Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

29 February 2024*

(Reference for a preliminary ruling – Food safety – Feed additives – Regulation (EC) No 1831/2003 – Authorisation procedure – Ban on placing on the market without authorisation – Status of existing products – Validity in the light of the Charter of Fundamental Rights of the European Union – Freedom to conduct a business – Right to property – Principle of proportionality – Implementing Regulation (EU) 2021/758 – Withdrawal from the market of grapefruit extract – Feedingstuffs containing grapefruit seed and grapefruit peel extract)

In Case C-13/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Osnabrück (Administrative Court, Osnabrück, Germany), made by decision of 15 December 2022, received at the Court on 16 January 2023, in the proceedings

cdVet Naturprodukte GmbH

v

Niedersächsisches Landesamt für Verbraucherschutz und Lebensmittelsicherheit (LA-VES),

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the Chamber, J. Passer and M.L. Arastey Sahún (Rapporteur), Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– cdVet Naturprodukte GmbH, by M. Immel, Rechtsanwalt,

– the Niedersächsisches Landesamt für Verbraucherschutz und Lebensmittelsicherheit (LA-VES), by L. Berning, acting as Agent,

* Language of the case: German.

– the French Government, by G. Bain and J.-L. Carré, acting as Agents,

– the Finnish Government, by H. Leppo, acting as Agent,

– the European Parliament, by G.C. Bartram, G. Mendola and L. Stefani, acting as Agents,

– the Council of the European Union, by N. Brzezinski, L. Hamtcheva and A. Jaume, acting as Agents,

– the European Commission, by B. Hofstötter, B. Rechena and M. Zerwes, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns, first, the validity of Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition (OJ 2003 L 268, p. 29), as amended by Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 (OJ 2019 L 231, p. 1) ('Regulation No 1831/2003'), in the light of Articles 16, 17 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter'), and, secondly, the interpretation of Article 2(3) of Commission Implementing Regulation (EU) 2021/758 of 7 May 2021 on the status of certain products as feed additives within the scope of Regulation No 1831/2003 and on the withdrawal from the market of certain feed additives (OJ 2021 L 162, p. 5), in conjunction with Part 1 of Chapter I.A of Annex I thereto.

2 The request has been made in proceedings between cdVet Naturprodukte GmbH ('cdVet') and Niedersächsisches Landesamt für Verbraucherschutz und Lebensmittelsicherheit (LA-VES) (Office of Consumer Protection and Food Safety for the Land of Lower Saxony, Germany) concerning a ban on placing on the market of feedingstuffs containing grapefruit seed and grapefruit peel extract.

Legal context

European Union law

Regulation No 1831/2003

3 Recitals 4, 6 and 11 of Regulation No 1831/2003 state:

'(4) In order to protect human health, animal health and the environment, feed additives should undergo a safety assessment through a Community procedure before being placed on the market, used or processed within the Community. …

…

(6) Action by the Community relating to human health, animal health and the environment should be based on the precautionary principle.

…

(11) The basic principle in this field should be that only those additives approved under the procedure provided for in this Regulation may be placed on the market, used and processed in animal feeding under conditions set out in the authorisation.'

4 Article 1(1) of that regulation provides:

'The purpose of this Regulation is to establish a Community procedure for authorising the placing on the market and use of feed additives and to lay down rules for the supervision and labelling of feed additives and premixtures in order to provide the basis for the assurance of a high level of protection of human health, animal health and welfare, environment and users' and consumers' interests in relation to feed additives, whilst ensuring the effective functioning of the internal market.'

5 Under Article 3(1)(a) of that regulation:

'No person shall place on the market, process or use a feed additive unless:

(a) it is covered by an authorisation granted in accordance with this Regulation'.

6 Article 4(1) and (2) of that regulation sets out:

'1. Any person seeking an authorisation for a feed additive or for a new use of a feed additive shall submit an application in accordance with Article 7.

2. An authorisation shall not be granted, refused, renewed, modified, suspended or revoked except on the grounds and under the procedures set out in this Regulation …'

7 Article 7(1) of Regulation No 1831/2003 provides:

'An application for an authorisation as provided for in Article 4 [of the present Regulation] shall be sent to the [European] Commission. The Commission shall without delay inform the Member States and forward the application to the European Food Safety Authority [(EFSA)].'

