

Message 104

Communication from the Commission - TRIS/(2019) 03695  
Directive (EU) 2015/1535  
Translation of the message 103  
Notification: 2019/0479/NL

Forwarding of the observations of a Member State (Romania) (article 5, paragraph 2, of Directive (EU) 2015/1535).  
These observations do not have the effect of extending the standstill period.

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(MSG: 201903695.EN)

1. MSG 104 IND 2019 0479 NL EN 02-04-2020 30-12-2019 COM 5.2 02-04-2020

2. Romania

3A. Ministerul Economiei, Energiei i Mediului de Afaceri

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3B. Ministerul Economiei, Energiei i Mediului de Afaceri

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4. 2019/0479/NL - X00M

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. 1. The notified draft provides that all tobacco products should be uniformly packaged and prohibits application of the brand logo.

The provisions of the draft thus restrict the property rights of the holder of the registered brand to use the brand under the conditions in which it was registered and breach the provisions of the relevant international treaties on the protection of industrial property: the Paris Convention for the Protection of Industrial Property and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The explanatory note specifies that: '[...] the proportionality of these measures and their impact on intellectual property rights will be examined'. However, the Netherlands has not made this brand restriction impact assessment available.

2. The draft requires the brand name to be written in certain colours, in certain characters of very small size (size 10), which makes it impossible for sellers to distinguish between packs because all packs are the same neutral colour and all markings are presented uniformly. In our opinion, size 12 characters could resolve this problem.

3. In point 3 of the explanatory note, the notified draft provides that 'Anything that is not specified in this order is therefore prohibited'. On the other hand, the e symbol appears on packaging in which roll-your-own tobacco is marketed, in accordance with the provisions of Directive 76/211/EEC on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain prepackaged products. In this context, it could be understood that it will be prohibited to place the e symbol on the packaging of roll-your-own tobacco, which would breach the provisions of Directive 76/211/EEC. We would ask the Netherlands authorities to clarify this aspect.

4. Concerning the outer packaging of the carton, the new paragraph 4(c) of Article 3.7 of the notified draft provides as follows:

'[can] contain an envelope made of unprinted, uncoloured and transparent cellophane with a uniform finish that can contain a cellophane strip, provided that the cellophane strip:

1. is not more than three millimetres wide;

2. runs in the same reading direction as the text warning from the combined health warning; and

3. is transparent or black, of which a section not more than fifteen millimetres in length can, in contrast, be transparent or black'.

On the other hand, the draft text specifies that 'Anything that is not specified in this order is therefore prohibited.' In this context and knowing that labels (stickers) are currently applied to the outer cellophane of cigarette cartons to ensure product traceability, we would ask the Netherlands authorities to clarify whether the respective labels (stickers) may still be applied to the cellophane of the cartons.

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