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IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA
HOF VAN JUSTITIE VAN DE EUROPESE UNIE
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Grand Chamber)

27 January 2026 *

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* Language of the case: Hungarian.

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(Failure of a Member State to fulfil obligations – Article 258 TFEU – Admissibility – Decision (EU) 2021/3 – Position to be taken, on behalf of the European Union, at the reconvened sixty-third session of the Commission on Narcotic Drugs, established by the United Nations Economic and Social Council, on the scheduling of cannabis and cannabis-related substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971 – Position and vote of a Member State, both being contrary to that position of the European Union – Article 4(3) TEU – Principle of sincere cooperation – Effects of the alleged conduct as at the date of expiry of the deadline laid down in the reasoned opinion – Ongoing effects on the unity and consistency of the European Union’s international action – Article 3(2) TFEU – Exclusive external competence – Effect on common rules or alteration of their scope – Plea of illegality raised in the defence – Inadmissibility)

In Case C-271/23,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 27 April 2023,

European Commission, represented by L. Baumgart, M. Carpus-Carcea and Zs. Teleki, acting as Agents,

applicant,

v

Hungary, represented by M.Z. Fehér and G. Koós, acting as Agents,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, F. Biltgen, K. Jürimäe, M.L. Arastey Sahún, I. Ziemele, J. Passer and O. Spineanu-Matei, Presidents of Chambers, S. Rodin, D. Gratsias, M. Gavalec (Rapporteur), Z. Csehi and N. Fenger, Judges,

Advocate General: L. Medina,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 15 October 2024,

after hearing the Opinion of the Advocate General at the sitting on 27 February 2025,

gives the following

Judgment

- 1 By its application, the European Commission claims that the Court should:
 - declare that, by failing to follow the European Union’s position at the reconvened sixty-third session of the Commission on Narcotic Drugs, on the amendment of the scheduling of cannabis and cannabis-related substances, Hungary (i) failed to fulfil its obligations under Council Decision (EU) 2021/3 of 23 November 2020 on the position to be taken, on behalf of the European Union, at the reconvened sixty-third session of the Commission on Narcotic Drugs, on the scheduling of cannabis and cannabis-related substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971 (OJ 2021 L 4, p. 1), which is binding on Hungary under Article 218(9) TFEU, read in conjunction with the fourth paragraph of Article 288 TFEU; (ii) infringed the European Union’s exclusive external competence provided for in Article 3(2) TFEU; and (iii) acted in breach of the principle of sincere cooperation enshrined in Article 4(3) TEU; and
 - order Hungary to pay the costs.

I. Legal context

A. International law

1. *The Convention on Narcotic Drugs*

- 2 The Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, concluded in New York on 30 March 1961 (*United Nations Treaty Series*, Vol. 520, No 7515; ‘the Convention on Narcotic Drugs’), provides, in the eighth paragraph of its preamble:

‘Desiring to conclude a generally acceptable international convention replacing existing treaties on narcotic drugs, limiting such drugs to medical and scientific use, and providing for continuous international co-operation and control for the achievement of such aims and objectives.’

- 3 Article 1, entitled ‘Definitions’, of the Convention on Narcotic Drugs, provides, in paragraph 1:

‘Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout the Convention:

- (a) “Board” means the International Narcotics Control Board [(“INCB”)].

...

- (g) “Commission” means the Commission on Narcotic Drugs of the [United Nations Economic and Social Council (“the Commission on Narcotic Drugs”)].

...

- (j) “Drug” means any of the substances in Schedules I and II, whether natural or synthetic.

...

- (u) “Schedule I”, “Schedule II”, “Schedule III” and “Schedule IV” mean the correspondingly numbered list of drugs or preparations annexed to this Convention, as amended from time to time in accordance with article 3.

...’

4 Article 2, entitled ‘Substances under control’, of that convention, provides:

‘1. Except as to measures of control which are limited to specified drugs, the drugs in Schedule I are subject to all measures of control applicable to drugs under this Convention and in particular to those prescribed in article 4(c), 19, 20, 21, 29, 30, 31, 32, 33, 34 and 37.

...

5. The drugs in Schedule IV shall also be included in Schedule I and subject to all measures of control applicable to drugs in the latter Schedule, and in addition thereto:

- (a) A Party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included; and
- (b) A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party.

...’

5 According to Article 3, entitled ‘Changes in the scope of control’, of that convention:

‘1. Where a Party or the World Health Organization [(WHO)] has information which in its opinion may require an amendment to any of the Schedules, it shall notify the Secretary-General and furnish him with the information in support of the notification.

...

4. If the [WHO] finds that a preparation because of the substances which it contains is not liable to abuse and cannot produce ill effects (paragraph 3) and that the drug therein is not readily recoverable, the Commission [on Narcotic Drugs] may, in accordance with the recommendation of the [WHO], add that preparation to Schedule III.

5. If the [WHO] finds that a drug in Schedule I is particularly liable to abuse and to produce ill effects (paragraph 3) and that such liability is not offset by substantial therapeutic advantages not possessed by substances other than drugs in Schedule IV, the Commission [on Narcotic Drugs] may, in accordance with the recommendation of the [WHO], place that drug in Schedule IV.

6. Where a notification relates to a drug already in Schedule I or Schedule II or to a preparation in Schedule III, the Commission [on Narcotic Drugs], apart from the measure provided for in paragraph 5, may, in accordance with the recommendation of the [WHO], amend any of the Schedules by:

- (a) Transferring a drug from Schedule I to Schedule II or from Schedule II to Schedule I; or
- (b) Deleting a drug or a preparation as the case may be, from a Schedule.

7. Any decision of the Commission [on Narcotic Drugs] taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations [(UN)], to non-member States Parties to this Convention, to the [WHO] and to the [INCB]. Such decision shall become effective with respect to each Party on the date of its receipt of such communication, and the Parties shall thereupon take such action as may be required under this Convention.

...’

6 Article 8, entitled ‘Functions of the Commission [on Narcotic Drugs]’, of that convention, states:

‘The Commission [on Narcotic Drugs] is authorized to consider all matters pertaining to the aims of this Convention, and in particular:

- (a) [to] amend the Schedules in accordance with article 3;

...’

7 Article 35, entitled ‘Action against the illicit traffic’, of the Convention on Narcotic Drugs, provides:

‘Having due regard to their constitutional, legal and administrative systems, the Parties shall:

- (a) Make arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination.

...’

8 Article 36, entitled ‘Penal provisions’, of that convention, provides:

- 1. (a) Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

...

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

(a) ...

- (ii) Intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connexion with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;

...

4. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.’

2. *The Convention on Psychotropic Substances*

- 9 The Convention on Psychotropic Substances, concluded in Vienna on 21 February 1971 (*United Nations Treaty Series*, Vol. 1019, p.175; ‘the Convention on Psychotropic Substances’), provides, in Article 1, entitled ‘Use of terms’:

‘Except where otherwise expressly indicated, or where the context otherwise requires, the following terms in this Convention have the meanings given below:

...

- (e) “Psychotropic substance” means any substance, natural or synthetic, or any natural material in Schedule I, II, III or IV.

...

- (g) “Schedule I”, “Schedule II”, “Schedule III” and “Schedule IV” mean the correspondingly numbered lists of psychotropic substances annexed to this Convention, as altered in accordance with article 2.

...’

- 10 Article 2, entitled ‘Scope of control of substances’, of that convention, provides, inter alia, for the procedure to be followed to transfer a substance from one Schedule to another, or to delete it from one of the Schedules.

B. European Union law

1. *Framework Decision 2004/757*

- 11 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), as amended by Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 (OJ 2017 L 305, p. 12; ‘Framework Decision 2004/757’), states, in recital 3:

‘It is necessary to adopt minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors which will allow a common approach at European Union level to the fight against such trafficking.’

- 12 Article 1(1) of that framework decision defines the concept of ‘drug’ as follows:

‘(a) a substance covered by the [Convention on Narcotic Drugs] or by the [Convention on Psychotropic Substances];

(b) any of the substances listed in the Annex.’

- 13 Article 2, entitled ‘Crimes linked to trafficking in drugs and precursors’, of that framework decision, states, in paragraph 1:

‘Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable:

- (a) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs;
- (b) the cultivation of opium poppy, coca bush or cannabis plant;
- (c) the possession or purchase of drugs with a view to conducting one of the activities listed in (a);

...’

- 14 Article 4, entitled ‘Penalties’, of that framework decision, provides:

‘1. Each Member State shall take the measures necessary to ensure that the offences defined in Articles 2 and 3 are punishable by effective, proportionate and dissuasive criminal penalties.

Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2 are punishable by criminal penalties of a maximum of at least between one and three years of imprisonment.

2. Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2(1)(a), (b) and (c) are punishable by criminal penalties of a maximum of at least between 5 and 10 years of imprisonment in each of the following circumstances:

- (a) the offence involves large quantities of drugs;
- (b) the offence either involves those drugs which cause the most harm to health, or has resulted in significant damage to the health of a number of persons.

...’

2. *Decision 2021/3*

- 15 Recitals 5, 7, 9, 11, 12, 21, 22 and 32 of Decision 2021/3 state:

‘(5) Changes to the Schedules of the Convention on Narcotic Drugs and of the Convention on Psychotropic Substances have direct repercussions on the scope of application of Union law in the area of drug control. [Framework Decision 2004/757] applies to substances listed in the Schedules of those

Conventions. Therefore, any change to the Schedules of those Conventions is directly incorporated into common Union rules.

