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## **EU Judge Rules Food Supplement Laws 'Invalid'**

*By Geoff Meade, PA Europe Editor, in Brussels*

Controversial new European laws controlling the sale of vitamins and other food supplements were declared illegal by a judge today.

The health food rules, due in force in August and affecting thousands of products in British shops, infringe basic EU principles of “legal protection, legal certainty and sound administration”, said an Advocate-General at the European Court of Justice in Luxembourg.

The interim “opinion” is a victory for the British health food industry’s legal challenge to an EU Directive which, say campaigners, will ban thousands of common food supplements and bankrupt many suppliers.

But today’s declaration is merely advisory and the full court will not deliver the final verdict for months.

In a majority of European Court cases, though, the judges follow the advice of the Advocate-General.

The Food Supplements Directive is designed to tighten controls on the growing market in products sold under the health food heading – natural remedies, vitamin supplements and mineral plant extracts.

The Directive was approved by EU governments in 2002, and health food manufacturers were given until July 12 this year to submit detailed scientific dossiers proving their ingredients are safe. Once approved, the ingredients and products go on a “positive list” of permitted substances for use in health foods.

But the British Health Food Manufacturers Association (HFMA), the National Association of Health Stores (NAHS) and the Alliance for Natural Health (ANH) went to court, arguing that the law was unnecessary and that the costs of complying would be prohibitive for many small firms which have supplied safe health foods for years.

Today, Advocate-General Leendert Geelhoed said the idea of establishing an EU “positive list” was valid, but the Directive as it stood should be annulled because it lacked clearly defined rules and norms for the European Commission to follow when deciding whether a product is to be allowed on the list.

That means similar rules could still come into force if the legal arrangements were changed to ensure that EU basic legal and administrative principles are upheld.

The plans caused controversy in Britain from the start, prompting a petition of more than one million signatures, a letter of protest to Prime Minister Tony Blair from more than 300 doctors and scientists, and motions opposing the euro-law from both Houses of Parliament.

Legislation on public health issues is normally left to member states, unless EU-wide measures are deemed necessary to protect consumer health.

The British health food lobbyists insist there is no widespread consumer welfare issue and that such legislation should be up to member states themselves.

Today, the Advocate-General backed the Directive's aim of improving cross-border EU trade in food supplements by removing differing national rules on the composition, manufacturing specifications, presentation and labelling of such foods.

The Directive would also ensure a high level of health and consumer protection – an objective, he said, which could not be achieved sufficiently by individual countries and required EU-level action.

The Directive had been drawn up on the correct legal basis – harmonising the single market rather than health protection.

But the Advocate-General went on: “The Directive infringes the principle of proportionality, because basic principles of Community law, such as the requirements of legal protection, of legal certainty and of sound administration, have not been properly taken into account.

“The Directive, therefore, is invalid.”

During the court case in January, the Luxembourg judges were told the Directive threatens 5,000 products containing more than 200 nutrients, long used safely in specialist supplements but now blighted because they are not on the “positive list” of permitted substances.

One third of UK women and a quarter of men take health food supplements in a market estimated to be worth at least £335 million a year. On the Continent, however, health food products are traditionally treated more like medicines.