

Message 315

Communication from the Commission - TRIS/(2018) 02788
Directive (EU) 2015/1535
Notification: 2018/0324/FIN

Detailed opinion from the Commission (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 07-01-2019.

Comunicado detallado - Podrobné vyjádření - Udførlig udtalelse - Ausführlichen Stellungnahme - Üksikasjalik arvamused - Εμπειριστικωμένη γνώμη - Detailed opinion - Avis circonstancié - Parere circostanziato - Detalizēts atzinums - Detali nuomonė - Részletes vélemény - Opinioni dettaljata - Uitvoerig gemotiveerde mening - Opinia szczegółowa - Parecer circunstanciado - Podrobný úsudok - Podrobno mnenje - Yksityiskohtainen lausunto - Detaljerat yttrande - Подробно становище - Aviz detaliat - Aviz detaliat.

Amplia el plazo del estatu quo hasta 07-01-2019. - Prodlužuje lhůtu pro stávající stav až do 07-01-2019. - Fristen for status quo forlænges til 07-01-2019. - Die Laufzeit des Status quo wird verlängert bis 07-01-2019. - Praeguse olukorra tähtaega pikendatakse kuni 07-01-2019. - Παρατείνει την προθεσμία του status quo μέχρι την 07-01-2019. - Extends the time limit of the status quo until 07-01-2019. - Prolonge le délai de statu quo jusqu'au 07-01-2019. - Proroga il termine dello status quo fino al 07-01-2019. - Pagarina "status quo" laika periodu līdz 07-01-2019. - Pratešia status quo laiko limitą iki 07-01-2019. - Meghosszabbítja a korábbi állapot határidejét 07-01-2019-ig. - Jestendi t-terminu ta' l-istatus quo sa 07-01-2019. - De status-quo-periode wordt verlengd tot 07-01-2019. - Przedłużenie status quo do 07-01-2019. - Prolonga o prazo do statu quo ate 07-01-2019. - Časový limit momentálneho stavu sa predĺži až do 07-01-2019. - Podaljša rok nespremenjenega stanja do 07-01-2019. - Jatkaa status quo määräaika 07-01-2019 asti - Förlänger tiden för status quo fram till: 07-01-2019 - Удължаване на крайния срок на статуквото до 07-01-2019 - Prelungește termenul status quo-ului până la 07-01-2019.

Die Kommission hat diese ausführliche Stellungnahme am 08-10-2018 empfangen.
The Commission received this detailed opinion on the 08-10-2018.
La Commission a reçu cet avis circonstancié le 08-10-2018.

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1. MSG 315 IND 2018 0324 FIN EN 08-10-2018 08-10-2018 COM 6.2(2) 08-10-2018

2. Commission

3. DG GROW/B/2 - N105 04/63

4. 2018/0324/FIN - C50A

5. article 6, paragraph 2, second indent of Directive (EU) 2015/1535

6. Within the framework of the notification procedure under Directive (EU) 2015/1535 the Finnish authorities notified to the Commission on 6 July 2018 the draft Act amending the Alcohol Act (hereinafter, the notified draft). According to the notification message, the notified draft would clarify that the provisions applicable to retail sales of alcoholic beverages are subject to approval and retail monopoly legislation would also apply to imported alcoholic beverages. The Act would stipulate, however, that the wholesale distribution of alcoholic beverages carried out from abroad would not require any licences. On the other hand, since the retail licence for alcoholic beverages may be granted only to an approved sales premises, cross-border distance sales would be prohibited. Distance vendors would not be allowed to import distance-sold alcoholic beverages containing more than 2.8 % alcohol by volume.

Examination of the notified draft has prompted the Commission to issue the following detailed opinion under Article 6(2) of Directive (EU) 2015/1535.

In §3, the notified draft provides the following definition of "distance selling across borders" and "distance seller":
"17) distance selling across borders means sales where a recipient established in Finland has purchased alcoholic beverages from either another Member State of the EU or a third country for a purpose other than the selling or preparation of an alcoholic beverage, and the seller or another party acting on its behalf sends or transports those alcoholic beverages to Finland directly or indirectly;

18) a distance seller means a seller who sells alcoholic beverages in the manner referred to in point 17".

§32 of the notified draft prescribes that "alcoholic beverages containing more than 2.8 per cent ethyl alcohol by volume and sold via distance selling across borders may not be imported to Finland."

Pursuant to the notified draft, read in conjunction with the current Alcohol Act, alcoholic beverages between 2.8% and 5.5% of ethyl alcohol by volume can be offered for sale online by retailers in Finland who obtained a licence and alcoholic beverages above 5.5% of ethyl alcohol by volume can be offered for sale online solely by Alko.

The Commission considers that the prohibition contained in §32 of the notified draft does not fall within the exercise of Alko's sole right to manage the retail trade of alcoholic beverages in Finland as set out in the current Alcohol Act.

