

Message 315

Communication from the Commission - TRIS/(2019) 02845
Directive (EU) 2015/1535
Notification: 2019/0337/S

Detailed opinion from the Commission (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 13-01-2020.

Comunicado detallado - Podrobné vyjádření - Udførlig udtalelse - Ausführlichen Stellungnahme - Üksikasjalik arvamus - Επιμεριστωμένη γνώμη - Detailed opinion - Avis circonstancié - Parere circostanziato - Detalizēts atzinums - Detali nuomonė - Részletes vélemény - Opinioni dettaljata - Uitvoerig gemotiveerde mening - Opinia szczegółowa - Parecer circunstanciado - Podrobný úsudok - Podrobno mnenje - Yksityiskohtainen lausunto - Detaljerat yttrande - Подробно становище - Aviz detaliat - Aviz detaliat.

Amplia el plazo del estatu quo hasta 13-01-2020. - Prodlužuje lhůtu pro stávající stav až do 13-01-2020. - Fristen for status quo forlænges til 13-01-2020. - Die Laufzeit des Status quo wird verlängert bis 13-01-2020. - Praeguse olukorra tähtaega pikendatakse kuni 13-01-2020. - Παρατείνει την προθεσμία του status quo μέχρι την 13-01-2020. - Extends the time limit of the status quo until 13-01-2020. - Prolonge le délai de statu quo jusqu'au 13-01-2020. - Proroga il termine dello status quo fino al 13-01-2020. - Pagarina "status quo" laika periodu līdz 13-01-2020. - Pratešia status quo laiko limitą iki 13-01-2020. - Meghosszabbítja a korábbi állapot határidejét 13-01-2020-ig. - Jestendi t-terminu ta' l-istatus quo sa 13-01-2020. - De status-quo-periode wordt verlengd tot 13-01-2020. - Przedłużenie status quo do 13-01-2020. - Prolonga o prazo do statu quo ate 13-01-2020. - Časový limit momentálneho stavu sa predĺži až do 13-01-2020. - Podaljša rok nespremenjenega stanja do 13-01-2020. - Jatkaa status quo määräaika 13-01-2020 asti - Förlänger tiden för status quo fram till: 13-01-2020 - Удължаване на крайния срок на статуквото до 13-01-2020 - Prelungește termenul status quo-ului până la 13-01-2020.

Die Kommission hat diese ausführliche Stellungnahme am 14-10-2019 empfangen.
The Commission received this detailed opinion on the 14-10-2019.
La Commission a reçu cet avis circonstancié le 14-10-2019.

ОГРАНИЧЕН - OMEZENÝ PŘÍSTUP - BEGRÆNSET - ZUGANGSBESCHRÄNKT - ΕΣΩΤΕΡΙΚΗ ΧΡΗΣΗ - LIMITED - LIMITADO - PIIRATUD - RAJOITETTU - LIMITÉ - KORLÁTOZOTT HOZZÁFÉRÉS - RISERVATO - RIBOTO NAUDOJIMO DOKUMENTAS - IEROBEŽOTAS PIEEJAMĪBAS DOKUMENTS - RISTRETT - RESTRITO - LIMITAT - OBMEDZENÝ - OMEJENO - BEGRÄNSAT

Document handled in the framework of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical standards and regulations.

This document is only releasable to staff in the European Commission and the Member States with an established need-to-know in the framework of Directive (EU) 2015/1535.

When bearing the marking 'LIMITED', this document shall not be releasable for publication. When transmitting it via electronic means within the Commission, SECeM (SECure EMail) should be used.

In case you are the holder of this document without having the established need-to-know, as indicated above, inform the author, originator or sender immediately and return it securely unread. Failure to do so shall be considered a breach of security, which may give rise to disciplinary or legal action.

(MSG: 201902845.EN)

1. MSG 315 IND 2019 0337 S EN 14-10-2019 14-10-2019 COM 6.2(2) 14-10-2019

2. Commission

3. DG GROW/B/2 - N105 04/63

4. 2019/0337/S - X00M

5. article 6, paragraph 2, second indent of Directive (EU) 2015/1535

6. Within the framework of the notification procedure under Directive (EU) 2015/1535, the Swedish authorities notified to the European Commission on 12 July 2019 the "Ordinance amending the Fuel Ordinance (2011:346)" (hereinafter 'the notified draft').

