



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Deputy Director-General, in charge of Directorates E, G and H

Brussels,
AGR[Art 4.1 2022] 6268461

Dear [Art 4.1 (b) - privacy]

Thank you very much for your question of 5 August 2022 on the implementation of Directive (EU) 2019/633 on unfair trading practices ('the Directive').

In your request, you inquire whether the food supplement HAIRBURST, a food supplement for hair, 60 gummies, with CN code 2106 90 92 ('the food supplement HAIRBURST'), falls within the scope of the Directive.

As you correctly state in your email, according to Article 2(1), the Directive applies to 'agricultural and food products' which means 'products listed in Annex I to the TFEU as well as products not listed in that Annex, but processed for use as food using products listed in that Annex'.

You rightly point to Article 2(a) of Directive 2002/46/EC which defines food supplements as 'foodstuffs the purpose of which is to supplement the normal diet and which are concentrated sources of nutrients or other substances with a nutritional or physiological effect, alone or in combination, marketed in dose form, namely forms such as capsules, pastilles, tablets, pills and other similar forms, sachets of powder, ampoules of liquids, drop dispensing bottles, and other similar forms of liquids and powders designed to be taken in measured small unit quantities'..

Moreover, Regulation (EC) No 178/2002 defines 'food' (or 'foodstuff') as 'any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans'.

According to these provisions, food supplements are to be considered as 'food'.

Based on the aforementioned reasoning and provided that the food supplement HAIRBURST is processed for use as food using products listed in Annex I TFEU, it is covered by the Directive.

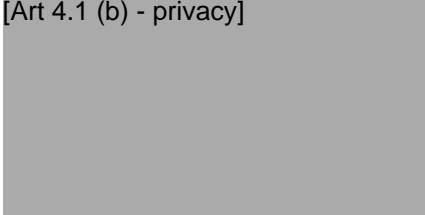
The present opinion is provided on the basis of the facts as set out in your letter of 5 August 2022 and expresses the view of the Commission services and does not commit the European Commission.

In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

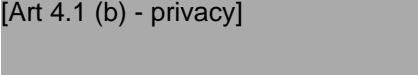
Please be advised that we intend to share your questions and our replies with other Member States via the CIRCABC system so as to facilitate the consistent transposition of the Directive. Doing so, we will redact any personal information.

Yours sincerely,

[Art 4.1 (b) - privacy]



[Art 4.1 (b) - privacy]



in absence of
Michael SCANNELL