environment prepared for' hydroponic cultivation can be classified as an 'agricultural area'.

– As regards the *specific additional requirements*, the dispute concerns the levels of THC and CBD in hemp grown in an indoor environment using a hydroponic system.

[23] Naturally, any findings of a technical nature that are necessary in order to provide the referring court with an answer are those which can be inferred from the case file and from the parties' observations, which must reflect the current status of scientific knowledge in the field. Neither this Opinion nor the Court's future judgment have any scope other than the strictly legal.

[24] See point 83 et seq. of this Opinion.

[25] It can be used as a textile fibre similar to linen; for the production of food for humans using de-hulled hemp seeds, and of food for animals using whole seeds; for the use in construction of lime hemp concrete, hemp wool, and fibreboard insulation; for the production of paper from hemp fibre; for the manufacture of cosmetics (oils, lotions and shampoos); and as a biofuel. See the data provided by the Commission at https://agriculture.ec.europa.eu/farming/crop-productions-and-plant-based-products/hemp_en.

[26] The Member States may, under certain conditions, grant voluntary coupled support to farmers who grow hemp, and France, Poland and Romania currently do this.

48. Before I deal with each of those two elements, I should point out that Member States may not impose additional restrictions on the cultivation of hemp under Article 189(2) of Regulation No 1308/2013.

49. That provision allows Member States only to establish 'more restrictive rules' than those laid down (in Article 189(1)) for hemp imports from third countries. That option does not permit the strengthening of domestic provisions on the production of hemp contrary to those laid down by EU law.

50. That assertion is confirmed by the judgment in *Hammarsten*,[27] relating to the Swedish prohibition on the cultivation and possession of industrial hemp covered by the CMO in the sector. The Court held that the national prohibition directly undermined that CMO and deprived farmers established in Sweden of any possibility of claiming the benefit of the aid provided for by EU law.

51. The judgment in *Hammarsten* and Article 189(1) of Regulation No 1308/2013 show that there is a certain connection between a permit to plant hemp and the possibility of obtaining the direct CAP payments laid down for the cultivation of hemp in Regulation No 1307/2013.

52. Article 189(1) of Regulation No 1308/2013 permits the import into the Union of raw true hemp only if the conditions laid down by Article 32(6) and Article 35(3) of Regulation No 1307/2013 are met.

53. Those conditions (which, in principle, are required to be met in order to obtain direct payments for areas planted with that crop) must be taken to apply also to the internal production of hemp in the Union. In other words, those articles set the limits for the existence of the 'legal' cultivation of hemp in the Member States, irrespective of whether or not the producer applies for a direct payment in respect of the cultivated area.

1. Concept of agricultural area

54. Pursuant to Article 32(1) of Regulation No 1307/2013, 'support under the basic payment scheme shall be granted to farmers … upon activation of a payment entitlement per eligible hectare'.

55. In accordance with Article 32(2)(a) of Regulation No 1307/2013, the definition of 'eligible hectare' covers 'any agricultural area of the holding … that is used for an agricultural activity or, where the area is also used for non-agricultural activities, is predominantly used for agricultural activities'.

56. The term 'agricultural area', as defined in Article 4(1)(e) of Regulation No 1307/2013, includes 'any area taken up by arable land, permanent grassland and permanent pasture, or permanent crops'.

[27] The judgment in *Hammarsten*, paragraphs 30 and 31. In the operative part of the judgment, the Court held that 'Regulation (EEC) No 1308/70 of the Council of 29 June 1970 on the common organisation of the market in flax and hemp, as amended by Council Regulation (EC) No 2826/2000 of 19 December 2000 on information and promotion actions for agricultural products on the internal market and Regulation (EEC) No 619/71 of the Council of 22 March 1971 laying down general rules for granting aid for flax and hemp, as amended by Council Regulation (EC) No 1420/98 of 26 June 1998, must be interpreted so precluding national legislation which has the effect of prohibiting the cultivation and possession of industrial hemp covered by those regulations'.

