

REF: TRIS/2024/0387/FI

COMMENTS ON THE DRAFT PROPOSAL TO AMEND THE ALCOHOL ACT

I would like to thank the Commission services for the opportunity to express the following comments on the Finnish draft proposal for amending the Alcohol Act. For the sake of clarity, let it be stated that I am the complainant in case CHAP(2018)2479 which has been transferred to the EU Pilot mechanism as EUP(2021)9837 on 3 February 2021. I have followed the issue related to the Finnish Alcohol Act for the past six years, and these comments are based on the latest EU case law and an extensive amount of official documents.

As a general observation, the notified draft regulation continues the tradition of an insincere, incompetent, and incredulous attitude displayed by the Finnish authorities in this matter. On a more specific point, the legislative draft raises three questions:

1. Would the proposed requirement to hold a transportation licence also apply to alcoholic beverages sold online by economic operators established in other Member States, who give the task of transportation to a third party in the Member State of origin, on the grounds that the activity allegedly constitutes 'retail sales' in Finland which requires a retail sales licence?
2. If the first answer is affirmative: On which legal grounds do the Finnish authorities impose general and abstract measures aimed at a category of given information society services by requiring that online sellers of alcoholic beverages established in other Member States have a Finnish retail sales licence?
3. On which legal grounds would a holder of the proposed transportation licence be prohibited from handing over to customers 'craft beer' and 'estate wine' that have been legally sold by licensed producers in Finland?

1. PRELIMINARY REMARKS

In order to give an answer to questions 1 and 2 it is necessary to determine whether the Finnish authorities require that online sellers established in other Member States have a Finnish retail sales licence, and consequently, require that the transportation agent obtain a transportation licence as per the notified proposal. While the issue of requiring a retail sales licence is already being investigated in the EU Pilot case EUP(2021)9837, it is impossible to separate from the legislative draft at hand, wherefore I shall touch on this issue here.

At first glance the impact assessment could lead the reader to believe that distance selling from other Member States is not prohibited, as it is stated the following: "the Proposal would equalise the status of domestic operators in relation to foreign alcohol sellers, since, in the past, it was possible to purchase alcohol on delivery from foreign alcohol sellers under certain conditions, but not from domestic alcohol sellers."

It is to be noted that the draft proposal aims to allow the state alcohol company and retail licence holders established in Finland to **sell** alcoholic beverages with delivery to customers, i.e. the seller may arrange for the delivery through a third party without any involvement of the buyer. However, the

exact wording of the impact assessment implies that alcoholic beverages can currently only be **bought** from abroad on delivery, which indicates that the seller established in another Member State may not arrange for the delivery.

Apparently the Finnish authorities are here referring to the guidance¹ issued by the Supervisory Authority for Welfare and Health (Valvira) - which the Ministry of Social Affairs and Health in the ongoing EU Pilot case EUP(2021)9837 has already confirmed not to be legally binding - stipulating that the Finnish buyer must arrange for the transportation independently of the seller and that the buyer must be marked as both consignor and consignee of parcel. In recent years, Valvira has additionally claimed that the buyer must pay all taxes, meaning that the Alcohol Act purportedly categorically bans distance selling as it is defined in the Directive on Excise Duty (262/2020).

The Ministry of Social Affairs and Health claimed as recently as in April 2024 that the Alcohol Act may be in conflict with the Excise Duty Act when it comes to distance selling. A written statement was given to the Ministry of Finance in preparation of amending the Excise Duty Act wherein the Ministry of Social Affairs and Health claims, that in principle, a retail licence is required also from sellers operating abroad². The Ministry of Social Affairs and Health on 17 May 2024 provided a similar statement at the request of the Finance Committee of the Finnish Parliament³.

