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Subject: Notification 2024/351/LV

Draft law ‘Amendments to the Handling of Alcoholic Beverages Law’

Delivery of a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535

Madam,

Within the framework of the notification procedures laid down under Directive (EU) 2015/1535 ⁽¹⁾, the Latvian authorities notified to the Commission on 1 July 2024 a **‘Draft law ‘Amendments to the Handling of Alcoholic Beverages Law’**’, under the reference 2024/351/LV (hereafter, the ‘notified draft’).

According to the notification message, the notified draft aims to protect the interests of public health, in particular children and young people, by introducing evidence-based complex measures that do not only limit the advertising and accessibility of alcoholic beverages, but also ensure public awareness of the health effects of alcohol consumption.

The notified draft, among other requirements for the labelling of alcoholic beverages, provides for the inclusion of information in the form of pictograms that encourage citizens not to use alcohol during pregnancy and when driving and information on

¹) 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 regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

ingredients and nutritional value, including energy value. The notified draft also includes a number of restrictions on the sale and advertising of alcoholic beverages. The notified draft would apply to all alcoholic beverages produced in Latvia or imported from another European Union Member State or from a third country.

Finally, the notified draft refers to the notification procedure under Regulation (EC) 1924/2006 concerning nutrition and health claims made on foods. ⁽²⁾

The examination of the notified draft has prompted the Commission to issue the following detailed opinion and comments.

1. DETAILED OPINION

The Commission understands that the notified draft imposes labelling requirements on alcoholic beverages placed on the Latvian market, whether produced domestically or in other countries, which would provide consumers with information concerning nutritional values, including the energy value, and the ingredients of alcoholic beverages.

Article 4 of the notified draft supplements the Handling of Alcoholic Beverages Law with Article 7¹ which reads as follows:

‘Article 7¹ . Additional labelling requirements for alcoholic beverages

(1) Alcoholic beverages shall be labelled in compliance with the laws and regulations concerning the provision of food information to consumers and the labelling of pre-packed food, as well as in accordance with directly applicable European Union laws on the handling of certain alcoholic beverages.

(2) Every unit of packaging (or the label attached thereto) for alcoholic beverages produced in Latvia, or imported from another European Union Member State or from a third country that is not a Member State of the European Union and intended for wholesale and retail sale in Latvia, shall be marked with a clearly visible and easily readable label that includes:

(1) Additional labelling for the alcoholic beverage: a nutritional declaration, which may be limited to the product's energy value and a list of ingredients. The full nutritional declaration and list of ingredients shall be provided on the label or made available by electronic means, provided that a clear and direct link to the location of the nutritional declaration and ingredients list is indicated on the packaging or attached label. Information on substances or products causing allergies or intolerances shall be directly indicated on the packaging or attached label;

(2) A warning pictogram [...]’

The Commission notes that according to Article 9(1)(b) and (l) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers ⁽³⁾ the indication of list of ingredients and

²) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, OJ L 404, 30/12/2006, p. 9, ELI: <http://data.europa.eu/eli/reg/2006/1924/oj>

³) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No

nutrition declaration shall be mandatory. Article 16(4) of the same Regulation provides for an exception to this general rule with respect to beverages containing more than 1,2 % by volume of alcohol providing that the particulars referred to in points (b) and (l) of Article 9(1) shall not be mandatory for such beverages.

The Commission thus considers that Article 4 of the notified draft as far as it introduces Article 7¹ (1)(1) to Handling of Alcoholic Beverages Law is not compatible with Article 16(4) of Regulation (EU) No 1169/2011, insofar as it requires the mandatory indication of the list of ingredients and nutrition declaration on all alcoholic beverages containing more than 1,2 % by volume of alcohol.

For what concerns certain grapevine products and aromatised wine products, Article 119(1)(h) and (i) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products⁽⁴⁾ and Article 6a(1)(a) and (b) of Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation and labelling of aromatised wine products⁽⁵⁾, respectively, require that the provision of the nutrition declaration and the list of ingredients shall be mandatory.

