Message 201

Communication from the Commission - TRIS/(2024) 0871

Directive (EU) 2015/1535

Notification: 2023/0375/SE

Forwarding of the response of the Member State notifying a draft (Sweden) to comments (5.2) of European Commission.

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1. MSG 201 IND 2023 0375 SE EN 18-09-2023 27-03-2024 SE ANSWER 18-09-2023

2. Sweden

3A. Kommerskollegium

3B. Landsbygds- och infrastrukturdepartementet, Regeringskansliet

4. 2023/0375/SE - X60M - Tobacco

5.

6. Sweden would like to start by thanking the Commission for its comments.

References to the EU legal framework applicable to food

In the old Food Act (1971:511), snus and chewing tobacco were included in the term ‘food’. The current Food Act (2006:804) entered into force in 2006. In the original version of Section 3, snus and chewing tobacco were, among others, treated as food. Despite the fact that tobacco products were excluded from the EU definition of food, the Swedish Government was of the view that there were strong reasons for the provisions of the Food Act to also be applied to snus and chewing tobacco. The Swedish Government also considered that it could be solved from a technical legislative point of view by making the provisions of the law generally applicable to those products as well (prop. 2005/06:128, p. 195).
On 1 January 2023, the Food Act was amended in such a way that snus-like products were added to Section 3. ‘Snuff-like products’ means both tobacco-free nicotine products as well as tobacco-free and nicotine-free products. What is important is that the product is used in a manner that corresponds to snus consisting of tobacco (prop. 2021/22:200, pp. 289-290). The change was made to ensure that the scheme is the same as for snus and chewing tobacco, and for the corresponding requirements regarding, inter alia, handling, hygiene and labelling, to also apply to snus-like products (prop. 2021/22:200, p. 220). By treating snus-like products as food, they fall within the scope of the Food Act and the products can be regulated nationally on the basis of the authorisations in the Food Act and the Food Ordinance (2006:812). However, the fact that a product is treated as foodstuff does not mean that the product is also to be regarded as food within the meaning of EU law.
The fact that snus-like products do not constitute food has been made clear by

the Swedish Government in the preparatory work for the food legislation (prop. 2021/22:200 pp. 220-223). The Swedish authorities have also communicated that snus-like products are not to be considered to be food (The Swedish National Food Agency's decision in relation to the position on tobacco-free snus-like products, ref. 2019/00929). The fact that snus-like products are not food is also communicated externally to consumers and entrepreneurs via, inter alia, the Swedish National Food Agency's website.
In conclusion, Sweden has, since 2006, had a technical legislative solution that means that snus and chewing tobacco are treated as food for those products to be subject to the provisions of the Food Act. On 1 January 2023, snuff-like products were added in order for the provisions of the Food Act to also be applicable to those products. Treating products as food does not mean that the products constitute food within the meaning of the EU term, nor that the relation with food legislation has changed.
As snus-like products are not food, the procedures for non-compliance with the food legislation will not apply to such products. Sweden's contact point for the Rapid Alert System for Food and Feed (RASFF) has been informed of this. Sweden is positive about this clarification, as the Commission has previously validated three RASFF notifications from Germany regarding tobacco-free snus containing nicotine (RASFF 2020.5422, RASFF 2020.5424 and RASFF 2020.5429).

Food additives authorised under EU legislation

Snus-like products are not covered by the provision in Section 4 of the notified draft. Thus, the provisions of the notified draft do not regulate which food additives are allowed to be included in snus-like products.
The additives allowed in snus and chewing tobacco have been regulated nationally even before Sweden joined the EU. Since these substances are usually the same as those used in food, Sweden has chosen to refer to certain parts of the food legislation despite the fact that snus and chewing tobacco are not food per se.

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