C/2026/3508

13.7.2026

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 26 March 2026 – Minister van Volksgezondheid, Welzijn en Sport v KL and Others

(Case C-250/26, Marnen [1])

(C/2026/3508)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Minister van Volksgezondheid, Welzijn en Sport

Respondents: KL, DT, RB, HL, PM, MR

Questions referred

1. Should Article 2(2) of Directive 2001/83/EC [2] on the Community code relating to medicinal products for human use and Article 1(2) of Directive 2002/46/EC [3] on the approximation of the laws of the Member States relating to food supplements, viewed in the light of recital 7 of Directive 2004/27/EC [4], be interpreted as meaning that it is first ascertained whether a product clearly falls within the definition of food supplement and, if that is the case, it is no longer necessary to ascertain whether the product is a medicinal product by presentation because Directive 2001/83/EC does not apply in that case?

2. Should the phrase 'foodstuffs the purpose of which is to supplement the normal diet' in Article 2(a) of Directive 2002/46/EC on the approximation of the laws of the Member States relating to food supplements be interpreted as meaning that the only determining factor is how the manufacturer intended and marketed the products? On the basis of which factors should the manufacturer's intention be determined? Is the way in which the seller presents the products to the consumer a contributing or the sole determining factor?

3. Can a product that (clearly) meets the definition of a food supplement and is therefore subject to Directive 2002/46/EC on the approximation of the laws of the Member States relating to food supplements be classified as a medicinal product at a later point in time because it is presented as having properties for treating or preventing disease in human beings within the meaning of Article 1(2)(a) of Directive 2001/83/EC on the Community code relating to medicinal products for human use, and, if that is reversed, become a food supplement again?

4. Should the expression 'presented as' in Article 1(2)(a) of Directive 2001/83/EC on the Community code relating to medicinal products for human use be interpreted as meaning that online reviews on a seller's platform that contain medical claims by third parties regarding a product may be taken into account in assessing whether there has been 'presentation', even if those reviews were posted independently of the manufacturer and seller? If so, what behaviours, initiatives, actions or efforts by the manufacturer or seller to prevent reviews with medical claims may result in such reviews not being taken into account in assessing whether there has been 'presentation'?

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[1] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

[2] Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

[3] Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ 2002 L 183, p. 51).

[4] Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ 2004 L 136, p. 34).