Provisional text

OPINION OF ADVOCATE GENERAL
TANCHEV
delivered on 14 May 2020 (1)

Case C-663/18

B. S.,
C. A.
interveners:
Ministère public,
Conseil national de l'Ordre des pharmaciens

(Request for a preliminary ruling from the Cour d'appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence, France))

(Reference for a preliminary ruling — Free movement of goods — Common organisation of the market in hemp — National legislation restricting the importation of hemp from another Member State solely to fibre and seeds)

1. The dispute in the main proceedings concerns the marketing in France of an electronic cigarette, the liquid in which contains cannabidiol ('CBD'), a compound extracted from the hemp plant, although, unlike tetrahydrocannabinol ('THC') also extracted from hemp, at least in the current state of scientific knowledge, it does not possess any psychotropic effects. B.S. and C.A., the directors of the company which markets that electronic cigarette under the name 'Kanavape', were convicted of a criminal offence by the Tribunal correctionnel de Marseille (Criminal Court, Marseille, France), on the grounds that the CBD oil contained in the cigarettes' cartridges was extracted from the whole hemp plant, including the leaves and flowers. French legislation restricts the cultivation, importation, exportation and industrial and commercial use of hemp solely to its fibre and seeds.

2. Since the CBD oil contained in Kanavape was, in the present case, imported from the Czech Republic, where the hemp plant was cultivated and where the CBD was extracted, the national court making the reference, the Cour d'appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence, France), questions whether the French legislation complies with the provisions of the FEU Treaty relating to the free movement of goods and with secondary legislation adopted within the framework of the common agricultural policy, specifically Regulation (EU) No 1307/2013 (2) and Regulation (EU) No 1308/2013. (3)

3. The present case will therefore provide the Court with an opportunity to give a ruling on whether national legislation restricting the importation of a substance derived from hemp, namely CBD oil — which the parties claim is increasing in popularity — is compatible with the provisions of the FEU Treaty, and in particular with Article 36 TFEU, which allows Member States to adopt measures prohibiting or restricting imports on grounds relating to the protection of the health and life of humans.

I. Legal context

A. European Union law

1. The FEU Treaty

4. Article 38 TFEU provides:

‘1. The Union shall define and implement a common agriculture and fisheries policy.

The internal market shall extend to agriculture, fisheries and trade in agricultural products. “Agricultural products” means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term “agricultural”, shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.

…

3. The products subject to the provisions of Articles 39 to 44 are listed in Annex I.

…’

5. Annex I to the Treaties, entitled ‘List referred to in Article 38 [TFEU]’, refers to heading 57.01 of the ‘Brussels Nomenclature’, (4) which covers ‘true hemp (*Cannabis sativa*), raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)’. That annex also refers to Chapter 12 of the Brussels Nomenclature, relating to ‘Oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder’.

2. Regulation No 1307/2013

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

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

3. Regulation No 1308/2013

7. Article 189 of Regulation No 1308/2013 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;

…

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. French law

8. Article R. 5132-86 of the Public Health Code (code de la santé publique) provides:

‘I. — The following shall be prohibited: production, manufacture, transportation, importation, exportation, possession, supply, transfer, acquisition or use of:

1. Cannabis, cannabis plants and cannabis resin, products containing cannabis or products obtained from cannabis, cannabis plants or cannabis resin;

2. Tetrahydrocannabinols, with the exception of delta-9-tetrahydrocannabinol, of tetrahydrocannabinol esters, ethers and salts, and of salts of the aforementioned derivatives, and of products containing them.

II. — Derogations may be granted from the above provisions for research and testing purposes and the manufacture of derivatives authorised by the Director-General of the Agence nationale de sécurité du médicament et des produits de santé (National Agency for Medicinal Product and Health Product Safety).

The cultivation, importation, exportation and industrial and commercial use of cannabis varieties not possessing narcotic properties or of products containing such varieties may be authorised, on a proposal from the Director-General of the Agency, by order of the Ministers with responsibility for Agriculture, Customs, Industry and Health.

…’

9. Under the derogations provided for by Article R. 5132-86 of the Public Health Code, the Decree of 22 August 1990 was adopted implementing Article R. 5181 (now Article R. 5132-86) of the Public Health Code in respect of cannabis, (5) as amended in 2004 (6) (‘the Decree of 22 August 1990’).

10. Article 1 of the Decree of 22 August 1990 provides:

‘The following shall be authorised under Article R. 5181 of the abovementioned code: cultivation, importation, exportation and industrial and commercial use (fibre and seeds) of varieties of *Cannabis sativa L*. meeting the following criteria:

- the delta-9-tetrahydrocannabinol content of those varieties does not exceed 0.20%;

- the determination of the delta-9-tetrahydrocannabinol content and the sampling for the purposes of such determination is carried out according to the Community method laid down in the annex.

…’

11. By circular of 23 July 2018, (7) the Minister for Justice called upon public prosecutors’ offices to prosecute and punish ‘particularly severely’ any offences relating to the sale of cannabis products to the public. Point 2.2 of that circular states: ‘… it should be noted that cannabidiol is found mainly in the leaves and flowers of the plant, and not in the fibre and seeds. Consequently, as the applicable legislation stands, it does not appear possible to extract cannabidiol under conditions consistent with the Public Health Code.’

II. Facts, the main proceedings and the question referred for a preliminary ruling

12. As stated in point 1 above, SAS Catlab, established in Marseille (France), whose directors are B. S. and C. A., markets an electronic cigarette, ‘Kanavape’, the liquid in which contains CBD. CBD is a compound extracted from hemp, specifically from *Cannabis sativa L*. Although, according to Kanavape’s sales publicity, CBD has relaxing properties, unlike THC it has no known psychotropic effects.

