



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) 2752

Directive (EU) 2015/1535

Notification: 2024/0388/SE

Forwarding of a detailed opinion received by a Member State (Portugal) (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 08-01-2025.

Detailed opinion - Avis circonstancié - Ausführliche Stellungnahme - Подробно становище - Podrobné stanovisko - Udførlig udtalelse - Εμπεριστατωμένη 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 08-01-2025. - Prolonge le délai de statu quo jusqu'au 08-01-2025. - Die Laufzeit des Status quo wird verlängert bis 08-01-2025. - Удължаване на крайния срок на статуквото до 08-01-2025. - Prodłużuje lhůtu současného stavu do 08-01-2025. - Fristen for status quo forlænges til 08-01-2025. - Παρατείνει την προθεσμία του status quo 08-01-2025. - Amplía el plazo de statu quo hasta 08-01-2025. - Praeguse olukorra tähtaega pikendatakse kuni 08-01-2025. - Jatkaa status quon määraaika 08-01-2025 asti. - Produžuje se vremensko ograničenje statusa quo do 08-01-2025. - Meghosszabbítja a korábbi állapot határidejét 08-01-2025-ig. - Proroga il termine dello status quo fino al 08-01-2025. - Status quo terminas pratęsiamas iki 08-01-2025. - Pagarina "status quo" laika periodu līdz 08-01-2025. - Jestendi t-terminu tal-istatus quo sa 08-01-2025. - De status-quoperiode wordt verlengd tot 08-01-2025. - Przedłużenie status quo do 08-01-2025. - Prolonga o prazo do statu quo até 08-01-2025. - Prelungește termenul status quo-ului până la 08-01-2025. - Predlžuje sa lehota súčasného stavu do 08-01-2025. - Podaljša rok nespremenjenega stanja do 08-01-2025. - Förlänger tiden för status quo fram till 08-01-2025.

The Commission received this detailed opinion on the 07-10-2024. - La Commission a reçu cet avis circonstancié le 07-10-2024. - Die Kommission hat diese ausführliche Stellungnahme am 07-10-2024 empfangen. - Комисията получи настоящото подробно становище относно 07-10-2024. - Komise obdržela toto podrobné stanovisko dne 07-10-2024. - Kommissionen modtog denne udførlige udtalelse den 07-10-2024. - Η Επιτροπή έλαβε αυτή την εμπεριστατωμένη γνώμη στις 07-10-2024. - La Comisión recibió el dictamen circunstanciado el 07-10-2024. - Komisjon sai üksikasjaliku arvamuse 07-10-2024. - Komissio sai tämän yksityiskohtaisen lausunnon 07-10-2024. - Komisija je zaprimila ovo detaljno mišljenje dana 07-10-2024. - A Bizottság 07-10-2024-án/én kapta meg ezt a részletes véleményt. - La Commissione ha ricevuto il parere circostanziato il 07-10-2024. - Komisija gavo šią išsamiai išdėstytą nuomonę 07-10-2024. - Komisija saņēma šo sīki izstrādāto atzinumu 07-10-2024. - Il-Kummissjoni rċeviet din l-opinioni dettaljata dwar il-07-10-2024. - De Commissie heeft deze uitvoerig gemotiveerde mening op 07-10-2024 ontvangen. - Komisja otrzymała tę opinię szczegółową w dniu 07-10-2024. - A Comissão recebeu o presente parecer circunstanciado em 07-10-2024. - Comisia a primit avizul detaliat privind 07-10-2024. - Komisia dostala toto podrobné stanovisko dňa 07-10-2024. - Komisija je to podrobno mnenje prejela dne 07-10-2024. - Kommissionen mottog detta detaljerade yttrande om 07-10-2024. - Fuair an Coimisiún an tuairim mhionsonraithe sin maidir le 07-10-2024.

MSG: 20242752.EN

1. MSG 115 IND 2024 0388 SE EN 08-01-2025 07-10-2024 PT DO 6.2(2) 08-01-2025

2. Portugal

3A. Ministério da Economia - Instituto Português da Qualidade, I.P.



