Message 315

Communication from the Commission - TRIS/(2019) 01119
Directive (EU) 2015/1535
Notification: 2019/0022/I

Detailed opinion from the Commission (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 22-07-2019.

Comunicado detallado - Podrobné vyjádření - Udförlig udtalelse - Ausführlichen Stellungnahme - Üksikasjalik arvamus - Εμπεριστατωμένη γνώμη - Detailed opinion - Avis circonstancié - Parere circostanziado - Detalizēts atzinums - Detali nuomonė - Részletes vélemény - Opinjoni 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 22-07-2019. - Prodlužuje lhůtu pro stávající stav až do 22-07-2019. - Fristen for status quo forlænges til 22-07-2019. - Die Laufzeit des Status quo wird verlängert bis 22-07-2019. - Praeguse olukorra tähtaega pikendatakse kuni 22-07-2019. - Παρατείνει την προθεσμία του status quo μέχρι την 22-07-2019. - Extends the time limit of the status quo until 22-07-2019. - Prolonge le délai de statu quo jusqu'au 22-07-2019. - Proroga il termine dello status quo fino al 22-07-2019. - Pagarina “status quo” laika periodu līdz 22-07-2019. - Pratęsia status quo laiko limitą iki 22-07-2019. - Meghosszabbítja a korábbi állapot határidejét 22-07-2019-ig. - Jestendi t-terminu ta’ l-istatus quo sa 22-07-2019. - De status-quo-periode wordt verlengd tot 22-07-2019. - Przedłużenie status quo do 22-07-2019. - Prolonga o prazo do statu quo ate 22-07-2019. - Časový limit momentálneho stavu sa predĺži až do 22-07-2019. - Podaljša rok nespremenjenega stanja do 22-07-2019. - Jatkaa status quo määräaikaa 22-07-2019 asti - Förlänger tiden för status quo fram till: 22-07-2019 - Удължаване на крайния срок на статуквото до 22-07-2019 - Prelungeşte termenul status quo-ului până la 22-07-2019.

Die Kommission hat diese ausführliche Stellungnahme am 23-04-2019 empfangen.
The Commission received this detailed opinion on the 23-04-2019.
La Commission a reçu cet avis circonstancié le 23-04-2019.

(MSG: 201901119.EN)
1. MSG 315 IND 2019 0022 I EN 23-04-2019 23-04-2019 COM 6.2(2) 23-04-2019

2. Commission

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

4. 2019/0022/I - T40T

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, on 21 January 2019, the Italian authorities notified the draft “Draft Ministerial Decree on car seat reminder systems” (hereafter ‘the notified draft’).
According to the notification message, the main purpose of this decree is to prevent minors from being left behind in vehicles. For that purpose, the notified draft aims at laying down the technical rules for car seat reminder alarm devices.
Examination of the notified draft has prompted the Commission to issue the following detailed opinion and comments.
1. Detailed opinion