13. In December 2014, Catlab ran an information campaign for the launch of Kanavape. Following that campaign, the Public Prosecutor attached to the Tribunal de grande instance de Marseille (Regional Court, Marseille, France) ordered an inquiry. The inquiry established that the CBD oil used in Kanavape came from plants grown in the Czech Republic, where extraction of that oil was also carried out. In addition, it is clear from that inquiry that the whole hemp plant, including the leaves and flowers, was used to produce the CBD oil. That oil was then imported into France by Catlab, which packaged it in cartridges for Kanavape. (8)

14. By judgment of 8 January 2018 ('the judgment of the Tribunal correctionnel de Marseille'), the Tribunal correctionnel de Marseille (Criminal Court, Marseille) found B. S. and C. A. guilty, inter alia, on the charge of infringement of the Regulation on the trade in poisonous plants. That offence is provided for in Article L. 5432-1 I(1) of the Public Health Code, which states that it is an offence to fail to comply with provisions adopted under Article L. 5132-8 of that Code, such as the Decree of 22 August 1990. The Tribunal correctionnel de Marseille (Criminal Court, Marseille) stated, inter alia, that under that decree the production of hemp oil to be put in Kanavape was lawful 'only where it [was] obtained by pressing seeds', and that 'any intrusion into that product of leaves, bracts, or flowers [was] sufficient to render use of the cannabis plant for industrial or commercial purposes unlawful'. Since the whole hemp plant, including the leaves and flowers, had been used to manufacture the CBD oil put in Kanavape, an offence had been committed. The Tribunal correctionnel de Marseille (Criminal Court, Marseille) therefore sentenced B. S. to a suspended term of eighteen months' imprisonment and payment of a fine of EUR 10 000. C. A., for his part, was sentenced to a suspended term of fifteen months' imprisonment and payment of a fine of EUR 10 000.

15. It is clear from the request for a preliminary ruling that B. S. and C. A. were not prosecuted for marketing a product containing a level of THC above the legal threshold of 0.20%, since an analysis conducted by the Agence nationale de sécurité du médicament et des produits de santé (the National Agency for Medicinal Product Safety) had established that that threshold had not been reached.

16. B. S. and C. A. appealed against the judgment of the Tribunal correctionnel de Marseille (Criminal Court, Marseille) before the Cour d'appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence). The latter court questions whether the Decree of 22 August 1990 complies with the principle of the free movement of goods, since that decree restricts the importation of a product which, because it has a THC content below the legal threshold of 0.20%, cannot be regarded as a narcotic drug. It also questions whether the Decree of 22 August 1990 complies with Regulations No 1307/2013 and No 1308/2013, which allow the cultivation and importation into the European Union of hemp with a THC content below 0.20%.

17. The Cour d'appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence) therefore suspended the proceedings and referred the following question to the Court for a preliminary ruling:

'Must Regulations [No 1307/2013 and No 1308/2013], and the principle of the free movement of goods, be interpreted as meaning that the derogating provisions introduced by the Decree of 22 August 1990, by limiting the cultivation, industrialisation and marketing of hemp solely to fibre and seeds, impose a restriction that is not in accordance with [EU] law?'

18. Written observations on the question referred have been submitted by B. S., C. A., the French and the Greek governments, and the European Commission. Those parties submitted oral argument at the hearing which took place on 23 October 2019.

III. Analysis

19. The national court asks the Court whether, first, Regulations No 1307/2013 and No 1308/2013, and, secondly, 'the principle of the free movement of goods' must be interpreted as precluding a measure such

as the Decree of 22 August 1990, which restricts the cultivation, importation and industrial and commercial use of hemp solely to the fibre and seeds of the plant, to the exclusion of leaves and flowers.

20. As a preliminary point, I should like to make two remarks concerning the subject matter of the question referred.

A. Preliminary remarks concerning the subject matter of the question referred

21. First, the reference by the national court to 'the principle of the free movement of goods' must, as the Commission contends, be construed as being a reference to Articles 34 and 36 TFEU, concerning quantitative restrictions on imports and measures having equivalent effect between Member States. It is immaterial that in the grounds of the order for reference the national court refers to Articles 28, 29, 30 and 32 TFEU. Those articles concern the prohibition of customs duties on imports and exports and charges having equivalent effect. The Decree of 22 August 1990, although it restricts hemp imports inter alia to certain parts of the plant, does not contain any provision relating to customs duties or charges having equivalent effect. It is therefore in the light of Articles 34 and 36 TFEU alone that the compatibility of a measure such as that at issue in the main proceedings with 'the principle of the free movement of goods' referred to by the national court should be assessed.

22. Secondly, I do not concur with the view taken by B. S. that in order to give an answer which is of assistance to the national court it is necessary to expand the subject matter of the question referred.

23. In B. S.'s view, the Court should assess compatibility with EU law, not only of the prohibition on the marketing of hemp leaves and flowers, but also of three other requirements the French legislation imposes on the marketing of hemp, which are, first, the fact that the plant in question should belong to certain, exhaustively listed, varieties of *Cannabis sativa L.*, secondly, that the THC content of the plant should not exceed 0.20% and, thirdly, that the THC content of the *finished product* should be zero. (9) However, the Court should not, in my view, carry out such an assessment. The question whether the latter three requirements are compatible with Articles 34 and 36 TFEU has no relevance to the subject matter of the main proceedings, since, according to the national court, B. S. and C. A. were convicted of an offence 'due to the use in the manufacture of the product at issue of the whole hemp plant, including the leaves and flowers', not because the CBD oil used was extracted from a hemp variety not covered by the Decree of 22 August 1990 or because the THC content of the oil, although below 0.20%, was not zero.

24. Furthermore, according to B. S., the Court should also consider whether Kanavape should be regarded as a medicinal product for human use, within the meaning of Directive 2001/83/EC. (10) That question is not unrelated to the subject matter of the main proceedings. Indeed, B. S. and C. A. were convicted by the Tribunal correctionnel de Marseille (Criminal Court, Marseille) not only of an offence under the regulation on the trade in poisonous plants, but also of the offence of marketing a medicinal product (by presentation, not by function) for which they had not obtained marketing authorisation. Nonetheless, the Court cannot, in my view, carry out the assessment proposed by B. S, since, according to settled case-law, to answer additional questions mentioned by the parties would be incompatible with the Court's duty under Article 23 of its Statute to ensure that the governments of the Member States may submit observations, with only the decision of the referring court being notified to the interested parties. (11) For the same reason, contrary to what B. S. claims, the Court cannot examine the compatibility of legislation such as that at issue in the main proceedings with Articles 15, 16 and 17 of the Charter of Fundamental Rights of the European Union, to which the request for a preliminary ruling makes no reference.

25. What I conclude from this is that the Court should confine itself to an assessment of whether national legislation which restricts the importation of hemp from another Member State solely to hemp fibre and seeds complies with Regulations No 1307/2013 and No 1308/2013 and with Articles 34 and 36 TFEU.

26. I shall therefore consider below, first, whether such legislation complies with those regulations and, secondly, whether it complies with Articles 34 and 36 TFEU.

