

SD-N 338688 - LT - On the control of tobacco, tobacco product

EC clarification request of 4/2/22:

According to the IMI report, the notified requirement falls under article 15 par.2(b) of the Services Directive (SD).

Please note that such requirements must, to be in line with the SD, be:

Non-discriminatory on basis of nationality or, in case of companies, the location of the registered office; justified by an overriding reason of public interest and proportionate i.e. measures suitable to achieve the objective, not exceed what is necessary to achieve it, and no less restrictive means available to attain it.

To ascertain whether such requirement is non-discriminatory it is necessary to assess the treatment of providers established in Lithuania (LT) to that of providers established in other Member States and providing services in LT.

LT authorities are kindly invited to clarify the notion of “branch of foreign juridical person” under this law and to explain the reasons for the exclusion of subsidiaries and agencies, which are other forms of establishment provided by the Treaty.

LT reply of 31/3/22:

Explaining the notion of ‘branch of foreign juridical person’ (from Lithuanian it should be translated as ‘branch of foreign legal entity’) under the notified Law we should refer to the definition of ‘foreign legal entity’ in the notified Law (Article 2(52)) and to the definition of ‘branch of legal entity’ in the Civil Code of the Republic of Lithuania (Article 2.53(1)). Foreign legal entity is a legal entity or other organization established in a party to the Agreement on the European Economic Area (except the Republic of Lithuania) or in another foreign country (third country). Branch of legal entity is a structural subdivision of a legal entity which has its office and performs all or part of the functions of legal entity. It should also be noted that the Lithuanian legal system does not impose any restrictions on foreign legal entities to establish a branch in the Republic of Lithuania.

Regarding the “subsidiaries” mentioned in your question, we would like to note that they are covered by ‘legal entity established in the Republic of Lithuania’ in the notified Law, as in the Lithuanian legal system subsidiaries are simply considered as a legal entity.

With regards to the remark on “agencies”, we agree that the Law should be supplemented by setting out that agencies established in Lithuania may also receive a license. Such amendment to the Law could be initiated during this year and re-notified after appropriate national legislative procedures.