...

- (7) The Union is not a party to the Convention on Narcotic Drugs or the Convention on Psychotropic Substances. It has an observer status in the [Commission on Narcotic Drugs], where 12 Member States are members with the right to vote at its reconvened sixty-third session. It is therefore necessary for the Council [of the European Union] to authorise those Member States to express the position of the Union on the scheduling of substances under the Convention on Narcotic Drugs and the Convention on Psychotropic Substances since decisions on the international scheduling of substances under those Conventions fall within the competence of the Union.

...

- (9) According to the assessment of the WHO Expert Committee, cannabis and cannabis resin are not particularly liable to produce ill-effects similar to the effects of the other substances in Schedule IV of the Convention on Narcotic Drugs. In addition, oral preparations of cannabis have shown therapeutic potential for the treatment of pain and other medical conditions such as epilepsy and spasticity associated with multiple sclerosis.

...

- (11) That recommendation implies no change in the level of international control of cannabis and cannabis resin. It duly takes into account scientific developments in the field since the first inclusion of cannabis and cannabis resin in the Convention on Narcotic Drugs. The deletion of cannabis and cannabis resin from Schedule IV of the Convention on Narcotic Drugs could be beneficial to the advancement of collective knowledge of the therapeutic utility as well as any associated harms of cannabis.

- (12) Therefore, the position of the Union should be to delete cannabis and cannabis resin from Schedule IV of the Convention on Narcotic Drugs.

....

- (21) ... The definition of preparations under the Convention on Narcotic Drugs may cover all products that are extracts and tinctures of cannabis as ‘preparations’ of cannabis, and also, if the recommendation of the WHO Expert Committee to move dronabinol to Schedule I of the Convention on Narcotic Drugs were followed, as ‘preparations’ of dronabinol and its stereoisomers. Therefore, the WHO recommended that extracts and tinctures of cannabis be deleted from Schedule I of the Convention on Narcotic Drugs.

(22) The information provided by the WHO after the issuance of that recommendation and the analysis of the impact of that recommendation by the [INCB] clarify that that recommendation does not entail any change in the level of international control of extracts and tinctures of cannabis and that that recommendation is not expected to have any impact on the control or reporting obligations of Member States. In addition, the deletion of extracts and tinctures of cannabis from Schedule I of the Convention on Narcotic Drugs would bring about greater certainty in the control of products derived without the use of a solvent but by application of heat and pressure.

...

(32) It is appropriate to establish the position to be taken on the Union's behalf in the [Commission on Narcotic Drugs] with regard to changes to the scheduling of cannabis and cannabis-related substances, as the decisions on scheduling as regards the abovementioned cannabis and cannabis-related substances will directly affect the content of Union law, namely, [Framework Decision 2004/757].'

16 Article 1 of that decision provides:

'The position to be taken on the Union's behalf by the Member States at the reconvened sixty-third session of the Commission on Narcotic Drugs ..., which is scheduled to take place from 2 to 4 December 2020, when that body will be called upon to adopt decisions on the addition of substances to, or their deletion from, the Schedules of the United Nations Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the United Nations Convention on Psychotropic Substances of 1971, shall be in accordance with that set out in the Annex to this Decision.'

17 Article 2 of that decision provides:

'The position referred to in Article 1 shall be expressed by the Member States that are members of the [Commission on Narcotic Drugs], acting jointly in the interest of the Union.'

18 The annex to that decision is worded as follows:

'Position to be taken by the Member States that are members of the Commission on Narcotic Drugs ..., acting jointly in the interest of the Union, at the reconvened sixty-third session of the [Commission on Narcotic Drugs], which is scheduled to take place from 2 to 4 December 2020:

(1) cannabis and cannabis resin are to be deleted from Schedule IV of the Convention on Narcotic Drugs ...;

- (2) dronabinol and its stereoisomers (*delta*-9-tetrahydrocannabinol) are to be added to Schedule I of the Convention on Narcotic Drugs and, if that recommendation is adopted, to be deleted from Schedule II of the Convention on Psychotropic Substances;
- (3) tetrahydrocannabinol (isomers of *delta*-9-tetrahydrocannabinol) is to be added to Schedule I of the Convention on Narcotic Drugs, subject to the [Commission on Narcotic Drugs] adoption of the recommendation to add dronabinol and its stereoisomers (*delta*-9-tetrahydrocannabinol) to Schedule I of the Convention on Narcotic Drugs, and, if that recommendation is adopted, is to be deleted from Schedule I of the Convention on Psychotropic Substances;
- (4) the term “extracts and tinctures” is to be deleted from Schedule I of the Convention on Narcotic Drugs;
- (5) the footnote reading “Preparations containing predominantly cannabidiol and not more than 0.2 percent of *delta*-9-tetrahydrocannabinol are not under international control.” is not to be added to the entry for cannabis and cannabis resin in Schedule I of the Convention on Narcotic Drugs;
- (6) preparations produced either by chemical synthesis or as preparation of cannabis, that are compounded as pharmaceutical preparations with one or more other ingredients and in such a way that *delta*-9-tetrahydrocannabinol (dronabinol) cannot be recovered by readily available means or in a yield which would constitute a risk to public health, are not to be added to Schedule III of the Convention on Narcotic Drugs.

In order to ensure coherence of the scheduling and to avoid the risk that a substance is scheduled under the Convention on Narcotic Drugs as well as under the Convention on Psychotropic Substances, the Member States that are members of the [Commission on Narcotic Drugs] can accept a joint vote on the recommendations concerned.’

3. *The Rules of Procedure of the Court of Justice*

- 19 Article 160, entitled ‘Application for suspension or for interim measures’, of the Rules of Procedure of the Court, provides, in paragraph 1:

‘An application to suspend the operation of any measure adopted by an institution, made pursuant to Article 278 TFEU or Article 157 TEAEC, shall be admissible only if the applicant has challenged that measure in an action before the Court.’

II. Background to the dispute

- 20 On 24 January 2019, the WHO submitted six recommendations, numbered 5.1 to 5.6 (‘the WHO recommendations’), to amend the classification of cannabis and

cannabis-related substances in accordance with the Convention on Narcotic Drugs and the Convention on Psychotropic Substances (together, ‘the two conventions in question’).

- 21 Each of the two conventions in question contains, as an annex, four Schedules, numbered I to IV, which draw up lists, respectively, of narcotic drugs, or preparations containing narcotic drugs, and psychotropic substances.
- 22 The objective of the WHO recommendations was, first, to ensure that the substances concerned were subject to the most relevant international control provided for by the two conventions in question, in the light of the current state of scientific and medical knowledge and administrative practices, and, second, to ensure the availability, research and development of preparations containing cannabis-related substances for medical purposes.
- 23 Those recommendations were debated at the fourth and fifth intersessional meetings of the Commission on Narcotic Drugs which took place on 24 June and 23 September 2019. That commission, whose functions and powers are defined in particular in the two conventions in question, is competent to amend the schedules annexed to those two conventions on the basis of the WHO recommendations; the WHO acts in accordance with the recommendations of its Expert Committee on Drug Dependence.
- 24 The Commission on Narcotic Drugs is composed of 53 States which are members of the United Nations and are selected by the United Nations Economic and Social Council. In December 2020, twelve Member States of the European Union, including Hungary, were members of that commission with the right to vote, and all the Member States of the European Union are parties to the two conventions in question. For its part, the European Union has observer status within that commission.
- 25 During the meetings referred to in paragraph 23 of the present judgment, the INCB and the United Nations Office on Drugs and Crime (UNODC) provided clarifications and assessed the impact of WHO recommendations.
- 26 Furthermore, after deciding, in March 2020, to postpone the vote on the WHO recommendations, the Commission on Narcotic Drugs organised three thematic debates between June and October 2020, followed, on 8 October 2020, by an intersessional meeting open to all stakeholders, during which the results of the previous discussions were summarised.
- 27 The vote on those recommendations was put on the agenda for the reconvened sixty-third ordinary session of the Commission on Narcotic Drugs that was to take place from 2 to 4 December 2020.
- 28 With that in mind, representatives of the Member States discussed the WHO recommendations on several occasions within the Council’s Horizontal Working Party on Drugs. The European Monitoring Centre for Drugs and Drug Addiction

(EMCDDA), which has since been replaced by the European Union Drugs Agency (EUDA), also assessed the impact of those recommendations.

- 29 On 16 October 2020, the European Commission adopted a proposal for a Council Decision on the position to be taken, on behalf of the European Union, in the reconvened sixty-third ordinary session of the Commission on Narcotic Drugs on the scheduling of substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971 (COM(2020) 659 final/2).
- 30 The Council’s Horizontal Working Party on Drugs examined that proposal, on which the Council voted by written procedure on 23 November 2020. The Council adopted Decision 2021/3 by qualified majority, in accordance with the first subparagraph of Article 218(9) TFEU. On that occasion, Hungary voted against that proposal and the Republic of Bulgaria abstained. That decision was addressed to all Member States.
- 31 Under Articles 1 and 2 of Decision 2021/3, the twelve Member States which were members of the Commission on Narcotic Drugs, acting jointly on behalf of the European Union and in its interest, were required to express, at the reconvened sixty-third session of the Commission on Narcotic Drugs, the position set out in the annex to that decision. Points 1 to 6 of the annex to that decision correspond to the WHO recommendations.
- 32 On 2 December 2020, a vote on the WHO recommendations took place within the Commission on Narcotic Drugs. WHO Recommendations 5.2 to 5.6 were rejected. By contrast, WHO Recommendation 5.1 (‘Recommendation 5.1’) was adopted by the required minimum majority (27 votes in favour, 25 votes against, and 1 abstention). That recommendation advocated the removal of cannabis and cannabis resin from Schedule IV of the Convention on Narcotic Drugs; that schedule contains the list of the most dangerous substances not having a medical use. WHO Recommendation 5.4 (‘Recommendation 5.4’) advocated the deletion of the words ‘extracts and tinctures’ from Schedule I of the Convention on Narcotic Drugs.
- 33 Hungary voted against Recommendations 5.1 and 5.4. It also stated, within the Commission on Narcotic Drugs, that the adoption of the WHO recommendations would increase the already growing use of cannabis and would involve unjustified interference with national policies.