B. Interpretation of Regulations No 1307/2013 and No 1308/2013

27. I would point out that in the present case, since the cultivation of the hemp and the extraction of the CBD took place in the Czech Republic, the product imported by B. S. and C. A. is CBD oil. (12) It is therefore necessary to determine whether Regulations No 1307/2013 and No 1308/2013 preclude a Member State from prohibiting the importation of CBD oil from another Member State, where that oil is extracted from the whole hemp plant and not solely from its fibre and seeds.

28. In that regard, B. S. contends that CBD is an agricultural product within the meaning of Article 38(1) TFEU and that it is therefore covered by Regulations No 1307/2013 and No 1308/2013, which preclude a Member State from restricting the use of the hemp plant solely to its fibre and seeds. Similarly, C. A. claims that Regulations No 1307/2013 and No 1308/2013 are applicable to the whole hemp plant, and therefore to CBD derived from its flowers and leaves, and that the Decree of 22 August 1990 undermines the common organisation of the market in hemp.

29. The French Government, on the other hand, contends that Regulations No 1307/2013 and No 1308/2013 are not applicable, since the former deals with the cultivation and not the marketing of hemp, and the latter does not cover hemp leaves and flowers (only stalks and seeds). In any event, the only relevant provision of those regulations, namely Article 189 of Regulation No 1308/2013, does not preclude a measure such as that at issue in the main proceedings.

30. The Greek Government stated at the hearing that CBD does not come within the scope of Regulations No 1307/2013 and No 1308/2013. Similarly, the Commission contends that CBD is an organic chemical and, as such, it cannot come under those regulations.

31. In my opinion, Regulations No 1307/2013 and No 1308/2013 do not preclude a Member State from prohibiting the importation of CBD oil from another Member State, where that oil is extracted from the whole hemp plant. CBD oil is not, in my view, among the products to which Regulations No 1307/2013 and No 1308/2013 apply. In any event, even if those regulations did apply, they would not preclude a Member State from adopting legislation such as that described in point 27 of this Opinion, provided it is appropriate for ensuring protection of human health and does not go beyond what is necessary to attain that objective.

32. I shall examine below the applicability of Regulations No 1307/2013 and No 1308/2013, then, in the alternative, their application.

1. Applicability of Regulations No 1307/2013 and No 1308/2013

33. Regulation No 1307/2013 defines, in Article 4(1)(d) thereof, the ‘agricultural products’ to which it applies as meaning ‘the products, with the exception of fishery products, listed in Annex I to the Treaties as well as cotton’. Similarly, Regulation No 1308/2013 provides, in Article 1(1) thereof, that it 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’. With regard to hemp, Annex I to the Treaties refers, first, to heading 57.01 of the Brussels Nomenclature, namely ‘true hemp (*Cannabis sativa*), raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)’ and, secondly, to Chapter 12 of the Brussels Nomenclature, namely ‘Oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder’, including hemp seeds.

34. It is appropriate to refer here to the Explanatory Notes to the Harmonised Commodity Description and Coding System. (13) It is settled case-law that those notes are an important aid for interpreting the

scope of the various tariff headings but do not have legally binding force. (14) The explanatory note to the Harmonised Commodity Description and Coding System relating to heading 5302 states that that heading covers: (15) '(1) Raw hemp as harvested, whether or not the leaves and seeds have been removed. (2) Retted hemp in which the fibres are still attached to the woody part of the plant, but have been loosened by the retting. (3) Scutched hemp which comprises the isolated fibres, sometimes 2 m or more in length, separated from the plant by scutching. (4) Combed hemp or hemp fibres otherwise prepared for spinning, generally in the form of slivers or rovings.' (16)

35. CBD oil, at issue in the present case, is extracted from the hemp plant by the addition of carbon dioxide under high pressure and at low temperature. CBD oil cannot therefore be regarded as raw hemp, as the latter is defined as hemp 'as harvested'. Nor can it be regarded as retted or scutched hemp, or as bast fibres, since the process of extracting CBD does not involve separating the fibre from the rest of the plant.

36. CBD oil is therefore not a product referred to in Annex I to the Treaties. Therefore, CBD oil does not come within the scope of Regulations No 1307/2013 and No 1308/2013, since Article 4(1)(d) of Regulation No 1307/2013 and Article 1(1) of Regulation No 1308/2013 provide that those regulations apply to products 'listed in Annex I to the Treaties'.

37. In support of that finding, I would point out, first, that with the exception of cotton, which is expressly referred to in Article 4(1)(d) of Regulation No 1307/2013, neither that provision nor Article 1 of Regulation No 1308/2013 states that they apply to products *other than those referred to in Annex I to the Treaties*. The express inclusion of cotton in Article 4(1)(d) of Regulation No 1307/2013, and the express exclusion of fishery and aquaculture products, some of which are, however, referred to in Annex I to the Treaties, in Article 4(1)(d) of Regulation No 1307/2013 and in Article 1(1) of Regulation No 1308/2013, confirm that the reference to the products listed in Annex I to the Treaties is exhaustive.

38. Secondly, I would point out that Annex I to Regulation No 1308/2013, which, according to Article 1(2) of that regulation, lists the 'agricultural products as defined in paragraph 1', refers, as regards hemp, to heading 5302 and sub-heading 1207 99 91 of the Combined Nomenclature, which correspond to the Brussels Nomenclature headings referred to in Annex I to the Treaties. Annex I to Regulation No 1308/2013 does not therefore, as regards hemp, refer to any heading that is not already referred to in Annex I to the Treaties. In particular, Annex I to Regulation No 1308/2013 does not refer to CBD oil, or even to CBD.

39. Thirdly, it cannot be considered that CBD oil comes within the scope of Regulations No 1307/2013 and No 1308/2013 as a product of first-stage processing of hemp within the meaning of Article 38(1) TFEU.

40. In that regard, 'agricultural products' are defined in Article 38(1) TFEU as 'products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products'. According to case-law, the concept of 'first-stage processing' implies a clear economic interdependence between basic products and products resulting from a productive process, irrespective of the number of operations involved therein. (17) However, a second definition of agricultural products appears in Article 38(3) TFEU. According to that provision, agricultural products are the products listed in Annex I to the Treaties. It follows from case-law that those two definitions are just one, so that a product which meets the definition of an agricultural product contained in Article 38(1) TFEU, but that is not listed in Annex I to the Treaties, cannot be regarded as an agricultural product (18) and cannot therefore be covered, inter alia, by Article 43 TFEU, which is the legal basis for the regulations on the common organisation of the markets. In other words, the list appearing in Annex I to the Treaties is exhaustive.