According to Article 1 (b) of the notified draft the “car seat reminder device” is “an alarm device, consisting of one or more interconnected components, whose main function is to prevent the abandonment of children, under the age of four years, in vehicles of categories M1, N1, N2 and N3 and which is activated in the event of the driver being removed from the vehicle”
According to Article 3 (1) of the notified draft:
“1. The car seat reminder device may be:
a) originally integrated into the child restraint system;
b) a basic feature or vehicle option included in the vehicle type-approval documentation;
c) independent of both the child restraint system and the vehicle.”
While the notified draft provides for a definition of “car seat reminder device”, according to Article 3 (1), the device can take various different forms. The notified draft does not provide further explanations as to what type of technical specificities each of the three forms of devices need to comply with beyond the technical build and functional specifications foreseen in Annex A therein. Through the replies to the Commission’s intermediate questions, the Italian authorities have not elaborated further on what type of identified technologies are available, for example, as per Article 3 (c), as “independent of both child restraint system and the vehicle”.
At the outset, the Commission would like to underline that it fully supports Italy's effort to reduce tragic accidents when children are left behind in cars. However, any national rule aiming at improving safety should be compatible with EU legislation, and, in particular, with the internal market rules.
Firstly, the Commission would like to draw the attention of the Italian authorities to the fact that the market for children seats is regulated under Regulation No 44 of the Economic Commission for Europe of the United Nations (UNECE) on the uniform provisions concerning the approval of restraining devices for child occupants of power-driven vehicles (‘Child Restraint Systems’) [2016/1722]. This Regulation is incorporated into Annex IV of Regulation (EC) No 661/2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor. In this regard, any additional technical specifications should take into consideration the available harmonised legislation for car children seats where the reminder device would need to be integrated as per Article 3(1)(a) of the notified draft.
Secondly, the Commission notes that several aspects of the devices at issue are already subject to other Union harmonisation rules, such as Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility and in Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC.
Yet, points (a) and (b) in part 2 of Annex A of the notified draft refer to EU type-approval rules on electromagnetic compatibility and also to the required CE Marking.
It is the understanding of the Commission that, due to the wording of Article 5 and points (a) and (b) in part 2 of Annex A of the notified draft, the third party certification foreseen in the notified draft applies also with respect to the above two Directives.
The Commission would like to inform the Italian authorities that, in so far as these devices emit and/or receive radio waves for the purpose of radio communication and/or radio determination, Directive 2014/53/EU is applicable to them when they are placed on EU/EEA market. In the other cases, Directive 2014/30/EU applies to the devices in question.
Directive 2014/53/EU, in Article 17, allows manufacturers to opt for the possibility to use self-declaration of conformity (i.e. ‘Module A’) for conformity assessment, which does not foresee, the involvement of notified bodies. The Directive, as provided for in Article 17 (4), requires the involvement of notified bodies in specific situations and only with respect to the requirements set out in its Articles 3 (2) and 3(3).
Directive 2014/30/EU, when it is applicable to the devices in question, allows, pursuant to Article 14, manufacturers to opt for the possibility to use self-declaration of conformity (i.e. ‘Module A’).
In light of the above, in case the notified draft requests third party certification with respect to the aspects covered by the above mentioned two Directives, it would be in breach of Article 17 of Directive 2014/53/EU and Article 14 of Directive 2014/30/EU.
Thirdly, the Commission understands that the functional specifications set out in part 1 of Annex A of the notified draft as well as points c), e) and f) of part 2 of this Annex A are not covered by Union harmonised legislation. The Commission examined them therefore in the light of Articles 34 and 36 TFEU.
Article 34 TFEU prohibits quantitative restrictions and all measures having equivalent effect in trade between Member States. In its Dassonville judgment, the Court of Justice of the European Union (CJEU) took the view that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Union trade are to be considered as measures having an effect equivalent to quantitative restrictions (Cases 8/74 of 11 July 1974 and points 63 to 67 of Case C-320/03 of 15 November 2005). The Court’s reasoning was developed further in the Cassis de Dijon (Case 120/78 of 20 February 1979) jurisprudence, which laid down the principle that any product legally manufactured and marketed in a Member State in accordance with its fair and traditional rules, and with the manufacturing processes of that country, must be allowed onto the market of any other Member State. As a consequence, in the absence of European harmonisation measures, Member States are obliged to allow goods that are legally produced and marketed in other Member States to circulate and to be placed on their markets.
The Commission is of the opinion that two aspects of the notified draft could constitute a measure of equivalent effect under Article 34 TFEU. The first aspect is that Articles 5 to 7 of the draft would subject car seat reminder alarm devices lawfully manufactured in other Member States to a prior approval procedure and hence restrict their access to the Italian market. The second aspect is that the draft requires these devices to be equipped with the automatic communication system referred to in point 2(f) of Annex A of the notified draft, which would impede