III. Pre-litigation procedure

- 34 Taking the view that Hungary’s vote and the position that Hungary had adopted within the Commission on Narcotic Drugs constituted a failure to fulfil its obligations under Decision 2021/3, and also under Article 3(2) TFEU and under the principle of sincere cooperation laid down in Article 4(3) TEU, the European Commission sent a letter of formal notice to Hungary on 18 February 2021.

- 35 In its response of 19 April 2021, Hungary pointed out that it had already expressed reservations about the WHO recommendations during the procedure for the adoption of Decision 2021/3, which had led it to vote against that decision. Recommendation 5.1 has, in Hungary's view, given the public the incorrect message that the social and public health risks of cannabis have been overestimated, which could, it argues, have a negative impact on the already increasing trend in cannabis consumption.
- 36 Hungary considers that Recommendation 5.4 reduced the level of international controls on cannabis extracts and solutions not containing tetrahydrocannabinol ('THC'), despite the social and public health risks associated with their consumption.
- 37 Hungary's intention, in opposing that recommendation, was to maintain unchanged the level of international control for cannabis extracts and solutions not containing THC. According to that Member State, the WHO and its partner bodies had not provided conclusive scientific evidence that cannabis was less harmful to health than previously presumed. Those extracts and those solutions not containing THC could contain other substances with psychotropic effects or be used as precursors. Lastly, Hungary argues that the WHO recommendations do not promote the medical use of cannabis. In its view, the objective of those recommendations is, rather, research into such use, but they are not capable of achieving that objective.
- 38 Since it was unconvinced by the arguments put forward by the Hungarian Government, the Commission issued a reasoned opinion on 12 November 2021. That reasoned opinion stated, first, that the grounds on which Hungary had not followed the position adopted by the Council were irrelevant, given the binding nature of Decision 2021/3. Second, the Commission maintained that Hungary had infringed Article 3(2) TFEU, since that Member State's action concerned an area in which the European Union has exclusive external competence. Third, Hungary had, in the Commission's view, acted in breach of the duty of sincere cooperation enshrined in Article 4(3) TEU, especially since the unexpected nature of that Member State's action had further weakened the European Union's position within the Commission on Narcotic Drugs. In that regard, the European Commission expressed its concerns about the likelihood of Hungary adopting comparable behaviour in the future in similar circumstances.
- 39 Hungary replied to the reasoned opinion on 11 January 2022, maintaining its position which it considered to be justified in the light of health policy considerations, and also social policy considerations. Referring to a national investigation, it expressed concern about the increase in cannabis consumption and stressed its commitment to reducing drug addiction. Hungary also noted the specific nature of the present case, highlighting the relevance and importance of its explanations concerning the vote within the Commission on Narcotic Drugs. It therefore disputed the idea that it would be likely to adopt comparable conduct in the future under similar circumstances.

IV. Procedure before the Court

- 40 As it was still unconvinced by the arguments put forward by Hungary, the Commission decided, on 15 February 2023, to bring an action before the Court seeking a declaration that that Member State had failed to fulfil its obligations under EU law (i) by infringing the European Union’s position established by Decision 2021/3; (ii) by infringing the European Union’s exclusive external competence, as defined in Article 3(2) TFEU; and (iii) by acting in breach of the principle of sincere cooperation laid down in Article 4(3) TEU. The Commission also claims that Hungary should be ordered to pay the costs.
- 41 Hungary contends that the Court should:
- dismiss the action as inadmissible, in so far as it is not consistent with Article 258 TFEU or compatible with the principle of sincere cooperation laid down in Article 4(3) TEU;
 - in the alternative, dismiss the action as unfounded; and
 - in any event, order the Commission to pay the costs.

V. The action

A. Admissibility

1. Arguments of the parties

- 42 Hungary argues that the present action is inadmissible. It submits that neither in the letter of formal notice nor in the reasoned opinion did the Commission specify the conduct which Hungary was supposed to adopt in order to bring to an end the infringement alleged against it. Furthermore, in Hungary’s view, no measure would enable it to comply with the obligation which, according to the Commission, is incumbent on Hungary under EU law, since the vote it cast clearly cannot be altered. According to Hungary, it follows from the judgments of 7 April 2011, *Commission v Portugal* (C-20/09, EU:C:2011:214, paragraph 41), and of 25 October 2001, *Germany v Commission* (C-276/99, EU:C:2001:576, paragraph 24), that the purpose of the infringement procedure is to bring about a change in the conduct of the State concerned.
- 43 Nor, in Hungary’s submission, has the Commission demonstrated the existence of actual and noticeable effects of Hungary’s conduct, persisting beyond the decision-making process at issue and calling into question the unity and consistency of the European Union’s external action.
- 44 Furthermore, the Commission’s argument based on ‘the likelihood that Hungary will adopt comparable behaviour in the future under similar circumstances’ is, in Hungary’s view, based merely on an assumption. The procedure followed by a

Member State in a specific situation is closely linked to that situation and to the interests at stake. The position of a Member State in international negotiations cannot therefore be determined by the manner in which it has previously acted in a given case. It is, in its view, conceivable, however, that, when called upon once more to adopt a position on a particular issue, the Member State concerned might be minded to take the same decision, if that is necessary in order to protect an essential interest of that Member State, but that it is conceivable that it will fully comply with the instructions of the European Union as regards all other amendments.

- 45 Furthermore, even if Hungary's conduct had had an impact on the unity and consistency of the European Union's external action going beyond the scope of the present dispute, the Commission has not, Hungary argues, demonstrated how the action for failure to fulfil obligations brought by the Commission against Hungary could remedy that impact.
- 46 Lastly, Hungary states that it expressed its disagreement before the adoption of Decision 2021/3 and had no means of challenging the latter, other than by departing from the position reflected in the annex to Decision 2021/3 when the sixty-third session of the Commission on Narcotic Drugs was reconvened.
- 47 The Commission contends that the plea of inadmissibility raised by Hungary should be rejected, relying principally on the judgment of 27 March 2019, *Commission v Germany* (C-620/16, EU:C:2019:256, paragraphs 45 to 52 and 57).
- 48 The Commission adds that it finds very worrying Hungary's assertion that no conclusions can be drawn, as regards its future attitude, from its conduct in the vote within the Commission on Narcotic Drugs. According to the Commission, Hungary thus accepts that it does not necessarily intend to align itself, in the future, with the European Union's position as laid down in Council decisions, but that, on the contrary, it intends to determine its position on a case-by-case basis. Hungary cannot therefore, in the Commission's view, validly claim that its conduct was not reprehensible from the perspective of EU law or that it had no consequences for the European Union.

2. Findings of the Court

- 49 The plea of inadmissibility raised by Hungary is based, in essence, on four arguments which it is appropriate to examine in turn.
- 50 First, Hungary complains that the Commission failed to specify the conduct which Hungary would have to adopt in order to bring to an end the failure to fulfil obligations alleged against it.
- 51 However, the Commission cannot be required to indicate, in the reasoned opinion, what steps should be taken to eliminate the impugned conduct (judgments of 11 July 1991, *Commission v Portugal*, C-247/89, EU:C:1991:305, paragraph 22,

and of 26 March 2009, *Commission v Greece*, C-559/07, EU:C:2009:198, paragraph 23).

