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Brussels, 30 October 2012

**Summary of our Legal Opinion expressed on 31 August 2012 to EPA on the conditions of use of the nutrition claim « with no added sugars » under Regulation 1924/2006 in relation to food products containing polyols**

The legal opinion submitted on 31 August 2012 relates to the interpretation of the conditions of use of the nutrition claim "with no added sugars" (WNAS) as established in the Annex to Regulation 1924/2006 (the NHCR). The legal opinion analyses whether the condition for making the claim that *the product does not contain any added mono- or disaccharides or any other food used for its sweetening properties* could be adequately interpreted in a manner that entails the impossibility of making the claim when the food contains polyols?

The opinion concludes that although polyols, arguably foods as per the definition of food in Regulation 178/2002/EC, are used in large part for their sweetening properties, they cannot be confused with "food used for its sweetening properties" a category that does not exist as such under EU law. In fact, arguably, the notion of *food used for its sweetening properties* has to be looked at in opposition to the functional class of "sweeteners" defined and regulated by the Food Additives Regulation.

Indeed, interpreting the condition of use for the WNAS claim as disqualifying foods containing polyols from the possibility to make that claim would be an incorrect interpretation of the NHCR taking into account the interpretation methods employed by the Court of Justice of the European Union (CJEU) and would render the condition of use in the Annex to the NHCR invalid on the basis of general principles of EU law.

First, the opinion assesses, following the means of the interpretation criteria employed by the CJEU, the interpretation that foods containing polyols are not eligible for using the WNAS claim under the NHCR which implies that polyols are to be considered as "*food used for its sweetening properties*" in the meaning of the conditions of use of the claim. Specifically, it concludes that:

- Applying the literal method of interpretation, it would not be sufficiently established that the notion of "*food used for its sweetening properties*" covers polyols.
- Using the teleological method, the interpretation concerned would not be consistent with the intent of the legislator.
- With regard to the contextual interpretation approach, this interpretation would not correspond to the context of EU food law especially taking into consideration the Food Additives Regulation 1333/2008, the discussions of the WNAS claim within the EC working group on claims, the labeling of polyols pursuant to Food Labeling Directive 2000/13 and Annex I of Directive 2008/5, and the amendment of the Fruit Juice Directive 2001/112.

Second, the opinion points out that the interpretation that the WNAS claim under the NHCR is not applicable to foods containing polyols would contradict general principles of EU law and in particular:

- It would not be proportionate to the aim of the NHCR and therefore run counter to the principle of proportionality.
- In light of the established policy that polyols are regulated as food additives, it would not conform to the principle of legal certainty. Simultaneously, the opinion demonstrates that the principle of protection of legitimate expectation may be invoked.
- It would act against the principle of lawfulness according to which the EU's administration should be based on law.



Jean Savigny