Message 103

Communication from the Commission - TRIS/(2026) 2148

Directive (EU) 2015/1535

Notification: 2026/0223/PL

Forwarding of the observations of a Member State (Czechia) (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

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1. MSG 103 IND 2026 0223 PL EN 06-11-2026 06-08-2026 CZ COMMS 5.2 06-11-2026

2. Czechia

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4. 2026/0223/PL - S00S - HEALTH, MEDICAL EQUIPMENT

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. Comments by the Czech Republic concerning TRIS Notification 2026/0223/PL

On 5 May 2026, a notification by the Republic of Poland concerning the draft Act amending the Act on protection of health against the consequences of consumption of tobacco and tobacco products (hereinafter the ‘draft Act’) was published in the TRIS database.

The proposed amendment to the Act on protection of health against the consequences of consumption of tobacco and tobacco products (No 213) introduces, among other things, restrictions on flavours in nicotine pouches and a ban on new nicotine-containing products that are not tobacco products or related products.

I.
The proposed restrictions, consisting of a ban on flavours in nicotine pouches (with the exception of unflavoured or tobacco-flavoured variants) and a significant restriction on market access for other nicotine products that are not tobacco products or related products, may have a significant impact on the business environment within the internal market, as in effect they indirectly prevent such products from being placed on the Polish market.

The Czech Republic is of the opinion that the proposed restrictive measures, i.e.

(I) a ban on flavours in nicotine pouches (with the exception of unflavoured or tobacco-flavoured variants) under

Article 1(7)(a) of the draft Act, where the following point 1a) is inserted in Article 11hb: ‘a nicotine pouch must not contain any ingredients that impart a smell or taste other than that of tobacco;’; and

(II) a ban on the placing on the market of nicotine-containing products that are not tobacco products or related products, by inserting in Article 12 a new point 1a), which reads as follows: ‘1a) places on the market nicotine-containing products that are not tobacco products or related products, contrary to the prohibition referred to in Article 7aa(1),’,

may, by virtue of their practical impact on domestic and foreign economic operators, create a de facto barrier to the free movement of goods within the meaning of Articles 34–36 of the Treaty on the Functioning of the European Union.

II.
In view of the above significant impacts on both foreign and domestic economic operators resulting from the proposed introduction of flavour restrictions on nicotine pouches and the ban on the placing on the market of nicotine-containing products that are not tobacco products or related products, the measures in question must be subject to stricter requirements as regards their justification. It is therefore necessary to assess in greater detail why, in terms of their effects, they do not affect foreign economic operators beyond what is necessary to achieve the objective pursued.

In this context, it is important to note that Directive 2014/40/EU of the European Parliament and of the Council, which permits a ban on the placing on the market of certain products containing flavourings, does not expressly apply to nicotine pouches and nicotine-containing products that are not tobacco products or related products. The fact that this is due to the rapid development of the market does not in itself justify applying these provisions by analogy to the product types in question. On the contrary, in accordance with the principle of legality, it is essential to proceed in accordance with EU law in force and applicable in the present case, namely, in particular, the provisions of Articles 34 and 36 of the Treaty on the Functioning of the EU. These provisions allow for restrictions on the free movement of goods on grounds relating to the protection of public health; however, the founding Treaties and the case law of the CJEU impose strict requirements on the adoption of such measures in terms of their proportionality and justification.

The Czech Republic considers that, in both of the above cases, Poland has not sufficiently demonstrated, with regard to its proposed amendment, that the objective pursued could not also be achieved through a combination of less restrictive regulatory instruments with a lesser impact on trade between Member States; nor is the Czech Republic convinced that Poland has sufficiently demonstrated the contrary.

III.
In the light of the above, the Czech Republic considers that the draft Act contains provisions which may create substantial barriers to the free movement of goods and thus significantly disrupt the business environment within the internal market; it is therefore necessary to provide a more detailed justification as to why it is not possible to introduce alternative, less restrictive measures, that is to say, to justify why, from the submitter’s perspective, the impact of the proposed measures does not go beyond what is necessary to achieve the objective that the relevant provisions contained in the draft legislation seek to achieve. For these reasons, as well as for reasons of legal certainty in connection with the introduction of national measures of this type in the future, the Czech Republic considers it necessary to draw attention to the possible inconsistency of Poland’s draft national legislation with EU law.

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