



Comments of the Federation of the Brewing and Soft Drinks Industry of Finland on the Finnish Notification of the Government's proposal to Parliament for a Act amending Section 17 of the Alcohol Act

The Federation of the Brewing and Soft Drinks Industry, the organization representing the interests of producers of beer, cider, long drinks, soft drinks, and mineral waters in Finland, appreciates the opportunity to comment on the draft act amending Section 17 of the Alcohol Act.

Background information

The preparation of this proposal is part of the government's plan to responsibly reform Finland's alcohol policy in a European direction, building on the overall reform of the Alcohol Act that took place in 2018. According to the entry, the retail sales license defined in Section 17 of the current Alcohol Act will be extended to include fermented alcoholic beverages with an alcohol content of up to 8 per cent of alcohol by volume, in addition to beverages with an alcohol content of up to 5.5 per cent of alcohol by volume.

Prime Minister Petteri Orpo's government program (20 June 2023) states, among other things, that Finland's economic and productivity growth has been slow for a long time. The government aims to promote fair and open competition. The government has declared that it will continue to open the market in a determined and responsible manner, create conditions for growth in the domestic market and increase the well-being and freedom of Finns. In this respect, the agreed government program contains a number of measures related to opening up the alcohol market and increasing competition.

The government justifies the change on the grounds of opening up and increasing competition, but the measures it proposes will have a discriminatory effect on competition. In addition, Finnish alcohol policy has for decades been based on health policy and thus on the reduction of alcohol-related harm, and this has also been mentioned as one of the driving forces behind the amendment. However, the arguments presented in the notification do not provide any scientific reason why alcoholic beverages of the same strength, produced in different ways, should be treated differently. The method of production of the alcoholic beverage is not relevant to health. Differentiation based on the method of production is discriminatory unless it is based on a well-researched and effective health policy. The arguments and studies used to justify young women drinking are also outdated and inadequate.

The debate on the production method restriction has been going on in Finland for a long time and no science-based justification has ever been found for its importance for health. As early as 1994, the Finnish Parliamentary Committee on Economic Affairs saw no reason to differentiate between beverages according to their method of production (TaVL 13/1994 vp), stating that the distinction should be based on objective criteria such as alcohol content and that no health policy justification could be given for different treatment of products of the same strength. Finally, in 2017, the revised Alcohol Act removed this completely artificial limit and, from 2018, all alcoholic products up to 5.5% can be sold in retail outlets, regardless of the method of production.



Prohibited State Aid

We continue to have concerns that the introduction of the proposal would affect the competitive environment of the industry in a way that is contrary to European Union state aid rules. As proposed, it sets artificial standards that affect economic competitiveness without due cause.

According to Article 107 of the Treaty on European Union and the case law of the Court of Justice of the European Union, a law may constitute prohibited state aid if it is deemed to confer a selective advantage on certain economic operators. The assessment of State aid is a case-by-case assessment, taking into account the relevant economic and legal context of each case.

The restrictions on retail sales are contained in section 17 of the Alcohol Act (1102/2017). Currently, the state-owned alcohol company Oy Alko Ab has the exclusive right to retail sales of alcoholic beverages containing more than 5.5% by volume of ethyl alcohol. As stated in the TRIS notification, the Government proposes to allow the retail sale of fermented alcoholic beverages containing more than 5.5 % by volume and not more than 8.0 % by volume in retail stores. The proposal will result in different retail sales regulations for competing products. For example, long drinks (traditional Finnish RTD) produced by fermentation will be available for sale in authorized retail stores, whereas long drinks produced by ethyl alcohol will only be available through Alko.

There are only 372 Alko retail stores in Finland and over 6440 authorized retail outlets, which results in a significant difference in the sales potential through the respective retail channels. Due to the significantly higher sales potential through more than 6440 authorized retail stores compared to sales through 372 Alko retail stores, the aid can be considered to be substantial. Also the opening hours are more limited in Alko than in retail stores. The retail exemption can be considered as a grant of special or exclusive rights.

As regards the retail sales exemption, the proposed exemption is also selective as it applies only to alcoholic beverages with an alcoholic strength exceeding 5.5% by volume and a maximum alcoholic strength by volume of 8.0% by volume produced by fermentation. The application of the retail sales exemption will lead to a distortion of competition within the internal market by granting a selective advantage to alcoholic beverages produced by fermentation. The access to a significantly larger retail channel can also be considered as an economic advantage.

Taxation

At the same time as changing the alcohol legislation, the government has also decided to increase the excise duty on alcohol. Again, groups of ethyl alcoholic beverages are treated differently from fermented beverages of the same strength.

The proposed tax rates change by increasing the tax on non-fermented alcoholic beverages containing less than 5.5 per cent by volume, while maintaining the current level for similar fermented beverages without objective reasons. The proposed tax changes discriminate between producers and importers on the basis of the production method, even though they are all in a comparable factual and legal situation in the light of the objective of the tax measure. The proposal leads to different tax treatment of competing products. For example, long drinks produced by fermentation will benefit from a lower tax than long drinks produced by ethyl alcohol even though they are the same strength.

