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S2024/01350

Ministry of Health and Social Affairs

Swedish National Board of Trade
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Mandate to the Swedish National Board of Trade to notify draft amendments to the law to the European Commission

Decision

The Government Offices decide to notify the European Commission (the Commission) of the attached draft Act amending the Alcohol Act (2010:1622), see *Annex*. Notification takes place under 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 (the 'Notification Directive') and Directive 2006/123/EC of the European Parliament and of the Council of 12 September 2006 on services in the internal market (the Services Directive).

The Swedish National Board of Trade is requested to execute the notification.

Background

On 4 July 2024, the Government decided on the legislative proposal entitled 'Better conditions for hospitality in small scale production of alcoholic beverages' (S2024/01343), proposing amendments to the Alcohol Act.

Regulations notified to the European Commission under the Notification Directive

Chapter 5, Section 2, Chapter 5a, Sections 1-19, Chapter 8, Section 7, Chapter 9, Sections 2, 3, 11, 12, 17 and 18a of the draft Act amending the Alcohol Act.

Regulations notified to the European Commission under the Services Directive

Chapter 5a, Sections 3, 4 and 15 of the draft Act amending the Alcohol Act.

Main content of the regulations

A provision is to be introduced in Chapter 5, Section 2, second paragraph, of the Alcohol Act to the effect that holders of on-farm sales permits may retail self-produced alcoholic beverages in accordance with the provisions of the proposed new Chapter 5a of the Alcohol Act on on-farm sales.

The new Chapter 5a contains, inter alia, provisions on the requirements and conditions for being granted on-farm sales permits.

On-farm sales permits may only be granted to independent producers who produce alcoholic beverages on their own and on a professional basis. The producer's annual production shall not exceed 75,000 litres of spirits, 400,000 litres of fermented alcoholic beverages up to 10 % alcohol by volume, and 200,000 litres of fermented alcoholic beverages with more than 10 % alcohol by volume. Producers of wine shall also produce the wine from grapes exclusively from their own plantations.

On-farm sales may be made from only one point of sale, which is the place where the majority of the alcoholic beverages have been produced. For producers of wine, the point of sale may alternatively be the place where the majority of the grapes have been grown.

On-farm sales may only be made to consumers taking part in a visit which has been organised by the holder of the permit and is related to the alcoholic beverage in question. The visit shall be conducted in close proximity to the point of sale. The visit shall have an awareness-raising element and a certain duration and shall be provided to consumers against payment.

On-farm sales to each individual consumer during a single visit must not exceed 0.7 litres of spirits, three litres of wine, three litres of strong beer and three litres of other fermented alcoholic beverages. The price of the alcoholic beverages and of the visit shall not be lower than the cost of production or cost price plus a reasonable mark-up.

In addition, Chapter 5a contains provisions on the permit procedure, self-monitoring and the provision of information, time limits on permits, limited times for sales, and requirements for informing about the harmful effects of alcohol.

Chapter 8, Section 7, second paragraph of the Alcohol Act is to stipulate that holders of on-farm sales permits may also conduct tastings of the self-produced alcoholic beverages.

Chapter 9 of the Alcohol Act is to stipulate that certain rules on supervision should also apply to on-farm sales.

The general provisions of the Alcohol Act concerning, for example, age limits and criminal liability also apply to on-farm sales.

Purpose of the regulation

The draft amendment to the Alcohol Act introduces a time-limited possibility for small-scale on-farm sales of alcoholic beverages. The aim is to improve the conditions for small-scale beverage producers by promoting local

hospitality and culinary tourism. Opportunities to live and operate throughout the country are thus increased. Small-scale food and drink producers can also contribute, through culinary tourism, to a better consumer understanding of how food production works and thus can raise quality awareness.

On-farm sales of alcoholic beverages are expected to have beneficial effects on the hospitality sector, where food and drink experiences can play an important role. Many companies producing alcoholic beverages in Sweden have visitor activities to some extent. These can be tastings, refreshments and sometimes full-scale food and accommodation operations, as well as conference facilities. The current ban on products being sold from the point of production is perceived by many beverage producers as limiting the possibility of developing new business ideas across the country.

Interest in tourist experiences related to food and drink is growing. Sweden is considered to have considerable room for development to accommodate more visitors, and to become an engine for growth for the local hospitality industry throughout the country. On-farm sales of alcoholic beverages are an important tool for such development.

The requirement that the sale of alcoholic beverages may take place only after the consumer has taken part in a visit links on-farm sales to the hospitality industry. The focus of on-farm sales is therefore the artisanal beverage production and the visitor experience, which distinguishes this form of sales from Systembolaget's retail trade.