Regulation (EU) 2021/2117⁽⁶⁾ amended Article 119 of Regulation (EU) No 1308/2013 and Article 6a of Regulation (EU) No 251/2014 by including a nutrition declaration and a list of ingredients as compulsory labelling particulars, in order to provide a higher level of information to consumers, while giving certain options to producers as regards the use of labelling by electronic means ⁽⁷⁾.

In accordance with Article 119(1)(h) and (i) of Regulation (EU) No 1308/2013, the compulsory particulars for the grapevine products concerned shall include a nutrition declaration and a list of ingredients. However, by way of derogation, Article 119(4) and (5) provide, in particular, that producers should have the option of limiting the contents of the nutrition declaration on the package or on a label attached thereto to only the energy value which may be expressed by using the symbol 'E' for energy and of making the full nutrition declaration and the list of ingredients available by electronic means, provided that they avoid any collection or tracking of user data and do not provide information aimed at marketing purposes. Similar requirements and derogations are

1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, OJ L 304, 22.11.2011, p. 18, ELI: <http://data.europa.eu/eli/reg/2011/1169/2018-01-01>.

⁴) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347 20.12.2013, p. 671, ELI: <http://data.europa.eu/eli/reg/2013/1308/2024-05-13>.

⁵) Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation and labelling of aromatised wine products and repealing Council Regulation (EEC) No 1601/91, OJ L 084 20.3.2014, p. 14.

⁶) Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union, OJ L 435, 6.12.2021, p. 262.

⁷ (P)Please see recitals 42 and 80 of Regulation (EU) 2021/2117.

provided for by Article 6a (2) and (3) of Regulation (EU) No 251/2014 for aromatised wine products.

As the Court of Justice of the European Union pointed out, it is one of the fundamental characteristics of a common organisation of the market that in the sectors concerned the Member States can no longer act through national provisions adopted unilaterally. Their legislative competence can only be residual and is limited to situations which are not governed by the Community rules and to cases where those rules expressly give them power to act ⁽⁸⁾. It is also settled case-law that the establishment of a common organisation of the agricultural markets does not prevent the Member States from applying national rules intended to attain an objective relating to the general interest other than those covered by the common organisation even if those rules are likely to have an effect on the functioning of the common market in the sector concerned ⁽⁹⁾.

According to the notification message of the Latvian authorities, the draft includes “information on ingredients, nutritional value, including energy value, on the labelling of alcoholic beverages, which would inform consumers about the food”. Therefore, the objective pursued by the draft is the same as the one pursued by Regulation (EU) No 1308/2013.

In accordance with Article 288(2) TFEU, the provisions of Regulation (EU) No 1308/2013 are binding in their entirety and directly applicable in all Member States. Article 119 is directly addressed to operators without giving any competence nor discretion for Member States to adopt rules at national level on this matter.

Furthermore, contrary to Article 119 of Regulation (EU) No 1308/2013, the notified draft does not include the possibility to express the energy value by using the symbol ‘E’ for expressing energy value nor the prohibition to collect or track user data or to display the list of ingredients with other information intended for sales or marketing purposes in case of e-labelling.

Following from the above-mentioned, the Commission considers that, by prescribing labelling requirements applicable to alcoholic beverages, including grapevine products and aromatised wine products, the notified draft regulates aspects that are already regulated by EU legislation and cannot be regulated by Member States anymore. In particular, by laying down rules on the compulsory labelling rules as regards ingredients and the nutritional for alcoholic beverages in general, thereby covering grapevine products that are regulated by Regulation (EU) No 1308/2013, Latvia is not in compliance with that Regulation.

The same reasoning is valid in respect of aromatised wine products regulated by Regulation (EU) No 251/2014. Article 6a of Regulation (EU) No 251/2014 provides for similar labelling rules as regards the nutrition declaration and the list of ingredients for aromatised wine products as Article 119 of Regulation (EU) No 1308/2013 for grapevine products ⁽¹⁰⁾.