These statements are put in a dubious light considering other recent developments. The Ministry of Social Affairs and Health had held a joint meeting with Valvira, Finnish Customs and the Helsinki District Police in October 2019⁴. In the meeting memorandum it is expressly confirmed that the rulings C-198/14 Visnapuu and KKO:2018:49 take a stand on some, but not all forms of selling alcoholic beverages from abroad. According to the memorandum, clarification should be sought in court by making a request for a pre-trial investigation of distance sellers established abroad that breach the guidance published by Valvira by selling alcoholic beverages falling under the sole right of the state alcohol monopoly and arranging through a third party the delivery of those beverages to the buyer in Finland.

As a result of the meeting, in August 2020 Valvira made a request for a pre-trial investigation of 12 distance sellers, including family wineries established in Austria and France, claiming that by paying taxes to Finland and by participating in the transportation, these companies engaged in illegal retail sales in Finland⁵. This project backfired massively in April 2022 when the Special Prosecutor decided not to press charges on the grounds that the companies had not sold in retail alcoholic beverages in Finland and that the sellers were even to be considered the importers as the beverages were imported by private persons for their own use⁶.

Incidentally, the designated contact person for the notification at hand, Mr. Jari KEINÄNEN, participated on behalf of the ministry in the said joint meeting in 2019. Maybe Mr. KEINÄNEN could shed some light on this matter and, among other things, explain to the Commission services to which extent C-198/14 Visnapuu and KKO:2018:49 apply to distance selling and which acts fall outside of the scope of the rulings?

¹ "Alkoholijuomien tilaaminen ja maahantuonti", dated 17.3.2010 and found in Finnish here: <https://valvira.fi/alkoholi/ohjeet>

² Statement VN/23901/2023-STM-8 dated 2 April 2024, p. 2: "STM katsoo kuitenkin, että valmisteverotuslaki ja ehdotetut muutokset voivat joltain osin olla ristiriidassa voimassa olevan alkoholilainsäädännön kanssa. Alkoholilainsäädännössä ei ole määritelty alkoholin etämyyntiä tai etäostamista. Voimassa olevan alkoholilainsäädännön mukaan alkoholijuomien myyjällä tulisi olla alkoholilaissa tarkoitettu vähittäismyyntilupa ja myyntipiste Suomessa – STM:n näkemyksen mukaan vaatimus vähittäismyyntiluvasta koskee lähtökohtaisesti myös ulkomaille sijoittautuneita alkoholijuomien myyjiä. Voimassaolevan alkoholilainsäädännön mukaan alkoholijuomien kuljetus myyjän toimesta suoraan esimerkiksi ostajan kotiin ei ole mahdollista, sillä alkoholilain mukaan alkoholijuomien vähittäismyyntiä saa harjoittaa vain luovuttamalla niitä asiakkaalle hyväksytyssä vähittäismyyntipaikassa." Available in Finnish here: <https://vm.fi/hanke?tunnus=VM094:00/2023>

³ Available in Finnish here: <https://www.eduskunta.fi/FI/vaski/JulkaistuMetatieto/Documents/EDK-2024-AK-21280.pdf>

⁴ Provided by the undersigned to the Commission services by email on 11 October 2021.

⁵ Provided by the undersigned to the Commission services by email on 14 April 2021.

⁶ Press release "Syyttämättäjättämispäätökset ns. alkoholin etämyyntiasiassa" by the Special Prosecutor on 12 April 2022. Available in Finnish here: <https://svyttajalaitos.fi/-/svyttamattajattamispaatokset-ns.-alkoholin-etamyyntiasiassa>

Furthermore, in 2023, the Helsinki Court of Appeal upheld the judgement of the Helsinki District Court of 2020 stating that the distance selling over the Internet of alcoholic beverages from another Member State with separate delivery is legal so long as the seller pays all relevant taxes and excise duties to Finland⁷. Before the EU Pilot procedure was started, the Commission services and the Ministry of Social Affairs and Health engaged in a short exchange of emails in 2020. The ministry wrote that "we will have new information on the topic next week (a court case from Helsinki district Court) and in this respect this is a good time to continue our conversations". However, when sending the next reply a few days later the ministry made no mention of the ruling by the District Court of Helsinki which had found distance selling through third-party transportation to be legal.