41. In the first place, I doubt whether CBD oil can be regarded as a product of first-stage processing of hemp. It is appropriate in that regard to refer to the observation made by the Greek government and the Commission that CBD oil, which is extracted from the hemp plant by means of a complex and costly process, is not 'directly related' to that plant, as required by Article 38(1) TFEU.

42. Secondly, even if CBD oil were to be considered to be a product of first-stage processing of hemp, it would not come within the scope of Regulations No 1307/2013 and No 1308/2013.

43. For CBD oil to come within the scope of those regulations it is not sufficient for it to be classified as a product of first-stage processing within the meaning of Article 38(1) TFEU. As I stated in points 36 to 38 above, Regulations No 1307/2013 and No 1308/2013 expressly provide that they apply, not to agricultural products within the meaning of Article 38(1) TFEU including products of first-stage processing, but solely to agricultural products *listed in Annex I to the Treaties*. Such an interpretation would run counter to the case-law concerning the exhaustive nature of the list in Annex I to the Treaties, cited in point 40 of this Opinion.

44. Nor is it possible to consider that CBD oil comes within the scope of Regulations No 1307/2013 and No 1308/2013 because it is a product of first-stage processing *of a product referred to in Annex I to the Treaties*, namely raw hemp. Such an interpretation would run counter to the same case-law.

45. I conclude from this that CBD oil does not come within the scope of Regulations No 1307/2013 and No 1308/2013. However, in case the Court holds that Regulations No 1307/2013 and No 1308/2013 do apply to CBD oil, I shall now consider whether those regulations preclude legislation such as that at issue in the main proceedings.

2. Application of Regulations No 1307/2013 and No 1308/2013

46. As stated in point 31 above, even if Regulations No 1307/2013 and No 1308/2013 were applicable to hemp oil, they would not, in my view, preclude a Member State from adopting legislation such as that at issue in the main proceedings, provided it was appropriate for ensuring the protection of human health and did not go beyond what is necessary to attain that objective.

47. According to settled case-law, under the common agricultural policy, which is a competence shared between the European Union and the Member States, the Member States have legislative powers which allow them to exercise their competence to the extent that the European Union has not exercised its competence. Therefore, where there is a regulation on the common organisation of the markets in a given sector, the Member States are under an obligation to refrain from taking any measures which might undermine or create exceptions to it or interfere with its proper functioning. Nevertheless, the establishment of a common market organisation 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 that common market organisation, even if those rules are likely to have an effect on the functioning of the internal market in the sector concerned. (19)

48. In the present case, it would seem to me that national legislation prohibiting the importation of CBD oil from another Member State, where that oil is extracted from the whole plant, does not create exceptions to or undermine any of the provisions of Regulations No 1307/2013 and No 1308/2013 relating to hemp.

49. Article 32(6) of Regulation No 1307/2013, to which the national court makes reference, provides that areas used for the production of hemp do not constitute eligible hectares and cannot therefore give rise to direct payments to farmers where the variety used has a THC content exceeding 0.20%. Article 32(6) of Regulation No 1307/2013 therefore deals with the cultivation of hemp, not with its importation from another Member State, which is the point at issue in the present case. Article 35(3) of that regulation, which is also mentioned by the national court, is also irrelevant since that provision merely authorises the Commission to adopt delegated acts laying down, inter alia, the procedure for the verification of the THC content provided for in Article 32(6) of that regulation. So far as Regulation No 1308/2013 is concerned, although Article 189(1) of that regulation, also referred to by the national court, prohibits the importation of raw hemp where its THC content exceeds 0.20%, that provision concerns importation ‘into the Union’ of hemp from a third country, not importation of hemp from another Member State. Article 189 of Regulation No 1308/2013, moreover, is in Part III of that regulation, entitled ‘Trade with third countries’, not in Part II, which is entitled ‘Internal market’.

50. However, it might be considered that national legislation prohibiting the importation of CBD oil from another Member State, where that oil is extracted from the whole plant, interferes with the proper functioning of the common organisation of the market in hemp, governed by Regulation No 1308/2013, within the meaning of the case-law cited in point 47 above. It is settled case-law that the Treaty provisions prohibiting quantitative restrictions or measures having equivalent effect are an integral part of the common organisation of the market in the sector concerned. (20) All measures of a Member State which are capable of hindering, directly or indirectly, actually or potentially, trade within the European Union are to be considered as measures having an effect equivalent to quantitative restrictions on imports within the meaning of Article 34 TFEU. (21) Accordingly, national legislation prohibiting the importation of CBD oil where it is extracted from the whole hemp plant, in particular from its leaves and flowers, must be regarded as a measure having equivalent effect within the meaning of Article 34 TFEU. Such legislation makes it impossible to import CBD oil into France, since, as the French Government stated at the hearing, it is very difficult from a technical point of view, and unviable from an economic point of view, to produce CBD from hemp fibre and seeds.

51. In my view, the European Union has *exhaustively* exercised its competence in the area of the free movement of goods covered by Regulation No 1308/2013. (22) It is immaterial in that regard that none of the provisions of Regulation No 1308/2013 expressly contains a prohibition on quantitative restrictions and measures having equivalent effect, since such a prohibition, *even in the absence of an express provision*, is an integral part of the regulation on the common organisation of the market in the sector concerned. (23) It is also immaterial that Article 189(2) of Regulation No 1308/2013 allows Member States to adopt 'more restrictive rules' than those laid down in Article 189(1), described in point 49 of this Opinion. Article 189(2) of Regulation No 1308/2013 provides that such provisions must be adopted by Member States 'in compliance with the TFEU', and thus, inter alia, with Article 34 TFEU. Therefore, Article 189(2) of Regulation No 1308/2013 cannot, in my view, be interpreted as allowing a Member State to prohibit the importation of hemp oil *from another Member State*.

52. Accordingly, it follows from the case-law cited in point 47 above that Regulation No 1308/2013 precludes Member States from adopting legislation prohibiting the importation of CBD oil from another Member State, where that oil is extracted from the whole plant, unless that legislation pursues a public-interest objective other than those covered by that regulation.

53. In that regard, the French Government stated that its objective in adopting the Decree of 22 August 1990 was to protect the health and life of humans.

