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Suspension of right of retail sale of alcoholic beverages from 22:00 to 10:00

Passed 19.02.2021 No. 76

Under § 36 (1) 1) of the Alcohol Act and considering subsection (2) of the same section:

1. In the interests of ensuring public order, the right of retail sale of alcoholic beverages in a place of business where the retail sale of alcohol is permitted for consumption on the premises is suspended throughout the state from 22:00 to 10:00.

2. The restriction referred to in clause 1 does not apply:

- 1) on board of aircraft used for international carriage of passengers or to places of business inside the security restricted area of an international airport and places of business located beyond the boarding gates in the waiting area of a passenger terminal of an international port;
- 2) to minibars in the guestrooms of an accommodation establishment upon the provision of accommodation services and during breakfast.

3. The Ministry of Economic Affairs and Communications is to promptly deliver this Order through the Register of Economic Activities to persons engaged in retail sale of alcohol.

4. Under § 49 (4) of the Alcohol Act, state supervision over compliance with the requirements related to the retail sale of alcoholic beverages and the restrictions on the consumption of alcoholic beverages is exercised by rural municipalities or city governments in their respective administrative territories.

5. This Order takes effect upon signing. Clauses 1 and 2 take effect on 1 March 2021. This Order will remain in effect up to and including 31 March 2021.

6. This Order shall be published in the official gazette Riigi Teataja and on the website kriis.ee.

7. Broadcasters shall publish this Order promptly.

For the protection of the life and health of people and overriding public interest, including the continuity of the state, this Order establishes a restriction on the freedom of enterprise for preventing the spread of the coronavirus SARS-CoV-2 causing COVID-19.

By the Government of the Republic Order No. 322 "Suspension of right of retail sale of alcoholic beverages from 00:00 to 10:00" of 17 September 2020, in the interests of ensuring public order, the right of retail sale of alcoholic beverages in a place of business where the retail sale of alcohol is permitted for consumption on the premises was suspended throughout the state from 00:00 to 10:00 from 25 September 2020 up to and including 24 October 2020.

By the Government of the Republic Order No. 348 "Suspension of right of retail sale of alcoholic beverages from 00:00 to 10:00" of 15 October 2020, in the interests of ensuring public order, the right of retail sale of alcoholic beverages in a place of business where the retail sale of alcohol is permitted for consumption on the premises was suspended throughout the state from 00:00 to 10:00 from 25 October 2020 up to and including 24 November 2020.

By the Government of the Republic Order No. 412 "Suspension of right of retail sale of alcoholic beverages from 00:00 to 10:00" of 18 November 2020, in the interests of ensuring public order, the right of retail sale of alcoholic beverages in a place of business where the retail sale of alcohol is permitted for consumption on the premises was suspended throughout the state from 00:00 to 10:00 from 25 November 2020 up to and including 26 January 2021.

By the Government of the Republic Order No. 10 "Suspension of right of retail sale of alcoholic beverages from 22:00 to 10:00" of 15 January 2021, in the interests of ensuring public order, the right of retail sale of alcoholic

beverages in a place of business where the retail sale of alcohol is permitted for consumption on the premises was suspended throughout the state from 22:00 to 10:00 from 27 January 2021 up to and including 28 February 2021.

This Order imposes the restriction for another period of time because the spread of the coronavirus SARS-CoV-2 causing COVID-19 is still extensive in Estonia. The intensity of contracting COVID-19 is currently extremely high and no decline can be seen in the first quarter of 2021. By directive No. 1.1-1/20/52 of the Director General of the Health Board of 10 November 2020, a health emergency was declared due to the wide spread of the coronavirus in Estonia, on the basis of which in-patient specialised medical care and general medical care have been re-arranged to prevent the present situation from escalating.

These restrictions serve the purpose of preventing and stopping the spread of the coronavirus SARS-CoV-2 causing COVID-19. The need to impose the restriction on the right of retail sale of alcoholic beverages again arises from the epidemiological situation faced by Estonia. Compared to the time covered by Government of the Republic Orders No. 322, 348, 412 and 10 the spread of the coronavirus is still very extensive.

When Order No. 10 was passed, according to the Health Board's data of 13 January 2021, 855 tests came back positive and the morbidity rate per 100,000 inhabitants for the past 14 days was 582.33. In comparison, the same figure was 210.69 on 16 November 2020, 43.49 on 14 October 2020, 22.80 on 12 September 2020 and 4.4 on 1 August 2020. On 13 January 2021, 404 patients were in hospital. On 16 February 2021, 5702 tests were analysed in Estonia in the last 24 hours and 622 of them came back positive. As of 16 February 2021 at 07:00, 493 persons are hospitalised and 18 patients are on mechanical ventilation according to information from hospitals. Seven deaths occurred in the last 24 hours. By 16 February 2021, a total of 508 people infected with the coronavirus had died in Estonia. A total of 8474 tests of all tests analysed over the past 14 days came back positive, which means the ratio is 632.63 per 100,000 inhabitants.