- 52 The purpose of an action under Article 258 TFEU is to obtain a declaration that a Member State has failed to fulfil its obligations under EU law. Where there is such a finding, Article 260(1) TFEU expressly requires the Member State in question to take the measures necessary to comply with the judgment of the Court of Justice. Consequently, just as the Commission cannot do so, the Court cannot order a Member State which is the subject of an action for failure to fulfil obligations to take specific measures (judgments of 14 April 2005, *Commission v Germany*, C-104/02, EU:C:2005:219, paragraph 49, and of 5 October 2006, *Commission v Germany*, C-105/02, EU:C:2006:637, paragraph 44), with the result that, in the main proceedings, the Commission cannot ask the Court to issue an instruction to the State concerned (see, to that effect, judgments of 2 October 2008, *Commission v Greece*, C-36/08, EU:C:2008:536, paragraph 9, and of 2 April 2020, *Commission v Poland, Hungary and Czech Republic (Temporary mechanism for the relocation of applicants for international protection)*, C-715/17, C-718/17 and C-719/17, EU:C:2020:257, paragraph 56).
- 53 By contrast, in the system of legal remedies established by the Treaties, the Commission may, in proceedings for interim relief based on Article 279 TFEU, request the Court to grant interim measures, such as a direction in order to safeguard the interests protected by the provisions of EU law alleged to have been infringed (see, to that effect, orders of 29 June 1994, *Commission v Greece*, C-120/94 R, EU:C:1994:275, paragraphs 42 and 98; and of 20 November 2017, *Commission v Poland*, C-441/17 R, EU:C:2017:877, paragraph 96; and order of the Vice-President of the Court of 14 July 2021, *Commission v Poland*, C-204/21 R, EU:C:2021:593, paragraph 54).
- 54 The present action is therefore admissible in so far as, by that action, the Commission merely seeks a declaration from the Court that there has been an objective infringement of EU law with regard to Hungary (see, to that effect, judgments of 1 March 1983, *Commission v Belgium*, 301/81, EU:C:1983:51, paragraph 8, and of 2 April 2020, *Commission v Poland, Hungary and Czech Republic (Temporary mechanism for the relocation of applicants for international protection)*, C-715/17, C-718/17 and C-719/17, EU:C:2020:257, paragraph 52 and the case-law cited).
- 55 Second, Hungary submits that it could not, in any event, bring to an end the failure to fulfil obligations which is the subject of the action and that the Commission has not demonstrated the existence of actual and noticeable effects of Hungary's conduct, persisting beyond the decision-making process concerned. That Member State further submits that the conduct of which it is accused has had no impact on the unity and consistency of the European Union's external action.
- 56 First, a Member State which, by its conduct, impedes the achievement of the objective inherent in a decision adopted under Article 218(9) TFEU, cannot evade

infringement proceedings on the grounds that that infringement has already exhausted its effects. Otherwise, the Commission would be unable to bring proceedings, within the powers that it holds under Article 258 TFEU, against the Member State concerned before the Court with a view to obtaining a declaration of such an infringement and to perform fully its role as guardian of the Treaties, conferred on it by Article 17 TEU. As to the claim that it is no longer possible to remedy the alleged harm to the reputation and credibility of the European Union, it cannot, in any event, give rise to the inadmissibility of the present action. A Member State cannot be allowed to rely upon a *fait accompli* of which it is itself the author so as to evade proceedings brought before the Court for failure to fulfil obligations (see, to that effect, judgment of 27 March 2019, *Commission v Germany*, C-620/16, EU:C:2019:256, paragraphs 48, 49 and 57).

- 57 Moreover, to uphold the inadmissibility of an action for failure to fulfil obligations brought against a Member State on the grounds of infringement of a decision adopted under Article 218(9) TFEU would be detrimental both to the binding nature of decisions, pursuant to the fourth paragraph of Article 288 TFEU, and, more generally, to the respect for the values on which the European Union, in accordance with Article 2 TEU, is founded, one such being the rule of law. As the case may be, after taking part in the deliberations and voting within the Council concerning a decision taking a position on behalf of the European Union, a Member State would be able to eschew that decision following its adoption, while being confident that the Commission would be unable to bring proceedings before the Court under Article 258 TFEU against such a failure to fulfil its obligations (see, to that effect, judgment of 27 March 2019, *Commission v Germany*, C-620/16, EU:C:2019:256, paragraphs 50 and 51).
- 58 Second, all the effects of Hungary's disputed conduct at the session of the Commission on Narcotic Drugs cannot be considered to have ceased at the end of that session. They manifest themselves as regards both the unity and consistency of the European Union's external action within that international body. Thus, those effects go beyond even the specific decision-making process concerned, when the very purpose of a decision taken on the basis of Article 218(9) TFEU is to safeguard those interests (see, to that effect, judgment of 27 March 2019, *Commission v Germany*, C-620/16, EU:C:2019:256, paragraphs 46, 47 and 52 and the case-law cited).
- 59 Third, Hungary submits that the Commission has also failed to demonstrate the risk of such a failure to fulfil obligations being repeated.
- 60 In that regard, it is sufficient to note that the risk of a failure to fulfil obligations being repeated is not a condition for the admissibility of an action for failure to fulfil obligations.
- 61 Fourth, Hungary states that it had expressed its disagreement before the adoption of Decision 2021/3. It claims, in that regard, that it had no means of challenging that decision other than by expressing its own position at the time of the

reconvened sixty-third session of the Commission on Narcotic Drugs instead of the position adopted in that decision.

- 62 However, such an argument falls within the scope of the examination of the substance of the present action and cannot therefore preclude the admissibility of the latter.
- 63 In the light of all the foregoing considerations, the action brought by the Commission must be declared admissible.

B. Substance

- 64 In support of its action, the Commission raises three complaints, alleging (i) infringement of the European Union’s position established by Decision 2021/3; (ii) infringement of the European Union’s exclusive external competence, as enshrined in Article 3(2) TFEU; and (iii) breach of the principle of sincere cooperation laid down in Article 4(3) TEU.
- 65 The Court considers it appropriate to begin by examining the second complaint raised by the Commission.

1. The second complaint, alleging infringement of Article 3(2) TFEU

(a) Arguments of the parties

- 66 In its application, the Commission submits that, by failing to comply with Decision 2021/3, Hungary disregarded the European Union’s exclusive external competence, as provided for in Article 3(2) TFEU. In the Commission’s view, the amendments made to the schedules annexed to the two conventions in question have direct repercussions on the scope of EU legislation in the field of drug control. It is irrelevant whether those amendments relate to substances already subject to control throughout the European Union or whether those amendments classify them for the first time.
- 67 According to the Commission, since the European Union is not a party to those two conventions, the Member States are required to represent its position in the international bodies set up in order to give full effect to those conventions, in accordance with the position defined by the Council in a decision adopted in accordance with Article 218(9) TFEU, such as Decision 2021/3.
- 68 In its defence, Hungary objects to the Commission’s interpretation that the amendment of the schedules annexed to the two conventions in question falls within the exclusive competence of the European Union. Hungary submits that it is apparent from Article 1(1)(a) of Framework Decision 2004/757 that the deletion of a substance from Schedule IV of those two conventions has no impact on the scope of that framework decision where the substance in question is still listed in another schedule annexed to those conventions.

- 69 Therefore, the amendment, in accordance with Recommendations 5.1 and 5.4, of the schedules annexed to those conventions does not, in Hungary's submission, affect EU rules or their scope. In its view, neither of those two recommendations alters the concept of 'drug' within the meaning of Article 1(1) of that framework decision.
- 70 In particular, Hungary argues that Recommendation 5.4 did not entail any substantive change, since the proposed deletion of the words 'extracts and tinctures' concerns substances not covered by the concept of 'drug' within the meaning of Framework Decision 2004/757. In that regard, according to Hungary, the Court has held, in the judgment of 19 November 2020, *B S and C A (Marketing of cannabidiol (CBD))* (C-663/18, EU:C:2020:938, paragraph 75), that, since cannabidiol (CBD) does not contain a psychoactive ingredient, it would be contrary to the purpose and general spirit of the Convention on Narcotic Drugs to include it under the definition of 'drugs' as a cannabis extract.
- 71 Furthermore, according to Hungary, it is apparent from recitals 11 and 22 of Decision 2021/3 that it was clear to the EU legislature that Recommendation 5.4 would not affect the monitoring or reporting obligations of the Member States.
- 72 According to Hungary, recitals 5 and 7 of that decision confirm that the international scheduling of certain substances under the two conventions in question and the decisions relating to that scheduling fall within the competence of the European Union; that refers to a situation in which a new substance appears on the list of one of those schedules. An amendment consisting of the scheduling of a substance already under control, such as cannabis, does not therefore, in Hungary's view, alter the scope of Framework Decision 2004/757.
- 73 Hungary argues that the fact that the Commission has not demonstrated to the requisite legal standard that the amendment of the two conventions in question altered the scope of EU rules affects the legality of Decision 2021/3 and renders the Commission's second complaint irrelevant.
- 74 In its reply, the Commission states that the Council may adopt a decision based on Article 218(9) TFEU within the framework of both the European Union's exclusive competence and its shared competence. Therefore, the argument that the European Union lacked exclusive competence to adopt Decision 2021/3 is, in the Commission's view, ineffective.
- 75 In the alternative, the Commission adds that, in order to establish the European Union's exclusive external competence under Article 3(2) TFEU, it is not necessary to be certain that common rules are affected or amended by an international commitment entered into by the Member States, since a mere risk of them being affected or amended is sufficient. Similarly, the scope of EU rules may be affected or altered by international commitments, inter alia, where the latter fall within an area which is already covered to a large extent by such rules,

as the Court has in particular indicated in Opinion 2/91 (*ILO Convention No 170*) of 19 March 1993, EU:C:1993:106, paragraphs 25 to 26).

