



## EUROPEAN COMMISSION

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

Single Market Enforcement

Notification of Regulatory Barriers

Message 201

Communication from the Commission - TRIS/(2024) 3463

Directive (EU) 2015/1535

Notification: 2024/0388/SE

Forwarding of the response of the Member State notifying a draft (Sweden) to of Portugal.

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5.

6. The Swedish Government welcomes the opportunity to respond to Portugal's objections to the compatibility of on-farm sales authorisations with internal market rules. The Government has carefully investigated the issue and is prepared to explain why the proposal does not need to be amended in order to respect EU law.

To begin with, the Government would like to emphasize that on-farm sales cannot be seen as part of the Swedish retail monopoly. The amendments to the Alcohol Act do not concern the provisions governing the functioning of Systembolaget. The current on-farm sales model means that, under certain conditions, operators producing alcoholic beverages in Sweden are given the opportunity to sell their alcoholic beverages alongside Systembolaget at the place of manufacture or cultivation. Subject to the conditions and limitations of nature and scope, such sales do not constitute ordinary retail sales. From that perspective, it is clear that the admissibility of the rules must be examined in relation to the rules on obstacles to trade laid down in Article 34 TFEU and not in relation to the rules on commercial monopolies laid down in Article 37 TFEU.

Furthermore, the Government wishes to emphasise that the conditions for authorisation to carry out farm sales are not justified on economic grounds, but have as their main objective the protection of public health and public order. They must therefore ensure that farm sales do not undermine the objectives of Swedish alcohol policy.

Sweden's restrictive alcohol policy is reflected in, among other things, rules that restrict accessibility and marketing, as well as in how alcohol products are taxed. The provisions limiting how on-farm sales may be conducted are those deemed necessary to reconcile the reform with Swedish public health policy.

By requiring that on-farm sales are clearly linked to the hospitality industry and small-scale local production, it is ensured that sales will be of such limited scope in terms of supply that they do not constitute an alternative to Systembolaget's



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retail trade. A visit should always include a knowledge-enhancing event and what may be purchased has the character of small souvenirs that the customer can take home. Limitations on how much can be sold to a customer per purchase, at what price and at what times, limit accessibility and thus ensure a continued high level of protection for public health.

It is therefore the Swedish Government's view that the restrictions to be applied in the context of on-farm sales can be justified under Article 36 TFEU. There is no arbitrary discrimination or disguised restriction on trade. The purpose of the restrictions is to protect public health within the framework of the restrictive Swedish alcohol policy. That conclusion is not called into question by the fact that the restrictions also contribute to some extent to the objective of the reform, which is to promote tourism and local production, not least in rural areas. The Court of Justice of the European Union has clarified that the mere fact that a regulatory framework also pursues objectives other than those set out in Article 36 TFEU does not imply that reliance on a ground set out in that article has been misused and exploited to discriminate against goods from other Member States; see Case C-198/14 *Visnapuu* concerning on-farm sales in Finland. The Court has also accepted that, for example, national gambling regulations were used to contribute to rural development, see Case C-212/08 *Zeturf*.

However, it is obviously not possible to assess the consequences for public health and the internal market with complete certainty in advance. The government takes this uncertainty very seriously and has therefore proposed a time-limited reform. If it should turn out that sales develop in a different way than assumed, it must have consequences in the form of the regulation being adjusted or repealed. The Government will therefore evaluate the regulations towards the end of the trial period and then decide what will apply for the continuation.

Finally, with regard to the principle of proportionality, the Government would like to point out that no restrictions are proposed other than those which are necessary and which, taken together, constitute the prerequisite for allowing on-farm sales in Sweden. It would not be possible to take account of the grounds of public health and public order invoked if, at the same time, licence holders were allowed to offer a wide range of products in forms which are in practice in competition with the retail monopoly. Against this background, the Government considers that the model for on-farm sales that is currently under consideration is proportionate.

In conclusion, Sweden maintains that the notified legislative proposals are compatible with EU law.

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European Commission

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