



New possibilities in terms of the maximum amount of nutrients in food supplements

Judgment of the Court of Justice of the European Union (CJEU) of 27 April 2017 in Case C-672/15

Background

A French distributor of food supplements was subject to criminal proceedings for selling, without authorisation, products whose contents exceeded the maximum amounts of nutrients that may be used pursuant to French regulations (Order 2006).

In the context of this procedure, the company claimed that the Order 2006 did not comply with EU law. As a result, the Tribunal de grande instance de Perpignan decided to refer three questions to the CJEU for a preliminary ruling.

Position of the CJEU

The first question referred to the CJEU was about the compatibility of the Order 2006 with Community principles of free movement of goods and of mutual recognition, given that said order did not establish a procedure for authorising the sale of food supplements for which the maximum amounts of nutrients exceeded those established by the order, in the event that said supplements were lawfully marketed in another Member State.

The CJEU established that the Order 2006 should set out a procedure that was readily accessible and could be completed within a reasonable time making it possible to obtain authorisation for the sale of food supplements lawfully manufactured or marketed in another Member State, even if their nutrient content exceeds the content allowed by Law.

Furthermore, it asserted that authorisation may only be refused if food supplements pose a genuine risk to public health and that said refusal must be open to challenge before the courts.

In terms of the second question posed, concerning the procedure for setting maximum amounts, the CJEU established that setting these amounts must be undertaken, on a case-by-case basis, taking into account the upper safe levels of the nutrients concerned, following a scientific assessment of the risks to human health. Furthermore, the court ruled that said assessment must be based on the relevant scientific data and not on purely hypothetical considerations.

In response to the third and final question, also regarding the setting of maximum amounts, the CJEU asserted that the scientific assessment of the risk mentioned in the preceding paragraph must not be based solely on national scientific opinions.

The judgment also states that recent and reliable international scientific opinions must be considered, based on which it concluded in favour of the possibility of setting higher limits of nutrients.