



EUROPEAN COMMISSION

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

Single Market Enforcement

Notification of Regulatory Barriers

Notification Number : 2023/0452/NL (Netherlands)

Amendment to the Tobacco and Smoking Products Decree in relation to prohibiting cross-border distance sales of related products other than electronic cigarettes and refill containers

Date received : 18/07/2023

End of Standstill : 19/10/2023

Message

Message 001

Communication from the Commission - TRIS/(2023) 2173

Directive (EU) 2015/1535

Notification: 2023/0452/NL

Notification of a draft text from a Member State

Notification – Notificación – Notifizierung – Нотификация – Oznámení – Notifikation – Γνωστοποίηση – Notificación – Teavitamine – Ilmoitus – Obavijest – Bejelentés – Notifica – Pranešimas – Paziņojums – Notifika – Kennisgeving – Zawiadomienie – Notificação – Notificare – Oznámenie – Obvestilo – Anmälan – Fógra a thabhairt

Does not open the delays - N'ouvre pas de délai - Kein Fristbeginn - Не се предвижда период на прекъсване - Nezahajuje prodlení - Fristerne indledes ikke - Καμμία έναρξη προθεσμίας - No abre el plazo - Viivituste perioodi ei avata - Määräaika ei ala tästä - Ne otvara razdoblje kašnjenja - Nem nyitja meg a késéset - Non fa decorrere la mora - Atidējimai nepradedami - Atlikšanas laikposms nesākas - Ma jiftaħ il-perijodi ta' dewmien - Geen termijnbegin - Nie otwiera opóźnień - Não inicia o prazo - Nu deschide perioadele de stagnare - Nezačína oneskorenia - Ne uvaja zamud - Inleder ingen frist - Ní osclaíonn sé na moilleanna

MSG: 20232173.EN

1. MSG 001 IND 2023 0452 NL EN 18-07-2023 NL NOTIF

2. Netherlands

3A. Ministerie van Financiën, Dienst Douane Noord, CDIU.
(cdiu.notificaties@douane.nl)

3B. Ministerie van Volksgezondheid, Welzijn en Sport
Directie Wetgeving en Juridische Zaken

4. 2023/0452/NL - SERV20 - Electronic commerce

5. Amendment to the Tobacco and Smoking Products Decree in relation to prohibiting cross-border distance sales of related products other than electronic cigarettes and refill containers

6. Cross-border distance sales of nicotine-free electronic cigarettes, nicotine-free refill containers, nicotine-free



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

cartridges, electronic heating devices and herbal products intended for smoking

7.

Directive 2006/123/EC on services in the internal market

Other

The proposed ban is applied without discrimination. No distinction is made between retailers based in the Netherlands and retailers based in other countries. Therefore, no distinction is made by nationality or country of establishment. In addition, as of 1 July 2023, there shall be a ban on domestic sales of nicotine-free electronic cigarettes, nicotine-free refill containers, nicotine-free cartridges, electronic heating devices and herbal products intended for smoking.

The ban is justified by an overriding reason in the public interest, namely: the protection of public health. The necessity and proportionality of the ban on cross-border sales of tobacco products, electronic cigarettes and refill containers were already weighed up with the establishment of Articles 18 and 20 of the Tobacco Products Directive and are summarised in Recital 33 of that Directive:

‘(33) Cross-border distance sales of tobacco products could facilitate access to tobacco products that do not comply with this Directive. There is also an increased risk that young people would get access to tobacco products. Consequently, there is a risk that tobacco control legislation would be undermined. Member States should, therefore, be allowed to prohibit cross-border distance sales.’

The ban is an appropriate measure and does not go beyond what is necessary. A reduction in points of sale reduces exposure to these products and contributes to the stance that smoking is not normal. This helps to reduce the chances of young people starting to smoke. By prohibiting cross-border sales of nicotine-free electronic cigarettes, electronic heating devices and herbal products intended for smoking, all related products are subject to the same rules and spillover effects shall be prevented. A ban on distance sales as the first measure rather than last is the most effective in the government's view. This shall prevent, for example, the proposed ban on sales in supermarkets from causing online sales to increase sharply, which might reduce or eliminate the positive effect on smoking prevalence and thus on public health.