The basic reproduction number R or the infection multiplier shows that with the exception of Tartu County the morbidity in other counties is still on the rise and we can expect an increase in morbidity during the following week. The R for Tartu County is higher than one, which suggests that a slight increase can be expected there. All data confirms that despite the temporary stabilisation morbidity continues to rise.

According to this Order, the right of retail sale of alcoholic beverages in a place of business where the retail sale of alcohol is permitted for consumption on the premises is suspended from 22:00 to 10:00.

According to the Order, the restriction on the right of retail sale of alcoholic beverages does not apply on board of aircraft used for international carriage of passengers or to places of business located beyond the boarding gates in the waiting area of a passenger terminal of an international airport and an international port. An exception is made for places of business located in an area intended only for passengers in an airport and a port open for international traffic, in other words in the waiting area of a port or an airport beyond the boarding gates but before the boarding of passengers and on board of aircraft engaged in international flights. Access to the security restricted area of an airport and to the waiting area of a port is only possible for a charge and with a passenger ticket. In connection with these areas it is possible, where necessary, to later identify persons because it is known to which flight and seat or to which watercraft the persons are headed.

An additional exception is made for guests staying overnight at an accommodation establishment for consuming alcoholic beverages on the premises using the guestrooms' minibars and during breakfast. The risk of the virus spreading in guestrooms or at breakfast tables is insignificant because there are not many people in those rooms at the same time and there is also no problem with later identifying contacts because accommodation establishments keep accurate records of their guests staying overnight. If such catering services are available to unspecified people or if the catering establishment is at the disposal of unspecified people, it is regarded as public indoor space. It follows that the requirements for public spaces as provided for in Government of the Republic Order No. 282 "Measures and restrictions necessary for preventing the spread of COVID-19" of 19 August 2020 must be complied with in such catering establishments. Minibars are not usually locked, making it harder to implement the restriction. This exception only applies to guests staying overnight at an accommodation establishment who have access to the minibar in their room and who at breakfast can enjoy alcoholic beverages included in their package. During the time the restriction is in force this exception does not extend to other sections or rooms of an accommodation establishment; therefore, during the restriction, alcoholic beverages may not be available, for example, in a drink vending machine in the foyer or the hall or in the lobby bar.

According to this Order, the right of retail sale of alcoholic beverages in a place of business where the retail sale of alcohol is permitted for consumption on the premises is suspended from 22:00 to 10:00. Under § 36 of the Alcohol Act, restricting the retail sale of alcoholic beverages for a certain period of time does not prohibit the consumption of alcohol. Supervision by the Police and Border Guard Board has revealed ways of evasion of the restriction on retail sale: large amounts of alcohol are sold to tables before the start of the restriction; alcohol is sold before midnight and then held for the customer and after the start of the restriction given to the customer against a receipt; entertainment establishments have imposed a higher entrance fee which allows the customers to bring their own alcohol; entertainment establishments have imposed an entrance fee that includes free alcohol; and open tabs are used (a tab is opened before the start of the restriction).

There have been fewer described violations of the restriction on the right of retail sale of alcoholic beverages. However, new violations in the form of so-called party buses, limousines, launches and trucks to circumvent the restrictions have been discovered. There have also been instances when a soft drink can has been used to

drink alcohol, giving the impression that one is drinking a non-alcoholic beverage. Front doors have been locked so that compliance with the requirements could not be checked by way of supervision. The Western Prefecture has discovered that the restriction on visiting entertainment establishments in Harju County and Ida-Viru County, in force until the end of January, has resulted in more customers going to other regions for the same services. It has also been alleged that the event in question is a private party or a gathering of employees from a single institution but supervision proceedings have revealed this not to be true. In December 2020 the Northern Prefecture passed on information about such violations to local authorities and the Health Board on 19 occasions.

The above ways of circumventing the restriction of suspension of retail sale of alcoholic beverages are not in compliance with the objective sought by the restriction. Although only single economic operators are circumventing the restriction, their actions may have a significant effect on the spread of the virus. Economic operators evading the restriction also gain extra income at the cost of law-abiding operators, infringing the principle of equal treatment among economic operators. The cases described above give reason to apply measures provided for in the Alcohol Act or the Law Enforcement Act and, where necessary, also penalty payment. Furthermore, as of September 2020 the Government of the Republic has additionally imposed several restrictions on catering and entertainment services, which has shown positive results in preventing the spread of the coronavirus in combination with the restriction of suspension of retail sale of alcoholic beverages. According to the Government of the Republic Order No. 282 "Measures and restrictions necessary for preventing the spread of COVID-19" of 19 August 2020 as currently in force, customers may not be in catering establishments' sales or seating area or in places of provision of leisure services from 21:00 to 06:00. These places are also subject to additional requirements, such as scattering of people.

Implementing the restrictions on customers' freedom of movement is based on information from the Health Board, according to which COVID-19 caused by the coronavirus SARS-CoV-2 is an infectious disease that spreads from one person to another by way of droplet infection, primarily upon close contact with an infectious person. This means that a person can contract the virus when in close contact with an infected person or through contaminated surfaces or hands. The virus spreads more extensively in poorly ventilated indoor spaces and mostly endangers people in risk groups. Therefore, for the purpose of getting the spread of the virus under control, the gathering, stay and movement of people in crowded indoor spaces are restricted.