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3B. Ministério da Economia - Direção Geral das Atividades Económicas

4. 2024/0388/SE - C51A - Beverages

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

6. DETAILED OPINION OF PORTUGAL

In the context of notification TRIS 2024/0388/SE, the Kingdom of Sweden notified the Commission and the Member States of the European Union of a draft law amending the Alcohol Act (2010:1622), with the introduction of a provision providing that holders of on-farm sales licences may retail self-produced alcoholic beverages, as well as the respective requirements and conditions for the granting of on-farm sales licences.

For this, it is proposed that on-farm sales authorisations may only be granted to: i) independent producers who produce alcoholic beverages on their own and on a professional basis; ii) the annual production of the producer does not exceed 75,000 litres of spirit drinks, 400,000 litres of fermented alcoholic beverages up to 10% alcohol by volume, and 200,000 litres of fermented alcoholic beverages with an alcoholic strength by volume exceeding 10%; iii) that wine producers produce wine from grapes grown on their own plantations.

As an argument for the legislative change, the expectation is that on-farm sales of alcoholic beverages will have beneficial effects for the hospitality sector, where experiences with food and beverages can play an important role. For this, it is stated that “(...) it should be noted that the secondary objective of limiting the range of producers who can sell on farms is to promote tourism and local production, particularly in rural areas.

Since 1955, Sweden has had a monopoly on the sale of beverages containing more than 3.5% alcohol. One of the main arguments for the existence of such a monopoly lies in the imperative of protecting public health. The Swedish government considers that unlimited access to low-priced alcoholic beverages, supplied by private retailers, would lead to increased consumption.

Article 34 TFEU provides that quantitative restrictions on imports and all measures having equivalent effect are prohibited between Member States, originating from a right of defence that may be invoked against national measures creating unjustified obstacles to cross-border trade. Examples of such measures are a total ban or a quota system. Thus, even a system of disguised quotas falls within the scope of Article 34 TFEU. Indeed, in the Dassonville process, confirmed in the Cassis de Dijon case, the CJEU underlines that the most important element in determining whether a national measure falls under Article 34 TFEU is its effect “(...) capable of hindering directly or indirectly, actually or potentially (...)”, and considers that it is not only overtly discriminatory measures that create barriers to trade between Member States.

It follows that the scope of Article 34 TFEU encompasses not only national measures that discriminate against imported products, but also legal measures that appear to apply equally to domestic and imported products, but in practice impose more barriers. In its case-law, the CJEU has consistently held that measures adopted by a Member State which have the object or effect of treating products from other Member States less favourably must be regarded as measures having equivalent effect to restrictions within the meaning of Article 34 TFEU, including any other measure which creates obstacles to access to the market of one Member State for products from other Member States.

A prohibition on the marketing of a product is the most restrictive measure that a Member State may adopt from the point of view of the free movement of goods. The justification of these strict measures invoked by the Member State as aiming at the protection of health under Article 36 TFEU, and imposing a national ban on a product or substance, requires that Member State to demonstrate unequivocally that the measure is necessary and that the marketing of the products in question poses a serious risk to public health, for which such a restriction must comply with the principles of proportionality and necessity (proc. C-270/02, Commission/Italy).

The application of Article 36 TFEU by the Member States must be based on respect for the principle of proportionality of the measures adopted. Even if the measure is justifiable under one of the derogations in Article 36, it must not constitute a means of arbitrary or disguised discrimination in trade between Member States. As such, a measure to be considered justified under Article 36 TFEU requires that the means chosen be limited to what is strictly necessary to ensure that the objective pursued is achieved and must be proportionate to that objective. Thus, the application of the principle of proportionality will consist in the application of alternative measures that pose fewer barriers to trade. The Member State is obliged to choose the least restrictive alternative and failure to do so constitutes a breach of the principle of proportionality. The Member State is also required to pursue the objectives invoked in a consistent and systematic



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manner and to avoid inconsistencies between the measures that are chosen and those that are not.

