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Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Message 201

Communication from the Commission - TRIS/(2024) 1012

Directive (EU) 2015/1535

Notification: 2023/0636/SI

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

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1. MSG 201 IND 2023 0636 SI EN 13-02-2024 15-04-2024 SI ANSWER 13-02-2024

2. Slovenia

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4. 2023/0636/SI - X60M - Tobacco

5.

6. Subject: European Commission letter C (2024) 755 of 1 February 2024

We thank the European Commission for the submitted comments issued in the context of the notification procedure pursuant to Article 5(2) of Directive (EU) 2015/1535. The comments refer to the definition of terms from Directive 2014/40/EU, to the health warnings on the packaging of electronic cigarettes and refill containers, and to the confusion regarding the use of the term 'cartridge', which is used in two different senses in the notified draft Act amending the Act on the Restriction of the Use of Tobacco and Related Products.

Below we provide answers to the comments.

In relation to the European Commission's finding that the notified draft act amends several definitions of terms (e.g. the terms 'related products' and 'herbal product for smoking'), which differ from the corresponding definitions from Directive 2014/40/EU or expand these definitions or cause confusion, we inform that these definitions of terms have been changed in the amendment act (EPA 1145-IX), which was adopted by the National Assembly on 28 March 2024, and follow the comments of the European Commission.

The amended section 25 of Article 3 of the national legislation reads as follows:

'25. Related products under Directive 2014/40/EU are electronic cigarettes and refill containers, and herbal products for smoking. In accordance with this act, related products also include nicotine-free electronic cigarettes and nicotine-free refill containers, heated herbal products, novel tobacco products, novel nicotine products. In accordance with this act, related products are also accessories or devices for using related products referred to in the first sentence and the previous sentence of this section, without which the related products cannot be used.'

The new text shows which related products are in accordance with Directive 2014/40/EU and which are in accordance with national legislation. At the same time, we clarify that the term 'related products' does not refer to the provisions related to Directive 2014/40/EU, but primarily to national provisions such as the prohibition on the promotion and advertising of these products, the prohibition on sales to minors, the prohibition on the use of related products in closed public and work spaces, the obligation to obtain an authorisation for the sale, etc.

Regarding the definition of the term 'herbal product for smoking', we clarify that the adopted amendment act no longer expands this definition, but a new definition of the term for heated herbal products has been added.

The added section 50(a) of Article 3 of the national legislation reads as follows:

'50(a) A heated herbal product is a product based on plants, herbs or fruit, which does not contain tobacco, during the use of which the heating process takes place.'

We further clarify that we have redefined the terms 'nicotine-free electronic cigarettes' and 'nicotine-free refill containers'.

According to the new section 12(a) of Article 3 of the national legislation, a nicotine-free electronic cigarette is a disposable product that contains a tank with a nicotine-free liquid and is used to inhale vapours that do not contain nicotine through the mouthpiece or any component of this product.

The term 'refill container' remains aligned with Directive 2014/40/EU. However, we have added the term 'nicotine-free refill container', which, according to the new section 23(a) of Article 3 of the national legislation, is a packaging containing nicotine-free liquid that can be used to refill electronic cigarettes.

In accordance with these two new terms, we have also been able to amend accordingly the provision relating to health warnings on the packaging of electronic cigarettes and refill containers, so that it is now clear that the indication of the health warning on the nicotine content is always required, except for nicotine-free electronic cigarettes and nicotine-free refill containers.

Regarding the term 'cartridge', we would like to inform you that we have removed it from the legislation in the version that caused confusion.

At the same time, we would like to inform you that, as part of the process of adopting legislation in the National Assembly, the menthol flavour was removed through amendments, and thus nicotine or non-nicotine liquid in electronic cigarettes, nicotine-free electronic cigarettes and nicotine-free refill containers can only contain tobacco flavour.

In the amendment act, we took into account all the comments made by the European Commission in the context of the notification procedure pursuant to Article 5(2) of Directive (EU) 2015/1535.

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