



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate F – Outreach, Research & Geographical Indications
The Director

Brussels
AGRI.F.3/

Dear Madam,

Thank you for your email dated February 7, 2024, concerning the meaning of aerated waters as included in point (k) of Annex II of Regulation (EU) 2024/1143 on geographical indications for wine, spirit drinks, and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural product (GI Regulation). We apologise for the delayed reply.

You enquire whether the newly added category "aerated waters", for traditional specialities guaranteed (TSGs), covers products classified under Combined Nomenclatures (the CN) codes 2201 and 2202. You also enquire whether this category could encompass not only aerated waters but also natural or artificial mineral waters.

In accordance with the GI Regulation (Articles 5 and 6), the CN, established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs, is relevant to identify the classes of the products designated by a Protected Designation of Origin (PDO), a Protected Geographical Indication (PGI) or a Geographical Indication (GI). It does not apply to Traditional Specialities Guaranteed (TSG). The CN is the goods classification used within the European Union for the purposes of foreign trade statistics. The classification is based on the World Customs Organisation (the WCO) standard Harmonised System (HS) which it sub-divides where necessary for purposes of external trade, agricultural regulation and customs duties. The WCO draws up the HS Explanatory Notes, which offer a detailed explanation of the classification of goods based on their characteristics, use, and composition.

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c.c.: [Redacted]

As provided in Article 51 of the GI Regulation, the scope of the TSG is defined as the agricultural products intended for human consumption listed in Annex I to the TFEU plus the agricultural products listed in Annex II to that Regulation, which includes “aerated waters”.

Natural mineral waters are *de jure* excluded from the scope of the GI Regulation as regards TSGs as they are neither a recipe nor do they result from a “mode of production, processing or composition corresponding to traditional practice”.

As regards artificial mineral waters, in order to settle whether they can be considered as included in the “aerated waters” class listed in Annex II of the GI Regulation, the CN classification is formally not relevant, because it applies only to PDOs, PGIs and GIs. However, the CN codes together with WCO HS Explanatory notes may be used as a tool, , to determine whether the scientific, commercial or common definition of “aerated waters’ includes natural or artificial mineral waters.

It appears that in the description of the codes 2201 and 2202 of the CN, to which you refer in your mail, and of the codes ‘2202 10’ and ‘2202 10 00’, ‘aerated waters’ and ‘mineral (natural or artificial) waters’ are listed as different products under the general category of ‘waters’. Therefore, the CN consider them as different products.

Following the HS Explanatory Note of the WCO to heading 2201 ‘aerated waters (carbonated waters) are only ordinary potable waters charged with carbon dioxide gas under pressure’; ‘natural mineral waters contain mineral salts or gases’; ‘natural mineral waters may also contain natural or added carbon dioxide’; ‘artificial mineral waters are waters prepared from ordinary potable water by adding the active principles (mineral salts or gases) present in natural waters to produce waters with the same properties’. Therefore, an addition of a carbon dioxide to a mineral water would not change its category to “aerated waters”. It would still be considered as a natural mineral water.

In the absence of a legal definition of aerated waters, the available legal interpretative tool is the classification provided in the CN together with WCO HS Explanatory notes. We consider, therefore, that natural and artificial mineral waters are not included in the class ‘aerated waters’ listed in point (k) of Annex II of the GI Regulation.

The present opinion is provided based on the facts as set out in your email and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving European Union law, it is for the Court of Justice of the European Union to provide a definitive interpretation of the applicable European Union law.

Yours faithfully,

A large grey rectangular box redacting the signature of Diego CANGA FANO.

Diego CANGA FANO