Message 981

Communication from the Commission - TRIS/(2024) 3507

Procedure for the provision of information EC - EFTA

Notification: 2024/9015/NO

Internal forwarding of the observations of a Member State (Spain).

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1. MSG 981 IND 2024 9015 NO EN 03-01-2025 30-12-2024 ES PROJ.7 03-01-2025

2. Spain

3A. Ministerio de Asuntos Exteriores, UE y Cooperación
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3B. Comisión Interministerial para la Ordenación Alimentaria
Agencia Española de Seguridad Alimentaria y Nutrición
Ministerio de Derechos Sociales, Consumo y Agenda 2030

4. 2024/9015/NO - X40M - Labelling and advertising

5.

6. Notification 2024/9015/NO:

In the framework of Directive 2015/1535, the Government of Norway notified, on 2 October 2024, the 'Amendment to the Food Act and proposal for new Regulations on the prohibition of the marketing of certain foods and beverages aimed at children'.

Examination of the draft has led the Spanish authorities to submit the comments set out below pursuant to Article 5(2) of said Directive.

The draft regulates the marketing on the Norwegian market of certain foods and beverages aimed at children.

Article 3 of the draft defines key concepts such as:
— Children: People under 18 years of age.
— Marketing: Any form of communication or action for marketing purposes. Marketing purpose exists if the aim of the communication or action is to promote sales to consumers.

Article 4 expressly prohibits the marketing of products covered by Annex I thereto, aimed at children. Applying the definitions in Article 3, the prohibition would affect any form of communication or action aimed at promoting the sale of the products covered by Annex I to people under the age of 18.

Furthermore, Article 4 includes situations where marketing shall always be considered to be aimed at children. Among them, the second paragraph, point (d), mentions special displays that have a form of presentation, content or design that may appeal to children, due to language, colours, effects, use of images, use of animation or drawn characters. With

regard to this point, we would request more details on what Norway considers to be ‘special displays’.

Additionally, the same article (Article 4) mentions that, when assessing whether marketing is aimed at children, the use of gifts, toys, coupons, discounts, collectibles, contests, or games that may particularly appeal to children, will be considered. It also adds a paragraph stating that the marketing of products covered by Annex I must not occur in a way that encourages adults to buy the product for children.

Article 6 of the draft refers to exceptions from the marketing prohibition. Point (c) of that Article includes packaging and wrapping, provided that they do not use luring effects as specified in Article 4(3)(e). However, Article 4 is not organised into numbered paragraphs, and it would, therefore, be appropriate for the Norwegian authorities to revise this Article, as it is not clear in which cases this exception would apply.

If Article 6 refers only to Article 4(e) (use of gifts, toys, coupons, discounts, collectibles, contests, or games that may particularly appeal to children), it follows that where the product is accompanied by any of these elements, its packaging and wrapping will be affected by this legislation, but it is not clarified how. The implication is that, in these cases, the product will always be considered aimed at children and, therefore, its marketing will be prohibited.

Furthermore, since packaging and wrapping form part of the presentation of the product for sale, under Article 4, third paragraph, point (b), the placing on the market of products covered by Annex I could be prohibited where it is considered that their presentation or design is likely to appeal to children. Thus, products lawfully produced and marketed in another EEA country could be affected by this measure. This situation would create an obstacle to the free movement of goods in the Internal Market, contrary to Article 34 TFEU, and its counterpart in the EEA Agreement (Article 11), which would not be sufficiently justified with regard to Article 36 TFEU (Article 13 of the EEA Agreement).

The Norwegian authorities are requested to:

1. Clarify what is considered to be ‘special displays’ within the meaning of Article 4, second paragraph, point (d);

2. Specify in which cases the exception in Article 6(c) would apply to packaging and wrapping.

3. The inclusion of a mutual recognition clause in the notified draft that ensures that any product legally produced and marketed in an EEA country can be marketed in the Norwegian market, complying with the provisions of Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008, thus, preventing this legislation from becoming an unnecessary obstacle to intra-Community trade in the foods concerned by the draft.

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