According to the notification message, certain environmental information, among them the country of origin of fossil and biofuel raw materials contained in the fuel, are to be made available to consumers in a declaration that is affixed to the fuel dispensers at the refill stations.

Examination of the notified draft has prompted the Commission to deliver the following detailed opinion.

1. Definitions in the notified draft

The notified draft defines what shall be considered as environmental information about the fuel, how the

information shall be made accessible for consumers, the relevant time period to which the data refers and which type of implementing acts should be adopted:

“§ 2a For the purposes of this Ordinance environmental information about the fuel means information about a fuel's emission of greenhouse gases over its life cycle, which fossil raw materials or renewable raw materials are contained in the fuel, and the country of origin of these raw materials.

(...)

§ 11a Those engaged in the commercial activity of providing a liquid or gaseous fuel, or who in that commercial activity also provide electricity as a fuel, shall provide the consumer with environmental information about the fuel that is being provided.

The information provided shall be in accordance with the provisions of the regulations laid down by the Swedish Energy Agency as defined in § 13 and shall:

(...)

3. be presented in abbreviated form or by reference to the website in a declaration affixed to the devices that are used by the companies to enable consumers to refill such fuels.

It shall be stated at the point of sale that the information concerns historical data about the fuel that is being sold and is not specific data about the fuel that is actually being provided at time of purchase.

§ 13 The Swedish Energy Agency may issue regulations concerning:

(...)

3. the design and content of consumer information in accordance with § 11a and when the information is to be updated, affixed to devices for refilling fuel and published on the website.

The regulations referred to in the first paragraph of point 3 shall contain, in cases concerning the country of origin of the raw materials, information that is available to the fuel supplier, and which means that consumers are given information on the origin of the raw materials. If the country of origin is outside the European Union or the EEA, but there is no information on which country is the country of origin, the regulations mean that the consumers are to be informed thereof.” (highlights in bold)

2. Assessment under TFEU Article 34

According to the notified draft, environmental information represents information based on the reported data from the previous calendar year. This historical environmental data, besides information about the fuel's emission of greenhouse gases over its life cycle, has to contain the country of origin of raw materials not only on the supplier's website, but also on a declaration affixed to the fuel dispensers at the refill stations as well. This 'origin marking' obligation applies to raw materials contained in the fuel produced in both, Member States and in third countries. Concerning 'origin marking' for fuels produced in or imported from Member States of the EU, the European Court of Justice (ECJ) has held that all measures which are capable of hindering directly or indirectly, actually or potentially, intra-EU trade are to be regarded as measures having equivalent effect to quantitative restrictions and are on that basis prohibited by TFEU Article 34.

The indication of origin of products or raw materials may render the marketing of products coming from other Member States more difficult than domestic products. As such, the ECJ has underlined that as regards the interpretation of TFEU Article 34, the purpose of indications of origin or 'origin marking' is to enable consumers to distinguish between domestic and imported goods and that this enables them to assert any prejudices, which they may have against foreign goods. Within the single market, the legal obligation of an 'origin marking' requirement can therefore make the marketing in a Member State of goods produced in other Member States more difficult. Consequently, a requirement to publish the origin when it is a Member States of the European Union or the EEA of fossil or renewable raw materials contained in the fuel among the data on environmental information intended for consumers at the refill station represents a measure capable of hindering imports of fuels produced in other Member States and is therefore contrary to TFEU Article 34.

3. Justification according to TFEU Article 36

The ECJ has consistently found that national legislation or a national practice that constitutes a measure having equivalent effect to quantitative restrictions may be justified on one of the public interest grounds listed in Article 36 TFEU or by overriding requirements. In either case, the national provision must be, in accordance with the principle of proportionality, appropriate for ensuring the attainment of the objective pursued and must not go beyond what is necessary in order to attain that objective.

According to settled case law, national measures that are capable of hindering intra-EU trade may inter alia be justified by overriding requirements relating to the protection of the environment.

In order to establish whether a measure is proportionate, having regard to the legitimate aim pursued, namely the protection of the environment, it needs to be determined whether it is necessary and appropriate in order to secure the authorised objective.

The Swedish authorities estimate in the notification message that the requirement to provide consumers with environmental information about fuels is to be considered justified for reasons relating to the protection of the environment. It is explained that consumers are expected to be able to contribute to the protection of the environment in their daily activities by choosing fuels with low emissions of climate gases, for example by choosing fuels that have low greenhouse gas emissions thanks to a high content of sustainable biofuel.

