



EUROPEAN COMMISSION

Brussels 15.12.2023  
C(2023) 9104 final

Ms Elina Valtonen  
Minister for Foreign Affairs  
Ministry for Foreign Affairs  
PO Box 176  
FI-00023 Government  
Finland

**Subject: Notification 2023/543/FI**

**Government proposal to parliament for an act amending section 17 of the Alcohol Act**

**Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015**

Madam,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535<sup>1</sup>, the Finnish authorities notified to the Commission on 18 September 2023 the draft “**Government proposal to parliament for an act amending section 17 of the Alcohol Act**” (hereafter “the notified draft”).

According to the notification message, the notified draft intends to amend section 17 of the Alcohol Act in Finland, resulting from the Government Programme of Prime Minister Petteri Orpo’s Government, one the aims of which is to open the market and increase competition. The proposed amendments aim at opening up competition for the sale of alcoholic beverages by allowing operators having obtained a license for the sale of alcoholic beverages to sale fermented alcoholic beverages containing more than 5.5 per cent and not more than 8.0 per cent by volume, which is currently reserved only for the government-owned alcohol company.

On 10 October, the Commission requested the Finnish authorities to provide supplementary information concerning the notified draft. In particular, the Commission asked the Finnish authorities to provide further information on the justification related to

---

<sup>1</sup> 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, OJ L 241, 17.9.2015, p. 1.

public health for the differential distribution of equally strong products made through fermentation or distillation, existing scientific evidence to substantiate the assumption, according to which products made out of distilled spirits with an alcohol content between 5.5 and 8% vol. would be more appealing to underage girls than fermented-based beverages with an equivalent alcohol percentage and an assessment on the effects of the measure on competition between producers of alcoholic beverages. On 20 October 2023, the Finnish authorities replied to the request for information from the Commission. The reply of the Finnish authorities reply has been taken into account.

The examination of the notified draft has prompted the Commission to issue the following comments.

The notified draft amends Section 17 of the Alcohol Act as follows:

*“Section 17*

*Retail sale licence for alcoholic beverages and requirements for the granting thereof*

*The retail sale licence for fermented alcoholic beverages containing up to 8.0 per cent of ethyl alcohol by volume, and alcoholic beverages produced by other methods and not exceeding 5.5 per cent by volume applies to retail sales within one place of sale and the licence is granted to:*

- (1) an applicant selling a diverse selection of food products for everyday use in a building within the meaning of the Land Use and Building Act (132/1999), if the share of the sales of alcoholic beverages of the total business activities is not considerably larger than the share of the sales of other food products sold;*
- (2) an applicant operating a business within the meaning of subsection 1 out of a sales truck or boat which runs on a regular route in regions with permanent or seasonal residents and the route is approved by a licensing authority;*
- (3) an applicant with an alcohol serving licence for the retail sale of the alcoholic beverages served under the serving licence; however, a retail sales licence can only be granted to an applicant with a temporary alcohol serving licence or operating within an area licenced for serving alcohol within the meaning of section 20 for events where several producers of alcoholic beverages present their products to consumers;*
- (4) an applicant with a production licence for retail sales at the place of production.”*

The Commission services highlight that the notified draft would reduce the scope of the current monopoly for retail sales of alcoholic products and allow that beverage of stronger alcoholic content (than currently permitted) be sold more widely by retail trade with a license. The highest permissible alcohol content for beverages sold with said retail license, and outside of the State monopoly, would increase from 5.5% to 8% but said enlargement, would be limited to fermented-based products and would not cover beverages containing distilled spirits.

In their reply of 20 October 2023 the Finnish authorities argue that the proposed amendment is likely to increase sales of fermented alcoholic beverages and promote competition in this respect, but also acknowledge that this may in part be at the expense of non-fermented alcoholic beverages. The reply also suggests that in the long term, the proposed change may affect consumers’ purchasing and consumption behaviour in a lasting manner and might result in consumers favouring fermented alcoholic beverages to

the detriment of alcoholic beverages produced in other ways. Therefore, the notified draft is likely to have a permanent effect on the market.

The reply of the Finnish authorities further argues that *“the factors restricting competition on the basis of the way in which the alcohol is produced would be proportionate, given that the objective of protecting children and adolescents in particular is the result of the distribution based on the method of production”*.

The Commission takes note of the acknowledgement of the Finnish authorities that effects on competition on the basis of the way in which the alcohol is produced, resulting from the notified draft, cannot be excluded.

In this respect, the Commission recalls Article 37(1) of the Treaty of the Functioning of the European Union (TFEU)<sup>2</sup>, according to which *“Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States”*.

