



EUROPEAN COMMISSION

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

Message 115

Communication from the Commission - TRIS/(2024) 2802

Directive (EU) 2015/1535

Notification: 2024/0396/HU

Forwarding of a detailed opinion received by a Member State (Austria) (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 15-01-2025.

Detailed opinion - Avis circonstancié - Ausführliche Stellungnahme - Подробно становище - Podrobné stanovisko - Udførlig udtalelse - Επιπεριστατωμένη γνώμη - Dictamen circunstanciado - Üksikasjalik arvamus - Yksityiskohtainen lausunto - Detaljno mišljenje - Részletes vélemény - Parere circostanziato - Išsamiai išdėstyta nuomonė - Sīki izstrādāts atzinums - Opinioni dettaljata - Uitvoerig gemotiveerde mening - Opinia szczegółowa - Parecer circunstanciado - Aviz detaliat - Podrobné stanovisko - Podrobno mnenje - Detaljerat yttrande

Extends the time limit of the status quo until 15-01-2025. - Prolonge le délai de statu quo jusqu'au 15-01-2025.- Die Laufzeit des Status quo wird verlängert bis 15-01-2025.- Удължаване на крайния срок на статуквото до 15-01-2025. - Prodłużuje lhůtu současného stavu do 15-01-2025. - Fristen for status quo forlænges til 15-01-2025. - Παρατείνει την προθεσμία του status quo 15-01-2025. - Amplía el plazo de statu quo hasta 15-01-2025. - Praeguse olukorra tähtaega pikendatakse kuni 15-01-2025. - Jatkaa status quon määraaika 15-01-2025 asti. - Produžuje se vremensko ograničenje statusa quo do 15-01-2025. - Meghosszabbítja a korábbi állapot határidejét 15-01-2025-ig. - Proroga il termine dello status quo fino al 15-01-2025. - Status quo terminas pratęsiamas iki 15-01-2025. - Pagarina "status quo" laika periodu līdz 15-01-2025. - Jestendi t-terminu tal-istatus quo sa 15-01-2025. - De status-quoperiode wordt verlengd tot 15-01-2025. - Przedłużenie status quo do 15-01-2025. - Prolonga o prazo do statu quo até 15-01-2025. - Prelungește termenul status quo-ului până la 15-01-2025. - Predlžuje sa lehota súčasného stavu do 15-01-2025. - Podaljša rok nespremenjenega stanja do 15-01-2025. - Förlänger tiden för status quo fram till 15-01-2025.

The Commission received this detailed opinion on the 14-10-2024. - La Commission a reçu cet avis circonstancié le 14-10-2024. - Die Kommission hat diese ausführliche Stellungnahme am 14-10-2024 empfangen. - Комисията получи настоящото подробно становище относно 14-10-2024. - Komise obdržela toto podrobné stanovisko dne 14-10-2024. - Kommissionen modtog denne udførlige udtalelse den 14-10-2024. - Η Επιτροπή έλαβε αυτή την επιπεριστατωμένη γνώμη στις 14-10-2024. - La Comisión recibió el dictamen circunstanciado el 14-10-2024. - Komisjon sai üksikasjaliku arvamuse 14-10-2024. - Komissio sai tämän yksityiskohtaisen lausunnon 14-10-2024. - Komisija je zaprimila ovo detaljno mišljenje dana 14-10-2024. - A Bizottság 14-10-2024-án/én kapta meg ezt a részletes véleményt. - La Commissione ha ricevuto il parere circostanziato il 14-10-2024. - Komisija gavo šią išsamiai išdėstyta nuomonę 14-10-2024. - Komisija saņēma šo sīki izstrādāto atzinumu 14-10-2024. - Il-Kummissjoni rċeviet din l-opinioni dettaljata dwar il-14-10-2024. - De Commissie heeft deze uitvoerig gemotiveerde mening op 14-10-2024 ontvangen. - Komisja otrzymała tę opinię szczegółową w dniu 14-10-2024. - A Comissão recebeu o presente parecer circunstanciado em 14-10-2024. - Comisia a primit avizul detaliat privind 14-10-2024. - Komisia dostala toto podrobné stanovisko dňa 14-10-2024. - Komisija je to podrobno mnenje prejela dne 14-10-2024. - Kommissionen mottog detta detaljerade yttrande om 14-10-2024. - Fuair an Coimisiún an tuairim mhionsonraithe sin maidir le 14-10-2024.