Restrictions targeting the consumption of alcohol are justified because consumption of alcohol weakens people's immune system and thereby their bodies' resistance to infectious diseases. Consuming large quantities of alcohol increases the risk of acute respiratory distress syndrome (ARDS), one of the most serious complications of COVID-19. Also, consuming alcohol alters a person's behaviour, including diminishes their sense of danger and encourages risk behaviour, and increases the probability of people not complying with rules of conduct set for preventing the spread of the virus. Furthermore, retail sale for consumption on the premises extends the time spent indoors. The above, in turn, means an increased risk of people getting infected and infecting others.

Consequently, it is justified that the applicability of the restrictions imposed on the right of retail sale of alcoholic beverages is extended by this Order throughout the state in places of business where retail sale of alcohol is permitted for consumption on the premises. In conjunction with the restriction on customers' freedom of movement in catering establishments' sales or seating area and in places of provision of leisure services for a certain period of time, the restrictions help prevent the spread of the coronavirus SARS-CoV-2 in a more efficient manner. If circumvention of the restrictions of suspension of the right of retail sale of alcoholic beverages continues, it may prove necessary to impose additional restrictions. For the purpose of identifying those circumventing the restrictions and preventing such circumvention, supervision over compliance with the restriction is also strengthened.

The imposition of this restriction also has the support of the Science Council advising the Government of the Republic and of the Health Board.

There is no other efficient way to achieve the objective of reduced availability of alcoholic beverages. There are no means that would restrict the availability of alcoholic beverages and reduce the risk of the virus spreading as a result of indoor consumption of alcoholic beverages the same, but that would restrict the rights of economic operators less. Considering the current spread of the infection, evidence showing that infected persons and people who have been in close contact with them visited recreational and catering establishments where it is possible to buy alcohol for consumption on the premises, and centres of infection that have been brought along by this kind of behaviour and that have spread, among others, into places of employment, the most efficient measure for slowing the continued spread of the disease down is to impose these restrictions throughout the state, not on the territory of a single local authority. Having regard to the aforesaid and the current situation, the restrictions are necessary and proportional. Under § 11 of the Constitution of the Republic of Estonia (hereinafter the *Constitution*), rights and freedoms may only be circumscribed in accordance with the Constitution. Such circumscription must be necessary in a democratic society and may not distort the nature of the rights and freedoms circumscribed. The principle of proportionality arises from the second sentence of § 11 of the Constitution, according to which circumscription of rights and freedoms must be necessary in a democratic society. In this instance, the imposition of the restrictions is in public interests and the restrictions are imposed throughout the state.

Under § 61 (1) of the Administrative Procedure Act, an administrative act is in force as of notification thereof or delivery to the addressee, unless a later entry into force is prescribed in the administrative act. Therefore, the Ministry of Economic Affairs and Communications is required to deliver this Order to the addressees. Since economic operators engaged in retail sale of alcohol are registered in the Register of Economic Activities, the Order can be delivered by using said channel. According to § 27 (2) 3) of the Administrative Procedure Act, a document made available or transmitted by electronic means is deemed to be delivered when the document or notice on making the document available has been forwarded to the e-mail address of a company entered in the commercial register.

Pursuant to § 36 (2) of the Alcohol Act, if the right of retail sale of alcoholic beverages is suspended throughout the state, throughout a county or throughout the administrative territory of a local government, the holder of the right of retail sale of alcoholic beverages shall be notified thereof immediately through the media. Therefore, the Order also requires broadcasters to publish the Order immediately.

This Order takes effect upon signature, subject to the specification that the restriction on retail sale of alcohol and the exceptions to the restriction take effect on 1 March 2021, giving the persons concerned the minimum amount of time necessary for re-arranging their activities and duly complying with the Order. This Order will remain in effect up to and including 31 March 2021. When the term of validity of this Order was determined, it was taken into account that the term of validity will provide extra help in preventing the spread of the coronavirus SARS-CoV-2 causing COVID-19.

Failure to duly comply with measures for preventing the spread of the coronavirus SARS-CoV-2 causing COVID-19 will prompt the application of the administrative coercive measures set out in § 28 (2) or (3) of the Law Enforcement Act. According to § 23 (4) of the Law Enforcement Act, the amount of penalty payment is 9600 euros. This penalty payment, which serves the purpose of enforcing the restrictions imposed by this Order and preventing the spread of the virus, may be imposed repeatedly.

This Order can be appealed against by filing a challenge with the Government of the Republic pursuant to the procedure provided by the Administrative Procedure Act within 30 days as of the day the relevant person became or should have become aware of the Order. This Order can also be appealed against by filing an action with the administrative court pursuant to the procedure provided for in the Code of Administrative Court Procedure within 30 days as of the day of announcement of this Order.

The explanatory memorandum to the Order is available on the website kriis.ee.

Kaja Kallas
Prime Minister

Taimar Peterkop
Secretary of State