Perhaps Mr. KEINÄNEN, who took part in the email exchange between the Commission services and the Ministry of Social Affairs and Health in 2020, could be kind enough to explain to the Commission services as to why the ministry has since never even mentioned the relevant court rulings?

Perhaps also the other named contact person for the notification at hand, Ms. Mirka-Tuulia KUOKSA, could elaborate - in light of what is presented above - on the legal grounds upon which she prepared the statement for the Ministry of Finance in April 2024 claiming that in principle, the retail sales licence applies to sellers located abroad?

2. SELLING ALCOHOLIC BEVERAGES ONLINE WITH LATER DELIVERY

The notified draft amendment hints at the current Alcohol Act only allowing the physical over-the-counter sales on licensed retail premises with the buyer and seller simultaneously present. However, the Finnish authorities have already confirmed on 29 April 2021 in the EU Pilot case EUP(2021)9837 that "there are no provisions in the Alcohol Act that prohibit the presentation of said alcoholic beverages to consumers, the displaying of their prices, or the concluding of distance orders and distance sales agreements, as well as paying for purchases online, via the internet, or through a dedicated application."⁸. The beverages must currently be handed over on retail sales premises, or in the case of Alko, at third-party pickup points. However, it is not required that the beverages are handed over to the buyer him/herself, which e.g. the state alcohol company very clearly advertises: "Do you want to send products as a gift? Or order them to be collected by someone else? This is possible at Alko's online store."⁹.

It is clear that the sales online of alcoholic beverages can be separated from the later delivery of those beverages in the meaning of paras 40-46 of *C-108/09 Ker-Optika*.

2.1. The act of selling alcoholic beverages online from other Member States

The sales over the internet of alcoholic beverages is an information society service in the meaning of the e-Commerce Directive (2000/31/EC).

According to Article 2(i) of the e-Commerce Directive the coordinated field concerns requirements with which the service provider has to comply in respect of the taking up of the activity of an information society service, such as requirements concerning qualifications, authorisation or notification.

⁷ Press release by the Helsinki Court of Appeal dated 7 February 2023, available in Finnish here: <https://oikeus.fi/hovioikeudet/helsinginhovioikeus/fi/index/tiedotteet/2023/hovioikeudentuomioalkoholijuomienverkkokauppaakoskevassaasiassa-syvtetorkeastaalkoholirikoksestahvattiinmuttavastaajatuumittintorkeastaveropetoksesta.r201078.html>

⁸ Response by the Finnish authorities on 29 April 2021 in EUP(2021)9837. Translated freely from Finnish.

⁹ Alko: "Gift orders". Page accessed on 29 July 2024. <https://www.alko.fi/en/services-shopping/alko-online-shop/gift-order>

Preamble 22 of the e-Commerce Directive states the following: "Information society services should be supervised at the source of the activity, in order to ensure an effective protection of public interest objectives; to that end, it is necessary to ensure that the competent authority provides such protection not only for the citizens of its own country but for all Community citizens; in order to improve mutual trust between Member States, it is essential to state clearly this responsibility on the part of the Member State where the services originate; moreover, in order to effectively guarantee freedom to provide services and legal certainty for suppliers and recipients of services, such information society services should in principle be subject to the law of the Member State in which the service provider is established."

Although the e-Commerce Directive and its cornerstone, the Country of Origin Principle enshrined in Article 3(2), have been in force well over two decades, there was for a long time some uncertainty regarding the derogation clause found in Article 3(4).

The EUCJ clarified in *C-390/18 Airbnb Ireland* (para. 96) that measures taken against a given information society service that have not been notified to the Commission and the Member State concerned cannot be enforced. The EUCJ then further clarified in *C-376/22 Google Ireland* (paras 58-60) that the derogation clause only concerns individual, named information society services, and that general and abstract measures aimed at a category of information society services fall outside the scope of the derogation clause. The EUCJ then stated that it is not even necessary to evaluate whether such measures have been notified. The EUCJ upheld these rulings in joined cases *C-662/22 and C-667/22 Airbnb Ireland and Amazon Services*.