According to Article 37(1) TFEU, “Member States shall adjust any national monopolies of a commercial character in such a way as to ensure that there is no discrimination between nationals of Member States as regards the conditions under which goods are procured and marketed.” As a general rule, Article 37 applies in circumstances where a Member State intervention grants exclusivity of buying or selling rights (thus enabling control of imports or exports) and grants rights to a state-owned enterprise, a state institution or, by delegation, a private organisation.

Member States are only permitted to derogate from the fundamental provisions of Articles 30, 34, and 35 TFEU in accordance with Article 36 TFEU (or in exceptional cases), but are limited by strict principles of non-discrimination, necessity, proportionality (including adequacy), and unity. Thus, a non-discriminatory measure is one which affects, in the same way, in law and in fact, both domestic products and those from other Member States.

The Swedish legislative proposal by limiting the sale of alcohol to “(...) holders of on-farm sales licences may retail self-produced alcoholic beverages” and that “on-farm sales authorisations may only be granted to independent producers producing alcoholic beverages on their own account and on a professional basis.” (...) and that (...) “On-farm sales may only be made from a single point of sale, which is the place where the majority of alcoholic beverages were produced. For wine producers, the point of sale may alternatively be the place where the majority of the grapes were grown. (...) it could be classified as a measure discriminating against the movement of goods by tacitly discriminating against other economic operators and disproportionately restricting market access.

The admissibility of national restrictions, based on the Treaties, depends on substantive and formal conditions, including public health (Article 36 TFEU), which allow the national restriction on freedom of movement to be justified by the safeguarding of non-economic goods of general interest. In principle, the use of implicit grounds for the restriction will apply only to rules which apply without distinction, that is to say, to restrictions which do not differ according to the country of origin. Implicit permissible limits include mandatory requirements for reasons of public interest, such as consumer protection. This allows a Member State, in order to protect legal interests, in particular those referred to in Article 36 TFEU, to adopt unilateral measures restricting the free movement of goods. However, those measures are subject to the principle of the prohibition of excess, which requires that they be applied in a non-discriminatory manner, must be appropriate for ensuring the pursuit of the objectives pursued, and strictly necessary for achieving those objectives. It is therefore for the competent national authorities to demonstrate that the measures satisfy the grounds and limits of the restrictions.

The Court of Justice of the European Union (CJEU) recognises that measures constituting quantitative restrictions may be considered justified on grounds of the protection of human health and life. However, a restriction may be regarded as justified only in so far as it is necessary and proportionate for the effective protection of the legal interest in question. The review of the proportionality and necessity of the proposed measures requires an analysis of the factual and legal circumstances characterising the situation in Sweden. Therefore, in order for health and public policy concerns to justify a measure having equivalent effect to a quantitative restriction within the meaning of Article 34 TFEU, such a measure must not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States, as required by Article 36 TFEU.

It can therefore be concluded that the present Swedish legislative proposal justifying the reason for the restrictions invoked as being grounds of health and public policy has been diverted from its purpose and used in such a way as to discriminate against products originating in other Member States or to protect indirectly certain domestic products (judgments in *Ahokainen* and *Leppik*, C-434/04, and *Rosengren*, C-170/04).

In view of the above considerations, it is considered that discrimination in the sale of alcoholic beverages, which is limited to production sites and their producers, constitutes a protectionist and discriminatory practice on the market.

The Swedish draft law, by limiting economic activity and supply to consumers, prevents and restricts market access for other economic operators by creating potential inequalities. The arguments put forward by the Swedish authorities must be duly substantiated on the basis of non-economic criteria for correcting market failures or combating externalities.

In view of the above considerations, Portugal issues a detailed opinion on the Swedish legislative proposal amending the Alcohol Act, considering that it conflicts with the existing Swedish monopoly on the sale of alcoholic beverages under Article 37, with the creation of barriers to the free movement of goods within the EU internal market, in particular under Article 34, and constitutes a discriminatory and disproportionate measure to trade between Member States under Article 36 TFEU.



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