



## **IOGT-NTO statement with regard to the Commission's detailed opinion on TRIS-notification 2018/324/FIN**

It was with great concern that IOGT-NTO read the Commission's detailed opinion to the Finnish proposal to clarify the Finnish ban on distance selling of alcohol. With this statement, we wish to support the Finnish proposal and to help clear up what seems to be misunderstandings in the detailed opinion.

IOGT-NTO is the largest temperance organisation in Sweden. It is one of Sweden's oldest NGOs with a long tradition of cultural, social and educational efforts in local communities as well as vast experience of working with evidence-based alcohol policy measures. IOGT-NTO firmly supports the Finnish proposal as it concerns Finland's ability to uphold their alcohol retail monopoly and ultimately impacts other countries in the EU/EEA region with alcohol retail monopolies.

The statement is divided into five points. Points 1-2 relate to the current legal framework surrounding distance sales in Finland. Point 3 lists necessary public health concerns IOGT-NTO believes should be taken into account when looking at the issue and points 4-5 pertain to the proportionality of the Finnish proposed legal clarification.

**1. The Commission's detailed opinion states that:** *"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 later *"Indeed, the provision would favour distance sales from retailers in Finland, as compared to those from other Member States.."*. It should be pointed out that, as far as IOGT-NTO understands it, online sales in Finland of beverages up to 5.5 % ABV is limited to online payment.<sup>1</sup> Any retail sale of alcohol between 2.8-5.5 % ABV in Finland is premised on the actual sale taking place physically in the licenced retail outlet (17 § and 35 § of the Alcohol Act). Allowing online payment in this way is different from allowing distance selling, such as delivery to a home, non-retail delivery point or post office. Actors without a Finnish license not based in Finland are also free to offer online payment possibilities to Finnish consumers as long as the pick-up, and thus sale, is carried out outside of Finland in line with the alcohol control laws where they are based. There are also no restrictions for foreign actors to apply for a Finnish retail license for alcoholic beverages between 2.8 % and 5.5 % ABV on the same conditions (17 § of the Alcohol Act) as actors of Finnish origin.

The Finnish Government Alcohol Monopoly, *Alko Oy*, is the only actor that is allowed to take online orders and online payment with pick-up in a regular monopoly retail store or at a designated monopoly delivery point (27 § of the Alcohol Act) of all beverages above 2.8% ABV. Distance sales with home or post office delivery is not permitted even for *Alko Oy*.

**2. In view of the above,** there are grounds to question why the detailed opinion does not consider at least parts of the proposed ban on distance sales to fall within the exercise of Alko's sole right to manage the retail trade of alcoholic beverages in Finland. The Finnish Supreme Court's final judgement in the Visnapuu case (KKO:2018:49) also specifically states that arrangements reserved for the alcohol monopoly are to be considered in accordance with article 37 TFEU, not article 34 and 36 TFEU.

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<sup>1</sup> [https://www.valvira.fi/documents/18502/315803/Detaljhandel\\_med\\_alkoholdrycker.pdf/4007ea3c-89e2-ed9-b72a-f11f5c5a5979](https://www.valvira.fi/documents/18502/315803/Detaljhandel_med_alkoholdrycker.pdf/4007ea3c-89e2-ed9-b72a-f11f5c5a5979)



**3. It should be highlighted and welcomed** that the Commission does not question the health protection concerns underpinning the measure. We believe it is important to include in these concerns: enforcement of alcohol control regulation (age restrictions, opening hours etc.), alcohol outlet density as well as the principle of ‘*disinterested management*’ governing the Finnish alcohol retail monopoly.

**4. It also needs to be pointed out that** the detailed opinion does not mention the *Visnapuu case* (Case C-198/14) and the consequent decision by the Finnish Supreme Court (Case KKO:2018:49). The cases were cited by the Finnish authorities in their notification and dealt specifically with the issue at hand. Together they clearly set out that the current Finnish legislation around alcohol sales and retail licensing, de facto banning distance selling of alcoholic beverages, conforms to the requirements under article 34 and 36 or 37 TFEU. It is therefore surprising that the detailed opinion considers that the legal clarification, which represents no de facto change to the current Finnish system, is not necessary nor proportionate and thus contrary to article 34 and 36 TFEU.

**5. Most importantly, it is surprising and worrying that** the detailed opinion does not contain a consideration for the core functioning of the Finnish alcohol monopoly. The Alcohol retail monopoly intends to remove profit interest from the retail sales of alcohol and thus has a considerable part of the retail market reserved for it. Alcohol retail monopolies are used by countries and regions all around the world, of which four in the EU/EEA area. The World Health Organisation lists public health oriented government alcohol retail monopolies as an effective and evidence-based tool in reducing alcohol related harm.<sup>2</sup> The right of an EU Member State to operate a retail monopoly for alcoholic beverages was confirmed by the *Franzén* judgement (Case C-189/95).

As the Commission is not convinced the proposed clarifying measures are necessary nor proportional, they set out a counter-proposal. The Commission asks Finland to consider allowing “*authorised delivery premises for distance selling of alcoholic beverages across borders and their import into Finland*”. This would potentially open up for a large amount of delivery premises establishing themselves in Finland and expand alcohol availability, which increases alcohol-related harms. Perhaps most importantly, the Commission’s counter-proposal would introduce unrestricted profit interests into retail sales of all strengths of alcohol in Finland. This by opening up the market reserved for *Alko Oy* to an unlimited number of distance alcohol retailers. This would remove the core pillar in Finnish alcohol control policy of a retail monopoly based on the ‘*disinterested management*’ of alcohol sales. It is surprising that such a one-sided liberalisation of alcohol control policy is presented as a measure which may have similar health effects as the current evidence-based Finnish alcohol retail monopoly. In view of this, we kindly encourage the Commission to revisit and reconsider their suggestion.

We hope that our points will be taken into account in the process moving forward.

IOGT-NTO

A handwritten signature in black ink, appearing to read "Johnny Mostacero".

Johnny Mostacero  
President

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<sup>2</sup> WHO (2010) Global strategy to reduce the harmful use of alcohol. Page 14. Link: [http://www.who.int/substance\\_abuse/publications/global\\_strategy\\_reduce\\_harmful\\_use\\_alcohol/en/](http://www.who.int/substance_abuse/publications/global_strategy_reduce_harmful_use_alcohol/en/)