8 Article 8(1) and (3) of that regulation sets out:

'1. [EFSA] shall give an opinion within six months of receipt of a valid application. …

…

3. In order to prepare its opinion, [EFSA]:

(a) shall verify that the particulars and documents submitted by the applicant are in accordance with Article 7 and undertake an assessment in order to determine whether the feed additive complies with the conditions laid down in Article 5;

…'

9 Under Article 9(1) of that regulation:

‘Within three months of receipt of the opinion of [EFSA], the Commission shall prepare a draft Regulation to grant authorisation or to deny authorisation. This draft shall take into account the requirements of Article 5(2) and (3), Community law and other legitimate factors relevant to the matter under consideration and in particular benefits for animal health and welfare and for the consumer of animal products.

Where the draft is not in accordance with the opinion of [EFSA], it shall provide an explanation of the reasons for the differences.

…’

10 Article 10(1), (2) and (5) of that regulation provide:

‘1. By way of derogation from Article 3, a feed additive which has been placed on the market pursuant to [Council] Directive 70/524/EEC [of 23 November 1970 concerning additives in feeding-stuffs (OJ, English Special Edition 1970(III), p. 840)] …, may be placed on the market and used in accordance with the conditions specified in [that directive] and [its] implementing measures, including in particular specific labelling provisions concerning compound feed and feed materials, provided that the following conditions are met:

(a) within one year of the entry into force of this Regulation, persons first placing the feed additive on the market or any other interested parties shall notify this fact to the Commission. …;

…

2. An application shall be submitted in accordance with Article 7, at the latest one year before the expiry date of the authorisation given pursuant to [Directive 70/524] for additives with a limited authorisation period, and within a maximum of seven years after the entry into force of this Regulation for additives authorised without a time limit … A detailed calendar listing in order of priority the different classes of additives to be re-evaluated may be adopted in accordance with the procedure referred to in Article 22(2). …

…

5. Where the notification and accompanying particulars referred to in paragraph 1(a) are not supplied within the period specified or are found to be incorrect, or where an application is not submitted as required by paragraph 2 within the period specified, a Regulation shall be adopted, in accordance with the procedure referred to in Article 22(2), requiring the additives concerned to be withdrawn from the market. Such a measure may provide for a limited period of time within which existing stocks of the product may be used up.’

11 Point 2(b) of Annex I to Regulation No 1831/2003 states:

‘In the category “sensory additives”, the following functional groups are included:

…

(b) flavouring compounds: substances the inclusion of which in feedingstuffs increases feed smell or palatability.’

Implementing Regulation (EU) No 230/2013

12 Commission Implementing Regulation (EU) No 230/2013 of 14 March 2013 on the withdrawal from the market of certain feed additives belonging to the group of flavouring and appetising substances (OJ 2013 L 80, p. 1) was adopted, inter alia, on the basis of Article 10(5) of Regulation No 1831/2003, in its original version.

13 The first paragraph of Article 1 of Implementing Regulation No 230/2013 provides:

'The feed additives specified in Part A of the Annex, belonging to the group "flavouring and appetising substances", shall be withdrawn from the market.'

14 Part A of the annex to that implementing regulation comprises, inter alia, under the heading 'Natural products and corresponding synthetic products', the following additives:

'*Citrus x paradisi* Macfad.: Grapefruit concentrate CoE 140/Citrus peels extract CAS 94266-47-4 FEMA 2318 Einecs 304-454-3/Grapefruit oil terpeneless CAS 90045-43-5 CoE 140/Grapefruit essence oil CoE 140/Grapefruit tincture CoE 140/Grapefruit terpenes CoE 140'.

Implementing Regulation 2021/758

15 In the same way as Implementing Regulation No 230/2013, Implementing Regulation 2021/758 was adopted, inter alia, on the basis of Article 10(5) of Regulation No 1831/2003.

16 Recital 7 of Implementing Regulation 2021/758 states:

'The withdrawal from the market of the products listed in Annex I does not prevent them from being authorised or subject to a measure concerning their status in accordance with Regulation [No 1831/2003].'

17 Article 1 of that implementing regulation provides:

'The feed additives specified in Annex I shall be withdrawn from the market in respect of the animal species or categories of animals as specified in that Annex.'

18 Article 2(1) and (3) of that implementing regulation provides:

'1. Existing stocks of the feed additives listed in Chapters I.A and I.C of Annex I may continue to be placed on the market and used until 30 May 2022.