57. 'Arable land' is defined in Article 4(1)(f) of Regulation No 1307/2013 as 'land cultivated for crop production or areas available for crop production but lying fallow … irrespective of whether or not that land is under greenhouses or under fixed or mobile cover'.

58. In accordance with Article 4(1)(c) of Regulation No 1307/2013, 'agricultural activity' includes 'production, rearing or growing of agricultural products, including harvesting …', with 'agricultural products', according to Article 4(1)(d), being taken to mean 'the products … listed in Annex I to the Treaties', a list which includes hemp.

59. Classification as 'arable land' and, therefore, as an 'agricultural area' for the purposes of those provisions, depends on the actual use (even where that use is contrary to national provisions relating to the classification of land) [28] of that land. [29]

60. Areas eligible for the payment of aid must be agricultural areas, be part of a farmer's holding and be used for agricultural activities or, where the areas are used as well for non-agricultural activities, predominantly used for agricultural activities. [30]

61. In my opinion, the provisions of Regulations No 1307/2013 and No 1308/2013 which I have cited above, and the case-law of the Court on the concept of agricultural area, support the argument that the cultivation of hemp in an 'indoor environment prepared for that purpose', using a hydroponic system, is covered by that concept.

62. An indoor environment prepared for the cultivation of hemp is a piece of land with a structure on it, which is used for an agricultural activity, such as the cultivation of hemp. 'Arable land' is, as I stated above, land cultivated for crop production, 'irrespective of whether or not that land is *under greenhouses or under fixed or mobile cover*'. [31]

63. Like a *greenhouse* or any other similar structure (which is not, properly speaking, a building in the usual sense), an indoor environment prepared for the cultivation of hemp consists of *fixed cover* which is placed on land, which does not preclude its classification as an agricultural area. The similarity between a greenhouse and a building equipped for the cultivation of hemp using a hydroponic system is clear. Nowadays, greenhouses are not built using only a simple wire and plastic structure but rather using other materials and more solid structures, such as polycarbonate or glass.

64. As the abovementioned case-law states, the relevant point is that the area (even with the fixed structure on it) is used for agricultural production, of hemp in this case.

65. The Commission disputes that line of reasoning, submitting that the cultivation of hemp is eligible for the basic payment to farmers only if it takes place in an open field and not where it is carried out in a covered structure using a hydroponic system.

[28] Judgment of 29 April 2021, *Piscicola Tulcea and Ira Invest* (C-294/19 and C-304/19, EU:C:2021:340, paragraph 63): 'an area must be classified as "agricultural" where it is actually used as "arable land" within the meaning of the provisions recalled in paragraph 61 of the present judgment (see, by analogy, judgment of 14 October 2010, *Landkreis Bad Dürkheim*, C-61/09, EU:C:2010:606, paragraph 37) and … that classification cannot be called into question on the sole ground that such an area has been used as arable land contrary to national law relating to the classification of land'.

[29] Judgments of 14 October 2010, *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606, paragraph 37); of 2 July 2015, *Wree* (C-422/13, EU:C:2015:438, paragraph 36); of 2 July 2015, *Demmer* (C-684/13, EU:C:2015:439, paragraph 56); and of 29 April 2021, *Piscicola Tulcea and Ira Invest* (C-294/19 and C-304/19, EU:C:2021:340, paragraph 62).

[30] Judgments of 2 July 2015, *Demmer* (C-684/13, EU:C:2015:439, paragraph 54), and of 29 April 2021, *Piscicola Tulcea and Ira Invest* (C-294/19 and C-304/19, EU:C:2021:340, paragraph 64).

[31] Article 4(1)(f) of Regulation No 1307/2013. Italics added.

66. In the Commission's submission, Article 4(1)(e) and (f) of Regulation No 1307/2013 requires *interaction* between the soil and the plant root in order for there to be arable land and an agricultural area. [32] The same requirement applies to the voluntary coupled support scheme [33] and is not met where hemp is cultivated in an indoor space using a hydroponic system.

