



EUROPEAN COMMISSION

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

Message 011

Communication from the Commission - TRIS/(2024) 3178

Directive (EU) 2015/1535

Notification: 2024/0610/AT

Refusal by the Commission of urgency request invoked under (article 6, paragraph 7, of Directive (EU) 2015/1535) and the normal time frame for the procedure opened.

The recourse to urgency disputed - Contestation de l'urgence - Ablehnung des Dringlichkeitsverfahrens - \ Отказ на искане за извънредна процедура - Možnost použití zrychleného řízení zpochybněna - Anfægtelse \ af henvisningen til hasteproceduren - Αμφισβήτηση του επειγόντος - Rechazo de urgencia - Kiireloomulistele \ rõhjustele tuginemise vaidlustamine - Kiireellisyyden kiistäminen - Osporena je primjena hitnog postupka - \ A sürgõsség igénybevétele vitatott - Contestazione dell'urgenza - Ginčijama skubos tvarka - Apstrīdēta \ steidzamība - Ikkontestat ir-rikors għall-urgenza - Betwisting van beroep op dringende redenen - Użycie \ trybu pilnego jest kwestionowane - Contestação da invocação da urgência - Recursul la procedura de urgență \ refuzat - Sporné využitie možnosti z dôvodu naliehavosti - Sklicevanje na nujnost sporno - Bestridande av brådska - \ Dul i muinín na práinne atá faoi dhíospóid

Opening of the standstill period - Ouvre le délai de statu quo - Beginn der Verfahrensfrist - Откриване на периода на прекъсване - Zahájení odkladné lhůty - Fristen for proceduren indledes - Έναρξη της προθεσμίας διαδικασίας - Abre el plazo de statu quo - Ooteaja avamine - Menettelyn määraaika alkaa - Otvaranje razdoblja mirovanja - A halasztási időszak megnyitása - È aperto il termine di procedura - Atidėjimo laikotarpio pradžia - Bezdarbības laikposma sākums - Il-ftuħ tal-perijodu ta' waqfien - Begin van de termijn voor de procedure - Otwarcie okresu odroczenia - Abre o prazo de procedimento - Deschiderea perioadei de stagnare - Začiatok odkladnej lehoty - Uvedba obdobja mirovanja - Inleder förfarandets frist - Oscailt na tréimhse neamhghníomhaíochta

MSG: 20243178.EN

1. MSG 011 IND 2024 0610 AT EN 08-11-2024 28-11-2024 COM CONTURG 08-11-2024

2. Commission

3. DG GROW/E/3 - N105 04/63

4. 2024/0610/AT - X60M - Tobacco

5. article 6, paragraph 7, of Directive (EU) 2015/1535

6. On 07-11-2024, the authorities of the Member State (Austria) notified the above-mentioned draft to the Commission, and invoked the urgency laid down in article 6, paragraph 7, of Directive (EU) 2015/1535.

The Commission considers that, in the case in point, the urgency criteria within the meaning of Directive (EU) 2015/1535 have not been met for the following reasons:

On 7 November 2024 the Austrian authorities notified the draft "Ordinance specifying prohibited substances in tobacco products and e-cigarette liquids" pursuant to the procedure established by Directive (EU) 2015/1535, and requested the application of the urgency procedure laid down in Article 6(7) of the Directive.

According to the notification message, "[i]n transposing Directive 2014/40/EU [...], Austria has incorporated into national law a ban on certain ingredients in nicotine-containing electronic cigarettes and refill containers (see Section 10a(7) subparagraph 3 in conjunction with Section 8b(2) of the Tobacco and Non-Smokers Protection Act (TNRSG), in nicotine-



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containing and nicotine-free cigarettes and refill containers (see Section 10b(7) subparagraph 3 in conjunction with Section 8b(2); Section 10b(7) subparagraph 5 TNRSRG) and in tobacco products (see Section 8b(2) subparagraph 1 TNRSRG) transposed into national law”.

The notification message further states that “the purpose of the present notification is to ensure that the substance categories included in the list are in any case to be regarded as prohibited ingredients and are therefore unequivocally subject to the statutory ban”.

The Austrian authorities justify their request for urgent adoption of the notified draft notably on the following grounds: “[...]because the prohibited substance categories are only listed in abstract terms in the national Austrian Act (TNRSRG), products are currently on the market containing ingredients that are prohibited by law but not specified in greater detail by name, posing a potential risk to the health of young consumers in particular [...] Clarification of the legal situation is therefore of the utmost and most urgent importance in order to safeguard health protection.”

Article 6(7) of Directive (EU) 2015/1535 provides that a Member State may invoke the urgency procedure “for urgent reasons, occasioned by serious and unforeseeable circumstances relating to the protection of public health or safety, the protection of animals or the preservation of plants and, for rules on services, also for public policy, notably the protection of minors, a Member State is obliged to prepare technical regulations in a very short space of time in order to enact and introduce them immediately without any consultations being possible; or for urgent reasons occasioned by serious circumstances relating to the protection of the security and the integrity of the financial system, in particular the protection of depositors, investors and insured persons, a Member State is obliged to enact and implement rules on financial services immediately”.

It should be pointed out that the criteria of seriousness and unforeseeability are cumulative. Also, the urgency may be invoked only in relation to the public interests mentioned in Article 6(7) of Directive (EU) 2015/1535, i.e. the protection of health or safety, of animals, plant and public policy, notably concerning the protection of minors, of security and integrity of the financial system, in particular concerning the protection of depositors, investors and insured persons.

The reasons outlined by the Austrian authorities in the notification message cannot be considered as unforeseeable reasons for applying the urgency procedure. In particular, the clarification of the national legislation, deemed necessary in the present case, cannot be considered as an unforeseeable situation. The notification message explicitly states that “the List of prohibited substances in tobacco products and electronic cigarettes was published for information purposes on the websites of the of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection (BMSGPK) on 13 July 2023 and the Austrian Agency for Health and Food Safety (AGES) on 14 July 2023, which is based on the decision of 30 May 2023 of the Advisory Board on Ingredients established pursuant to Section 8b(9) TNRSG [...]”.

Therefore, after having carefully examined the request for urgent adoption, the Commission notes that the conditions required by Article 6(7) of Directive (EU) 2015/1535, i.e. the condition of urgent reasons occasioned by serious and unforeseeable circumstances, preventing the Austrian authorities from waiting for the status quo of three months as laid down by this Directive, have not been met in this request for the urgency procedure.

Consequently, the three months standstill period, laid down in Article 6(1) of Directive (EU) 2015/1535, is opened. This period expires on 10 February 2025.

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