…

3. Compound feed and feed materials produced with the additives referred to in paragraph 1 … may continue to be placed on the market and used until 30 May 2023.'

19 Annex I to Implementing Regulation 2021/758 lists feed additives to be withdrawn from the market, as referred to in Article 1 of that implementing regulation. Part 1 of Chapter I.A of that annex refers to feed additives to be withdrawn from the market for all species and categories of animals, including, under the heading 'Flavouring and appetising substances – Natural products – botanically defined', the following additives:

'*Citrus x paradisi* Macfad.: Grapefruit oil expressed CAS 8016-20-4 FEMA 2530 CoE 140 Einecs 289-904-6/Grapefruit extract CoE 140'.

German law

20 Paragraph 21(3) of the Lebensmittel- und Futtermittelgesetzbuch (Food and Feed Code) provides:

'Unless otherwise provided for in the second sentence, feedingstuffs in respect of which,

1. in their processing or their treatment,

…

(b) a feed additive in a category other than that referred to in Article 6(1)(e) of Regulation [No 1831/2003]

has been used,

…

must not be placed on the market or be used in animal nutrition. The first sentence, point 1, shall not apply where the feed additive used is authorised by a directly applicable legal measure of the European Community or of the European Union and the feed additive or the feedingstuff used complies with the requirement set out in that directly applicable legal measure or in Regulation [No 1831/2003], in so far as such a requirement has been provided for therein. …'

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

21 cdVet produces and markets feedingstuffs, including the product 'DarmRein Pulver/GutClean Powder', a complementary feed for dogs, cats and other domestic animals ('the contested product'). That product contains a sensory additive, listed on the labelling of that product as 'grapefruit seed extract' ('the contested additive').

22 On 24 February 2022, members of staff of LA-VES carried out an official inspection of cdVet's premises concerning, inter alia, the contested product. The examination which they carried out, on that occasion, of the upstream distributor's document specifying the characteristics of the contested additive ('the product specification sheet') indicated that that additive is listed on that sheet as 'grapefruit seed extract S' and that it consisted mainly of a glycerine-containing extract produced by extracting grapefruit seeds and grapefruit peel with vegetable glycerine.

23 After hearing cdVet, LA-VES, by a decision of 30 March 2022, prohibited cdVet from offering for sale and from placing on the market the contested product and ordered the immediate enforcement of that decision. LA-VES gave reasons for that decision maintaining, in essence,

that the grapefruit seed extract had been withdrawn from the market under Article 1 of Implementing Regulation No 230/2013, in conjunction with Part A of the annex to that implementing regulation, for not being covered by an application for authorisation laid down in Article 10(2) of Regulation No 1831/2003 within the prescribed time limit. It had therefore been necessary, according to LA-VES, to find that the placing on the market of the contested additive constituted an infringement of Article 3(1) of Regulation No 1831/2003 or of point 1(b) of Paragraph 21(3) of the Food and Feed Code.

24 On 11 October 2022, cdVet brought an action against that decision and lodged an application for interim measures with the Verwaltungsgericht Osnabrück (Administrative Court, Osnabrück, Germany), the referring court, claiming that, in view of its composition, the contested additive should be classified not as grapefruit seed extract but as 'grapefruit extract'.

25 cdVet submits that it is clear from the product specification sheet that that contested additive is produced not only from grapefruit seeds, which may have explained why the distributor used the description of 'grapefruit seed extract', but also from grapefruit peel.

26 According to cdVet, it is true that Article 1 of Implementing Regulation 2021/758, in conjunction with Part 1 of Chapter I.A of Annex I to that implementing regulation, has, in principle, withdrawn the additive 'Grapefruit extract CoE 140' from the market. However, the transitional provision in Article 2(3) of that implementing regulation allowed cdVet to continue to market the contested product, produced with that additive, until 30 May 2023.

27 cdVet also expresses doubts as to the compatibility of the provisions of Regulation No 1831/2003, which LA-VES applied, with EU law, in so far as that regulation concerns a blanket ban on the marketing and use of all feed additives, without the circumstances of each particular case being taking into account.

28 Before the referring court, LA-VES contends that grapefruit seed extract, added as an additive to the contested product, and grapefruit extract are not identical substances, with the result that cdVet cannot legitimately rely on the transitional scheme provided for in Article 2(3) of Implementing Regulation 2021/758, which concerns only 'grapefruit extract'.