67. I do not agree with the Commission's position. It is not possible to infer from the wording of Article 4(1)(e) and (f) of Regulation No 1307/2013 that only agricultural areas on which the plant root interacts with the soil can be arable land. That view reflects a perception of agriculture which has been overtaken by technological progress.

68. Soil ceased to be an essential element for agricultural production years ago. [34] Under natural conditions, soil definitely acts as a mineral and nutrient reserve for plants but, when the nutrients are dissolved in water, the plant's roots are able to absorb them directly and the soil is no longer strictly necessary in order for the plant to grow. In other words, 'interaction of the roots with the soil' is not essential for the plant to develop and for there to be agricultural production.

69. Hydroponics is a cultivation system through which the roots are supplied with a nutrient solution dissolved in water. This solution contains the chemical elements needed for the development of plants which can grow in an aqueous medium (or in an inert medium such as washed sand, gravel or perlite) without the need for soil (earth).

70. The advantages of hydroponic cultivation over traditional agriculture include:

– Lower consumption of water and nutrients, which can be used more efficiently.

– Lower use of agricultural soil and elimination of problems relating to deterioration of the quality of that soil, due to the use of fertilisers and the repeated cultivation of intensive crops.

– Reduced use of pesticides, because hydroponics is combined with cultivation in indoor or semi-indoor spaces (such as greenhouses or buildings fitted out for that purpose), thereby making it easier to control pests. [35]

– Closer proximity to urban centres of consumption and consequent reduction in emissions related to the transport of agricultural products.

[32] The Commission's position is reflected in the document *Direct Payments Eligibility for direct payments of the Common Agricultural Policy*, May 2019, p. 4, in these terms: 'greenhouses are considered eligible provided the land maintains the characteristics of an agricultural area. However, in specific situations, e.g. cultivation of plants in pots with no interaction of the plants roots with the soil, or greenhouses where the soil is concrete (e.g. hydroponic cultivation), the areas are considered not eligible because the soil is not contributing to the development of the crop'.

[33] Article 53(5) of Delegated Regulation No 639/2014 provides that 'Member States may not grant area-related coupled support for areas that are not eligible areas within the meaning of Article 32(2), (3) and (4) of Regulation (EU) No 1307/2013'.

[34] In areas under greenhouses, for example, the land is often covered by a layer of sand and all the nutrients that the plants need are watered in. At other times, planting is done on top of the soil but the plant roots do not penetrate the soil and instead are kept on an artificial covering of peat or similar material, which is placed inside a wide tube to which nutrients are added by watering, with the plant roots remaining inside that tube.

[35] That control enables the use of integrated pest control techniques, in which insects which predate pests are produced to eliminate pests from crops, with the aim of reducing or eliminating the use of insecticides.

71. Regulations No 1307/2013 and No 1308/2013 do not contain any provisions making classification as arable land or as an agricultural area subject to the use of specified cultivation techniques. Therefore, there are no grounds for arguing that hydroponic systems are incompatible with the treatment of land as an agricultural area.

72. The EU provisions do not allow the use of hydroponic systems in the case of organic production. Hydroponic systems are thus prohibited by Regulation (EU) 2018/848, [36] pursuant to recital 28 [37] and Annex II, Part I ('Plant production rules'), point 1.2. [38]

73. In my view, the reason why the legislature wished to exclude hydroponic production from organic plant production is because, implicitly and by a converse interpretation, hydroponic production is permitted for conventional (non-organic) agricultural production.

74. As a cultivation technique, hydroponics has advantages that are consistent with the objectives of the CAP, as I have already pointed out and as all the parties acknowledged at the hearing. In particular, it accords with the aim of the CAP (Article 39(1)(a) TFEU) of '[increasing] 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'.

75. Hydroponic systems increase agricultural productivity, promote technical progress and encourage more rational development of agriculture, since they use fewer water resources and reduce the size of land needed for cultivation.