It now stands clear that the Finnish authorities cannot enforce a requirement that a provider of an information society service established in and operating in another Member State has to hold a Finnish retail sales licence in order to sell alcoholic beverages to Finnish customers online.

2.2. The importation and delivery of alcoholic beverages sold online in other Member States

In accordance with *C-108/09 Ker-Optika*, the arrangement characterised by the sale of goods via the Internet and the delivery of those goods to the customer's home are to be viewed in the light of Articles 34 and 36 TFEU.

The state alcohol company Alko is a retail and not an import monopoly of alcoholic beverages, wherefore importation is caught by Article 34 TFEU. A ban on the importation of alcoholic beverages for private use was considered contrary to TFEU 34 in *C-186/05 Commission v. Sweden* and *C-170/04 Rosengren*. According to the authentic Swedish version of the judgement *C-186/05*, it is not required that the buyer arranges for the transportation through an independent third party in order for the importation to be considered taking place for private purposes. This is also confirmed in the ruling by the Supreme Court of Sweden of 7 July 2023¹⁰.

The Finnish authorities did try in 2017 (TRIS/653/2016/FIN) and in 2018 (TRIS/324/2018/FIN) to legislate a categorical ban on the importation of alcoholic beverages sold by distance selling. However, as the Commission issued detailed opinions in both cases, the Finnish authorities decided to leave out the import ban of what became the current Alcohol Act (1102/2017). The latter notification was

¹⁰ Judgement in case T 4709-22 by the Supreme Court of Sweden, paras 18-19: "In the legislative history, it was stated that the phrase 'other independent intermediary' was taken from the judgment in *Commission v Sweden*, and that imports through independent intermediaries other than professional intermediaries should also be authorised in order for Swedish law to agree with EU law. [...] It is irrelevant whether it is the seller or the buyer who has enlisted the carrier. However, if the seller himself brings the alcoholic beverage into Sweden, this importation is not permitted". Available in English here: <https://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/engelska-oversattningar/t-4709-22-eng.pdf>

withdrawn. The breach of the obligation to notify a technical regulation is a substantial procedural defect which renders the technical regulations enforceable (C-194/94 CIA Security International).

The Supreme Court of Finland stated the following in KKO:2018:49 (which implements C-198/14 Visnapuu): "The Supreme Court states, referring to the preparatory statements outlined above, that according to section 8, subsection 1 of the Alcohol Act of 1994 (1/1999), the importation of alcoholic beverages has not in itself required a permit. The procedure becomes contrary to the Alcohol Act only if the imported alcoholic beverages are used for commercial or other business purposes without a licence as required by the Alcohol Act. Therefore, the Supreme Court considers that the importation of alcoholic beverages in itself has not been contrary to the alcohol legislation."¹¹

The Finnish authorities on 29 April 2021 confirmed this same thing in the EU Pilot procedure by stating that the "provisions of the Finnish Alcohol Act concerning the retail sale of alcoholic beverages and the necessary licences apply only if the sale is considered to take place in Finland. Therefore, the Finnish Alcohol Act does not restrict the retail sale of alcoholic beverages deemed to take place in another country, even if the alcoholic beverages sold were to come for the consumption by a Finnish consumer in Finland."¹²

Firstly, the Country of Origin Principle enshrined in Article 3(2) of the e-Commerce Directive prohibits receiving Member States from applying their own retail licence schemes on information society services provided from other Member States. Secondly, in the current Alcohol Act there is no licence scheme aimed at economic operators transporting alcoholic beverages to consumers. Therefore, the online distance sales of alcoholic beverages from other Member States with separate transportation is currently legal.

3. ON THE APPLICABILITY OF THE TRANSPORT LICENCE ON BEVERAGES TRANSPORTED FROM ANOTHER MEMBER STATE

For the sake of clarity, it is still necessary to evaluate the proposed delivery licence in the light of EU law.