The Finnish Competition and Consumer Authority has also expressed concerns about the restriction of the method of production in the context of excise duty on alcohol.

"It may be justified to tax different alcoholic beverages differently if, for example, they have different health effects. For example, if high-alcohol drinks cause more harm than low-alcohol drinks, it could be justified to tax them more than low-alcohol drinks. However, the taxation of drinks with similar health and other adverse effects



should in principle be neutral. If taxation leads consumers to choose a drink that they would not otherwise choose, there will be welfare losses. Such a situation could arise, for example, for long drinks, which are subject to two different tax treatments depending on the method of production (fermented and ethyl alcohol based long drinks), although their use is likely to be largely similar. The Finnish Competition and Consumer Authority does not comment on the impact of the tax reform but recommends further examination of whether there are sufficient reasons for different tax treatment of similar alcoholic beverages".¹

The explanatory memorandum to the law states that the change would mainly increase sales of stronger beers and only those beverages currently available in Alko. However, the change in the law will bring many stronger fermented RTD's onto the market. These will also have a much lower tax level than ethyl alcohol drinks, making them very attractive to young people.

Effectiveness requirement

A good legal system can be seen as a prerequisite for effectiveness. The effectiveness of a piece of legislation, which is intended to have a certain effect, is measured by how well it achieves its steering effect, i.e. how well it achieves the desired objective. Good legislation is therefore effective in achieving its objectives.

The proposal is based on the assumption that restricting the method of production will potentially reduce girls' drinking. At the same time, however, it allows stronger ciders to be sold in shops, even though the law clearly states that cider is one of girls' favorite alcoholic drinks. In other words, the amendment covers only some of the alcoholic beverages that young girls might consume, not all. In this way, the amended legislation could only encourage girls to drink more cider. Measured against this objective of reducing girls' drinking, the amendment cannot be considered effective.

On the other hand, the bill explicitly recognizes that men drink more and have significantly more alcohol-related problems. Nevertheless, it raises the limit for beer, the drink of choice for men, which may increase problems among young men. Justifications that focus only on girls are discriminatory against young people in general and do not achieve the object of the legislation.

Non-discrimination

Non-discrimination is a prerequisite for good and effective legislation. Non-discriminatory legislation requires that comparable situations are not treated differently and that different situations are not treated in the same way unless such treatment is objectively justified. Any inequalities should be considered in the light of the underlying objectives of alcohol legislation. If two alcoholic beverages of the same alcoholic strength are treated differently simply because they are produced by different methods, the State must have a legitimate justification for the difference in treatment. For example, if there is a public health justification, it must be possible to show that an alcoholic beverage subject to greater restrictions (e.g. ethanol-based RTD) has more harmful health effects than an alcoholic beverage produced by a different method (e.g. fermented RTD) because of its production method especially when consumed in the same quantities and with the same alcoholic strength.

Therefore, any measures restricting a freedom to conduct business should be justified and proportionate and should not go beyond what is necessary to achieve the objective of a free and competitive internal market. Fermented and non-fermented alcoholic beverages exert competitive pressure on each other.

For example, there might be a justification relating to the protection of public health. If the objective of the State's alcohol or tax policy is to protect public health by discouraging the consumption of 'alcopops', the method of production should not be a relevant indicator of the achievement of that objective. The restriction is

¹ https://api.hankeikkuna.fi/asiakirjat/2c6d623b-01f4-439a-91c4-da6a1c1fb58d/73ad4dbf-c8d8-4da2-97a3-30b4975f292c/LAUSUNTO_20230913174550.PDF



therefore also contrary to the principle of proportionality because: (i) in order to protect public health in the manner described above, it is not necessarily necessary to restrict the sale of alcoholic beverages produced by a particular method.

Effects of the internal market

As the Union is based upon a custom union, customs needs to know the commodity code for the imported goods in order to calculate the correct amount of possible duties and taxes. Based on the concept of an internal market, that code should contain the general rules and procedures which ensure the implementation of the tariff and other common policy measures introduced at Union level in connection with trade in goods between the Union and countries or territories outside the customs territory of the Union, taking into account the requirements of those common policies.

Alcoholic beverages are very often discussed in the Tariff and Statistical Nomenclature Section of the Customs Code Committee. In particular, the discussion moves between codes 2206 and 2208 as the tax difference between the two categories is considerable. Member States sometimes have very different views and interpretations. The number of innovative beverages is constantly increasing and the old-fashioned classification into beer-wine-alcohol categories is becoming more and more difficult. Discussions in the Customs Code Committee can take a long time, and during this time a company wishing to sell in Finland would not know whether it could sell at retail stores or only in Alko. Similarly, it will be difficult to monitor whether drinks are clearly produced only by fermentation and can be sold in retail stores with up to 8% alcohol. Authorities do not have possibility to test all the products at the market.