76. Hydroponics also promotes the attainment of two other objectives of the CAP, namely, '[assuring] the availability of supplies' (Article 39(1)(d) TFEU) and '[ensuring] that supplies reach consumers at reasonable prices' (Article 39(1)(e) TFEU).

77. Both those objectives are fulfilled because hydroponic crops in indoor spaces are less dependent on climatology than traditional crops in an open field and are less affected by pests. By the same token, they are better at ensuring the availability of agricultural products, enabling those products to be supplied at reasonable prices and lower transport costs.

78. Admittedly, the CAP appears to be designed more with traditional agriculture in mind, since aid to farmers is determined on the basis of eligible hectares, that is, area, which fits better with outdoor agriculture and plants that are rooted in the soil. [39] However, it is also true that, in the case of other products (for example, vegetables and fruit), hydroponic cultivation can be very convenient and, in the absence of an express prohibition, I see no reason for excluding these new production methods, whose compatibility with the objectives of the CAP has, I believe, been demonstrated.

[36] Regulation 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).

[37] 'As organic plant production is based on nourishing the plants primarily through the soil ecosystem, plants should be produced on and in living soil in connection with the subsoil and bedrock. Consequently, hydroponic production should not be allowed, nor growing plants in containers, bags or beds where the roots are not in contact with the living soil.'

[38] 'Hydroponic production, which is a method of growing plants which do not naturally grow in water with their roots in a nutrient solution only or in an inert medium to which a nutrient solution is added, is prohibited.'

[39] In fact, some agricultural production is not suitable for cultivation using hydroponic systems (cereals, for example).

79. To put it another way, the CAP rules should not be interpreted in such a way that they slow down technical developments in agriculture, which would happen if direct area payments were prohibited for indoor holdings fitted with hydroponic systems.

80. In any event, the Commission argued at the hearing that the cultivation of hemp in indoor spaces using hydroponic systems is compatible with Regulation No 1308/2013 but that those crops would not be eligible for direct payments under Regulation No 1307/2013, although they would be eligible for other types of aid, such as, in particular, aid under the European Agricultural Fund for Rural Development (EAFRD).

81. While I share the Commission's view with regard to Regulation No 1308/2013, I do not believe that it is correct in relation to Regulation No 1307/2013. The cultivation of hemp indoors using a hydroponic system is more intensive than the cultivation of hemp outdoors, meaning that the crops occupy less land and, therefore, the direct payments are lower.[40] However, I see no reason to reject direct payments solely because there is no interaction between the roots of the hemp plant and the land, as I have stated above.

82. To sum up, I believe that an area used for the cultivation of hemp in an indoor environment prepared for that purpose and using a hydroponic system can be regarded as an agricultural area for the purposes of Article 4(1)(e) and (f) of Regulation No 1307/2013.

2. Concentrations of THC and CBD in hemp

83. The cultivation of hemp is subject to *specific requirements* for the receipt of direct payments, due to the fact that it is possible to extract and sell narcotic substances from this plant:

– In accordance with Article 32(6) of Regulation No 1307/2013, areas used for the production of hemp are only eligible hectares if the varieties used have a THC content not exceeding 0.2%.

– Although it is not applicable *ratione temporis* to these proceedings, Regulation (EU) 2021/2115 raised the THC content to 0.3% with effect from 1 January 2023.[41]

– Article 53(5) of Delegated Regulation No 639/2014 extends that requirement to areas of hemp production in order for them to be eligible for voluntary coupled support, which Romania has used.

[40] The area of land used for this type of production is smaller than for hemp cultivation in an open field and the area-related direct aid received by farmers is also correspondingly lower. However, the increased productivity of cultivation in indoor spaces using hydroponics may offset the reduction in area-related direct aid.

[41] From 1 January 2023, Regulation No 1307/2013 was repealed and replaced by Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ 2021 L 435, p. 1). The second subparagraph of Article 4(4) of Regulation 2021/2115 provides that 'areas used for the production of hemp shall be eligible hectares only if the varieties used have a tetrahydrocannabinol content not exceeding 0.3%'. Recital 18 of that regulation explains that, 'as regards the areas used for the production of hemp, in order to preserve public health and to ensure coherence with other bodies of legislation, the use of hemp seed varieties with tetrahydrocannabinol content below 0.3% should be included within the definition of "eligible hectare"'.