29 Lastly, according to LA-VES, there are no serious doubts as to the proportionality of Regulation No 1831/2003 in the light of EU law, since the purpose of that regulation, stated in recital 4 thereof, namely to assure a high level of protection of human and animal health and the environment, necessarily requires an authorisation procedure which makes it possible to assess the safety of feed additives, in accordance with the precautionary principle.

30 On account of its doubts as regards the validity and the interpretation of the rules of the EU law in question, the referring court granted cdVet's application for interim measures and restored the suspensory effect of its action.

31 In the first place, that court has doubts as to whether, in the present case, a fair balance consistent with the principle of proportionality, within the meaning of Article 52(1) of the Charter, is struck between, on the one hand, the freedom to conduct a business and the right to property, referred to in Article 16 and Article 17(1) of the Charter, respectively, and, on the other, the protection of the legal interests in human health, animal health and the environment, as referred to in Regulation No 1831/2003. It notes that that regulation imposes a blanket ban on the placing on the market, use and processing of feed additives which have not been authorised, without taking into account

in that respect the circumstances of each particular case, such as the question as to the absolute quantity or concentration of the feed additive in the feed at issue or whether that additive is also a naturally occurring substance or a synthetic one. In that regard, the referring court states that the components of the contested additive, the concentration of which, moreover, is below the threshold where it can be detected, are of exclusively natural origin, with the result that there is no indication that they may be harmful to human or animal health.

32 In the second place, the referring court is uncertain whether the contested additive corresponds to the substance 'Grapefruit extract CoE 140' referred to in Part 1 of Chapter I.A of Annex I to Implementing Regulation 2021/758. It submits that, if that were the case, cdVet should be able, under the transitional provision provided for in Article 2(3) of that implementing regulation, to continue to market the contested product until 30 May 2023. On 30 March 2022, the date on which its decision was adopted, LA-VES could not have found an infringement of the provisions of the law on feed.

33 In those circumstances, the Verwaltungsgericht Osnabrück (Administrative Court, Osnabrück) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is [Regulation No 1831/2003], in particular Article 3(1)(a), Article 4(1), Article 7(1) and Article 10(1)(a), (2) and (5) thereof, which provide that, in the case where no authorisation has been granted, a blanket ban on placing on the market, using and processing feed additives is to be ordered, with no account taken of the circumstances of the particular case in question, compatible with the principle of proportionality enshrined in Article 52(1) of the [Charter], in the light of the freedom to conduct a business protected by Article 16 of the [Charter] and the right to property provided for in Article 17(1) of the Charter?

(2) In the event that the Court answers the first question in the affirmative, with the result that [Regulation No 1831/2003], in particular Article 3(1)(a), Article 4(1), Article 7(1) and Article 10(1)(a), (2) and (5) thereof, is to be interpreted without restriction, does the extract used by the applicant as a feed additive, which, according to [the product specification sheet], is produced from grapefruit seeds and grapefruit peel and is described in that sheet as grapefruit seed extract (more specifically, grapefruit seed extract S), (also) constitute (in any event) the substance listed in [Article 2(3)] of [Implementing Regulation 2021/758], in conjunction with Part 1 of Chapter I.A of Annex I thereto, as "Grapefruit extract CoE 140"?'

Consideration of the questions referred

The first question

34 By its first question, the referring court seeks a ruling from the Court of Justice, in essence, on the validity of Regulation No 1831/2003, in particular of Article 3(1)(a), Article 4(1), Article 7(1) and Article 10(1)(a), (2) and (5) of that regulation, in so far as they provide that in the case where no authorisation has been granted a blanket ban on placing on the market, using and processing feed additives is to be ordered, with no account taken of the circumstances of the particular case in question. That court requests the Court of Justice to assess the validity of those provisions in the light of the freedom to conduct a business and the right to property, enshrined in Article 16 and Article 17(1) of the Charter, respectively, and of the principle of proportionality set out in Article 52(1) thereof.

35 As a preliminary point, it should be noted, first, that the ban referred to by the referring court in its question is set out in Article 3(1)(a) of Regulation No 1831/2003. Secondly, Article 10 of that regulation determines the status of existing products, namely the feed additives which have been placed on the market pursuant to, inter alia, Directive 70/524, which is the case in respect of the contested additive.