The health arguments

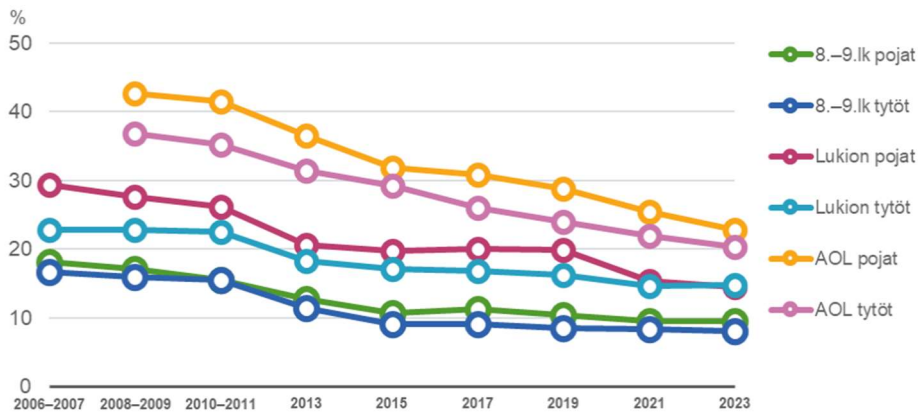
The Federation supports the state's efforts to protect the health of minors through some restrictions in alcohol legislation. However, we are concerned about the specific approach taken by the Finnish authorities.

It is noteworthy that Finland has made significant progress in recent years with regard to underage drinking, even after the restriction on production methods was removed from the 2017 legislation.

A study conducted by the Finnish Institute for Health and Welfare (THL) in the autumn of 2023 shows that alcohol consumption and binge drinking, especially among young people, is steadily decreasing. The trend has been similar since 2018, despite the change in legislation that removed discrimination based on production method and liberalised retail sales of all alcoholic beverages below 5.5%. There has been a decrease for both boys and girls, but boys still binge drink more than girls. However, the Communication only justifies the changes on the basis of a possible increase in drinking by girls, rather than being concerned about boys who consume more alcoholic beverages.



Kuvio 12. Tosi humalassa vähintään kerran kuukaudessa olleiden nuorten osuus su-
kupuolen ja kouluasteen mukaan vuosina 2006–2023, %. THL, Kouluterveyskysely.



Caption in English: In 2023, drinking alcohol to the point of drunkenness at least once a month was more common among students in vocational schools (23% boys, 20% girls) than among students in upper secondary schools (15% boys and girls) and in grades 8 and 9 of basic education (10% boys, 8% girls).

Research based evidence

“It is the alcohol that causes harm, not the beverage” The World Health Organization a statement in The Lancet Public Health²

The explanatory memorandum of the law strongly emphasizes the ESPAD³ study, which shows what drinks are being consumed, particularly by underage young people. Young people were asked about drinks in general and the answer is that 'Long Drink' (RTD) are one of the favorites. However, the survey does not distinguish between mixed beverages according to the way they are made, i.e. the questions do not take into account that the RTD category can include drinks such as 1) malt drinks to which different fruit juices or other flavorings have been added, 2) wine coolers: drinks containing wine to which ingredients such as fruit juices or other flavorings have been added, or 3) mixed drinks containing distilled alcohol and sweet liquids such as fruit juices or other flavorings. The survey was also conducted between 2015 and 2019, and for the first three years, from 2015 to 2017, only fermented beverages were available in retail outlets. RTDs containing ethyl alcohol were only sold in Alko and were significantly more expensive, and as these are young minors with no personal income, it is very unlikely that they would have bought more expensive products.

Conclusions

In light of the above, we respectfully request the European Commission to take all further necessary steps to amend the proposed regulation and ensure full equality between products.

We cannot ignore the facts:

- The Government's proposals have failed to find a single real-world, evidence-based study anywhere in the world to suggest that the way RTDs are produced has any impact on what young people drink.

² <https://www.who.int/europe/news/item/04-01-2023-no-level-of-alcohol-consumption-is-safe-for-our-health>

³ https://www.julkari.fi/bitstream/handle/10024/138792/ESPAD_tilastoraportti2019.pdf?sequence=6&isAllowed=y



- The proposed legislation is poorly targeted, inefficient, unfair and fails to treat product categories fairly.
- Combined with very unequal tax treatment, the barrier to trade will constitute a breach of state aid under Article 107 TFEU.
- It is worth noting that fermented RTDs are already currently less expensive than ethyl alcohol-based beverages and are for the most part produced by retailers (private labels), so they would already be attractive to minors.
- Even THL (Finnish Institute for Health and Wellbeing), in its preliminary comments while trying to justify the production based restrictions, stated that "it may be difficult to justify why it is now a necessary and proportionate measure to promote public health, as it has been removed from the legislation in 2018".

The European Commission should encourage the Finnish government to only take measures that are evidence-based, proportionate and implemented on a non-discriminatory basis. When the percentage limit for alcoholic beverages sold in retail stores will be increased, this should apply to all beverages, regardless of the method of production.

Thank you for your consideration of our comments and we remain at your disposal for any additional information or clarification.

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