54. It is not possible in my view to consider that the risks to human health posed, or potentially posed, by hemp and substances extracted from it are covered *exhaustively* by Regulation No 1308/2013. (24)

55. It was stated in the judgment of 16 January 2003, *Hammarsten* (C-462/01, EU:C:2003:33, paragraphs 34 and 35) that the risks to human health constituted by the use of narcotic drugs were taken into account within the framework of the common organisation of the market in hemp. It could therefore be held that the risks to human health posed by hemp were taken into account exhaustively by Regulation No 1308/2013, whether it be the risks posed by THC or, where appropriate, the risks posed by CBD.

56. However, I would point out that, unlike the first and second recitals of Regulation (EEC) No 1430/82, (25) at issue in the judgment cited in the preceding point, Regulation No 1308/2013 does not make express reference, as regards hemp crops, to the protection of human health. Recital 154 of Regulation No 1308/2013 states that it is 'in order to prevent illicit crops from disturbing the market' that a maximum THC content is laid down for hemp imported into the Union. (26)

57. I would also point out that other acts of EU law adopted with the objective of protecting human health are likely to apply to hemp and, inter alia, to CBD extracted from it.

58. It is apparent from the observations submitted by C. A. and the Commission that CBD is used in cosmetic products, which can be placed on the market only if the person responsible gives an assurance

that they are safe for human health and draws up a report on their safety. Where a product poses a risk to human health, that person must immediately inform the competent national authorities. (27)

59. It is also apparent from the observations submitted by C. A., the Greek government, and the Commission that CBD might be considered to be a novel food within the meaning of Article 3 of Regulation (EU) 2015/2283. (28) An application to that effect was in fact made to the Commission. It is currently pending. If CBD did constitute a novel food within the meaning of Regulation 2015/2283, its placing on the market would be conditional on authorisation by the Commission and entry on the Union list of authorised novel foods, which are possible only if that food 'does not, on the basis of the scientific evidence available, pose a safety risk to human health'. (29)

60. Lastly, a CBD-based medicinal product was recently the subject of a Commission decision granting marketing authorisation, (30) on the basis of Article 10(2) of Regulation (EC) No 726/2004. (31)

61. The risks to human health posed by hemp and substances extracted from it are not therefore covered *exhaustively* by Regulation No 1308/2013. As a result, a Member State may adopt legislation with the objective of protecting human health against the risks posed by CBD, provided, as required by case-law, (32) that legislation is appropriate for ensuring attainment of such an objective and does not go beyond what is necessary in order to attain it. The need for, and proportionality of, such national legislation will be considered in Section C below.

C. Interpretation of Articles 34 and 36 TFEU

62. I shall consider below whether Articles 34 and 36 TFEU preclude a Member State from prohibiting the importation of CBD oil from another Member State, where that oil is extracted from the whole hemp plant, on the grounds that the objective of such legislation is to protect the health and life of humans. This will also mean determining, first of all, whether Articles 34 and 36 TFEU are applicable to national legislation relating to CBD oil, or whether, since the latter must be regarded as a narcotic drug and is not used for medical or scientific purposes, it is regarded as '*res extra comercium*'.

63. B. S. contends that Kanavape cannot be regarded as a narcotic drug and that Articles 34 and 36 TFEU are therefore applicable to it. Those articles preclude legislation such as that at issue in the main proceedings, which restricts the importation of Kanavape although no risk to health has been demonstrated. C. A. also takes the view that liquids for electronic cigarettes containing CBD fall within Articles 34 and 36 TFEU, which preclude the Decree of 22 August 1990. The Greek Government considers that that decree does not comply with Articles 34 and 36 TFEU.

64. The French Government, on the contrary, claims that the Decree of 22 August 1990, even if it did not comply with Article 34 TFEU, would still be justified by the protection of health and life of humans within the meaning of Article 36 TFEU, since, inter alia, it merely prohibits the importation of hemp leaves and flowers and not of the whole plant, which is in accordance with the French Republic's international commitments.

65. The Commission takes the view that Articles 34 and 36 TFEU are applicable to CBD. It considers that Article 34 TFEU precludes legislation such as that at issue in the main proceedings, but that it is for the national court to determine whether that legislation is appropriate for protecting the health and life of humans and whether it is proportionate for the purposes of Article 36 TFEU.

66. I would like to say straight away that Articles 34 and 36 TFEU are applicable, in my view, and that they do preclude legislation such as that described in point 62 of this Opinion, since CBD oil appears not to possess any psychotropic effects and the legislation at issue in the main proceedings is not therefore appropriate for protecting human health. It is for the national court, however, to ensure that no risk associated with any harmful effects, in particular, effects *apart from psychotropic effects*, arises from the use of CBD oil and, if such risk exists, that the legislation at issue in the main proceedings does not go beyond what is necessary in order to protect human health.

67. I shall therefore focus below, first, on the applicability and, secondly, on the application of Articles 34 and 36 TFEU.

1. Applicability of Articles 34 and 36 TFEU

68. It is clear from case-law that, since the harmfulness of narcotic drugs is generally recognised, there is a prohibition in all the Member States on marketing them, with the exception of strictly controlled trade for use for medical and scientific purposes. (33) Accordingly, narcotic drugs which, like the cannabis sold in Dutch coffee-shops, are not distributed through channels strictly controlled by the competent authorities with a view to use for medical or scientific purposes, do not benefit from the free movement of goods. (34) However, narcotic drugs which, like diamorphine, an opium derivative, used as an analgesic in medical treatments, are distributed through such channels and do benefit from the free movement of goods. (35)

69. The CBD oil at issue in the present case is not marketed through channels strictly controlled by the competent authorities with a view to use for medical or scientific purposes. Therefore, if CBD oil were to be considered a narcotic drug it would fall outside the scope of Articles 34 and 36 TFEU.

70. In my view, that is not the case.

71. I note in that regard that it is clear from the observations submitted by C. A. and the Commission that under French law CBD, unlike THC, is not classified as a narcotic drug.