36 Article 4(1) and Article 7(1) of Regulation No 1831/2003 merely provide, in essence, that any person seeking an authorisation in accordance with that regulation must submit an application to the Commission. Accordingly, those provisions are, in the light of the circumstances of the dispute in the main proceedings, irrelevant for examining the validity of Regulation No 1831/2003. That dispute concerns the ban on placing on the market an additive in respect of which no application for an authorisation under that regulation has been submitted, even though the rules for submitting such an application are not relevant in the present case.

37 Consequently, only the validity of Article 3(1)(a) and Article 10(1)(a), (2) and (5) of Regulation No 1831/2003 requires an examination in the present case, having regard to Article 16, Article 17(1) and Article 52(1) of the Charter.

38 In that regard, it should be noted, first of all, that the freedom to conduct a business and the right to property provided for in Article 16 and Article 17(1) of the Charter, respectively, are not absolute, but must be viewed in relation to their social function (judgment of 2 September 2021, *Irish Ferries*, C-570/19, EU:C:2021:664, paragraph 170 and the case-law cited).

39 Next, Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights and freedoms enshrined by it as long as the limitations are provided for by law, respect the essence of those rights and freedoms, and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

40 Lastly, when several rights protected by the EU legal order clash, the assessment of those limitations must be carried out in accordance with the need to reconcile the requirements of the protection of those various rights and striking a fair balance between them (judgment of 2 September 2021, *Irish Ferries*, C-570/19, EU:C:2021:664, paragraph 172 and the case-law cited).

41 In the present case, it is important to note that it follows from recital 4 and from Article 1(1) of Regulation No 1831/2003 that the purpose of that regulation is to establish, inter alia, an EU procedure for authorising the placing on the market and use of feed additives in order to provide the basis for the assurance of a high level of protection of human health, animal health and welfare, environment and users' and consumers' interests in relation to those additives, whilst ensuring the effective functioning of the internal market.

42 For that purpose, the EU legislature has provided, as is apparent from recital 11 of Regulation No 1831/2003, that only those additives approved under the procedure provided for in that regulation may be placed on the market, used and processed in animal feeding. That authorisation procedure is set out in Chapter II of that regulation, which contains Articles 3 to 15 thereof. Article 3(1)(a) of that regulation prohibits the placing on the market, processing and use of feed additives which have not been granted an authorisation.

43 It follows from a combined reading of Article 4(1) and (2), Article 8(1) and (3) and Article 9(1) of Regulation No 1831/2003 that, first of all, the application for authorisation is subject to an opinion of EFSA, for the purposes of which that authority undertakes a risk assessment in order to determine whether the additive concerned complies with the conditions for authorisation set out in that regulation. Subsequently, the authorisation is granted or refused by a regulation adopted by the Commission in the exercise of its implementing powers. When drafting the regulation granting or refusing authorisation, the Commission takes into account especially those conditions for authorisation and other legitimate factors relevant to the matter under consideration and, in particular, benefits for animal health and welfare and for the consumer of animal products.

44 Article 10 of Regulation No 1831/2003 provides that, by way of derogation from Article 3, additives which have been placed on the market, inter alia, pursuant to Directive 70/524 may continue to be placed on the market provided, amongst other things, that an application for authorisation has been submitted within a maximum of seven years after the entry into force of that regulation.

45 Accordingly, it must be held, first, that the authorisation system set up by Regulation No 1831/2003 is provided for by law within the meaning of Article 52(1) of the Charter.

46 Secondly, that authorisation system respects the essence of the freedom to conduct a business and of the right to property provided for in Article 16 and in Article 17(1) of the Charter, respectively. It does not preclude the production and marketing of feed, but imposes certain conditions in the interests of human and animal health and of the environment (see, to that effect, judgment of 17 December 2015, *Neptune Distribution*, C-157/14, EU:C:2015:823, paragraph 71). Moreover, that authorisation system does not lead to a deprivation of property and therefore does not constitute interference that undermines the very substance of the right to property (see, to that effect, judgment of 16 July 2020, *Adusbef and Others*, C-686/18, EU:C:2020:567, paragraph 89).

47 Thirdly, so far as concerns compliance with the principle of proportionality, it should be borne in mind that, with regard to judicial review of that principle, the Court has allowed the EU legislature broad discretion in areas entailing political, economic and social choices, and in which it is called upon to undertake complex assessments. Consequently, the legality of a measure adopted in those fields can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (judgment of 2 September 2021, *Irish Ferries*, C-570/19, EU:C:2021:664, paragraph 151 and the case-law cited). That is so, in particular, in the veterinary and phytosanitary fields (see, to that effect, judgment of 6 December 2005, *ABNA and Others*, C-453/03, C-11/04, C-12/04 and C-194/04, EU:C:2005:741, paragraph 69).