The Commission stresses that it cannot be ruled out that the amendment, which aims at dismantling the monopoly rights of stronger alcoholic beverages, might nevertheless result in favouring fermented products in relation to beverages in which alcohol produced by other methods. In light of Article 37 TFEU, this could lead to effectively favouring products of Finnish origin, if these are overrepresented in the “fermented” beverages market.

In this respect, the Commission reminds the Finnish authorities of EFTA Court of Justice judgment in the EFTA Surveillance Authority v The Kingdom of Norway case<sup>3</sup>, where the Court considered the Norwegian law allowing the sale of beer with alcohol content up to 4.75 % outside of the state monopoly system, but not for other spirit drinks of the same strength as indirect discrimination against European products, since beers with alcohol content of between 2.5% and 4.75% by volume is mainly produced domestically, whilst other spirit drinks with similar alcohol percentage are mainly imported.

The Commission services note that the sales regime for alcoholic beverages covered by the retail licenses at stake is not covered by harmonised EU rules and should therefore be assessed against articles 34-36 TFEU on the free movement of goods.

While Member States are allowed a certain degree of discretion in organising matters not harmonized at EU level, general principles of EU law must nevertheless be observed. The national authorities need to be able to prove that the marketing of specific products poses a serious and real risk to public health.<sup>4</sup> This needs to be well founded, and Member States need to provide all evidence, data (technical, scientific, statistical, nutritional, etc.) and other relevant information to be able to justify their measures. The protection of health cannot be invoked if the real purpose of the measure is to protect the domestic market, even if in the absence of harmonisation it is for a Member State to decide on the level of protection. Measures adopted also need to be proportionate to the

---

<sup>2</sup> Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47.

<sup>3</sup> See Judgment of the EFTA Court of 15 March 2002 in Case E-9/00- EFTA Surveillance Authority v The Kingdom of Norway [2002] EFTA Ct. Rep. 72.

<sup>4</sup> C-421/09 *Humanplasma GmbH v Austria* [2010] ECLI:EU:C:2010:760, para. 34.

objectives pursued, meaning, the measure needs to be restricted to what is necessary and thus not excessive to attain the legitimate aim of protecting public health. Moreover, the Member State is obliged to pursue the stated objectives in a consistent and systematic manner.

In principle, should Member States wish to maintain or introduce measures to protect health under Article 36 TFEU, the burden of proving the necessity of such measures rests with them. In its rulings, the Court of Justice of the European Union (CJEU) has emphasised that real risks need to be demonstrated in the light of the most recent results of international scientific research. The CJEU has consistently stated that the Member States have to perform a detailed risk assessment before taking precautionary measures under Articles 34 and 36 TFEU. Member States do not need to show a definite link between the evidence and the risk, however, the measures cannot be based on ‘*purely hypothetical considerations*’, as confirmed in Case C-672/15 *Noria Distribution*.

Therefore, a mere statement that the measure is justified on one of the accepted grounds or the absence of analysis of possible alternatives will be deemed unsatisfactory.

On 10 October 2023, the Commission services invited Finnish authorities to provide the underlying proportionality analysis of the measure resulting from the notified draft, including a detailed explanation, based on scientific evidence, of the justification related to public health for the differential distribution of equally strong products made through fermentation or distillation.

In their reply of 20 October 2023, the Finnish authorities illustrated that, in light of research data and past experience, it is very likely that if mixed drinks (derived from distillation), beers and wines of between 5.6 and 8.0 per cent were to be sold in grocery trade, their consumption would increase significantly. They also state that it is difficult to predict whether overall consumption of mixed drinks would increase more than beer consumption, but based on the 2018 experience, this is “*possible*”. According to the Finnish Authorities’ reply, the restriction based on production method could help curb impulse purchases of mixed drinks of a higher strength than before.

The Finnish reply appears to suggest that that the measure resulting from the notified draft might be based on purely hypothetical considerations and might therefore not be suitable to achieve the stated objective. In fact, the proportionality assessment provided fails to prove the existence of a concrete causal link between the specific activity that the Finnish authorities are trying to restrict (i.e., the licensed retail sale of distilled alcoholic beverages between 5.5% and 8% vol.) and the objective of avoiding social harm to public health.

Similarly, the Commission notes the need for more specific research to be carried out in order to substantiate and support the Finnish authorities’ claim that maintaining a more restrictive regime for the sale of distilled beverages with identical alcoholic content would be justified by the objective of protecting the health of young female consumers, who would be more likely to be negatively affected, and in order to prove the existence of a causal link and the suitability of the restriction.

Considering the above-mentioned, the Commission invites the Finnish authorities to analyse the potential effects on competition likely to be introduced by the notified draft

and ensure that the national measure do not result in indirect discrimination of imported products.

The Finnish authorities are invited to take these comments into account.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Kerstin Jorna  
Director-General

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