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Approval of the list of the European Commission on health claims made on foods

Judgment of the General Court, of 12 June 2015, Case T-296/12

Background

In 2012 the European Commission (EC) adopted Regulation 432/2012 authorising a list of health claims made on foods. Such list was issued in compliance with Regulation 1924/2006 which laid down the principle that such health claims need to be based on proper scientific evidence, entrusted the EC with the approval of a list of permitted claims based on the evaluation of the European Food Safety Authority (EFSA), and prohibited health claims made on foods that did pass this evaluation satisfactorily. On the same day the EC published on its webpage a second list of claims -regarding botanical substances– that were still being evaluated, and therefore they remained on hold and could continue to be used provisionally until a decision was reached.

Several food companies established in the United Kingdom and in the Netherlands brought an action for annulment against Regulation (EU) No 432/2012 as they understood that the evaluation criteria applied by EFSA to the scientific evidence were excessively stringent and erroneous. The applicants, moreover, argued that the health claims that were being used beforehand should benefit from a presumption of veracity, considered that their right to be heard before the approval of the list had been infringed, and they blamed the EC for having approved a list of health claims on hold that was not laid down in the regulation of 2006.

The position of the Court

The Court rejected the first argument based on the fact that Regulation 1924/2006 provides that these claims should only be authorised for use in the European Union after passing a scientific assessment of the highest possible standard by the EFSA. Also, the Court highlights that the applicants did not prove that the evaluation criteria applied by the EFSA were erroneous.

The Court also rejects the argument of fundamental rights being violated. The Court reminded that it is a fundamental principle of EU law, recognized by Article 41 of the Charter of Fundamental Rights, to warrant the defence right in every proceeding in which the person concerned might be adversely affected. But such right does not apply to this case insofar as the regulation does not aim to prohibit the marketing of the applicants' goods but only to prevent the use of promotional claims which are not consistent with the requirements of the Union's law.

Finally, it points out that the second list of claims on hold does not constitute a challengeable act, since an act is open to review only if it is a measure definitely laying down the position of the EC, and since the regulation of 2006 does not preclude the adoption of the list of permitted claims in several successive stages.