72. I also note that, although the Court considered on two occasions that cannabis-based products did not fall within the scope of the rules on the free movement of goods, neither of those cases involved CBD. The first case involved hashish, a cannabis resin concentrate, (36) and the second case involved cannabis sold in Dutch coffee-shops, which most certainly contained a high level of THC. (37)

73. Lastly, I note that CBD is not considered to be a narcotic drug according to the international conventions to which the Member States are parties, namely the United Nations Single Convention on Narcotic Drugs, concluded in New York on 30 March 1961, amended by the 1972 Protocol amending the Single Convention of 1961 (‘the Single Convention’), (38) and the United Nations Convention on Psychotropic Substances concluded in Vienna on 21 February 1971 (‘the Convention on Psychotropic Substances’). (39)

74. Article 1(1)(j) of the Single Convention defines ‘drug’ as meaning any of the substances in Schedules I and II to that convention. The following entry appears in Schedule I to the Single Convention: ‘Cannabis and cannabis resin and extracts and tinctures of cannabis’. It is true that CBD might be considered to be an ‘extract of cannabis’, in so far as it is extracted mainly from cannabis leaves and flowers (40) and, according to Article 1(1)(b) of the Single Convention, ‘“Cannabis” means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops)’. However, first, according to Article 28(2) of the Single Convention, the convention does not apply to the cultivation of the cannabis plant ‘exclusively for industrial purposes (fibre and seed) or horticultural purposes’, secondly, it is stated in the Commentary on the Single Convention published by the United Nations, (41) that cultivation of the plant for any other purpose [than the production of cannabis or cannabis resin], and not only for [industrial or horticultural purposes]’ is exempted from the control regime provided for in Article 23 of that convention. In other words, cultivation of the hemp plant is not subject to control where it is not for the purpose of producing a narcotic drug. The Convention on Psychotropic Substances, although it regards THC as a psychotropic substance,(42) does not regard CBD as such.

75. I note, lastly, that the World Health Organisation recommended that the United Nations should amend Schedule I to the Single Convention in order to clarify that CBD is not a narcotic drug, first, by removing from that schedule the references to ‘extracts and tinctures of cannabis’ and, secondly, by inserting a footnote stating that ‘preparations containing mainly [CBD], the [THC] of which does not exceed 0.20%, are not subject to international control’. (43) The fact, mentioned by the French Government at the hearing, that the Single Convention has not yet been amended in accordance with the

World Health Organisation recommendation does not, in my view, establish that CBD must be regarded as a narcotic drug within the meaning of that convention, since it does not currently appear among the psychotropic substances listed in the Convention on Psychotropic Substances.

76. It follows that CBD oil falls within the scope of Articles 34 and 36 TFEU.

2. Application of Articles 34 and 36 TFEU

77. It is clear from point 50 of this Opinion that national legislation which, like that at issue in the main proceedings, prohibits the importation of CBD oil where it is extracted from the whole of the hemp plant, must be regarded as a measure having equivalent effect within the meaning of Article 34 TFEU.

78. However, a national measure which restricts the free movement of goods may be justified, inter alia, on grounds of protection of the health and life of humans, within the meaning of Article 36 TFEU. In that regard, I note that, although it is for the Member States to decide the level of protection they wish to afford to the health and life of humans, the fact remains that legislation that is capable of restricting a fundamental freedom guaranteed by the FEU Treaty, such as the free movement of goods, can be justified on grounds of the protection of the health and life of humans, within the meaning of Article 36 TFEU, only if that measure is appropriate for securing the achievement of the objective pursued and does not go beyond what is necessary in order to attain it. (44)

79. The French Government claims that the Decree of 22 August 1990 is justified on grounds relating to the protection of human health, as referred to in Article 36 TFEU. It states that, although it has so far not been established that CBD is toxic or dangerous, recent scientific studies, as reported in a 2018 study by the Paris Centre for Evaluation and Information on Pharmacodependence/Addictovigilance, have pointed to certain adverse reactions to CBD, such as drowsiness, lethargy, ataxia, psychiatric disorders and liver disease. Given the lack of scientific certainty regarding the harmful effects of CBD, in the view of the French Government the precautionary principle allows Member States to adopt legislation such as that at issue in the main proceedings.

80. In the present case, first, it is clear from the request for a preliminary ruling that, in the current state of scientific knowledge, CBD has no psychotropic effects, which is confirmed by the fact, noted in points 74 and 75 of this Opinion, that CBD does not come under the Convention on Psychotropic Substances. Secondly, I note that the Commission challenges the French Government's assertion that there is a risk that CBD oil might have harmful effects apart from psychotropic effects.

81. The French Government claims, however, that it relies on the precautionary principle in order to prohibit the importation of CBD oil.

82. According to case-law, where there is scientific uncertainty as regards the existence or scope of the real risks to public health, a Member State may, under the precautionary principle, take protective measures without having to wait for the reality and the seriousness of those risks to be fully demonstrated. In that regard, a correct application of the precautionary principle presupposes, first, identification of the potentially negative consequences for health of the substances or food concerned, and, secondly, a comprehensive assessment of the risk to health based on the most reliable scientific data available and the most recent results of international research. (45)

83. In the light of the information provided to the Court, it is hard to consider that the French Government has clearly identified the harmful, in particular psychotropic, effects involved in the use of CBD oil in electronic cigarettes, even less that it has carried out a comprehensive assessment of the risk to health based on the most reliable scientific data available and the most recent results of international research.

84. However, given the small amount of specific information provided to the Court, it will be for the national court to determine whether the use of CBD oil in electronic cigarettes involves risks to human

health and, in particular, whether CBD oil has harmful effects apart from psychotropic effects. If that is the case, it will also be for the national court to consider whether the Decree of 22 August 1990 goes beyond what is necessary in order to protect human health, since it prohibits outright the importation of CBD oil extracted from hemp leaves and hemp flowers, when it might perhaps have been possible to lay down a maximum CBD content, similar to the 0.20% threshold for THC.

85. I conclude from this that Articles 34 and 36 TFEU preclude legislation such as that at issue in the main proceedings, which prohibits the importation of CBD oil where it is extracted from the whole hemp plant, since, in the current state of scientific knowledge, it has not been established that CBD oil has psychotropic effects. It is, however, for the national court to satisfy itself that no risk associated with, inter alia, non-psychotropic effects of CBD has been identified or been the subject of a comprehensive scientific assessment, and if it were to find that such a risk existed and that there were such an assessment, to satisfy itself that an alternative measure, less restrictive on the free movement of goods, could be adopted, such as the establishment of a maximum CBD content.