- 76 According to the judgment of 4 September 2014, *Commission v Council*, C-114/12, EU:C:2014:2151, paragraph 74, the existence of the European Union’s exclusive competence should be based on an overall and specific analysis of the relationship between the envisaged international agreement and the EU law in force.
- 77 In the Commission’s submission, in the present case, in accordance with Article 1(1) of Framework Decision 2004/757, the material scope of that framework decision covers, inter alia, substances which it classifies as ‘drugs’ and which are referred to in the two conventions in question.
- 78 In addition, in the Commission’s view, Hungary is wrong to maintain that only the scheduling of certain substances under the two conventions in question and the decisions relating thereto fall within the exclusive competence of the European Union. According to the Commission, the opposite conclusion follows, however, from recitals 5, 7 and 32 of Decision 2021/3.
- 79 As regards, more specifically, Recommendation 5.1, the Commission states that, under Article 3(5) of the Convention on Narcotic Drugs, a drug in Schedule I of that convention may be included in Schedule IV of that convention where it is particularly liable to give rise to abuse and to produce harmful effects and where such a danger is not offset by substantial therapeutic benefits not possessed by substances other than those in Schedule IV. According to the Commission, it follows from recitals 9 and 12 of Decision 2021/3 that it is now scientifically established that cannabis and cannabis resin do not have harmful effects similar to those of the other substances in Schedule IV, such as heroin. It was therefore recommended that they be deleted from Schedule IV, while leaving them in Schedule I of that convention.
- 80 According to the Commission, the deletion of cannabis and cannabis resin from Schedule IV of the Convention on Narcotic Drugs affects and amends the rules of Framework Decision 2004/757 on penalties, in so far as those substances can no longer be regarded as among the most harmful drugs to health, to which the penalties laid down in Article 4(2)(b) of that framework decision apply, and not the penalties, which are less heavy, referred to in Article 4(1) of that framework decision.
- 81 As regards Recommendation 5.4, the Commission observes that CBD is only one of a number of plant extracts, with the result that no conclusion whatsoever can be inferred from the judgment of 19 November 2020, *B S and C A (Marketing of cannabidiol (CBD))* (C-663/18, EU:C:2020:938), as regards other extracts and tinctures or their THC content. Those substances should, it argues, be examined and classified on a case-by-case basis. It argues, moreover, that Hungary rightly stated, in its reply to the Commission’s letter of formal notice, that extracts and

tinctures could also contain psychotropic substances other than THC and, consequently, that they fall within the scope of the two conventions in question, despite them being deleted from Schedule I of those conventions.

- 82 In addition, recital 21 of Decision 2021/3 states that the term ‘preparations’ in the Convention on Narcotic Drugs may cover all products that are extracts and tinctures of cannabis. Accordingly, the deletion of those substances from Schedule I of that convention does not change the level of international control of them, since any mixture, solid or liquid, containing cannabis or cannabis resin, and therefore any cannabis preparation, falls within the scope of that convention.
- 83 In its rejoinder, Hungary submits that it is necessary to question whether the amendment, in accordance with the WHO recommendations, of the schedules annexed to the two conventions in question does in fact fall within the European Union’s exclusive external competence and, therefore, whether Decision 2021/3 is lawful.
- 84 Hungary states that that decision refers, by way of legal basis, to Article 83(1) TFEU, read in conjunction with Article 218(9) TFEU. Interpreted in the light of the latter provision, Article 83(1) TFEU does not, according to Hungary, confer on the European Union competence to conclude an international agreement. In its view, it is clear from recital 5 of that decision, but also from recital 32 thereof, that the element which is supposed to form the basis of the European Union’s exclusive external competence is the fact that the amendment of the schedules of the two conventions in question has direct repercussions on the scope of EU law in the field of drug control.
- 85 Hungary argues that that condition, laid down in Article 3(2) TFEU, is not met.
- 86 First of all, Hungary submits that the reasoning set out in that regard by the Commission in its reply, as summarised in paragraphs 75 to 82 of the present judgment, did not appear in the Commission’s application. It argues that that reasoning therefore constitutes a new argument which, as such, should be declared inadmissible.
- 87 Next, Hungary submits that the Commission does not dispute that the definition of the concept of ‘drug’ in Framework Decision 2004/757 remains unchanged as a result of the amendment of the schedules annexed to the two conventions in question. On the contrary, the Commission now maintains that any amendment of those schedules is important for the other provisions of that framework decision. The Commission thus refers, on several occasions, to Article 4 of that framework decision, even though it had not relied on that article until now.
- 88 Similarly, Hungary disputes the Commission’s interpretation that the deletion of extracts and tinctures of cannabis from Schedule I annexed to the Convention on Narcotic Drugs does not mean that those substances fall outside the scope of that convention.

- 89 Lastly, in Hungary's view, the Court does not need to examine whether the European Union's external competence may be justified by the fact that an amendment of the schedules annexed to the two conventions at issue is capable of altering the application of common EU rules. Where both the EU provisions the application of which is allegedly affected by an international agreement and that international agreement itself lay down minimum provisions, it cannot, in Hungary's submission, be argued that the international rules prevent the full application of EU law, as follows from Opinion 2/91 (*ILO Convention No 170*) of 19 March 1993, (EU:C:1993:106, paragraph 18).
- 90 According to Hungary, both the title of Framework Decision 2004/757, which refers to 'laying down minimum provisions', and recital 3 thereof clearly show that its purpose is to adopt such provisions.
- 91 Consequently, Hungary argues that the European Union cannot, under any circumstances, have exclusive external competence as regards the amendment of the schedules annexed to the two conventions in question.

(b) Findings of the Court

- 92 It is necessary to reject, at the outset, the plea of inadmissibility raised by Hungary against certain arguments of the Commission seeking to demonstrate that the European Union has exclusive competence to establish the position to be taken on the European Union's behalf in negotiations within an international body. The Commission, in its application, did not have to demonstrate the existence of the European Union's exclusive competence, since its line of argument was based on the premiss that Decision 2021/3 was valid and that it showed the existence of that exclusive competence of the European Union. The Commission thus merely stated, in its reply, that, from its point of view, the third situation provided for in Article 3(2) TFEU was applicable in the present case.
- 93 As to the substance, the parties disagree as regards their understanding of the concept of 'alteration' of the scope of EU law in the field of drug control. Hungary proposes a global reasoning and submits that, as long as the scope of Framework Decision 2004/757 remains unchanged, there can be no alteration of the rules of EU law. Conversely, the Commission considers that the scope of EU law is affected where the classification of a substance is amended. It argues that such an amendment affects the perception of the danger posed by a drug and, consequently, affects the determination of the applicable criminal penalties.
- 94 As a preliminary point, it must be noted that the wording of Article 218(9) TFEU makes no distinction according to the nature of the European Union's external competence (see, by analogy, judgments of 5 December 2017, *Germany v Council*, C-600/14, EU:C:2017:935, paragraph 49, and of 2 September 2021, *Commission v Council (Agreement with Armenia)* C-180/20, EU:C:2021:658, paragraph 27). It is therefore irrelevant whether the European Union has exclusive or shared competence for the adoption of a decision under that provision. In either

case, the Council, on a proposal from the Commission, may adopt a decision ‘establishing the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement’.

- 95 It should be noted that, in accordance with the third scenario provided for in Article 3(2) TFEU, the European Union has exclusive competence for the conclusion of an international agreement in so far as its conclusion may affect common rules or alter their scope.
- 96 That provision is also applicable where a body established under such an international agreement is called upon to adopt measures implementing it (judgment of 20 November 2018, *Commission v Council (Antarctic MPAs)*, C-626/15 and C-659/16, EU:C:2018:925, paragraph 112). Moreover, the fact that the European Union is not a member of an international organisation does not prevent its external competence from being in fact exercised, in particular through the Member States acting jointly in the European Union’s interest (see, to that effect, Opinion 2/91 (*ILO Convention No 170*) of 19 March 1993, EU:C:1993:106, paragraph 5, and judgment of 12 February 2009, *Commission v Greece*, C-45/07, EU:C:2009:81, paragraph 31).
- 97 There is a risk that common EU rules might be adversely affected by international commitments, or that the scope of those rules might be altered, which is such as to establish an exclusive external competence of the European Union, where those commitments fall within the scope of those rules (see, to that effect, judgments of 31 March 1971, *Commission v Council*, 22/70, EU:C:1971:32, paragraph 30, and of 4 September 2014, *Commission v Council*, C-114/12, EU:C:2014:2151, paragraph 68). However, it is not necessary for the areas covered by the international agreement and the EU legislation to coincide fully (Opinion 1/03 (*New Lugano Convention*) of 7 February 2006, EU:C:2006:81, paragraph 126). In particular, the scope of EU rules may be affected or altered by international commitments where the latter fall within an area which is already covered to a large extent by such rules (judgment of 20 November 2018, *Commission v Council (Antarctic MPAs)*, C-626/15 and C-659/16, EU:C:2018:925, paragraph 113 and the case-law cited).
- 98 The existence of a risk of common EU rules being affected, within the meaning of Article 3(2) TFEU, may be established where the international commitments at issue, without necessarily conflicting with those rules, may have an effect on their meaning, scope and effectiveness (see, to that effect, Opinion 1/13 (*Accession of third States to the Hague Convention*) of 14 October 2014, EU:C:2014:2303, paragraph 85; Opinion 2/15 (*Free Trade Agreement with Singapore*) of 16 May 2017, EU:C:2017:376; and judgment of 20 November 2018, *Commission v Council (Antarctic MPAs)*, C-626/15 and C-659/16, EU:C:2018:925, paragraph 114).

