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ECJ Refuses Health Claims Requested by German Glucose Manufacturer Dextro Energy – Case C-296/16 P

On June 8, 2017, the Court of Justice of the European Union dismissed an appeal filed by Dextro Energy GmbH & Co. KG ('Dextro Energy') against a Decision of the General Court, after the General Court had refused to comply with Dextro Energy's application for annulment of *Commission Regulation (EU) 2015/8*.

In December 2001, Dextro Energy had applied with the German Federal Office of Consumer Protection and Food Safety (Bundesamt für Verbraucherschutz und Lebensmittelsicherheit – BVL) to authorize use of the following food health claims: "Glucose is metabolised within the body's normal energy metabolism", "glucose supports normal physical activity", "glucose contributes to normal energy-yielding metabolism"; "glucose contributes to normal energy-yielding metabolism during exercise", and "glucose contributes to normal muscle function".

Despite a positive opinion from the European Food Safety Authority (EFSA), the Commission refused to authorize the health claims, and on *January 6, 2015* adopted the contested *'Regulation (EU) 2015/8 refusing to authorize certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health'*. The Commission based its refusal on the following considerations (abbreviated):

Pursuant to Regulation (EC) No 1924/2006 (Health Claims Regulation – HCR) health claims need to be based on generally accepted scientific evidence. Authorization may also legitimately be withheld if health claims do not comply with other general and specific requirements of the HCR, even in the case of a favourable scientific assessment by EFSA. Health claims inconsistent with generally accepted nutrition and health principles should not be made. EFSA concluded that a cause and effect relationship has been established between the consumption of glucose and contribution to energy-yielding metabolism. However, the use of such a health claim would convey a conflicting and confusing message to consumers, because it would encourage consumption of sugars for which, on the basis of generally accepted scientific advance, national and international authorities inform the consumer that their intake should be reduced. The use of health claims should not be ambiguous or misleading. Furthermore, even if the health claim was to be authorized only under specific conditions of use and/or accompanied by additional statements or warnings, it would not be sufficient to alleviate the confusion of the consumer, and consequently the claim should not be authorized.

The main reasons of the General Court for the dismissal of the action, which were now confirmed by the ECJ, were that the Commission has a broad discretion, in particular

as to the assessment of highly complex scientific and technical facts, in order to determine the nature and scope of the measures which they adopt. Review by the Courts of the European Union is limited to verifying whether there has been a manifest error of assessment or a misuse of powers, or whether those authorities have manifestly exceeded the limits of their discretion, which was not the case here. According to the ECJ the Commission also did not breach the principle of proportionality and furthermore did not breach the principle of equal treatment.

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