IV. Conclusion

86. In view of the foregoing considerations, I propose that the Court should reply as follows to the questions referred to it by the Cour d'appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence, France):

(1) Neither 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, nor 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 applicable to cannabidiol oil;

(2) Articles 34 and 36 TFEU preclude a Member State from prohibiting the importation of cannabidiol oil from another Member State, where that oil is extracted from the whole hemp plant, and not solely from its fibre and seeds, since, in the current state of scientific knowledge, it has not been established that cannabidiol oil has psychotropic effects. It is, however, for the national court to satisfy itself that no risk associated with, inter alia, non-psychotropic effects of CBD has been identified or been the subject of a comprehensive scientific assessment, and if it were to find that such a risk existed and that there were such an assessment, to satisfy itself that an alternative measure, less restrictive on the free movement of goods, could be adopted, such as the establishment of a maximum CBD content.

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1 Original language: French.

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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).

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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).

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4 The 'Brussels Nomenclature' to which Annex I to the Treaties refers was established by the International Convention on Nomenclature for the Classification of Goods in Customs Tariffs, concluded in Brussels on

15 December 1950. It may be appropriate to point out that the Brussels Nomenclature is different from the nomenclature established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), known as the 'Combined Nomenclature', which for its part is based on the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983 and approved, with the Protocol of Amendment of 24 June 1986, on behalf of the European Economic Community, by Council Decision 87/369/EEC of 7 April 1987 (OJ L 198, p. 1). I would also point out, first, that heading 57.01 of the Brussels Nomenclature corresponds to heading 5302 of the Combined Nomenclature, which covers 'true hemp (Cannabis sativa L.), raw or processed but not spun; tow and waste of true hemp (including yarn waste and garnetted stock)' and, secondly, that Chapter 12 of the Brussels Nomenclature, corresponds, inter alia, to sub-heading 1207 99 91 of the Combined Nomenclature, which covers 'Hemp seeds, whether or not broken, other than for sowing'. See, in that regard, Bianchi, D., *La politique agricole commune (PAC). Précis de droit agricole européen*, Bruylant, Brussels, 2nd Edition, 2012 (footnote 378) and McMahon, J. A., *EU Agricultural Law*, Oxford University Press, Oxford, 2007 (paragraph 1.06).

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5 JORF No 230 of 4 October 1990, p. 12041.

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6 By the Decree of 24 February 2004 amending the Decree of 22 August 1990 implementing Article R. 5181 of the Public Health Code in respect of cannabis (JORF No 69 of 21 March 2004, p. 5508).

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7 Circular from the Director of Criminal Matters and Pardons at the Ministry of Justice concerning the rules applying to establishments offering cannabis products for public sale (coffee shop), No 2018/F/0069/FD2 ('the Circular of 23 July 2018').

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8 It appears from the judgment of the Tribunal correctionnel de Marseille (see point 14 of this Opinion) that 'the hemp … was produced by the company Hempoint in the Czech Republic. The essential oil produced by Hempoint contained [CBD] isolated from the plant by the extraction of CO2. All the ingredients were combined in a solution to produce the e-liquid by the company APPLICANT-INT in the Czech Republic. In December 2014 that company sold [Catlab] 500 ml of e-liquid containing 5% [CBD]'.

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9 According to B. S., the 0.20% threshold applies only to the hemp plant itself and not to finished products derived from hemp.

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10 Directive of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

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11 See judgment of 30 January 2020, *Dr. Willmar Schwabe* (C-524/18, EU:C:2020:60, paragraph 30).

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12 See point 13 of this Opinion.

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13 The Harmonised Commodity Description and Coding System was drawn up by the World Customs Organisation and established by the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983 (see footnote 4 to this Opinion).

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14 See judgments of 9 February 2017, *Madaus* (C-441/15, EU:C:2017:103, paragraph 38), and of 13 September 2018, *Vision Research Europe* (C-372/17, EU:C:2018:708, paragraph 23).

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15 In addition to tow and waste of hemp, which are obtained during scutching or combing of hemp and are not at issue here.

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16 I should explain that hemp retting involves isolating the fibre by removing the gummy substance that surrounds it. Hemp scutching involves, after retting and drying, separating the fibre from the shives in order to obtain the bast fibres. Hemp shiv is the woody inner part of the hemp stalk which remains after the bast fibres are removed.

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17 See judgment of 29 May 1974, *König* (185/73, EU:C:1974:61, paragraph 13).

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18 See judgments of 14 December 1962, *Commission* v *Luxembourg and Belgium* (2/62 and 3/62, EU:C:1962:45, at p. 434); of 25 March 1981, *Coöperatieve Stremsel- en Kleurselfabriek* v *Commission* (61/80, EU:C:1981:75, paragraphs 19 to 21), and of 29 February 1984, *Cilfit and Others* (77/83, EU:C:1984:91, paragraphs 11 and 12). See, in that regard, Bianchi, D., *Jurisclasseur Europe Traité*, fascicule 1310, October 2014 (paragraph 9).

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19 See judgments of 23 December 2015, *Scotch Whisky Association and Others* (C-333/14, EU:C:2015:845, paragraphs 19 and 26), and of 13 November 2019, *Lietuvos Respublikos Seimo narių grupė* (C-2/18, EU:C:2019:962, paragraphs 28 to 30).

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20 See judgment of 22 May 2003, *Freskot* (C-355/00, EU:C:2003:298, paragraph 38). See also judgment of 3 March 2011, *Kakavetsos-Fragkopoulos* (C-161/09, EU:C:2011:110, paragraph 27) and Opinion of Advocate General Mengozzi in *Kakavetsos-Fragkopoulos* (C-161/09, EU:C:2010:531, point 34).

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21 See judgments of 11 July 1974, *Dassonville* (8/74, EU:C:1974:82, paragraph 5); of 23 December 2015, *Scotch Whisky Association and Others* (C-333/14, EU:C:2015:845, paragraph 31), and of 27 October 2016, *Audace and Others* (C-114/15, EU:C:2016:813, paragraph 66).

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22 See, by analogy, judgment of 13 November 2019, *Lietuvos Respublikos Seimo narių grupė* (C-2/18, EU:C:2019:962, paragraphs 42 to 45).

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23 See judgment of 29 November 1978, *Redmond* (83/78, EU:C:1978:214, paragraphs 52 to 55).

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24 See, by analogy, judgment of 13 November 2019, *Lietuvos Respublikos Seimo narių grupė* (C-2/18, EU:C:2019:962, paragraphs 46 to 53).

