



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

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

Brussels, 3 November 2021
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6747102 (b)

By e-mail only

[Art 4.1 (b) - Privacy]

Thank you for the questions in your e-mail of 28 September 2021 concerning the implementation of the Directive (EU) 2019/633 on unfair trading practices ('the Directive').

Product scope of the Directive

In your e-mail you raise questions regarding the definition of agricultural and food products as provided for in Article 2 (1) of the Directive. In particular, you inquire about products, which fall under Annex I of the Treaty on the Functioning of the European Union (TFEU), such as 'unmanufactured tobacco, tobacco refuse'. Furthermore, you raise questions with regard to products not listed in Annex I of the TFEU, such as 'cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes', 'other manufactured tobacco and manufactured tobacco substitutes, homogenised or reconstituted tobacco, tobacco extracts and essences' and 'mineral waters'. You also inquire whether products not listed in Annex I, but processed from products listed in Annex I, such as mannitol, sorbitol or egg albumin, are covered by the Directive. In this regard, you also refer to Regulation (EU) No 510/2014.

I should like to point out that for the definition as an agricultural and food product within the meaning of Article 2(1) of the Directive, the product has to either be a product listed in Annex I of the TFEU or a product not listed, but processed for use as food using products listed in this annex.

This means that for products falling under Annex I of the TFEU, it is not necessary to assess whether they are intended for the use as food. In your example, Annex I of the TFEU refers to Chapter 24.01 of the Combined Nomenclature with the title 'unmanufactured tobacco, tobacco refuse' and does not cover other Sections of the Chapter 24 of the Combined Nomenclature. Therefore, only unmanufactured tobacco or tobacco refuse, are considered agricultural products within the meaning of Article 2(1) of

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the Directive. However, this indicates also that the products listed in the Chapter 24.02 and 24.03 of the Combined Nomenclature (such as cigars, cheroots, cigarillos, cigarettes of tobacco or of tobacco substitutes, other manufactured tobacco and manufactured tobacco substitutes, homogenised or reconstituted tobacco as well as tobacco extracts and essences) are not covered by the Directive.

Regulation (EU) No 510/2014¹ covers processed agricultural products that can be made from agricultural products listed in Annex I of the TFEU or not. For example, mineral waters (2201 10) are listed in Annex I of Regulation (EU) No 510/2014, but not made of an agricultural product listed in Annex I of the TFEU, and therefore they are not covered by the Directive. Alternatively, feathers (ex 0505) listed in Regulation (EU) No 510/2014 are not a product for use as food, therefore not covered by the Directive either. This is why Regulation (EU) No 510/2014 cannot be used for verifying whether a product is covered by the Directive.

As stated above, the Directive covers products that are either agricultural products listed in Annex I of the TFEU or products not listed in this annex, but processed for use as food using agricultural products. In your example, mannitol, sorbitol and egg albumin, are made by processing products listed in Annex I of the TFEU, and they are used widely as ingredients in foods. Therefore, mannitol, sorbitol or egg albumin are falling within the scope of the Directive.

The present opinion is provided on the basis of the facts as set out in your request for information of 28 September 2021 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 and designated enforcement authorities via the CIRCABC system to facilitate the consistent transposition of the Directive. Doing so, we will redact any personal information.

Yours sincerely,

(e-signed)

Michael SCANNELL

c.c.:

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¹ Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009, OJ L 150, 20.5.2014, p. 1.