– Article 35(3) of Regulation No 1307/2013 [42] empowers the Commission to adopt a delegated act in accordance with the conditions which it lays down. [43] The Commission adopted Delegated Regulation No 639/2014, Article 9 [44] of which provides that farmers must use certified seed of the varieties listed in the European Union Common Catalogue of Varieties of Agricultural Plant Species. There are 75 varieties of hemp recorded in that catalogue.

84. It can be inferred from that raft of provisions that farmers may obtain direct payments if they sow one of the varieties of hemp with a THC content of less than 0.2% (or 0.3% from 1 January 2023). In the case of hemp cultivation in an open field, it does not appear that there is a risk of an increase in THC.

85. The specific conditions for opting for direct payments in respect of hemp cultivation are, in addition, requirements for obtaining the corresponding administrative authorisation, pursuant to EU law, and for growing that product lawfully. Compliance with those conditions must enable producers to carry on that activity, as the judgment in *Hammarsten* emphasised.

3. The prohibition adopted by the Romanian authorities

86. It is apparent from the order for reference that the Romanian authorities prohibit the cultivation of hemp in indoor environments prepared for that purpose, using a hydroponic cultivation system, owing to the risk that the THC content of plants grown in that way will increase above the permitted limits, with the resulting harm to public health.

87. The establishment of a CMO does not prevent the Member States from applying national rules intended to attain an objective relating to the general interest other than those covered by the CMO even if those rules are likely to have an effect on the functioning of the common market in the sector concerned. [45]

88. More restrictive national measures intended to protect an objective relating to the general interest must, however, satisfy the requirement of proportionality, that is, they must be appropriate for attaining the objective pursued, and must not go beyond what is necessary to attain that objective. The issue of proportionality must be examined by taking into consideration, in particular, the objectives of the CAP and the proper functioning of the CMO, which necessitates that those objectives be weighed against the objective pursued by that legislation. [46]

[42] 'In order to preserve public health, the 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).'

[43] See also Commission Regulation (EU) 2022/1393 of 11 August 2022 amending Regulation (EC) No 1881/2006 as regards maximum levels of delta-9-tetrahydrocannabinol (Δ9-THC) in hemp seeds and products derived therefrom (OJ 2022 L 211, p. 83), repealed implicitly with effect from 24 May 2023 by Commission Regulation (EU) 2023/915 of 25 April 2023 on maximum levels for certain contaminants in food and repealing Regulation (EC) No 1881/2006 (OJ 2023 L 119, p. 103).

[44] 'For the purposes of Article 32(6) of Regulation (EU) 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)]. The seed shall be certified in accordance with Council Directive 2002/57/EC [of 13 June 2002 on the marketing of seed of oil and fibre plants (OJ 2002 L 193, p. 74)]'.

[45] The judgment in *Hammarsten*, paragraph 31, and judgment of 23 December 2015, *Scotch Whisky Association and Others* (C-333/14, EU:C:2015:845, paragraph 26).

[46] Judgment of 23 December 2015, *Scotch Whisky Association and Others* (C-333/14, EU:C:2015:845, paragraph 28).

89. Further, a restrictive measure can be considered to be an appropriate means of securing the achievement of the objective pursued only if it genuinely reflects a concern to secure the attainment of that objective in a consistent and systematic manner. [47]

90. Regulation No 1307/2013 and the other EU provisions relating to the cultivation of industrial hemp balance the interests in question by allowing only the cultivation of hemp with THC levels of less than 0.2%. Since there is no explicit reference in those provisions to the techniques for cultivating industrial hemp, a Member State has the option of adopting additional restrictive measures in that regard.