According to the proposed amended definition of 'retail sales', the act ends with the handing over on retail premises of the purchased alcoholic beverages to either the buyer or a licensed delivery agent. 'Transportation' is defined as a separate act which begins by receiving on retail premises alcoholic beverages which are to be delivered to a customer. The act of delivery could be carried out by any economic operator that has been granted the proposed licence. The delivery licence requirements and the need for staff to receive training, as well as the proposed government oversight measures, fees and sanctions, are targeted specifically and exclusively at the delivery agent and not at the seller. If the state alcohol company wishes itself to act as a transportation agent it has to apply for the proposed license. The requirements are therefore not specifically applicable to the exercise, by a domestic commercial monopoly, of its exclusive rights (C-456/10 ANETT, para 22). 'Delivery' is separate from 'retail sales', although connected to it, wherefore the proposed licensing scheme regarding the delivery of alcoholic beverages from approved retail sales premises to the buyer must necessarily be viewed in the light of Article 34 TFEU regardless of whether the beverages have been sold in retail by the state alcohol company or a licensed retail seller (C-456/10 ANETT, para 23; C-198/14 Visnapuu, para 87; C-170/04 Rosengren, para 18; C-189/95 Franzén, para 36).

However, the delivery of alcoholic beverages is in itself restricted in such a way that a licenced transport agent may only hand over alcoholic beverages stronger than 5,5 vol-% ethyl alcohol, or 8 vol-% ethyl alcohol if produced through fermentation. In the detailed justifications of the proposed

¹¹ KKO:2018:49, para 8. Translated freely from Finnish. <https://finlex.fi/fi/oikeus/kko/kko/2018/20180049>

¹² Response from the Finnish authorities on 29 April 2021 in EUP(2021)9837, translated freely from Finnish.

Paragraph 35a it is stated that this restriction is necessary in order to safeguard the national retail sales monopoly. The same issue is, however, already regulated and supervised by the government at the retail stage by restricting the licensed sales to beverages of a certain strength and to approved retail sales premises. Furthermore, an economic activity that is caught by Article 34 TFEU cannot be justified on the grounds of Article 37 TFEU, but by Article 36 TFEU or overriding requirements (C-198/14 *Visnapuu*, para 110). A restrictive measure can be considered to be an appropriate means of securing the achievement of the objective pursued only if it genuinely reflects a concern to secure the attainment of that objective in a consistent and systematic manner (C-333/14 *Scotch Whiskey Association*, para 37).

If the intention of the Finnish authorities is to enforce the delivery restrictions on beverages sold online and transported from other Member States - even though there are no legal grounds to do so - these measures would not be consistent and systematic in reducing the amount of alcohol consumed, and thus safeguarding the health and life of humans, since the same beverages could be delivered home by ordering them from the state retail monopoly. In fact, it would be a means of favouring a distribution channel for those goods by directing requests for the importation of beverages to the state alcohol company (C-170/04 *Rosengren*, para 47).

4. THE PROHIBITION ON TRANSPORT LICENCE HOLDERS HANDING OVER 'CRAFT BEER' AND 'ESTATE WINE'

In the notified draft, one of the two retail sales licences is downplayed in a strange manner. It is stated that the state alcohol company has a retail monopoly on alcoholic beverages exceeding 5,5 vol-% ethyl alcohol, and 8,0 vol-% ethyl alcohol when produced through fermentation, and that the retail licence that can be granted to producers of 'craft beer' and 'estate wine', as set out in Paragraph 17 second subparagraph of the current Alcohol Act, forms some kind of "exception". The Finnish authorities, in other words, seem to claim that this second licence somehow falls under the exclusive right of the monopoly even though the licence by definition can be granted to other economic operators.

The CJEU stated in *C-198/14 Visnapuu* (para 91) regarding the licence granted to retail sellers and the licence granted to producers that "those two licencing schemes are separable from the operation of the monopoly granted to Alko and must be examined in the light of Article 34 TFEU, as rightly submitted by the Finnish and Norwegian Governments".