other devices, not having that characteristic, from accessing the Italian market.
According to the settled case-law of the Court of Justice, such measures may be justified only on one of the grounds of public interest listed in Article 36 TFEU or by one of the overriding requirements referred to in the case-law of the Court, provided in particular that that measure is appropriate for securing the attainment of the objective pursued and that it does not go beyond what is necessary in order to attain that objective (see, for instance, paragraphs 48-49 of the Judgment of the Court of Justice of 10 September 2014, 'Vilniaus energija' UAB v Lietuvos metrologijos inspekcijos Vilniaus apskrities skyrius, Case C-423/13).
The Commission notes that the notified draft is intended to protect the health and the life of young children, which is one of the legitimate grounds of public interest set out in Article 36 TFEU. Therefore, the Commission agrees that requirements on car seat reminder alarm devices could be appropriate for guaranteeing the health and life of young children.
However, the Commission notes that no evidence of the proportionality of the measure has been provided by the Italian authorities, including no impact assessment.
As regards the first aspect referred to above, i.e. the prior approval procedure, the Italian authorities have not provided any information on whether e.g. a subsequent control procedure (i.e. after placing of the product on the market) would not be genuinely effective and enable them to achieve the aim pursued. Furthermore, it should be noted that, for as long as it lasts, a prior authorisation procedure completely prevents traders from marketing the products concerned. It follows that, in order to comply with the fundamental principle of the free movement of goods, such a procedure must not, on account of its duration, the amount of costs to which it gives rise, or any ambiguity as to the conditions to be fulfilled, be such as to deter the operators concerned from pursuing their business plan. Yet, none of these elements appears in the text of the draft.
As regards the second aspect referred to above, i.e. the obligation that the car seat reminder device should be equipped with an automatic communication system for sending messages or calls via mobile wireless communication networks to at least three different numbers, the Commission considers that the measure may not be achieving its objective, should for example, the driver not possess a (well-functioning) mobile himself or lack phone numbers of two additional persons. Moreover, the requirement of an alarm signal as referred to in point (d) of part 1 of Annex A might be in itself sufficient to warn the driver of the motor vehicle or bystanders that a child was abandoned in the car.
For the above reasons, the Commission delivers the detailed opinion provided for in Article 6(2) of Directive (EU) 2015/1535 to the effect that, the notified draft would be in breach of Article 34-36 TFEU and, to the extent it requests third party certification with respect to aspects covered by Directive 2014/53/EU and Directive 2014/30/EU, of Articles 17 and 14 therein, respectively, should it be adopted without giving due consideration to the above remarks.
The Commission would like to remind the Italian 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 22 July 2019.
The Commission further draws the attention of your 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 opinion.
The Commission furthermore invites your Government to communicate to it on adoption the definitive text of the draft technical regulation concerned, in accordance with Article 5(3) of Directive (EU) 2015/1535.
Should your 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 abovementioned objections or be otherwise in breach of European Union law, the Commission may commence proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union.
2. Comments
Article 8 of the notified draft would require accredited bodies to submit an application for recognition to the Italian Directorate-General for Motor Vehicles. To the extent that the procedure set out in Article 8 would constitute a prior authorisation procedure, the Commission would invite the Italian authorities to examine the compatibility of this provision with Article 56 TFEU.
The Commission also draws the attention of the Italian authorities to the fact that the Court of Justice has underlined that traders must have sufficient warning of changes in national regulation and adequate time to adapt (C-463/01 Commission v Germany (2004) ECR I-11705, para.79; Case C-320/03 Commission v Austria (2005) ECR I7929, para.35). The draft requires that drivers and producers must comply with it by 1 July 2019. Even though the Commission understands that frequent communication were made on the Ministry of Infrastructure and Transport website, the only producers involved in the legislative process seem to have been Italian. The timeline asked by the Italian authorities does not seem reasonable for manufacturers, importers, etc, particularly if operating from other Member States, taking into account the important modifications they must undertake on their products including the verification and certification obligations foreseen in Article 5 and the requirements for the manufacturer foreseen in Articles 6 and 7 of the notified draft.

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