- 99 In the present case, it is apparent from Article 1(1)(a) and (b) of Framework Decision 2004/757 that the concept of ‘drug’ is defined, *inter alia*, by reference to the two conventions in question. As the Advocate General observed in point 59 of her Opinion, by making such a reference, the EU institutions signalled their decision to ensure that the European Union aligns its actions with international drug control policies and, accordingly, with those conventions.
- 100 Indeed, as stated in recitals 5 and 32 of Decision 2021/3, any change to the schedules of those two conventions is directly incorporated into common EU rules, with the result that such a change will directly affect the content of Framework Decision 2004/757.
- 101 In that respect, as regards, in the first place, Recommendation 5.1, the latter sought the amendment of the classification of cannabis and cannabis-related substances by deleting them from Schedule IV annexed to the Convention on Narcotic Drugs; that schedule lists the most harmful drugs ‘not having any known value in the treatment of human beings’, as explained in the commentaries on the Single Convention on Narcotic Drugs of 1961 (United Nations, 1975), as regards Article 3(3)(i) and (ii) of the Convention on Narcotic Drugs (paragraph 7).
- 102 Although it follows from Article 4 of Framework Decision 2004/757 that, as a matter of principle, Member States must lay down, for the offences referred to in Article 2 thereof, penalties of a maximum of at least between one and three years of imprisonment, Article 4(2)(b) of that framework decision nevertheless states that the Member States must take the necessary measures to ensure that the offences referred to in Article 2(1)(a) to (c) thereof are punishable by penalties of a maximum of at least between five and ten years of imprisonment where those offences involve those drugs which cause the most harm to health or have resulted in significant damage to the health of a number of persons.
- 103 Thus, the Commission is fully entitled to submit that, in the light of the definition of the concept of ‘drug’ in Framework Decision 2004/757 by reference, *inter alia*, to the Convention on Narcotic Drugs, the deletion of cannabis and cannabis-related substances from Schedule IV of that convention was liable to result in the penalties laid down in Article 4(2)(b) of that framework decision not being applied.
- 104 It follows that Recommendation 5.1 was capable of affecting the meaning and scope of EU rules, which is sufficient for a finding that a statement of position as to the adoption of that recommendation fell within the European Union’s exclusive competence on the basis of the third scenario referred to in Article 3(2) TFEU.
- 105 As regards, in the second place, Recommendation 5.4, it sought the deletion of the terms ‘extracts and tinctures’ from Schedule I of that convention. In essence, that concerned the issue of no longer classifying, as narcotic drugs, cannabis extracts and tinctures not having psychoactive properties and therefore the issue of

authorising their marketing, while remaining vigilant with regard to cannabis extracts and tinctures having such properties. In so doing, that recommendation had the effect of excluding those ‘extracts and tinctures’ from the scope of Framework Decision 2004/757, in view of the reference made in Article 1(1) of that framework decision to the two conventions in question.

- 106 As the Advocate General observed, in essence, in point 63 of her Opinion, such an exclusion would have had the effect, *inter alia*, of rendering inapplicable the requirements laid down in Article 4(1) of that framework decision as regards criminal penalties to be imposed by the Member States for the offences referred to in Article 2 thereof.
- 107 It follows that Recommendation 5.4 was also capable of affecting the meaning and scope of EU rules, which is sufficient for a finding that a statement of position as to the adoption of that recommendation fell within the European Union’s exclusive competence on the basis of the third scenario referred to in Article 3(2) TFEU.
- 108 Since the situation is not, therefore, comparable to that found in paragraphs 18 and 21 of Opinion 2/91 (*ILO Convention No 170*) of 19 March 1993 (EU:C:1993:106), Hungary cannot rely on the Court’s findings in that opinion in order to counter the interpretation that the European Union has exclusive external competence to adopt Decision 2021/3.
- 109 Therefore, contrary to what Hungary submits, the European Union had exclusive competence to conduct negotiations regarding Recommendations 5.1 and 5.4 within the Commission on Narcotic Drugs, and to take a position in favour of the adoption of those recommendations within that commission. The Council was therefore fully entitled to adopt Decision 2021/3 in order to establish the position to be taken on behalf of the European Union in negotiations within the Commission on Narcotic Drugs. By failing to respect that decision, Hungary therefore disregarded the European Union’s exclusive competence.
- 110 The Commission’s second complaint, alleging that Hungary infringed Article 3(2) TFEU, must therefore be upheld.

2. *The first complaint, alleging infringement of Articles 1 and 2 of Decision 2021/3 and of the fourth paragraph of Article 288 TFEU*

- 111 Since Hungary raised a plea of illegality in respect of Decision 2021/3 in its defence, it is appropriate to examine that plea first.

(a) *The plea of illegality in respect of Decision 2021/3*

(1) *Arguments of the parties*

- 112 Hungary claims that Decision 2021/3 is unlawful. In view of the short period of time which elapsed between the adoption of that decision and the sixty-third session of the Commission on Narcotic Drugs, which was held before the expiry of the deadline laid down in the sixth paragraph of Article 263 TFEU for bringing an action for annulment, Hungary argues that it was unable effectively to challenge that decision. Not only could it not have prepared an action for annulment in that short period, but the Court also could not have examined the substance of such an action and thus ensure the effective judicial protection of that State. Even the bringing of an action for annulment, together with an application for an interim measure, would not, in Hungary's view, necessarily have been sufficient to rule out the undesirable effect of Decision 2021/3.
- 113 In addition, Hungary submits that the fact that it did not bring an action for annulment of Decision 2021/3 cannot prevent it from pleading the illegality of that decision under Article 277 TFEU in the context of the present action for failure to fulfil obligations. That, it argues, is all the more so since the bringing, after the vote within the Commission on Narcotic Drugs, of an action for annulment of that decision would not have enabled Hungary either to put forward its point of view or to escape the initiation of infringement proceedings.
- 114 Moreover, it argues, there can be no question of circumvention of the procedural time limits laid down in Article 263 TFEU where the problems raised by an EU act are not identifiable at the time of its adoption and can be detected only at the stage of its implementation.
- 115 Since the Commission has not proved the effectiveness of an action for annulment brought against Decision 2021/3, it cannot, in Hungary's view, argue that Article 277 TFEU, which supplements Article 263 TFEU, is inapplicable, as otherwise Hungary would be deprived of its right to effective judicial protection, as guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union.
- 116 Furthermore, no one can be sued for an unlawful act. Since the vote within the Commission on Narcotic Drugs finalised the prejudice caused to Hungary's interests by that decision, Hungary argues that it is not that decision which now adversely affects its interests, but the infringement proceedings initiated on account of its infringement.
- 117 In any event, Hungary considers that it has demonstrated, in response to the Commission's second complaint, that Decision 2021/3 is a non-existent act which should be examined by the Court of its own motion.

118 The Commission submits, relying on the judgment of 6 March 1979, *Simmenthal v Commission* (92/78, EU:C:1979:53, paragraph 39), that the plea of illegality in respect of Decision 2021/3 is manifestly inadmissible since Hungary was indisputably entitled to challenge it by means of an action for annulment.

(2) *Findings of the Court*

119 It should be noted that the system of remedies established by the FEU Treaty distinguishes between the actions mentioned in Articles 258 and 259 TFEU, which seek a declaration that a Member State has failed to fulfil its obligations, and the actions mentioned in Articles 263 and 265 TFEU, which seek review of the lawfulness of acts or failures to act of the European Union institutions. Those remedies have different objectives and are subject to different rules (judgments of 30 June 1988, *Commission v Greece*, 226/87, EU:C:1988:354, paragraph 14; of 27 October 1992, *Commission v Germany*, C-74/91, EU:C:1992:409, paragraph 10; and of 27 March 2019, *Commission v Germany*, C-620/16, EU:C:2019:256, paragraph 89).

120 The Court has inferred from this that, in the absence of a provision of the Treaty expressly permitting it to do so, a Member State cannot properly plead the unlawfulness of a decision or a directive addressed to it as a defence in an action for a declaration that it has failed to fulfil its obligations arising out of its failure to implement that decision or that directive, and that the position could be different only if the act in question contained such particularly serious and manifest defects that it could be categorised as a non-existent act (see judgments of 30 June 1988, *Commission v Greece*, 226/87, EU:C:1988:354, paragraph 16; of 27 October 1992, *Commission v Germany*, C-74/91, EU:C:1992:409, paragraph 11; and of 27 March 2019, *Commission v Germany*, C-620/16, EU:C:2019:256, paragraph 89).

121 The Court has also held that, as a member of the Council, which was the author of the decision establishing the position to be taken on behalf of the European Union in negotiations within an international organisation, a Member State necessarily had knowledge of that decision, even if it was not formally the addressee thereof, and was fully in a position to bring an action seeking annulment of that decision within the period of two months laid down in the sixth paragraph of Article 263 TFEU (see, to that effect, judgment of 27 March 2019, *Commission v Germany*, C-620/16, EU:C:2019:256, paragraph 90).

122 Furthermore, as pointed out in paragraph 119 of the present judgment, an action for failure to fulfil obligations has a specific purpose consisting exclusively in seeking a declaration by the Court that a Member State has failed to fulfil its obligations. Such an action cannot therefore be used by the State against which proceedings have been brought in order to make up for its passivity and the failure to challenge directly, by means of an action for annulment, the act which the Commission alleges was disregarded by the Member State.