MSG: 20242802.EN

1. MSG 115 IND 2024 0396 HU EN 15-01-2025 14-10-2024 AT DO 6.2(2) 15-01-2025

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2. Austria

3A. Bundesministerium für Arbeit und Wirtschaft



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4. 2024/0396/HU - C50A - Foodstuffs
4. 2024/0397/HU - C50A - Foodstuffs

5. article 6, paragraph 2, second indent of Directive (EU) 2015/1535

6. I. Introduction:

Austria opposes the draft law on the protection of children's health, Notification 2024/396/HU.

The bill prohibits the sale or supply of energy drinks to anyone under the age of eighteen. Violations may be sanctioned, including the temporary closure of the company for a maximum of 30 days. The bill allows the government to define energy drinks in a decree.

Austria also opposes the amendment of Government Decree No 210/2009 of 29 September 2009 on the conditions for the pursuit of commercial activities for the protection of the health of children and minors, Notification 2024/397/HU. The draft amendment to Government Decree No. 210/2009 prohibits the sale or supply of energy drinks to persons under the age of eighteen, and violations are punishable by fines.

II. Infringement of Article 34 TFEU:

The Hungarian legislation infringes the principle of the free movement of goods laid down in Article 34 TFEU: The prohibition on the sale of energy drinks to persons under the age of 18 may hinder intra-Community trade and may therefore constitute a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 34 TFEU. According to the settled case-law of the Court of Justice, any measures of a Member State which are liable to hinder, directly or indirectly, actually or potentially, trade within the European Union are to be considered as measures having an effect equivalent to quantitative restrictions within the meaning of Article 34 TFEU (see CJEU, 23 December 2015, Case C-333/14, Scotch Whisky Association, § 31 with further references).

Nor can the provisions at issue be justified on the grounds of justification laid down in Article 36 TFEU (Article 34 does not preclude prohibitions or restrictions on imports, exports or transit imposed on grounds of public morality, public policy and public security, the protection of the health and life of humans, animals or plants, the protection of national treasures of artistic, historical or archaeological value or the protection of industrial and commercial property). Under Article 36 TFEU, such prohibitions or restrictions must not constitute a means of arbitrary discrimination or a disguised restriction on trade between the Member States. Even if the objective of protecting the health of young people is taken as a basis, the measures infringe Article 34 in so far as they are not appropriate for ensuring the attainment of the objective pursued and go beyond what is necessary to attain it.

The CJEU held that, in the event of a derogation from the principle of the free movement of goods, Member States are required to demonstrate 'that their rules are necessary to achieve the declared objective and that this objective could not be achieved by less extensive prohibitions or restrictions or by prohibitions or restrictions having less effect on intra-Community trade' (see CJEU Case C-198/14 *Valev Visnapuu*, § 117 with further references).

An opinion of the European Food Safety Authority (EFSA) indicates that, as long as one is healthy, one does not belong to a subgroup of the population prone to problems (such as persons with cardiac arrhythmias, pregnant or breastfeeding women, or breastfed infants), and does not exceed the recommended daily intake, there is no reason for energy drinks to be classified as harmful to health. EFSA also considers that the safe caffeine intake (3 mg/kg body weight per day)



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derived for acute caffeine consumption by adults can serve as a basis for the derivation of single doses of caffeine and the safe daily caffeine intake for the population subgroups of children and pregnant/breastfeeding adults.

Therefore, instead of prohibiting the sale to persons under the age of 18, a more precise labelling of the contents/education of the population (recommended daily requirement of caffeine, taurine, inositol, glucuronolactone, guarana,...) and more visible/accurate warnings ('not suitable for persons with caffeine intolerance' - possible undesirable side effects: insomnia, nervousness, headache, tachycardia/advising against consumption in cases of cardiac arrhythmias due to caffeine content) should be considered.

In summary, it should be noted that the Hungarian draft laws constitute a serious obstacle to the free movement of goods. Setting an age limit of 18 years is arbitrary and without scientific basis. The proposed measures are liable to restrict the internal market and are therefore rejected.

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