In addition, the measure does not go beyond what is necessary. Like previous measures, this ban is part of a coherent package of measures necessary to achieve the goals set out in the National Prevention Agreement. A key measure in this regard is to reduce the number of points of sale, and this ban is part of that. The omission of this measure would undermine the overall policy aimed at achieving a smoke-free generation by 2040.

8. This draft Decree prohibits cross-border distance sales of nicotine-free electronic cigarettes, nicotine-free refill containers, nicotine-free cartridges, electronic heating devices and herbal products intended for smoking. The ban in Article I of the draft Decree can be considered a technical regulation within the meaning of Directive (EU) 2015/1535.

Cross-border distance sales of related products (other than electronic cigarettes and refill containers) do not fall within the scope of the Tobacco Products Directive. However, for aspects not covered by the Tobacco Products Directive, a Member State is free to maintain or introduce national legislation applicable to all products placed on that market in that Member State, provided that it is compatible with the TFEU and does not jeopardise the full application of this Directive. Therefore, under these conditions, a Member State may, inter alia, provide for the regulation or prohibition of products which resemble a type of tobacco or related product in appearance. National technical regulations require prior notification under Directive (EU) 2015/1535.

No mutual recognition clause has been included. The proposed ban applies to retailers offering nicotine-free electronic cigarettes, nicotine-free refill containers, nicotine-free cartridges, electronic heating devices and herbal products intended for smoking for cross-border distance sales from other EU Member States or third countries to consumers in the Netherlands (imports). In addition, the ban applies to cross-border distance sales of nicotine-free electronic cigarettes, nicotine-free refill containers, nicotine-free cartridges, electronic heating devices and herbal products intended for smoking by retailers established in the Netherlands to consumers in other Member States or third countries (exports).

9. The ban is justified for urgent reasons in the interest of public health, is applied without discrimination, and is necessary and proportionate for the protection of public health.



EUROPEAN COMMISSION

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Single Market Enforcement
Notification of Regulatory Barriers

Prohibition of discrimination

The proposed ban is applied without discrimination. No distinction is made between retailers based in the Netherlands and retailers based in other countries. Therefore, no distinction is made by nationality or country of establishment. In addition, as of 1 July 2023, there shall be a ban on domestic sales of nicotine-free electronic cigarettes, nicotine-free refill containers, nicotine-free cartridges, electronic heating devices and herbal products intended for smoking.

Necessity

The ban is justified by an overriding reason in the public interest, namely: the protection of public health. The necessity and proportionality of the ban on cross-border sales of tobacco products, electronic cigarettes and refill containers were already weighed up with the establishment of Articles 18 and 20 of the Tobacco Products Directive and are summarised in Recital 33 of that Directive:

‘(33) Cross-border distance sales of tobacco products could facilitate access to tobacco products that do not comply with this Directive. There is also an increased risk that young people would get access to tobacco products. Consequently, there is a risk that tobacco control legislation would be undermined. Member States should, therefore, be allowed to prohibit cross-border distance sales.’

As of 1 July 2023, the ban on cross-border sales of tobacco products, electronic cigarettes and refill containers as well as the ban on domestic distance sales of tobacco products and related products shall enter into force. The ban on cross-border distance sales of related products which do not fall within the scope of Articles 18 and 20 of the Tobacco Products Directive is in line with this Recital.

Proportionality

The ban is an appropriate measure and does not go beyond what is necessary. A reduction in points of sale reduces exposure to these products and contributes to the stance that smoking is not normal. This helps to reduce the chances of young people starting to smoke. By prohibiting cross-border sales of nicotine-free electronic cigarettes, electronic heating devices and herbal products intended for smoking, all related products are subject to the same rules and spillover effects shall be prevented. A ban on distance sales as the first measure rather than last is the most effective in the government's view. This shall prevent, for example, the proposed ban on sales in supermarkets from causing online sales to increase sharply, which might reduce or eliminate the positive effect on smoking prevalence and thus on public health. In addition, the measure does not go beyond what is necessary. Like previous measures, this ban is part of a coherent package of measures necessary to achieve the goals set out in the National Prevention Agreement. A key measure in this regard is to reduce the number of points of sale, and this ban is part of that. The omission of this measure would undermine the overall policy aimed at achieving a smoke-free generation by 2040.

10. Numbers or titles of basic texts:

B-2023-0452-NL-01

B-2023-0452-NL-02

11. No

12.

13. No

14. No

15. No

16.

TBT aspects: No

SPS aspects: No



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European Commission

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