To this extent, the Commission is of the opinion that raising awareness of consumers on major differences among the fuels may significantly contribute to making informed environmentally friendly choices of fuel. Hence, environmental information about the fuels at the filling station available to consumers in a declaration that is affixed to the fuel dispensers at the refill stations can be a measure appropriate to achieve the objective of environmental protection.

However, the Commission has doubts that the origin of raw materials among the environmental information is suitable for drawing conclusions on the environmental impact of a specific type of fuel. Therefore, the origin marking of the raw materials does not seem appropriate to achieve the objective of environmental protection.

Furthermore, even if the origin of raw materials of the fuel is considered as part of the environmental information, which is in general appropriate to achieve the environmental objective, the necessity of this specific data in the light of the environmental objective has to be assessed: It should be established whether the measure, which includes the origin of raw materials among environmental data, goes beyond what is necessary to achieve the legitimate public objective – the protection of the environment.

Environmental information (§ 2a of the notified draft) includes 1) information about a fuel's emission of greenhouse gases over its life cycle, which fossil raw materials or renewable raw materials are contained in the fuel and 2) country of origin of these raw materials.

On 7 August 2019, the Commission requested supplementary information to clarify the reasons for including the country of origin of raw materials of fuel among the environmental information intended for consumers. The Swedish authorities replied to request for supplementary information on 28 August 2019.

According to the Swedish authorities' response, the emissions of greenhouse gases will vary, depending on where the raw material is cultivated, what energy is used in the process and which transport route the raw materials and fuel use. Based on this, the raw materials' country of origin is relevant in the assessment of a biofuel's emissions of greenhouse gases and thus the country of origin is also relevant in the assessment of the fuel's environment and climate impacts.

The Commission does not agree with this argument to the extent that data about the fuel's greenhouse emission, as concluded based on § 2a of the notified draft, will be already included in the environmental information.

Therefore, first, consumers will be able to find calculated values of greenhouse emission affixed to the fuel dispensers, thus there will be no need to proceed to further scientific calculations of emissions of greenhouse gases based on where the raw material is cultivated, what energy is used in the process and which transport route the raw materials and fuels use. Secondly, as it is explained by the Swedish authorities, the reason why the environmental information is made available to consumers through a declaration affixed to the fuel dispensers at the refill stations and not only on the respective fuel suppliers' websites is to reach, "a wider audience than just the most engaged consumers". An average consumer is considered reasonably well informed and reasonably observant and circumspect. However, it cannot be expected of average consumers to be capable of accomplishing scientific calculations of greenhouse emissions based on the origin of the fuel before deciding for which type of product they should opt for.

Consequently, including the origin of the fuel raw materials, when produced in Member States, among the data on environmental information goes beyond what is necessary to achieve the objective of environmental protection, which can be achieved by less restrictive measures. For example, the information about a fuel's emission of greenhouse gases over its life cycle as well as fossil raw materials or renewable raw materials contained in the fuel is enough and necessary to achieve the objective of environmental protection through raising awareness of consumers.

For the above reasons, the Commission delivers a detailed opinion provided for in Article 6(2) of Directive (EU) 2015/1535, to the effect that § 2a and § 13 paragraph 2 of the notified draft would be in breach of Articles 34 and 36 TFEU, were the notified draft to be adopted without giving due consideration of the above remarks.

The Commission would remind the Swedish Government that under the terms of Article 6(2) of the above-mentioned Directive (EU) 2015/1535, the delivery of a detailed opinion obliges the Member State, which has drawn up the draft technical regulation concerned, to postpone its adoption for six months from the date of its notification.

This deadline therefore comes to an end on 13 January 2020.

The Commission further draws the attention of the Swedish Government to the fact that under this provision the Member State which is the addressee of a detailed opinion is obliged to inform the Commission of the action which it intends to take as a result of the detailed opinion.

The Commission furthermore invites the Swedish Government to communicate the adoption of the definitive text of the draft technical regulation concerned, in accordance with Article 5(3) of Directive (EU) 2015/1535.

Should the Swedish Government not comply with the obligations foreseen in Directive (EU) 2015/1535 or should the text of the draft technical regulation under consideration be adopted without account being taken of the above-mentioned objections or be otherwise in breach of EU law, the Commission may commence proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union.

Elżbieta Bieńkowska
Member of the Commission
European Commission

Contact point Directive (EU) 2015/1535
Fax: +32 229 98043
email: grow-dir2015-1535-central@ec.europa.eu