- 123 Since an action for failure to fulfil obligations does not in any way concern the applicability of an act of an institution, body, office or agency of the European Union and, in accordance with Article 277 TFEU, the very purpose of a plea of illegality is to obtain the inapplicability of such an act, a Member State cannot be authorised to raise, in such an action, a plea of illegality in respect of such an EU act, whatever it may be, unless that act contains such particularly serious and manifest defects that it could be categorised as a non-existent act, as stated in paragraph 120 of the present judgment.
- 124 A Member State wishing to take advantage of any action for failure to fulfil obligations in order to challenge the legality of the act of secondary legislation, the failure to comply with which led to the bringing of that action, disregards the presumption of validity enjoyed by all acts of secondary legislation. That presumption imposes, on all persons subject to EU law, the obligation to acknowledge that such acts of secondary EU law are fully effective as long as their invalidity has not been established by the Court of Justice of the European Union (see, to that effect, judgments of 13 February 1979, *Granaria*, 101/78, EU:C:1979:38, paragraphs 4 and 5, and of 7 June 1988, *Commission v Greece*, 63/87, EU:C:1988:285, paragraphs 10 and 11) and to recognise their enforceability unless the EU Courts have decided to suspend the operation of those acts (judgment of 21 September 1989, *Hoechst v Commission*, 46/87 and 227/88, EU:C:1989:337, paragraph 64). Those acts therefore produce legal effects until such time as they are withdrawn, annulled in an action for annulment or declared invalid following a reference for a preliminary ruling or a plea of illegality (judgments of 5 October 2004, *Commission v Greece*, C-475/01, EU:C:2004:585, paragraph 18, and of 10 September 2019, *HTTS v Council*, C-123/18 P, EU:C:2019:694, paragraph 100).
- 125 As a result, the fact that it is impossible for a Member State to plead the illegality of the act the disregard of which has led the Commission to initiate proceedings against that Member State for failure to fulfil obligations is based on the principle that, except where expressly provided for, the scheme of the Treaties prohibits the Member States from taking the law into their own hands (judgment of 13 November 1964, *Commission v Luxembourg and Belgium*, 90/63 and 91/63, EU:C:1964:80).
- 126 If a Member State considers that an act of secondary legislation contains elements which are incompatible with EU law, it has the power to act, either within the Council, by alerting the Commission, or, ultimately, in legal proceedings to have those incompatibilities eliminated. However, a Member State may not, under any circumstances, unilaterally adopt, on its own authority, corrective or protective measures designed to cure any breach, by another Member State or by an EU institution, of rules of EU law (see, to that effect, judgments of 25 September 1979, *Commission v France*, 232/78, EU:C:1979:215, paragraph 9; of 12 February 2009, *Commission v Greece*, C-45/07, EU:C:2009:81, paragraph 26; and of 27 March 2019, *Commission v Germany*, C-620/16, EU:C:2019:256, paragraph 88), without calling into question the fundamental requirement of the

EU legal order that EU law be applied uniformly (judgment of 21 February 1991, *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest*, C-143/88 and C-92/89, EU:C:1991:65, paragraph 26).

- 127 As the Advocate General observed, in essence, in point 96 of her Opinion, where a Member State does not, within the two-month period set out in the sixth paragraph of Article 263 TFEU, bring an action for annulment of an act addressed to it, that Member State cannot subsequently call into question the legality of that act in the context of infringement proceedings, as otherwise the consistent and uniform application of EU law, which is a fundamental feature of the EU system, would be undermined. In permitting Member States to profit from the advantages of the European Union, the Treaties also impose on them the obligation to respect the rules of those treaties. For a Member State to break unilaterally, according to its own conception of national interest, the equilibrium between the advantages and obligations flowing from its adherence to the European Union calls into question the equality of Member States before EU law, in breach of the duties of solidarity which are accepted by Member States as a result of their adherence to the European Union and which form part of the fundamental basis of the EU legal order. Such an attitude is also capable of creating discrimination at the expense of the nationals of Member States and, and above all, of the nationals of the State itself which places itself outside the EU rules (judgment of 7 February 1973, *Commission v Italy*, 39/72, EU:C:1973:13, paragraphs 24 and 25).
- 128 Furthermore, in a context characterised by urgency caused by the concomitance or quasi-concomitance between, on the one hand, the Council decision establishing the position to be taken on behalf of the European Union in negotiations within an international body and, on the other hand, the vote within that body, a Member State which has doubts as to the validity of such a decision should take advantage of the period which runs between the Commission's submission of the final, or almost final, version of the draft decision and the Council's vote which may lead to the adoption of that decision, in order to prepare its application initiating proceedings and an application for suspension of the operation of that decision, in accordance with Article 160(1) of the Rules of Procedure. From that perspective, the Commission must, in general, endeavour to present its proposal in sufficient time to enable the Council to complete its decision-making process with a view to establishing, in a timely manner, the position to be taken on behalf of the European Union with a view to negotiations and voting within such a body.
- 129 The grant of suspension of operation of that decision would have the effect of temporarily removing its presumption of validity. In such a situation, the Member States and the EU institutions nevertheless remain subject, in accordance with Article 4(3) TEU, to mutual duties of sincere cooperation (see, to that effect, judgment of 10 February 1983, *Luxembourg v Parliament*, 230/81, EU:C:1983:32, paragraphs 37 and 38). In particular, it is for the Member States to ensure that, before the Court rules on the substance, the requirement of unity in the representation of the European Union is not undermined, whereas it is for the Commission to make use of its status as negotiator of the external action at issue

in order to preserve, as far as possible, the effectiveness of the judicial proceedings before the Court, for example by seeking to have the vote postponed within the international body concerned.

- 130 Furthermore, it must be pointed out that the fact that it is impossible for a Member State to raise a plea of illegality in the context of an action for failure to fulfil obligations is, however, without prejudice to its right to challenge the merits of the Commission’s interpretation of the act of secondary legislation which that Member State allegedly infringed. When the wording of secondary EU legislation is open to more than one interpretation, preference should be given as far as possible to the interpretation which renders the provision consistent with the Treaties. Similarly, the primacy of international agreements concluded by the European Union over secondary EU legislation requires that the latter be interpreted, as far as possible, in a manner consistent with those agreements (see, to that effect, judgments of 13 December 1983, *Commission v Council*, 218/82, EU:C:1983:369, paragraph 15; of 10 September 1996, *Commission v Germany*, C-61/94, EU:C:1996:313, paragraph 52; and of 17 October 2024, *PT Pelita Agung Agrindustri and PT Permata Hijau Palm Oleo v Commission*, C-112/13 P, EU:C:2024:899, paragraph 38).
- 131 Lastly, and without it being necessary to examine more thoroughly the arguments advanced by Hungary in support of the contention that Decision 2021/3 is unlawful, it must be stated that that Member State has not provided any evidence to show that that decision is vitiated by a defect that is so serious and manifest that it would call into question its very existence (see, by analogy, judgment of 11 October 2016, *Commission v Italy*, C-601/14, EU:C:2016:759, paragraph 34).
- 132 The plea of illegality raised by Hungary in respect of Decision 2021/3 must therefore be declared inadmissible.

(b) The infringement of Articles 1 and 2 of Decision 2021/3 and of the fourth paragraph of Article 288 TFEU

(1) Arguments of the parties

- 133 The Commission submits that Hungary infringed Decision 2021/3 by failing, when voting within the Commission on Narcotic Drugs, to comply with the position adopted by the Council in that decision. In the Commission’s view, it is irrelevant, in that regard, that Hungary relied on health and social considerations to justify its opposition to Recommendations 5.1 and 5.4. The Commission recalls that, under the fourth paragraph of Article 288 TFEU, a decision taken by the European Union is binding in its entirety, with the result that it cannot be applied selectively, as Hungary did.
- 134 Hungary denies that it infringed that decision, arguing that it constitutes a non-existent act. In Hungary’s view, since the European Union was not competent to adopt that decision, the latter was adopted in breach of Article 5(2) TEU.

(2) Findings of the Court

- 135 Decision 2021/3 was adopted on the basis of Article 218(9) TFEU, which provides for the adoption not of a mere recommendation but of a ‘decision’ establishing the position to be taken on behalf of the European Union in a body set up by an international agreement. That decision therefore produces binding legal effects, in that it establishes, for the Member States, the European Union’s position in the sixty-third session of the Commission on Narcotic Drugs and requires the Member States to defend that position. In addition, that decision was published in the L series of the *Official Journal of the European Union*, as a binding act (see, to that effect, judgments of 1 October 2009, *Commission v Council*, C-370/07, EU:C:2009:590, paragraph 44, and of 27 March 2019, *Commission v Germany*, C-620/16, EU:C:2019:256, paragraphs 78 and 80).
- 136 As follows from paragraphs 109 and 131 of the present judgment, the European Union did have competence to adopt Decision 2021/3 on the basis of Article 3(2) TFEU.
- 137 Moreover, contrary to what Hungary claims, that decision enjoys a presumption of validity, in accordance with the case-law referred to in paragraph 124 of the present judgment, and therefore that Member State was required to respect the enforceability of that decision in the absence of any suspension of its operation by the Court.
- 138 The Commission’s first complaint must therefore be upheld.

3. The third complaint, alleging breach of the principle of sincere cooperation enshrined in Article 4(3) TEU*(a) Arguments of the parties*

- 139 The Commission considers that Hungary acted in breach of the principle of sincere cooperation, enshrined in Article 4(3) TEU, by failing, within the Commission on Narcotic Drugs, to vote in accordance with Decision 2021/3 and by publicly expressing its disagreement with the WHO recommendations, which were set out in the agenda.
- 140 The Commission argues that it follows from the judgment of 27 March 2019, *Commission v Germany* (C-620/16, EU:C:2019:256, paragraph 94), that the obligation on Member States to comply with a decision adopted on the basis of Article 218(9) TFEU is a specific expression of the requirement of unity in representation of the European Union.
- 141 Hungary’s action is, in the Commission’s view, aggravated by the fact that its vote within the Commission on Narcotic Drugs took place without prior warning given to, or consultation of, the EU institutions. Within the Commission on Narcotic Drugs, Hungary was entitled to express itself only on behalf of the European

Union and, in view of the latter's exclusive external competence, Hungary could only express the position of the European Union.