91. Making use of that option, the Romanian authorities took the view that there is a genuine risk that the cultivation of varieties of hemp in indoor environments using hydroponic systems is liable to increase the level of THC above the permitted legal limit of 0.2%. Hemp cultivated in that way could be 'diverted' to the manufacture of narcotic drugs, to the detriment of public health.

92. In the light of that risk, the Romanian authorities, taking into account the precautionary principle, applied an *ex ante* prohibition, taking the view that the performance of *ex post* checks on hemp plantations in indoor environments would not sufficiently protect the public interest. The Romanian authorities argue that those checks are laid down for hemp grown outdoors but not for hemp produced indoors, which has different growth and flowering cycles. [48]

93. Procedure A for taking samples to determine the THC content is, as I indicated, set out in Annex III to Delegated Regulation No 639/2014, [49] which specifies as follows:

– point 2.1 ('Samples'): '… in a standing crop of a given variety of hemp, a 30 cm part containing at least one female inflorescence of each plant selected shall be taken. Sampling shall be carried out during the period running from 20 days after the start of flowering to 10 days after the end of flowering';

– point 2.2 ('Sample size'): 'the sample shall comprise parts of 50 plants per field'.

94. It is for the referring court to examine that aspect, in addition to all the other aspects which have a bearing on the proportionality of the restrictive national measure (and, consequently, on the assessment of its compatibility with EU law), but the Court may provide the referring court with guidelines for conducting that examination.

95. First, it is common ground that narcotic drugs (including those derived from hemp, such as cannabis) are harmful, and therefore the marketing of such drugs is prohibited. However, strictly controlled trade for use for medical and scientific purposes is permitted. [50]

96. Accordingly, the public interest relating to the protection of public health is capable of justifying a national measure prohibiting the cultivation of hemp, where plants are used for the production of narcotic drugs such as cannabis, produced from THC.

[47] Judgments of 3 March 2011, *Kakavetsos-Fragkopoulos* (C-161/09, EU:C:2011:110, paragraph 42); of 23 December 2015, *Scotch Whisky Association and Others* (C-333/14, EU:C:2015:845, paragraph 37); and the judgment in *B. S. and C. A. (Marketing of cannabidiol (CBD))*, paragraph 87.

[48] At the hearing, the Romanian Government emphasised the logistical difficulties in adopting checks of that kind on hemp crops in indoor spaces, because the flowering cycles differ from the usual open-air cycles.

[49] As amended by Delegated Regulation 2017/1155.

[50] Judgment of 16 December 2010, *Josemans* (C-137/09, EU:C:2010:774, paragraph 36), and the judgment in *B. S. and C. A. (Marketing of cannabidiol (CBD))*, paragraph 59.

97. Secondly, the information supplied by Biohemp shows that the variety of hemp planted in an indoor space with a hydroponic system has a THC content which does not exceed 0.2%. Biohemp asserts that indoor cultivation using a hydroponic system leads to an increase in CBD in the plant but not in the level of THC. According to the Romanian authorities, some studies suggest that the THC level could also increase and, at the moment, there are no conclusive analyses which confirm otherwise.

98. As the Commission stated at the hearing, if the plants are hemp varieties authorised for cultivation in the Union, they must have a THC level which does not exceed 0.2%, including where the seeds are sown in an indoor space fitted with a hydroponic system.

99. Subject to the appropriate verifications based on reliable scientific studies, it appears that a high level of CBD in a particular hemp plant means a lower level of THC, from which it follows that the plant concerned is not conducive to the manufacture of drugs. In the situation at issue, the risk of an increased level of THC could thus be ruled out, but that is a matter for the referring court to confirm.

100. The cannabinoid which it has been established increases where industrial hemp varieties are grown indoors using a hydroponic system is, according to the available information, CBD.

