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CEEV contribution to the TRIS notification 2024/0388/SE on Draft act amending the Swedish Alcohol Act on farm sales permit

Comité Européen des Entreprises Vins (CEEV – www.ceev.eu) represents the wine companies in the industry and trade in the European Union: still wines, aromatised wines, sparkling wines, liqueur wines and other vine products. It brings together 25 national organisations from 13 EU Member States, plus Switzerland, the United Kingdom and Ukraine, as well as a consortium of 4 leading European wine companies. Its members produce and market the vast majority of quality European wines, with and without a geographical indication, and account for over 90% of European wine exports.

CEEV is pleased to submit, here below, its contribution to the TRIS notification 2024/0388/SE¹ on the Swedish (draft) act amending the Alcohol Act 2010:1622 regarding Retail of self-produced alcoholic beverages – Permits for on-farm sales.

A. CEEV COMMENTS

The notified Draft act amending the Swedish Alcohol Act 2010:1622 is authorising domestic producers of alcoholic beverages, including wine, to sell their products directly from their place of production, consequently out of the state-owned monopoly premises and rules.

In this context, such development will create a new sales channel exclusively limited to Swedish alcoholic beverages. Therefore, it will imply consequences for foreign alcoholic products on the Swedish market, and in particular the market access granted to EU wines.

Conformity with TFEU²

CEEV is therefore concerned that it would discriminate product on the basis of the origin, by favouring local/domestic products compared to the foreign EU-products in a way that, in its current form, would not be compatible with EU law – articles 34 and 37 of the Treaty of Functioning of the European Union (TFEU).

According to art. 34, « *Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.* »

According to art. 36, « *The provisions of Articles 34 and 35 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*

¹ <https://technical-regulation-information-system.ec.europa.eu/en/notification/26051>

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² Consolidated version of the Treaty on the Functioning of the European Union https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj

commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. »

According to art. 37, « Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States [...] Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the articles dealing with the prohibition of customs duties and quantitative restrictions between Member States [...]

Such rules do not fit with TFEU requirements and additionally do have an effect on the Single Market:

- While the on-farm sales model in its current form is subject to certain conditions (e.g. volume restrictions, production site location, link to hospitality aspects in Section 2-3-4-5 and 15 of new Chapter 5a), it does not preclude that foreign products will not benefit from the fair and equal treatment in reaching the Swedish consumers.
- From a market-access perspective, it is quite difficult, not to say impossible, for foreign-based operators to easily adapt to the proposed model on farm sales. As a consequence, this requirement will discriminate EU producers and/or distributors on the Swedish market, because of an equivalent effect to quantitative restrictions on imports, in breach of art. 34 TFEU.
- The options allowed for foreign producers to access to Swedish consumers alongside the own-state retail monopoly put forward by the Swedish authorities in the impact assessment attached to the notification do not compensate or change the discriminatory nature of “on-farm sales” scheme for the access to market of imported products. In that respect, the foreign operator and/or products will be disadvantaged to a Swedish one(s). This situation constitutes « *a means of arbitrary discrimination or a disguised restriction on trade between Member States* », prohibited under art. 36 TFEU.
- By imposing a requirement that on-sales shall be clearly linked to hospitality and local production, thus ensuring that those on-farm sales are of limited extent, it does not preclude from being considered as constituting an alternative to the retail trade carried out by Systembolaget. As a matter of fact, in view of being listed on the Swedish market and allowed to sell alcoholic beverages products, domestic products under the farm sales scheme would escape, contrary to other domestic and foreign operators’ products, to the rules and/or requirements imposed by the state-owned monopoly for products sold in Systembolaget stores. This includes, among other requirements made mandatory by the own-state retail monopoly, specific fee and/or mark-up, which will be obviously different [and probably higher] that the “reasonable mark-up” the Swedish producer will apply to its own production sold on-site (Section 15 of new Chapter 5a on Pricing of alcoholic beverages and visiting arrangements).

We therefore ask you to adequately consider, when analysing the Draft act in the light of the EU legislation, the EU “acquis” and the fact that the Swedish exception of state retail monopoly on alcohol sales has been granted by the EU Commission subject to the respect of the non-discrimination of EU products.

To be in line with the EU Treaty and to secure fair and equal treatment, it will be crucial that the model of on-farm sales does not discriminate against foreign EU-products and, if allowed, apply to these sales the same requirements, including in terms of pricing or fiscality, as to the products sold through the own-state retail monopoly stores.

In light of the above, CEEV requests the European Commission to issue, under the TRIS procedure, a detailed opinion in order to engage a dialogue with the Swedish government to (i) amend provisions to make the regulation compatible with EU law when it comes to the introduction of alcohol farm sales scheme or (ii) renounce its adoption.
