



Brussels, 3 February 2021
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**THEMIS/EU PILOT EUP(2021)9837
REQUEST FOR INFORMATION TO THE FINNISH AUTHORITIES**

Dear Sir, / Dear Madam,

In the essence of time, we are sending you the following letter and questions in English. We intend to send to you the following communication in Finnish by 10 February 2021, please note that relevant recommended deadlines would only start to apply from when you receive the Finnish language version.

The Commission has received several complaints against Finland related to possible obstacles to the sales of certain alcoholic beverages.

According to these complaints, the current Finnish Alcohol Act as interpreted in the Guidance by the National Supervisory Authority for Welfare and Health, Valvira, and as currently enforced by Alko, may raise concerns with EU law. In particular, the principle of the free movement of goods as enshrined in Articles 34 and 36 of the Treaty on the Functioning of the European Union and the e-Commerce Directive.

According to the information gathered so far by the Commission, the situation in Finland as regards the sales of certain alcoholic beverages, is as follows:

- §17 of the Finnish Alcohol Act allows retail selling, not only by Alko, but also by any person having obtained a retail trade license from the competent authority for alcoholic beverages containing a maximum of 5.5 percentages by volume ethyl.
- Such beverages may be sold by license holders in Finland e.g. grocery stores, retailers, etc established in Finland. However, sales at distance or online by such licence holders are not allowed in Finland according to official guidance by Valvira¹.
- Retailers or sellers of beverages with an alcohol content of up to 5,5% that are established in other EU Member States are not able to obtain a Finnish licence to sell at distance such beverages nor is there a system to recognise other national EU Member States retail licences in Finland.

¹ Available in Finnish:
<https://www.valvira.fi/documents/14444/201001/Yksityishenkil%C3%B6n+alkoholin+maahantuontioikeus/4caa5790-1e35-4e24-a4b2-acb2c2905bb4>

- Alko's practise in Finland for alcohol beverages with a content of 2,8 % - 5,5 % allows orders to be placed by consumers online or via an Alko mobile application, and then picked up from authorised pick-up points, some of which are third party premises.
- Alko requires economic operators to obtain an authorisation of the producer or owner of the trademark before Alko agrees to offer processing of all beverages relating to its monopoly.

In this regard, we would appreciate if the Finnish authorities could complement and clarify any of the points described above and provide replies to the following questions:

1. Is it correct that, as a consequence of the the practice and guidance by the National Supervisory Authority for Welfare and Health, Valvira², distance selling, by retailers or sellers established in another Member State, of alcoholic beverages containing a maximum of 5.5 percentages by volume ethyl, is impossible in Finland, regardless of there not being such direct prohibition in the Alcohol Act? If the Finnish authorities consider that Valvira does not have such practice, would it be possible to elaborate how retailers or sellers established in another Member State could sell alcoholic beverages containing a maximum of 5.5 percentages by volume ethyl at a distance selling in Finland, and under which conditions?
2. If the above prohibition exists, how do the Finnish authorities enforce it in relation to on-line sellers established in other Member States preventing the on-line sale of some or all alcohol beverages? If yes, what are the legal grounds for these enforcement measures (e.g. lack of Finnish retail license, violation of Alko's monopoly over on-line sales, breach of delivery restrictions applicable to alcohol products, etc...)? If such enforcement measures were adopted, to what extent was the country of origin of the provider informed about the measures and the Commission notified of these measures, following the procedure in Article 3(4) of the e-Commerce Directive? What would be in this case the general interest justifying such cross-border restriction? Which reasons would make such restriction to cross-border on-line sales necessary for the achievement of such objective?
3. Are retail licenses to sell alcoholic beverages containing a maximum of 5.5 percentages by volume ethyl available to retailers, sellers or producers that are not established in Finland but would be interested in selling at distance? If not, what is the justification to limit the access of retail licences only to retailers or producers established in Finland? If yes, could you point the relevant legal provision where this possibility is regulated?
4. Are the Finnish authorities planning to take any legislative action on the basis of the proposal from the working group set up under the Ministry of Social Affairs and Health presented in April 2018 in relation to the regulation of cross-border sales of alcoholic beverages? And if yes, what type of action?
5. What is the objective of Alko's trademark authorisation procedure, which requires economic operators to obtain an authorisation of the producer or owner of the trademark before Alko agrees to sell products that has been submitted for offer

² Idem.

processing?³ Have the Finnish authorities considered less restrictive means to obtain the same objective?

6. Moreover, what is the objective to only allow one economic operator the right to offer products through Alko, even if several suppliers have obtained a trademark authorisation by the producer or trademark owner?⁴

We would be very grateful if you could reply to these questions within eight weeks following the receipt of this request.

If you need further information, please do not hesitate to contact Mr Christian Scharling (e-mail: christian.scharling@ec.europa.eu and telephone +32 229 50718).

Yours faithfully,

(e-signed)
Hans Ingels
Head of Unit

³ Available in English at (page 8): https://www.alko.fi/INTERSHOP/static/WFS/Alko-OnlineShop-Site/-/Alko-OnlineShop/en_US/for%20suppliers/Muut/VOT/Alko%20-%20Listing%20instructions%20for%20alcoholic%20preparations%2015.7.2020.pdf

“To be approved for offer-processing, an authorization of the producer or the owner of the trademark must accompany the offer. If there are unclarities in the product’s industrial rights (e.g. trademark rights), Alko may exclude the product from the offer processing. Authorization is not required, if the offered product is the company’s own trademark.”

⁴ Idem, page 25:

“If the producer/trademark owner has authorized several different companies to represent the same products and Alko therefore receives several different offers of the same products from different suppliers within the same search, all such offers received will be rejected for clashing with each other.”