



EUROPEAN COMMISSION

Brussels, 28.9.2023
C(2023) 6652 final

Mr Krišjānis Kariņš,
Minister for Foreign Affairs
Ministry for Foreign Affairs of the
Republic of Latvia
K.Valdemara street 3
LV-1395, Latvia

Subject: Notification 2023/405/LV

Amendments to the law on the handling of tobacco products, herbal products for smoking, electronic smoking devices and liquids

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015

Sir,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535 ⁽¹⁾, the Latvian authorities notified to the Commission on 30 June 2023 a draft of '*Amendments to the law on the handling of tobacco products, herbal products for smoking, electronic smoking devices and liquids*' (hereinafter, 'the notified draft').

According to the notification message, the aim of the notified draft is to protect public health interests, especially that of children and young persons, by establishing stricter regulation regarding products containing tobacco and nicotine, reducing their availability and attractiveness among children and young consumers, taking into account the harm caused by their use to health and the Latvian economy as a whole.

Examination of the notified draft has prompted the Commission to deliver the following comments pursuant to Article 5 (2) of Directive (EU) 2015/1535.

¹) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

COMMENTS

I. ADDITION OF “OR HEATING” IN ARTICLE 1, PARA. 2

The Commission notes that, according to point 2 of the notified draft, the following amendment is introduced in Article 1 paragraph 2 of the basic law (Law on the circulation of Tobacco products, herbal smoking products, electronic smoking devices and their liquids):

‘the words “or heating” are added after “combustion”’.

This will result in the following wording in the relevant provision of the basic law:

‘herbal product for smoking – a product based on plants, herbs or fruit which contains no tobacco and that can be consumed via a combustion or heating process’.

The Commission notes that Member States can regulate herbal products which are consumed *via* a heating process and not combusted (because they are not part of the harmonised area of “herbal products for smoking”). However, the Commission notes that the way ‘herbal products for smoking’ are defined in the notified draft risks being confusing because it does not follow the distinction for smoking *versus* smokeless products that is made in the Directive 2014/40/EU⁽²⁾ (‘the Tobacco Products Directive’). The definition does not only cover products that can be consumed *via* a combustion process and is therefore not entirely consistent with the definition of ‘herbal product for smoking’ within the meaning of Article 2(15) of the Tobacco Products Directive).

To avoid confusion, the Latvian authorities are invited to clarify in the notified draft that the relevant provisions refer to heated herbal products ‘for smoking’ and that those products only include products that can be consumed via a combustion process. This does not prevent the Latvian authorities from extending the material scope of their law to smokeless herbal products, in particular to heated herbal products that cannot be consumed via a combustion process.

In this regard, the Commission invites the Latvian authorities to ensure that for the purpose of establishing whether herbal products are for smoking, the presence or absence of a combustion process shall be considered.

II. ADDITION OF PARA. 8 TO ARTICLE 3

The Commission further notes that point 4 of the notified draft provides for the introduction of paragraph 8 in Article 3 in the basic law.

The new provision will read:

‘It is prohibited to place on the market:

²) Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, OJ L 127, 29.4.2014, p. 1–38. See in particular Article 2(5), (9) and (15).

(...)

8) liquids of electronic smoking devices and tobacco substitute products containing flavourings, with the exception of flavourings producing tobacco smell or taste. Authorised flavourings producing tobacco smell or taste shall be as set out in the Annex to this Law’.

According to the notification message, the notified draft aims to impose restrictions on the placing on the market of liquids of electronic smoking devices and tobacco substitute products containing flavourings, with the exception of flavourings producing tobacco smell or taste. A list of authorised flavourings producing tobacco smell or taste, is set out in the Annex.

The Annex provides for an exhaustive list of 16 flavourings which may be added to liquids.

The Commission notes that the notified draft is regulating the flavours of e-cigarettes and certain tobacco substitute products, where the responsibility for adopting rules remains with the Member States. The Commission would like to bring to the attention of the Latvian authorities that the regulation of ingredients, certainly in e-cigarettes, is a harmonized area of the Tobacco Products Directive (see, for e-cigarettes, in particular Article 20 of the Tobacco Products Directive).

The Commission invites the Latvian authorities to take the above comments into account.

The Commission furthermore recalls that, once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Kerstin JORNA
Director-General

Directorate-General for Internal
Market, Industry, Entrepreneurship
and SMEs