- 142 Furthermore, the Commission argues that Hungary did not take any steps, either at the meeting of the Commission on Narcotic Drugs or subsequently, to remedy the consequences of its conduct or at least to mitigate the consequences thereof and to dispel doubts as to its future action. Hungary has thus, in the Commission's submission, failed to acknowledge the unlawful nature of its conduct within the Commission on Narcotic Drugs and has even insisted that its actions were legitimate.
- 143 The Commission submits that the Hungarian authorities were already aware of the position which was planned to be adopted on behalf of the European Union even before its proposal was submitted to the Council. Therefore, if Hungary had genuinely intended to challenge that position, it would have had the necessary time to prepare its action, before the meeting of the Commission on Narcotic Drugs.
- 144 Lastly, since the WHO generally does not publish its reports before the end of November, the time available for the preparation of the Commission proposal and the interinstitutional coordination to prepare the position to be adopted by the European Union at the session of the Commission on Narcotic Drugs, which takes place in March of the following year, is, in the Commission's view, extremely short. Often, the two-month period laid down in the sixth paragraph of Article 263 TFEU for bringing an action for annulment of the Council decision establishing such a position, which is calculated from the time of notification of that decision, does not expire before the beginning of the spring session of the Commission on Narcotic Drugs. The fact that that period is ongoing does not, however, prevent the decision from producing its legal effects or prevent the Member States to which it is addressed from complying with it.
- 145 Hungary denies that it acted in breach of the principle of sincere cooperation.
- 146 First, it argues that the unlawfulness of Decision 2021/3, which results from the infringement of Article 3(2) TFEU, precludes a finding of any breach of that principle by that Member State. That unlawfulness thus means, in that Member State's view, that it could freely express its own position within the Commission on Narcotic Drugs.
- 147 Second, Hungary claims not to be solely responsible for the situation. In that regard, it points to the tardiness with which the Commission submitted to the Council its proposal for a decision. The vote within the Commission on Narcotic Drugs therefore took place before the expiry of the two-month period that was available to Hungary to bring an action to challenge Decision 2021/3. Such a practice, it argues, infringes the Member States' right to effective judicial protection. In Hungary's submission, the principle of sincere cooperation must therefore be interpreted in the light of the right to effective judicial protection, as

guaranteed by Article 47 of the Charter of Fundamental Rights. The few days which elapsed between the adoption of that decision and the vote on the amendments were not, it argues, sufficient to bring an action as well as an application for interim measures and for the Court to rule on both of them.

- 148 In addition, Hungary states that, on account of that tight timetable, it decided its final position on the WHO recommendations only just before the session, taking into account, in that regard, the judgment of 19 November 2020, *B S and C A (Marketing of cannabidiol (CBD))* (C-663/18, EU:C:2020:938).
- 149 Furthermore, it argues that the present case should be distinguished from the case that gave rise to the judgment of 5 December 2017, *Germany v Council* (C-600/14, EU:C:2017:935). It is true, it submits, that those two cases have in common the fact that the Member State concerned did not have sufficient time to challenge the contested decisions or to apply for suspension of operation of those decisions. Nevertheless, unlike the case which gave rise to that judgment, the irreversible effects caused by Decision 2021/3 at the session of the Commission on Narcotic Drugs persist in the present case, which, Hungary argues, undermines the right to effective judicial protection.
- 150 Third, in Hungary's view, the WHO has not provided any specific argument, whether from a health, social or legal perspective, in support of the practical usefulness of its recommendations, the only effect of which could be to give the public the message that the risks associated with cannabis for society and for public health were overestimated when the two conventions in question were drawn up and that those conventions are therefore too strict as regards the control introduced for cannabis.
- 151 Fourth, Hungary argues the WHO recommendations are not capable of favouring access to cannabis preparations for therapeutic purposes, since the sole purpose of those recommendations is to facilitate research into such uses.

(b) Findings of the Court

- 152 As the Court has repeatedly held, in all the areas corresponding to the objectives of the Treaties, Article 4(3) TEU requires Member States to facilitate the achievement of the European Union's tasks and to abstain from any measure which could jeopardise the attainment of those objectives (judgment of 31 March 1971, *Commission v Council*, 22/70, EU:C:1971:32, paragraph 21; Opinion 2/91 (*ILO Convention No 170*) of 19 March 1993, EU:C:1993:106, paragraph 10; judgment of 5 November 2002, *Commission v Denmark*, C-467/98, EU:C:2002:625, paragraph 110; and judgment of 8 March 2022, *Commission v United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 527).
- 153 Consequently, where it is apparent that the subject matter of an international agreement or international convention falls partly within the competence of the

European Union and partly within that of its Member States, it is essential to ensure close cooperation between the Member States and the EU institutions, both in the process of negotiation and conclusion and in the fulfilment of the commitments entered into. That obligation to cooperate flows from the requirement of unity in the international representation of the European Union (Opinion 2/91 (*ILO Convention No 170*) of 19 March 1993, EU:C:1993:106, paragraph 36, and Opinion 1/94 (*Agreements annexed to the WTO Agreement*) of 15 November 1994, EU:C:1994:384, paragraph 108, and judgment of 20 April 2010, *Commission v Sweden*, C-246/07, EU:C:2010:203, paragraph 73).

- 154 The special duties of action and abstention to which a Member State is thus subject cannot tolerate that State presenting, in a body set up by an international agreement, a unilateral proposal which dissociates it from a common strategy drawn up within the Council. Such a situation is likely to compromise the principle of unity in the international representation of the European Union and its Member States and also weaken their negotiating power with regard to the other parties to the Convention concerned (see, to that effect, judgment of 20 April 2010, *Commission v Sweden*, C-246/07, EU:C:2010:203, paragraphs 103 and 104).
- 155 The Member States' obligations under the principle of sincere cooperation, as recalled in paragraphs 152 to 154 of the present judgment, are binding, a fortiori, on those Member States within the scope of the European Union's exclusive competences.
- 156 Furthermore, as the Advocate General observed, in essence, in point 156 of her Opinion, relying on the judgment of 14 March 1973, *Westzucker* (57/72, EU:C:1973:30, paragraph 17), it is inherent not only in the very idea of the European Union, but also in the application of a majority voting procedure in the Council, that the Member States should emphasise their interests within the framework of the mechanics of collective discussion that were created by the Treaties in order to implement the objectives of the European Union.
- 157 It should also be noted that compliance on the part of the Member States with a decision adopted by the Council under Article 218(9) TFEU is a specific expression of the requirement of unity in representation of the European Union, arising from the obligation of sincere cooperation (see, by analogy, judgment of 27 March 2019, *Commission v Germany*, C-620/16, EU:C:2019:256, paragraph 94).
- 158 It follows that, first, by failing, within the Commission on Narcotic Drugs, to vote in accordance with Decision 2021/3 and, second, by publicly expressing its disagreement with the WHO recommendations, which were on the agenda, Hungary acted in breach of the principle of sincere cooperation laid down in Article 4(3) TEU. Such conduct undermined the effectiveness of the international action of the European Union and the latter's credibility and reputation on the international scene.

- 159 Furthermore, the Commission's line of argument that Hungary has not taken any measures to remedy the consequences of its conduct or at least to mitigate the consequences thereof and to dispel doubts as to its future action is aimed at responding to Hungary's claims, namely that the vote at issue within the Commission on Narcotic Drugs is an isolated case and that, in the light of the explanations provided by that Member State, there is nothing to support the conclusion that it is capable of adopting similar conduct in the future. It is sufficient to note that those circumstances have, in any event, no bearing on the failure to fulfil the obligation of sincere cooperation resulting from the conduct of that Member State, established in paragraph 157 of the present judgment.
- 160 In the light of the foregoing considerations, the Commission's third complaint must be upheld.
- 161 In the light of all the foregoing considerations, it must be held that, by failing to follow the European Union's position at the reconvened sixty-third session of the Commission on Narcotic Drugs on the amendment of the scheduling of cannabis and cannabis-related substances, Hungary (i) failed to fulfil its obligations under Decision 2021/3, which is binding on Hungary under Article 218(9) TFEU, read in conjunction with the fourth paragraph of Article 288 TFEU; (ii) infringed the European Union's exclusive external competence provided for in Article 3(2) TFEU; and (iii) acted in breach of the principle of sincere cooperation enshrined in Article 4(3) TEU.

Costs

- 162 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Hungary has been unsuccessful, Hungary must be ordered to pay the costs.

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

1. **By failing to follow the European Union's position at the reconvened sixty-third session of the Commission on Narcotic Drugs of the United Nations Economic and Social Council on the amendment of the scheduling of cannabis and cannabis-related substances, Hungary (i) failed to fulfil its obligations under Council Decision (EU) 2021/3 of 23 November 2020 on the position to be taken, on behalf of the European Union, at the reconvened sixty-third session of the Commission on Narcotic Drugs, on the scheduling of cannabis and cannabis-related substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971, which is binding on Hungary under Article 218(9) TFEU, read in conjunction with the fourth paragraph of Article 288 TFEU; (ii) infringed the European Union's exclusive**

external competence provided for in Article 3(2) TFEU; and (iii) acted in breach of the principle of sincere cooperation enshrined in Article 4(3) TEU;

2. Orders Hungary to pay the costs.

[Signatures]