In the draft proposal the Finnish authorities also go on to incorrectly say that "[t]he granting of a licence for the retail sales of alcoholic beverages is not subject to any requirements relating to the nationality of the applicant or to the country of origin of the products." In paragraph 106 of *C-198/14 Visnapuu* the EUCJ quite conversely stated that "the retail sale licence referred to in the second subparagraph of Paragraph 14 of the Law on Alcohol is available only to manufacturers of alcoholic beverages established in Finland, thus excluding manufacturers established in other Member States". This continues to be the case in Paragraph 17 of the current Alcohol Act.

Paragraph 17 subparagraph 2 of the current Alcohol Act allows licensed producers to sell in retail 'craft beer' (FI: *käsityöläisolut*) of a maximum of 12 vol-% ethyl alcohol and 'estate wine' (FI: *tilaviini*) of a maximum of 13 vol-% ethyl alcohol. The proposed amendment of Paragraph 3 point 11 and Paragraph 35 would broaden the definition of retail sales to include the handing over of alcoholic beverages on retail premises to a licensed transportation agent. The proposed Paragraph 17a would, in turn, allow the transportation company to apply for a transportation licence, and consequently, to take alcoholic beverages into transportation from licensed retail premises. However, as already stated, the proposed Paragraph 35a would limit the *delivery* of alcoholic beverages in such a way that beverages sold by licensed retailers would be limited to 5,5 vol-% ethyl alcohol, or 8 vol-% ethyl alcohol when produced by fermentation.

In other words, the aforementioned would lead to a situation where craft beer and estate wine could be legally sold, the beverages could be handed over to a licensed transportation agent, the transportation agent could transport the beverages to the doorstep of the customer, but the transportation agent would not be allowed *deliver* the beverages to their legal owner because the beverages exceed 8 vol-% ethyl alcohol. However, if that same customer purchases the beverages online from the state alcohol company, and even if that same licensed delivery agent transports the beverages, they may be handed over to the customer as his/her doorstep. This makes absolutely no sense: simply by listing its products in the Alko web shop the producer of craft beer or estate wine could circumvent these delivery restrictions. It is therefore not a means to curb the use of alcohol, but a means to direct the demand for craft beer and estate wine to the state alcohol company.

While one should refrain from speculation, it nevertheless seems highly likely that the Finnish authorities intend to enforce the delivery licence on beverages sold and transported from other Member States. This is emphasised by the fact that craft beer and estate wine are left outside the scope of home delivery, as the lower permitted alcohol level (5,5 / 8 vol-% ethyl alcohol) would conveniently exclude next to all wines which generate the bulk of sales of the state alcohol company¹³.

5. REQUIRED CLARIFICATIONS TO THE DRAFT PROPOSAL

Based on all of the above, it seems clear that the Finnish retail licence requirement does not apply to online sellers of alcoholic beverages established and operating in other Member States. However, in the name of legal certainty it would be beneficial that this were expressly stated in the Finnish Alcohol Act.

In a similar matter the Commission requested France, in the name of legal certainty, to clarify in the proposed legislative drafts TRIS/2023/0461/FR and TRIS/2023/0632/FR that the notified general and abstract measures regulating information society services would not apply to economic operators established in other Member States. The Commission requested the clarification be made in the final text regardless of France confirming that these measures would, due to the EUCJ ruling in *C-376/22 Google Ireland*, only apply to economic operators established in France or in third countries.

