

European Commission
DG Grow, Internal Market

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To the attention of
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Dear Sirs

The Association of Finnish Alcoholic Beverage Suppliers represents manufacturers, importers, and wholesale trade of alcoholic beverages in our markets. We want to bring to your attention our concerns about the upcoming proposed amendment to the alcohol law, which we believe is discriminatory and against free competition. Finland intends to notify this national measure to the European Commission.

In Finland, the sale of alcoholic beverages is primarily an exclusive right of the state-owned monopoly company Alko Ltd. However, grocery stores can obtain a retail sales permit for the sale of alcoholic beverages containing up to 5.5 percent alcohol. In accordance with Prime Minister Petteri Orpo's government program, the Finnish Government will submit a proposal to the parliament for an amendment to the alcohol law, in which the current retail sales permit would be expanded to include fermented-based beverages containing alcohol up to 8 percent.

The Finnish Government's intention to expand the retail sales permit does not apply to beverages containing distilled spirits, even if the alcohol content of the final product falls between 5.5 and 8.

Current Situation

In 2018, a comprehensive reform of the alcohol law came into effect in Finland. This reform eliminated the so-called production method restriction, which meant that the permission of retail sales of alcoholic beverages depended not only on the alcohol content of the beverages but also on their method of production. Until 2018, retail permit holders (grocery stores) were allowed to sell beverages with up to 4.7 percent alcohol content, which were produced from fermented-based alcohol only. All beverages produced using distilled spirits were under the monopoly distribution.

Since 2018, alcoholic beverages sold in grocery stores do not have to be exclusively fermented-based, but they can also be produced of distilled spirits as raw materials, as long as the alcohol content of final product is up to 5.5 volume percent of ethyl alcohol.

Change in Brief

In grocery stores, products made from distilled spirits would be allowed with an alcohol content of up to 5.5%, but for fermented-based alcoholic beverages, the highest permissible alcohol content would be 8%.

Equality principle

The legal amendments must ensure compliance with Finland's constitution and be in harmony with EU law. Equality and non-discrimination are fundamental principles of the European Union. Legislation must treat all citizens fairly and equally, and this principle applies also legal business operators.

According to Section 1 of Finland's alcohol law, the purpose of the law is to reduce the consumption of alcoholic substances by restricting and supervising related business activities to prevent harm to alcohol users, other individuals, and society as a whole. Therefore, the justification for the monopoly and retail sales permit system is based on the goals of protecting public health and maintaining public order.

The explanatory notes of the alcohol law that came into effect in 2018 state that *'for the purposes of applying the Alcohol Act, it is not necessary to define different alcoholic beverages as is done, for example, in the Alcoholic Beverage Tax Act or customs tariff codes.'*

In other words, when drafting the current alcohol law, it was considered that the goal of protecting public health does not require distinguishing between alcoholic beverages made through fermentation or distillation, even though such distinctions are used in taxation. There is no scientific evidence to suggest that fermented-based alcoholic beverages are less harmful than spirits-based alcoholic beverages if their alcohol content is the same. Therefore, the production method restriction for the retail sale of alcoholic beverages unjustly discriminates against products made from distilled spirits.

Considering that the Finnish Government also proposes to reduce the excise tax on beer by approximately 4.9 percent while increasing the alcohol tax on all other alcoholic beverage categories, the production method restriction raises suspicions of favouring the domestic brewing industry in violation of the principle of non-discrimination.

Consistency

The EU Court of Justice has held that the Finnish monopoly system must be examined in the light of Article 37 of the Treaty on the Functioning of the European Union (TFEU) and the retail licensing scheme in the light of Article 34 TFEU.¹ Further, the Court of Justice has stated that the Finnish retail licensing scheme constitutes a restriction within the meaning of Article 34 TFEU.² An obstacle to the free movement of goods may be justified on one of the public interest grounds set out in Article 36 TFEU or in order to meet overriding requirements. In either case, the national

¹ C-198/14, *Visnapuu*, paragraphs 90–92 of the judgment.

² C-198/14, *Visnapuu*, paragraph 108 of the judgment.

provision must be appropriate for securing the attainment of the objective pursued and must not go beyond what is necessary in order to attain it.³

According to settled case-law of the Court of Justice, national legislation is appropriate for ensuring attainment of the objective relied on only if it genuinely reflects a concern to attain it in a *consistent and systematic manner*. In any event, the restrictions must be applied without discrimination.⁴

The proposed amendment of the Alcohol Act does not fulfil the requirement mentioned above according to which national legislation shall attain the objective in a consistent and systematic manner. As said, there is no scientific evidence that beverages produced of distilled alcohol pose a greater risk to public health than beverages produced of fermented alcohol if alcohol content of the beverages are the same. Consequently, the production method limitation that would discriminate beverages containing more than 5,5% but not exceeding 8% ethyl alcohol by volume on the basis of production method **is not consistent and does not attain the objective concerning protection of public health in a systematic manner.**

Undistorted Competition

Preventing distortions of competition is one of the fundamental principles of the European Union, as outlined in the Treaty on the Functioning of the European Union. According to Protocol No. 27 on the Internal Market and Competition, the internal market defined in Article 3 of the TFEU includes a system that ensures competition remains undistorted.

Products made from distilled alcoholic spirits with an alcohol content exceeding 5.5 volume percent would, according to the government's stance, continue to be subject to the monopoly distribution system in the future, with sales restricted to 372 stores instead of over 4000 sales points. Since there is no justification related to public health for the differential distribution of equally strong products made through fermentation or distillation, this constitutes a barrier to competition.

Action Proposal

The Association of Finnish Alcoholic Beverage Suppliers proposes that the Commission acknowledges that the production method 'fermented' in the proposed amendment to the alcohol law is inconsistent with equality and coherence and constitutes a trade barrier for products made from distilled spirits with an alcohol content exceeding 5.5 but not exceeding 8 volume percent.

In any case, the Commission should require the Finnish Government to provide clear evidence that the production method restriction aligns with the goal of protecting public health in a consistent and systematic manner.

³ C-198/14, *Visnapuu*, paragraph 110 of the judgment.

⁴ C-176/11, *HIT ja HIT LARIX*, paragraph 22. See also, e.g., C-475/20, *Admiral Gaming Network*, paragraph 57, and C-169/07, *Hartlauer*, paragraph 55. In addition, there is reference to the consistency requirement in case C-170/04, *Rosengren*, paragraph 52, which concerns the Swedish alcohol monopoly system.

Yours sincerely,



The Association of Finnish Alcoholic Beverage Suppliers

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