The Commission considers that the prohibition contained in §32 of the notified draft would constitute a quantitative restriction on the free movement of goods under Article 34 TFEU as a de jure discrimination against imported alcoholic beverages. Indeed, the provision would favour distance sales from retailers in Finland, as compared to those from other Member States, as for example retailers in Finland that obtained a licence could freely sell and arrange for delivery at retail premises of alcoholic beverages containing a maximum of 5.5 % by volume of ethyl alcohol, while completely excluding distance sales by retailers from other Member States that can sell via distance sales only alcoholic beverages containing a maximum of 2.8% by volume of ethyl alcohol.

The justification for the prohibition of the import of alcoholic beverages containing more than 2.8 % ethyl alcohol by volume and sold via distance selling set out in the notified draft is provided in its Section 5 (i.e. the positive effect on public health and public finances through reduced volume of purchase of alcoholic beverages; the more effective control of purchase of alcoholic beverages).

It is clear that the legislation at issue pursues the objective of the protection of the health and life of humans. The Commission understands the health concerns of alcohol abuse and the fact that the control of the consumption of alcohol so as to prevent the harmful effects caused to health of humans and society by alcoholic substances. The Commission also acknowledges that the legislation at issue thus seeks to combat alcohol abuse and reflects health and public policy concerns recognised by Article 36 TFEU.

It is settled case-law that the health and life of humans rank foremost among the assets or interests protected by Article 36 TFEU and it is for the Member States, within the limits imposed by the Treaty, to decide what degree of protection they wish to assure (see Case C-333/14 Scotch Whisky Association paragraph 35 and case-law cited). The Court has already ruled that legislation which has as its objective the control of the consumption of alcohol so as to prevent the harmful effects caused to health of humans and society by alcoholic substances, and which thus seeks to combat alcohol abuse, reflects health and public policy concerns recognised by Article 36 TFEU (see Case C-170/04 Rosengren and Others, paragraph 40; Case C 434/04 Ahokainen and Leppik , paragraph 28).

Thus the Commission does not question the health protection concerns underpinning the measure.

Nonetheless, the Commission would like to draw to the attention of the Finnish authorities that a restriction to free movement of goods may be justified on the grounds of the protection of the health and life of humans, under Article 36 TFEU, only if that measure is appropriate for securing the achievement of the objective pursued and does not go beyond what is necessary in order to attain it (see, Case C-333/14 Scotch Whisky Association, paragraph 33 and the case-law cited). According to settled case-law it is for the Member State invoking a justification to demonstrate that its conditions are met (Case C-170/04 Rosengren and Others, paragraph 50 and case-law cited).

The Commission is not convinced about the necessity and proportionality of the prohibition at issue. The

Commission is of the opinion that other, less restrictive means may be able to achieve the same objective.

The Commission invites the Finnish Government to consider authorised delivery premises for distance selling of alcoholic beverages across borders and their import into Finland, similarly to §27(1) of the Alcohol Act, which grants Alko the right to sell alcoholic beverages online and, after purchases have been made, the right to arrange itself or through its contracted third parties their transport to the point of delivery outside Alko's approved retail trade premises.

Further, the Commission understands that the Finnish Government plans to allow any producer or seller of alcoholic beverages, regardless of nationality, to list their own products in the selection of the online store of Alko based on their own notification, and Alko would carry out the import into Finland and supply of imported alcoholic beverages to private individuals either at a State Alcohol Monopoly outlet or at delivery premises.

The Commission would highly appreciate to receive further details from the Finnish Government on how the abovementioned arrangement will be implemented.

For these reasons, the Commission delivers a detailed opinion provided for in Article 6(2) of Directive (EU) 2015/1535 to the effect that §32 of the notified draft, when read in conjunction with § 3(17) and (18) thereof, would set out a prohibited quantitative restriction on the free movement of goods under Article 34 TFEU, which is not necessary nor proportionate in the light of Article 36 TFEU, were it to be adopted without giving due consideration to the above remarks.

The Commission would remind the Finnish Government that under the terms of Article 6(2) of the above-mentioned Directive (EU) 2015/1535, the delivery of a detailed opinion obliges the Member State which has drawn up the draft technical regulation concerned to postpone its adoption for six months from the date of its notification.

This deadline therefore comes to an end on 7 January 2019.

The Commission further draws the attention of your Government to the fact that under this provision the Member State which is the addressee of a detailed opinion is obliged to inform the Commission of the action which it intends to take as a result of the opinion.

The Commission furthermore invites your Government to communicate to it on adoption the definitive text of the draft technical regulation concerned, in accordance with Article 5(3) of Directive (EU) 2015/1535.

Should your Government not comply with the obligations foreseen in Directive (EU) 2015/1535 or should the text of the draft technical regulation under consideration be adopted without account being taken of the above-mentioned objections or be otherwise in breach of European Union law, the Commission may commence proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union.

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