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25 Council Regulation of 18 May 1982 providing for restrictions on the importation of hemp and hemp seed and amending Regulation (EEC) No 1308/70 in respect of hemp (OJ 1982 L 162, p. 27). The first recital of

Regulation No 1430/82 states that ‘the increasing abuse of narcotics in the Community is likely to endanger human health’. The second recital of that regulation states that both the aid granted for hemp and imports of hemp into the Union should be limited to ‘varieties providing adequate safeguards in terms of human health’.

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26 The same applies in respect of the order of 11 July 2008, *Babanov* (C-207/08, not published, EU:C:2008:407, paragraphs 28 to 30), in which the Court does not refer, with regard to the maximum THC level, to the objective of protecting human health, but solely to the ‘risk that illegal crops might be hidden among those being cultivated lawfully’.

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27 Those obligations are provided for, respectively, in Article 3 and Article 5(1) of Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ 2009 L 342, p. 59); in Article 10 and Annex I of that regulation; and in the second subparagraph of Article 5(2) of that regulation.

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28 Regulation of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 (OJ 2015 L 327, p. 1).

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29 Article 6 and Article 7(a) of Regulation 2015/2283.

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30 Commission Implementing Decision of 19 September 2019 granting marketing authorisation for the orphan medicinal product for human use ‘Epidyolex– cannabidiol’ under Regulation [No 726/2004] [COM(2019) 6893 (final)].

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31 Regulation of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

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32 See judgment of 13 November 2019, *Lietuvos Respublikos Seimo narių grupė* (C-2/18, EU:C:2019:962, paragraphs 56 and 57).

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33 See judgment of 16 December 2010, *Josemans* (C-137/09, EU:C:2010:774, paragraph 36).

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34 See judgment of 16 December 2010, *Josemans* (C-137/09, EU:C:2010:774, paragraphs 31, 42 and 54). I would point out that, even though the Kingdom of the Netherlands applies a policy of tolerance to the sale of cannabis (in strictly limited quantities), such sales are nonetheless prohibited in that Member State (judgment of 16 December 2010, *Josemans*, C-137/09, EU:C:2010:774, paragraphs 12 to 13 and 43). See also judgments of 5 February 1981, *Horvath* (50/80, EU:C:1981:34, paragraphs 10 to 13); of 26 October 1982, *Wolf* (221/81, EU:C:1982:363, paragraphs 8 to 13 and 16); of 26 October 1982, *Einberger* (240/81, EU:C:1982:364, paragraphs 8 to 13 and 16); of 28 February 1984, *Einberger* (294/82, EU:C:1984:81, paragraphs 14, 15 and 22); of 5 July 1988, *Mol* (269/86, EU:C:1988:359, paragraphs 15, 16 and 21), and of 5 July 1988, *Vereniging Happy Family Rustenburgerstraat* (289/86, EU:C:1988:360, paragraphs 17, 18 and 23). See, lastly, Van Cleynenbreugel, P., *Droit matériel de l’Union européenne. Libertés de circulation et marché intérieur*, Larcier, Brussels, 2017 (p. 55).

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35 See judgment of 28 March 1995, *Evans Medical and Macfarlan Smith* (C-324/93, EU:C:1995:84, paragraph 20). I would point out that in that case the diamorphine was imported *for medical use* and that its importation was therefore lawful (judgment of 28 March 1995, *Evans Medical and Macfarlan Smith*, C-324/93, EU:C:1995:84, paragraphs 4, 20 and 37). See the Opinion of Advocate General Bot in *Josemans* (C-137/09, EU:C:2010:433, points 85 and 86), which reads 'in the light of the internal market rules, narcotic drugs do not all come under the same category. This difference does not relate to the nature of the goods, but to their final use. Thus, it is settled case-law that narcotic drugs which have a medical or scientific application come under the internal market rules. However, that is not the case with narcotic drugs imported illegally or intended for illicit purposes'. See, lastly, Blumann, C., 'Le champ d'application du marché intérieur', in Blumann, C. (dir.), *Introduction au marché intérieur. Libre circulation des marchandises*, Éditions de l'université de Bruxelles, Brussels, 2015 (paragraph 70).

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36 Judgment of 5 July 1988, *Vereniging Happy Family Rustenburgerstraat* (289/86, EU:C:1988:360, paragraph 17).

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37 Judgment of 16 December 2010, *Josemans* (C-137/09, EU:C:2010:774, paragraph 36).

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38 *United Nations Treaty Series*, Vol. 520, No 7515.

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39 *United Nations Treaty Series*, Vol. 1019, No 14956. I note in that regard that, so far as I am aware, there is no instrument of EU law that defines what is meant by 'narcotic drug' or 'drug'. Both Article 1(1)(a) of Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8), and Article 71(1) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19), refer in that regard to the Single Convention, and to the Convention on Psychotropic Substances. Accordingly, it seems to me appropriate, in order to determine whether CBD should be considered to be a narcotic drug, to refer to those international conventions. I note, moreover, that, in the judgment of 5 July 1988, *Mol* (269/86, EU:C:1988:359, paragraphs 24 and 25), the Court states that the Convention on Psychotropic Substances considers amphetamines to be psychotropic substances and that, in the judgment of 5 July 1988, *Vereniging Happy Family Rustenburgerstraat* (289/86, EU:C:1988:360, paragraphs 3 and 25), it notes that the Single Convention considers products derived from Indian hemp, such as hashish, to be narcotic drugs.

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40 See point 2.2. of the Circular of 23 July 2018, cited in point 11 of this Opinion.

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41 United Nations (Ed.), *Commentary on the Single Convention on Drugs — 1961*, New York, 1975. See the comment on Article 28 of that convention.

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42 Article 1(e) of the Convention on Psychotropic Substances and Schedule I thereto.

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43 Letter from the Secretary-General of the World Health Organisation to the Secretary-General of the United Nations, dated 24 January 2019.

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44 See judgments of 8 June 2017, *Medisanus* (C-296/15, EU:C:2017:431, paragraphs 82 and 83); of 3 July 2019, *Delfarma* (C-387/18, EU:C:2019:556, paragraph 29), and of 18 September 2019, *VIPA* (C-222/18,

EU:C:2019:751, paragraphs 67, 69 and 71).

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45 See judgments of 28 January 2010, *Commission* v *French Republic* (C-333/08, EU:C:2010:44, paragraphs 91 and 92), and of 19 January 2017, *Queisser Pharma* (C-282/15, EU:C:2017:26, paragraphs 56 and 60).