COURT OF JUSTICE
OF THE EUROPEAN UNION

Judgment of the General Court in Case T-523/24 | Kerry and Kerry Ingredients (UK) v Commission

Press release No 162/26

Luxembourg, 11 November 2026

Food safety: the Commission was right to refuse the renewal of authorisation of three smoke flavouring products marketed by Kerry

It is for the applicant requesting the renewal of an authorisation to demonstrate that the product concerned does not present a risk to human health

Kerry Inc. and Kerry Ingredients (UK) Ltd ('Kerry') market three smoke flavouring primary products. [1] Those products were included, in 2013, in the EU list of authorised smoke flavouring primary products for a period of ten years. In June 2022, Kerry applied for the renewal of the authorisations of those products.

In September 2023, the European Food Safety Authority (EFSA) adopted scientific opinions in which it identified concerns regarding the genotoxicity of certain components of those products. It found, inter alia, that the exposure estimates for two substances known to be genotoxic *in vivo* when administered orally exceeded the applicable threshold of toxicological concern.

On 31 July 2024, in the light of those opinions, the European Commission refused the renewal of the three authorisations, whilst allowing for transitional periods. Kerry then brought an action before the General Court of the European Union seeking the annulment of those decisions.

In its judgment, the General Court dismisses Kerry's action in its entirety.

The General Court states, first of all, that, under the EU legislation applicable to smoke flavourings, **it is for the applicant requesting an authorisation or its renewal to demonstrate that the product concerned does not present a risk to human health**. Therefore, neither EFSA nor the Commission is required to demonstrate that the product is harmful in order to refuse the renewal.

The General Court then rejects the criticisms levelled at the scientific method followed by EFSA. The latter was entitled to use an approach based on the chemically identified components of the products. EFSA also did not confine itself to identifying a hazard: it assessed the exposure to the components that presented genotoxicity concerns and found that the estimated levels exceeded the applicable threshold of toxicological concern.

Kerry also argued that the refusal to renew the authorisations would encourage a return to the traditional smoking process, which it considered to be more harmful to health. The General Court finds that it has not been demonstrated that there would be an increase in a return to that technique. Even if there were so, that would not result in the Commission being required to authorise products for which it has not been sufficiently demonstrated that they do not present a risk to health.

Kerry also complained that the Commission had not taken into account the economic and environmental consequences of its decisions. The General Court finds, however, that the transitional periods allow the undertakings to find alternative solutions and to adjust their production processes and recipes. Those periods thus take account of the economic constraints, but do not constitute an acknowledgement that the products are not harmful. Lastly, Kerry has not explained how the economic or environmental consequences which it relies on would justify the renewal of the authorisations despite the risks to health.

Finally, the General Court rejects the complaint alleging infringement of the right to be heard. Kerry had been able, on several occasions, to put forward its observations both in writing and at a meeting the Commission's services. The fact that its arguments and proposed alternative solutions were not accepted does not mean that they were not taken into consideration.

NOTE: An action for annulment seeks the annulment of acts of the institutions, bodies, offices and agencies of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

Unofficial document for media use, not binding on the General Court. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

The full text and, as the case may be, an abstract of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ✆ (+352) 4303 3355.

Images of the delivery of the judgment are available on 'Curia Web TV' and on 'European Broadcasting Service' ✆ (+32) 2 2964106.

Stay Connected!

[1] Smoke flavouring primary products are obtained by condensing and purifying wood smoke. They may be used directly in foods or in the preparation of flavourings, making them taste of smoke.