101. The Court has already had occasion to clarify that, in the current state of scientific knowledge, CBD does not contain a psychoactive ingredient.[51] Therefore, CBD must not be classified as a narcotic drug within the meaning of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concluded in Vienna on 20 December 1988,[52]to which all the Member States and the European Union are parties.[53]

102. Since the cultivation of industrial hemp in an indoor environment using a hydroponic system only increases the CBD in the plants and does not increase their (legalised) THC content, a Member State may not simply justify restricting hemp cultivation on the basis of the protection of public health. I repeat that, in the current state of scientific knowledge, CBD 'is not a drug within the meaning of the Single Convention'.[54]

103. Thirdly, a national measure restricting the production of industrial hemp indoors using a hydroponic system can only pass the assessment of proportionality if it is applied consistently and systematically.

104. At the hearing it was debated whether the requirements of consistency and systematic application of the prohibition are met in Romania. Biohemp claimed that, in a number of provinces (Constanța, Dâmbovița and Sibiu) of Romania, this type of hemp cultivation is permitted. Moreover, in previous harvests in the province of Alba (Romania), the authorities

[51] The judgment in *B. S. and C. A. (Marketing of cannabidiol (CBD))*, paragraph 75.

[52] United Nations, *Treaty Series*, Vol. 1582, No I-27627.

[53] The Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, done at New York on 30 March 1961 (United Nations, *Treaty Series*, Vol. 520, No 7515). See the judgment in *B. S. and C. A. (Marketing of cannabidiol (CBD))*, paragraph 76.

[54] The judgment in *B. S. and C. A.(Marketing of cannabidiol (CBD))*, paragraph 76.

authorised Biohemp to grow hemp in an indoor space prepared for that purpose using a hydroponic system.[55] The Romanian Government rejected those assertions, and the dispute in relation to this point remains unresolved.

105. In any event, it is for the referring court to determine whether the national restrictive measure is applied systematically and consistently on Romanian territory.

106. Lastly, the principle of proportionality requires a determination of whether there is a less restrictive alternative to a general prohibition of the cultivation of hemp indoors, in order to attain the objective of the protection of public health pursued by the Romanian State.

107. In that connection, it may be possible to authorise that type of hemp cultivation subject to rigorous checks to verify that the plants produced do not exceed the THC content of 0.2%. The difficulties put forward by the Romanian Government in relation to carrying out such checks could, perhaps, be overcome by applying to hemp grown in indoor spaces, inter alia other measures (in addition to that of obtaining the required permit), sample checks to measure the level of THC, which are provided for in Delegated Regulation No 639/2014.

108. In short, Article 32(6) of Regulation No 1307/2013 precludes national legislation which prohibits the cultivation of varieties of hemp having a THC content of less than 0.2%, where the cultivation technique used (in an indoor environment prepared for that purpose and using a hydroponic system) creates a significant increase in the CBD content of the hemp, unless that legislation is appropriate for ensuring the attainment of the objective of the protection of public health and does not go beyond what is necessary to attain that objective.

V. Conclusion

109. In the light of the foregoing considerations, I propose that the reply to be given to the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania) is as follows:

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, and 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,

are to be interpreted as meaning that:

– Article 4(1)(e) and (f) of Regulation No 1307/2013 permits the classification as an agricultural area of an area used for the cultivation of hemp (*Cannabis sativa* L.) in an indoor environment fitted with a hydroponic system.

[55] Biohemp claimed that the permit issued by the provincial authority in 2020 for the cultivation of hemp covered the renovated 400m^2 building used as a covered growing space, which is comparable to a greenhouse. At the hearing, the Romanian Government refuted that argument, stating that the permit was requested for the cultivation of an area of 3 500 m^2 without specifying that the building was situated in that area.

– Article 32(6) of Regulation No 1307/2013 precludes, in principle, national legislation which prohibits the cultivation of varieties of hemp having a tetrahydrocannabinol (THC) content of less than 0.2%, where the cultivation technique used (in an indoor environment fitted with a hydroponic system) creates a significant increase in the cannabidiol (CBD) content of the hemp, unless that legislation is appropriate for ensuring the attainment of the objective of the protection of public health and does not go beyond what is necessary to attain that objective, a matter which it is for the referring court to establish.