48 In that respect, and in the same way as the authorisation systems provided for, as the European Parliament, the Council of the European Union and the Commission note in their written observations, by numerous EU measures in the field of food safety, it must be held that the authorisation system provided for by Regulation No 1831/2003, as described in paragraphs 42 to 44 of the present judgment, is not manifestly inappropriate in the light of that regulation's purpose, namely to assure a high level of protection of human health, animal health and welfare, environment and users' and consumers' interests.

49 As regards that purpose, it should be observed that, although the referring court refers to Article 16 and to Article 17(1) of the Charter, it is also important to take account of Articles 35, 37 and 38 of the Charter, which seek to ensure a high level of human health,

environmental and consumer protection, respectively. Moreover, it is clear both from the case-law of the Court and from Article 13 TFEU that the protection of animal welfare is an objective of general interest recognised by the European Union (judgment of 17 December 2020, *Centraal Israëlitisch Consistorie van België and Others*, C-336/19, EU:C:2020:1031, paragraph 63).

50 In addition, an authorisation system such as that set up by Regulation No 1831/2003 constitutes an appropriate means of ensuring compliance with the precautionary principle which, as is clear from recital 6 of that regulation, applies in the field concerned.

51 Moreover, it is important to note that Regulation No 1831/2003 contains several provisions which are aimed, in accordance with the principle of proportionality, at striking a fair balance between the purpose of that regulation and the interests of undertakings which use feed additives. As regards, in particular, the re-evaluation procedure for products which have been placed on the market pursuant to Directive 70/524, such as the contested additive, the same applies to the transitional period of a maximum duration of seven years laid down in Article 10(2) of that regulation, during which those products may continue to be placed on the market without the application for authorisation provided for in Article 7 of that regulation having been submitted, or also to the Commission's option, where it requires a withdrawal from the market of additives in accordance with Article 10(5) of that regulation, to provide for a limited period of time within which existing stocks of the product concerned may be used up. In the present case, the Commission has provided for such a period of time in Article 2(3) of Implementing Regulation 2021/758 on which cdVet relies in the dispute in the main proceedings.

52 Furthermore, the referring court is inclined to take the view that the authorisation system set up by Regulation No 1831/2003 does not take account of the 'circumstances of the particular case' and is uncertain, in particular, as to the relevance of the circumstances such as the absolute quantity or the concentration of the feed additive in the feed at issue or the fact that that additive is a natural or synthetic substance. In that respect, it suffices to recall that Implementing Regulations No 230/2013 and 2021/758 prohibit the placing on the market of a large number of additives, which, in their annexes, are described as being natural products. In addition, the setting of abstract thresholds for an absolute quantity or for the concentration of an additive, without carrying out a risk assessment of that additive, is difficult to reconcile with the requirements of the protection of human and animal health, in particular having regard to the precautionary principle.

53 Lastly, as is clear from recital 7 of Implementing Regulation 2021/758, the withdrawal from the market of the additives listed in Annex I to that regulation does not prevent them from being authorised in accordance with Regulation No 1831/2003. Thus, any circumstances specific to the dispute in the main proceedings could be relied on by cdVet in a possible application for authorisation of the contested additive.

54 In the light of all the foregoing considerations, it must be held that consideration of the first question has disclosed no factor of such a kind as to affect the validity of Article 3(1)(a) and Article 10(1)(a), (2) and (5) of Regulation No 1831/2003 in the light of Article 16, Article 17(1) and Article 52(1) of the Charter.

The second question

55 By its second question, the referring court asks, in essence, whether the definition of 'grapefruit extract', referred to in Part 1 of Chapter I.A of Annex I to Implementing Regulation 2021/758 must be interpreted as meaning that an extract produced from grapefruit seeds and grapefruit peel is covered by that definition.

56 As a preliminary point, it must be held, first, that the annex to Implementing Regulation No 230/2013 and Annex I to Implementing Regulation 2021/758 use, in some language versions, two different vernacular names to designate the same fruit, whose scientific name is '*Citrus x paradisi*'. That is the case, in particular, concerning the versions of those two annexes in French, which use the terms 'pamplemousse (grapefruit)' and 'pomélo (grapefruit)', respectively.