A similar kind of clarification is also needed regarding the Finnish Alcohol Act. In fact, the Deputy Parliamentary Ombudsman of Finland evaluated the current legal situation in Finland in the decision EOAK/911/2023. It is to be noted that this decision was made in response to a complaint lodged in March 2023, i.e. prior to the EUCJ ruling in *C-376/22 Google Ireland*. Nevertheless, the decision by the Deputy Ombudsman underpins the necessity to clearly specify which kind of distance selling from other Member States is permitted. It must be emphasised that the Deputy Parliamentary Ombudsman does not consider that the current Alcohol Act would contain a prohibition on distance selling when stating the following:

”I consider that the ambiguity in the regulation concerning the distance selling of alcohol jeopardizes legal certainty in a manner that I cannot deem acceptable. Furthermore, I note that the ambiguity surrounding the regulation of distance selling of alcohol complicates the ability of the enforcing authority to act in accordance with the requirements of good governance. In my view, the legal situation regarding the distance selling of alcohol is so unclear that it cannot be rectified by interpretation by the enforcing authority, but only through legislative action.”¹⁴

¹³ In 2023, 62% of the liters of alcohol sold by Alko were wines. Source: Alko’s press release dated 10 January 2024, available in Finnish here: <https://www.alko.fi/alko-oy/uutishuone/mediatiedotteet/alkon-myyntilitrat-vuonna-2023>

¹⁴ Decision EOAK/911/2023 by the Deputy Parliamentary Ombudsman on 6 June 2024. Translated freely from Finnish. Available in Finnish here: <https://www.oikeusasiamies.fi/r/fi/ratkaisut/-/eoar/911/2023>

The Constitutional Committee - which, in the absence of a constitutional court, is the highest authority on constitutional matters in Finland - stated in 2017 the following regarding the government proposal that became the Alcohol Act (1102/2017): "The Constitutional Law Committee considers that the proposed sections 32 and 90, together with section 1 of chapter 50a of the Criminal Code, do not prohibit distance sales for private use in the manner required by section 8 of the Constitution, as stated in the reasoning. The criminality is linked in the Criminal Code to the illegal importation of alcohol, not to 'distance sales.' Therefore, the proposed provisions and their justifications are unclear and somewhat contradictory. The prohibition of distance sales also raises significant EU law issues, which do not fall within the constitutional tasks of the Constitutional Law Committee to assess. Without taking a stance on these, the Committee notes that if the intention is to criminalise distance sales, a provision must be established that meets the legality principle under section 8 of the Constitution."¹⁵

It seems outright farcical to claim in the impact assessment of the notified proposal that alcohol can be bought on delivery from abroad "under *certain* conditions", when the supreme overseer of legality in Finland considers that the conditions are legally *uncertain* to the extent that it requires legislative action.

Furthermore, by claiming that alcoholic beverages can be bought - but apparently not sold - from abroad the Finnish authorities are completely overlooking The Constitutional Committee that found that the claimed ban on distance selling in the Alcohol Act is so unclear that it does not meet the principle of legality required by the Finnish Constitution. As stated earlier in the preliminary remarks, in 2022 the Special Prosecutor decided not to press charges against online distance sellers established in other Member States, and in 2023 the Helsinki Court of Appeal found online distance sales from other Member States to be legal.

The notified proposal would, indeed, add to the legal uncertainty surrounding the question of distance selling. If an online seller established in another Member State is required - as the Finnish authorities keep claiming - to hold a Finnish retail licence and to establish him/herself with physical retail sales premises in Finland, surely this could then be seen as such retail sales which require the proposed transportation licence if the beverages are to be delivered home to the customer. This, in turn, would allegedly limit the strength of the beverages delivered to 5,5 / 8 vol-% ethyl alcohol.

For the reasons stated above it is imperative that the legislative proposal does proceed in its notified form, unless it is clarified so that neither the retail licence nor the delivery licence requirements apply to online sales from another Member State when the seller operates outside of Finnish territory. This clarification would also end the need for the EU Pilot case EUP(2021)9837.

In Helsinki, 29 July 2024

Rikhard Sjöberg

M.Sc(Econ), B.Soc.Sc(Econ)
Helsinki, Finland

¹⁵ Statement by the Constitutional Committee of the Finnish Parliament PeVL 48 / 2017 vp. Translated freely from Finnish. Available in Finnish here: https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/PeVL_48+2017.aspx