Message 201

Communication from the Commission - TRIS/(2024) 2187

Directive (EU) 2015/1535

Notification: 2024/0351/LV

Forwarding of the response of the Member State notifying a draft (Latvia) to request for supplementary information (INFOSUP) of European Commission.

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1. MSG 201 IND 2024 0351 LV EN 02-10-2024 16-08-2024 LV ANSWER 02-10-2024

2. Latvia

3A. Ekonomikas ministrija

3B. Veselības ministrija

4. 2024/0351/LV - C51A - Beverages

5.

6. The responsible authority (Ministry of Health) provides answers to the following questions of the European Commission:

1. The Latvian authorities are kindly invited to clarify whether the provisions in the notified draft are intended to apply to providers of information society services as per the meaning of Directive 2000/31/EC. In the affirmative, the Commission services would like to receive further information on:
a) whether the notified draft would apply to information society service providers operating in the territory of other Member States than Latvia;

Yes, the notified draft would apply to information society service providers that provide retail services for alcoholic beverages by means of a distance contract via mobile application or website to Latvian residents, namely the delivery of alcoholic beverages purchased through a distance contract via mobile application or website within the territory of Latvia.

b) what would be the obligations applicable to those service providers resulting from the notified draft;

The providers of such services are already required to comply with the requirements set out in Article 6.1 of the Handling of Alcoholic Beverages Law. In addition to the existing obligations, once the new requirements enter into force, service providers will be required to ensure compliance with the time limits for the delivery of alcoholic beverages, namely the delivery of alcoholic beverages ordered through a distance contract (mobile application or website) to the final consumer in Latvia may not be carried out earlier than 6 hours after the order is placed, in accordance with the time restrictions on the sale of alcoholic beverages in Latvia. Currently, the delivery of alcoholic beverages is prohibited between 10:00 p.m. and 8:00 a.m. Once the new requirements are in effect, it will be prohibited to deliver alcoholic beverages to the final consumer from Monday to Saturday before 10:00 a.m. and after 8:00 p.m. on Sundays before 10:00 a.m. and after 6:00 p.m.).

c) whether the Latvian authorities have identified those providers or what would be the basis for identifying them;

Since 2020, the sale of alcoholic beverages via distance contracts has been permitted in Latvia and a service provider registered in any of the countries of the European Economic Area and complying with the regulatory requirements of the respective country's coordinated area is entitled to freely provide information society services in the coordinated area in Latvia. Thus as of 2020, Article 6.1 of the Handling of Alcoholic Beverages Law states that in order to carry out retail sales of alcoholic beverages via distance contracts through a website or mobile application within the territory of Latvia, or to store alcohol in warehouses, the operators must obtain a special permit (licence) issued by the State Revenue Service, thereby identifying the service providers. This requirement also applies to operators from other countries that wish to sell alcoholic beverages within the territory of Latvia through distance contracts via mobile application or website, and they must also obtain the special permit (licence).
What concerns information service providers from other Member States (i.e. Delivery companies providing courier or postal services) they must be registered in the Postal Operators Register when providing the postal services. If a company is involved in the food chain within the territory of Latvia, including the storage or transport of alcoholic beverages, the company or service provider is obliged to register with the Food and Veterinary Service as a food business. Therefore, the providers of delivery services are under the jurisdiction of Latvia and can be identified.
At the same time since 2023, the Latvian State Police has been conducting test purchases made online or via other means of distance communication, thereby controlling the conditions for retail and delivery of alcoholic beverages. The penalty for unauthorized delivery of alcoholic beverages set forth in the Handling of Alcoholic Beverages Law applies both to the legal entity and the employee of the legal entity - courier or other delivery personnel.

d) How do the Latvian authorities intend to comply with the requirements laid down in Article 3(4) of Directive 2000/31/EC, particularly in the light of the CJEU judgement in case C-376/22.

Measures that impose time restrictions on the delivery of alcoholic beverages and are aimed at protecting public health, apply only to certain information society services engaged in retail sale of alcoholic beverages through a website or mobile application.
The restrictions on delivery times for alcoholic beverages and accordingly limitations on information society service providers, are necessary to mitigate the impact of impulsive alcohol purchases and rapid delivery of alcohol to the end consumer on alcohol consumption and consequences caused thereby ensuring the protection of public health. According to the WHO recommendations, limiting the physical availability of alcoholic beverages, including sales and delivery time restrictions, are cost-effective measures that reduce alcohol consumption, including risky alcohol consumption and the associated societal risks.
As previously reported in the Communication on the Draft Technical Regulations, alcohol consumption levels in Latvia are the highest both among the countries of the European Union and the Organisation for Economic Cooperation and Development. Risky alcohol consumption among the working-age population in Latvia is also relatively high (40 %) and exceeds the World Health Organisation (WHO) European Region average (30.4 %). At the same time alcohol consumption in Latvia generates significant monetary costs, estimated in a study carried out in Latvia in 2023 at between 1.3 % and 1.8 % of GDP, which is approximately twice the income from alcohol excise duty.
With regard to the requirements of Article 3(4) of Directive 2000/31/EC, which require the notification of the Member States likely to be affected by these requirements and whose service providers might deliver alcoholic beverages to border areas in less than 6 hours, it should be noted that, upon approval of the draft law by the Saeima, the Latvian authorities will inform the competent authorities of the Member States of the new conditions for the delivery of alcoholic beverages purchased online or via a mobile application.

2. The Commission services would like to receive more information on whether the provisions of the notified draft, particularly but not limiting to Paragraphs 3, 5 and 7, are intended to apply to providers of intermediary services as defined in Article 3(g) of Regulation (EU) 2022/2065. In the event of an affirmative reply, the Commission services would welcome a clarification on:
a) the intended interplay between the notified draft and the Regulation (EU) 2022/2065, in view of its maximum harmonization effect;
b) the specific obligations related to intermediary services as defined in Regulation (EU) 2022/2065 arising from the notified draft;

The obligations of the involved companies arising from the notified draft apply to those intermediary services that provide forwarding serviced, namely the delivery of alcoholic beverages to individuals. The forwarding service provider should ensure compliance with the time limits for the delivery of alcoholic beverages, i.e. the delivery of alcoholic beverages ordered via mobile application or website to the end consumer may not be carried out earlier than six hours after the order was placed subject to the time restrictions on the sale of alcoholic beverages in Latvia. Currently it is prohibited to deliver alcoholic beverages between 10:00 p.m. and 8:00 a.m. Once the draft law comes into force, it will be prohibited to deliver alcoholic beverages from Monday to Saturday before 10:00 a.m. and after 8:00 p.m. And on Sundays before 10:00 a.m. and after 6:00 p.m.

3. The Latvian authorities are requested to clarify whether the amendments in Section 5 supplementing Article 11 of the notified draft and prohibiting the advertising of prices and discounts for alcoholic beverages on 'websites and online platforms' apply to video-sharing platform service providers within the meaning of Article 1(1)(da) of the Audiovisual Media Services Directive 2010/13/EU.

The advertising restrictions prohibiting the advertisement of prices and discounts for alcoholic beverages within the meaning of Article 1(1)(d) of the Audiovisual Media Services Directive 2010/13/EU do not fall within the scope of the Handling of Alcoholic Beverages Law, including the notified draft technical regulation.

4. If the answer is affirmative, the Latvian authorities are requested to clarify whether the prohibition applies to video-sharing platform service providers regardless of whether the audiovisual commercial communication in question is marketed, sold or organized by the video-sharing platform.

Not applicable.

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European Commission
Contact point Directive (EU) 2015/1535
email: grow-dir2015-1535-central@ec.europa.eu