57 Secondly, as the French Government has noted in its written observations, 'grapefruit extract' is listed in Part 1 of Chapter I.A of Annex I to Implementing Regulation 2021/758 as a 'flavouring and appetising substance'.

58 In that regard, it follows from the order for reference that the contested additive is described, on the label of the contested product, as being a 'sensory additive'. Point 2 of Annex I to Regulation No 1831/2003 indicates that flavouring substances belong to the category of sensory additives. Accordingly, it appears, subject to determination by the referring court, that the contested additive is in fact used, in the contested product, as a flavouring and appetising substance.

59 As regards the definition of 'grapefruit extract', referred to in Part 1 of Chapter I.A of Annex I to Implementing Regulation 2021/758, it must be noted that that definition is not set out in that implementing regulation nor, moreover, in Implementing Regulation No 230/2013.

60 In those circumstances, it must be observed that in interpreting a provision of EU law, it is necessary to consider not only its wording, by considering the latter's usual meaning in everyday language, but also the context in which the provision occurs and the objectives pursued by the rules of which it is part. In addition, an implementing regulation must, if possible, be given an interpretation consistent with the basic regulation (judgment of 7 December 2023, *Syngenta Agro*, C-830/21, EU:C:2023:959, paragraphs 31 and 32 and the case-law cited).

61 Consequently, in accordance with its usual meaning in everyday language, the definition of 'grapefruit extract' must be interpreted as referring to any extract produced from grapefruit, irrespective of whether a given extract has been produced from some parts of that fruit or from the whole fruit.

62 That interpretation of the definition of 'grapefruit extract' is supported by the objectives of the rules of which it forms part. Implementing Regulation 2021/758 is designed to implement the provisions of Article 10(5) of Regulation No 1831/2003. Regulation No 1831/2003 establishes, as is clear from paragraph 42 of the present judgment, the principle of prohibiting the placing on the market, processing and use of feed additives which have not been granted an authorisation. Article 10 of Regulation No 1831/2003 implements that principle as regards the additives which had previously been placed on the market pursuant to Directive 70/524 but which have not been newly authorised in accordance with that regulation by providing, inter alia, for a transitional period of a maximum of seven years, on the expiry of which those additives must be withdrawn from the market.

63 Since that ban is a general rule on which Regulation No 1831/2003 is based, it should be interpreted broadly, according to which any additive that is not expressly authorised is prohibited, including where it had previously been placed on the market in accordance with Directive 70/524.

64 Consequently, to the extent that Implementing Regulation 2021/758 does not distinguish, where it makes provision for the withdrawal from the market of the additive 'grapefruit extract', between the different parts which comprise a grapefruit, the view must be taken that that implementing regulation refers to extracts produced from any part of the fruit, even from the whole fruit.

65 The interpretation referred to in paragraph 61 of the present judgment is also supported by the annex to Implementing Regulation No 230/2013, which, among the additives based on '*Citrus x paradisi*', includes, inter alia, citrus peels extract and, thus undoubtedly, covers grapefruit peel. Therefore, if the intention of the EU legislature had been to distinguish the extracts produced from different parts of that fruit, it would have stated as much, in the same way as it has done in respect of the citrus peels extract.

66 In the light of all the foregoing considerations, the answer to the second question is that Part 1 of Chapter I.A of Annex I to Implementing Regulation 2021/758 must be interpreted as meaning that the definition of 'grapefruit extract', within the meaning of that provision, covers an extract produced from grapefruit seeds and grapefruit peel.

Costs

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

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

1. **Consideration of the first question has disclosed no factor of such a kind as to affect the validity of Article 3(1)(a) and Article 10(1)(a), (2) and (5) of Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition, as amended by Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019, having regard to Article 16, Article 17(1) and Article 52(1) of the Charter of Fundamental Rights of the European Union.**

2. **Part 1 of Chapter I.A of Annex I to Commission Implementing Regulation (EU) 2021/758 of 7 May 2021 on the status of certain products as feed additives within the scope of Regulation (EC) No 1831/2003 of the European Parliament and of the Council and on the withdrawal from the market of certain feed additives**

   must be interpreted as meaning that the definition of 'grapefruit extract', within the meaning of that provision, covers an extract produced from grapefruit seeds and grapefruit peel.

[Signatures]