Alcohol consumption is associated with health risks. Therefore, in addition to the visit requirement, several restrictions are to be imposed on the possibility of on-farm sales. The draft requirements for carrying out on-

farm sales, such as the permit requirements, production requirements and sales rules, contain legally binding and mandatory requirements for those who wish to carry out on-farm sales. The draft provisions aim to limit the availability of alcohol through on-farm sales, thus limiting the health risks and adverse effects associated with the consumption of these products. The requirements are necessary for the reform to be in line with Swedish alcohol and public health policies and efforts to reduce the availability of alcohol.

Entry into force and transitional provisions

The amendments to the Alcohol Act are proposed to enter into force on 1 June 2025. The law is proposed to be limited in time and will expire six years from its entry into force.

Impact assessment

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. Such regulation can be seen as an obstacle to trade under Article 34 of the TFEU, but can be justified under one of the exceptions in Article 36 of the TFEU. It should be stressed that there are opportunities for foreign-based producers to reach Swedish consumers alongside the retail monopoly. A foreign producer of alcoholic beverages may engage in wholesale trade provided that it is approved as a warehouse keeper or as a registered consignee of such goods. In addition, persons who have reached the age of 20 years may import alcoholic beverages from another country within the European Economic Area (EEA) through professional transport or other independent intermediary, if the beverages are intended for personal use. Producers of alcoholic beverages established in other EEA countries thus have the possibility to sell their

beverages to Swedish consumers on a distance basis, subject to the proviso that the producer itself may not transport the alcoholic beverages to consumers. The proposed regulation does not introduce any new restrictions on importers of alcoholic beverages. Nor will there be anything in the proposed regulation to prevent an offshore producer from setting up production in Sweden.

The reform includes legally binding and mandatory requirements for small-scale manufacturers wishing to sell their own and artisanal alcoholic beverages. These requirements can also be seen as a barrier to trade.

By imposing a requirement that on-sales shall be clearly linked to hospitality and local production, it is ensured that sales will be of such a limited extent that they do not constitute an alternative to the retail trade carried out by Systembolaget. The restriction to manufacturers in Sweden is also a prerequisite for a well-functioning enforcement system that can ensure that the rules of the Alcohol Act are complied with. Requirements which impose restrictions on how much can be sold to a customer per purchase and the hours during which on-farm sales may take place also limit accessibility and thus ensure a continued high level of protection of public health.

They reduce the risk of adverse effects on human health and life and maintain the protection of children and young people. The aim of the reform is to promote local hospitality throughout the country. At the same time, it increases consumers' access to alcohol. The proposals are therefore designed to achieve the objectives of the reform, while maintaining the high level of protection of public health by limiting the availability of alcohol.

In summary, the provisions limiting the manner in which on-farm sales may be carried out are considered necessary in order to protect public and private health. In addition to public health considerations, it should be pointed out that the secondary aim of limiting the range of producers that can sell on farms is to promote tourism and local production, not least in rural areas. The requirement of systematics and coherence does not exclude restrictive rules intended, for example, to protect public health from containing elements with partly different objectives (see the Zeturf case (C-212/08, EU:C:2011:437)).

According to the judgment of the Court of Justice of the European Union in the Visnapuu case (C-198/14, EU:C:2015:751), a limited form of on-farm sales of alcoholic beverages alongside a retail monopoly may be acceptable if it is limited in scope and concerns traditional and artisanal production. According to the proposal, on-farm sales can only be carried out by independent producers who produce their alcoholic beverages on their own and have a limited annual production. This implies that production must be artisanal. Producing alcoholic beverages on a small scale is a time-consuming process that requires knowledge and skills in food production and raw materials management. The producer must also be able to demonstrate that they are fit to carry out the activity. Several of the beverages that may be sold through on-farm sales are of a traditional nature, such as beer and cider with a long-standing Swedish tradition.

Volume restrictions and pricing rules ensure that any competitive advantage granted to on-farm sellers is very limited compared to producers of alcoholic beverages in other countries. The design of the on-farm sales model in question means that the measure cannot be regarded as a means of arbitrary discrimination or a disguised restriction on trade between Member States.

The conditions for less intrusive restrictions on on-farm sales have been assessed where different alternatives were available. It is considered that there are no less restrictive measures to protect public health. The regulation is adapted so that a continued high level of protection of public health can be maintained without unnecessarily far-reaching prohibitions or restrictions. The measures are therefore deemed appropriate. In summary, the proposals are deemed to be proportionate. The requirements are based on equivalent requirements for other trade in and serving of alcoholic beverages, ensuring that alcohol regulation is coherent and systematic.

On behalf of the Government Offices of Sweden

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Prime Minister's Office, Office for EU Law and Institutional Affairs, Ministry of Foreign Affairs, International Trade Policy and EU Internal Market Unit