Message 201

Communication from the Commission - TRIS/(2024) 1541

Directive (EU) 2015/1535

Notification: 2023/0543/FI

Forwarding of the response of the Member State notifying a draft (Finland) to comments (5.2) of European Commission.

MSG: 20241541.EN

1. MSG 201 IND 2023 0543 FI EN 19-12-2023 13-06-2024 FI ANSWER 19-12-2023

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4. 2023/0543/FI - C50A - Foodstuffs

5.

6. The Commission issued a comment dated 15 December 2023 on an amendment to the Finnish legislation on alcohol (Notification 2023/543/FI). We thank the Commission for its views. The draft Act has been modified in the light of the Commission’s comments by supplementing the explanatory memorandum in the proposal and assessing the measure in relation to Articles 34 and 36 TFEU.

In its notification, the Commission stated that it cannot be ruled out that the amendment, which aims at dismantling the monopoly rights o stronger alcoholic beverages, might nevertheless result in favouring fermented products in relation to beverages in which alcohol is produced by other methods. In light of Article 37 TFEU,
this could lead to effectively favouring products of Finnish origin, if these are overrepresented in the fermented beverages market. In its notification, the Commission also invited the Finnish authorities to analyse the potential effects on competition of the notified draft and ensure that the national measure does not result in indirect discrimination of imported products.

In response to the Commission’s notification, the impact assessments and explanatory memoranda for the proposed Act have been supplemented with a more detailed description of the effects on competition contained in the proposal and an assessment of the proposal in relation to Articles 34 and 36 TFEU.

Under Article 34 TFEU, quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States. However, according to Article 36 TFEU, Article 34 TFEU shall not preclude prohibitions or

restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

In fact, the proposed amendment reduces the scope of the national monopoly in relation to the legislation in force. Under the current Alcohol Act, alcoholic beverages containing a maximum of 5.5 % by volume ethyl alcohol may be sold in retail trade and the government-owned alcohol company has exclusive rights to sell alcoholic beverages above that limit. The amendment therefore aims to extend the free movement of alcoholic beverages and reduce the restrictions on imports of alcoholic beverages. However, the amendment would liberalise only fermented alcoholic beverages containing between 5.5 % and 8.0 % by volume ethyl alcohol for retail sale, thus placing alcoholic beverages produced by other methods in a different position in relation to these fermented beverages which, it is proposed, would fall outside the system of exclusive rights.

The proposal describes the proportions of domestic and foreign products of fermented alcoholic beverages and alcoholic beverages produced by other methods sold in Finland, The aim of this is to show that the proposal would open up foreign markets in relation to current legislation, and that the restriction based on production method would not in fact discriminate against citizens of Member States or favour domestically produced products. In the case of fermented products, slightly more than half the beers sold by the government-owned alcohol company were foreign and for wines, the proportion of sales comprising imported products was even larger.

Currently, mixed drinks with an alcohol content of between 5.6 % and 8.0 % by volume in the product range offered by the government-owned alcohol company (Alko) are a predominantly domestic product group. The proportion of domestically produced mixed drinks sold by Alko in 2023 accounted for around 92 % of total sales of mixed drinks The product groups proposed to be liberalised for retail sale currently comprise mainly imported products in the Alko range. In the case of beers, just over half of beers sold by Alko were foreign and imported products accounted for an even larger proportion of wines. The proportion of domestically produced products sold in e.g. grocery shops in the case of the relevant products is unlikely to change much as a result of the legislative proposal. Therefore, the production method restriction is not considered to be favouring domestic products over imported products. As regards mixed drinks, the legislation would not change from the current legal situation and the current regulation treats domestic and foreign operators in the same way – i.e. the sale of mixed drinks would continue to take place in the context of the government-owned alcohol company's exclusive rights system, in which both domestic operators and operators of other EU Member States are treated equally under section 25 of the Alcohol Act.

According to the Commission, the measure based on the notified draft, namely the restriction based on the method of production of alcoholic beverages, would appear to be based on purely hypothetical considerations. On the basis of the Commission's notification, the impact assessments of the proposal have been supplemented with a clearer description of the background to and effects of the aim of the restriction based on production method. The impact assessment of the proposal has highlighted the fact that, although alcohol consumption is harmful to young people regardless of the type of drink, the general preference for Finnish 'long drinks'(mixed drinks) among underage girls suggests that allowing the sale of stronger long drinks in grocery shops is likely to increase girls' alcohol consumption. This assumption is supported by the findings on the impact of the Alcohol Act that entered into force in 2018. Overall, alcohol consumption among young Finns has decreased fairly steadily since the turn of the millennium, although the trend came to a halt between 2017 and 2019, and the amount of alcohol consumed in one session by young people, especially girls, increased after the change to the law. The amendment to the Alcohol Act has been found to have led to an increase in the consumption of mixed drinks among girls in particular (Lintonen et al. 2020).

In 2008, Australia introduced a special tax on mixed drinks, aimed at reducing the harms associated with the consumption of alcohol among young people. As a result, the number of outpatient visits resulting from alcohol consumption, especially by young women, fell significantly (Gale et al. 2015). It is thus possible to predict that the restriction based on production method could achieve the underlying objective of preventing health harms caused by

alcohol among young people and girls in particular, and the proposal would thus be proportionate and acceptable on the basis of Article 36 TFEU.

In its notification, the Commission also stated that more specific research should be carried out in order to substantiate and support the claim that maintaining a more restrictive regime for the sale of distilled beverages with identical alcoholic content would be justified by the objective of protecting the health of young female consumers and to prove the existence of a causal link and thus the suitability of the restriction.

At this stage, new specified research has not yet been conducted, as it is not appropriate to carry out high-quality research to a very tight deadline. However, the Government proposal includes a description of a study published in 2015 on the impact of a special tax on mixed drinks imposed by Australia in 2008 on the consumption of alcohol by young people. According to the study, the tax on mixed drinks led to a marked reduction in outpatient visits due to alcohol consumption, especially among young females. The results of the study suggest that restricting the sale of mixed drinks is relevant to the prevention of alcohol-related health harms to young women. The Finnish Institute for Health and Welfare (THL) will monitor the social and health-related effects of the reform, including its effects on the consumption of alcohol by young people.

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