⁸⁾ See Case C- 48/85, Commission of the European Communities v. Federal Republic of Germany, Judgement of 18 September 1986, para. 12.

⁹⁾ See Case C-462/01, Hammarsten, Judgment of 16 January 2003; ECLI:EU:C:2003:33, para. 28 – 29, and Case C-333/14, Scotch Whisky Association and Others v The Lord Advocate and The Advocate General for Scotland, Judgement of 23 December 2015, ECLI:EU:C:2015:845; para19].

¹⁰⁾ (See also recital 4 of Regulation (EU) No 251/2014 and recital 80 of Regulation (EU) 2021/2117.

For the above-mentioned reasons, the Commission delivers a detailed opinion provided for in Article 6(2) of Directive (EU) 2015/1535 to the effect that Article 7¹ (1)(1) of Handling of Alcoholic Beverages Law as amended by the notified draft is not compatible with Article 16(4) of Regulation (EU) No 1169/2011, Article 119 of Regulation (EU) No 1308/2013, and Article 6a of Regulation (EU) No 251/2014 were it to be adopted without giving due consideration to the above observations.

The Commission reminds the Latvian Government that under the terms of Article 6(2) of 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 2 January 2025.

The Commission further draws the attention of the Latvian 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.

Should the Latvian 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 4 of the notified draft supplements the Handling of Alcoholic Beverages Law with Article 7¹ which also introduces further requirements for health warnings (pictograms that encourage citizens not to use alcohol during pregnancy and when driving) and reads as follows:

‘Article 7¹ . Additional labelling requirements for alcoholic beverages

(1) [...]

(2) Every unit of packaging (or the label attached thereto) for alcoholic beverages produced in Latvia, or imported from another European Union Member State or from a third country that is not a Member State of the European Union and intended for wholesale and retail sale in Latvia, shall be marked with a clearly visible and easily readable label that includes:

(1) [...] (2) A warning pictogram — a graphic symbol and other visual elements (e.g., borderlines, background drawing, or colour) serving as a warning against the consumption of alcoholic beverages during pregnancy and while operating a vehicle, printed on the label of the alcoholic beverage packaging or affixed by a special sticker.

(3) On packaging of alcoholic beverages produced in small distilleries, only the warning pictogram shall be displayed.’

The Commission would like to recall that Article 39(1) of Regulation (EU) No 1169/2011 provides that in addition to the mandatory particulars referred to in Article 9(1) and in Article 10, Member States may, in accordance with the procedure laid down in Article 45, adopt measures requiring additional mandatory particulars for specific types or categories of foods, justified on grounds of at least one of the following: (a) the protection of public health; (b) the protection of consumers; (c) the prevention of fraud; (d) the protection of industrial and commercial property rights, indications of provenance, registered designations of origin and the prevention of unfair competition.

Such national provisions shall be notified to the Commission together with the grounds for introducing them. Therefore, with regard to the provisions of the notified draft introducing a warning pictogram, the Latvian authorities are invited to follow the notification procedure described in Article 45 of this Regulation. The Latvian authorities are reminded that the relevant three-month standstill period for the assessment of the national measures as provided by Article 45(3) of Regulation (EU) No 1169/2011 will only commence once the measure is notified to the Commission in line with this procedure.

It must already be noted that it is not clear to the Commission which format will be required for these pictograms. Therefore, the Latvian authorities are invited when notifying under Article 45(3) of the FIC Regulation to specify which format will be required for the pictograms, in particular if they are to be provided in a prescribed format or if pictograms already in use to the same purpose in other EU Member States would be accepted.

Finally, the Commission notes that the notification message refers to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, in particular notification procedure of the national measures under Article 23 of this Regulation. In that regard, the Commission considers that the notified draft does not fall under the scope of this Regulation.

The Latvian authorities are invited to take these comments into account.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

The Commission points out that this response does not prejudice any decision which might be taken under other EU acts.

Yours faithfully,

For the Commission

Margrethe Vestager
Executive Vice-President of the
Commission