

Brussels, 29 October 2019

CEEV COMMENTS on TRIS NOTIFICATION 2019/423/IRL - Regulations 2019 on “Sale and Supply of Alcohol Products” under the Irish Public Health (Alcohol) Act

GENERAL FRAMEWORK and TRIS NOTIFICATION 2019/423/IRL

On September 2019, the Irish Government notified to the European Commission under the TRIS procedure the draft regulations 2019 in the framework of Public Health (Alcohol) Act 2018 - the PHAA - related to sale and supply of alcohol products.

The purpose of this draft regulation is to regulate promotions encouraging alcohol consumption. The deadline for Member States and the Commission to respond to the TRIS notification is 3 December 2019.

These new regulations notified within **TRIS notification 2019/423/IRL** are proposed in exercise of the powers conferred to the Minister of Health by section 5 and subsection (1) of section 23 of the Public Health (Alcohol) Act 2018 (No. 24 of 2018). To be recalled that the Irish Public Health (Alcohol) Act covered:

- minimum unit pricing of alcohol products;
- health labelling of alcohol products;
- the regulation of advertising of alcohol products;
- the regulation of sponsorship by alcohol companies;
- structural separation of alcohol products in mixed trading outlets;
- the regulation of the sale and supply of alcohol in certain circumstances.

The draft regulations notified seeks to implement what was foreseen in subsection 23 “Regulations relating to sale and supply of alcohol products” of PHAA 2018 and will prohibit from 1 September 2020, the sale or supply of alcohol products at a reduced price or free of charge or the promotion of such sale.

The section was drafted in recognition of the fact that alcohol is not an ordinary grocery product. By restricting access to alcohol products through promotions or loyalty card programmes the regulations align with the objectives of the Public Health (Alcohol) Act 2018, which are to:

- reduce alcohol consumption to 9.1 litres of pure alcohol per person per annum by 2020,
- delay the initiation of alcohol consumption by children and young people,
- reduce the harms caused by the misuse of alcohol, and
- regulate the supply and price of alcohol in order to minimise the possibility and incidence of alcohol related harm;

CEEV is supportive of national initiatives which aim at addressing harmful use of alcohol. Nevertheless, without calling into question the public health objectives pursued by the Irish authorities, we regret that the Alcohol Act, in general, and the Legislations notified come to put in danger the good functioning of the Single Market, and, by aiming at reducing *per capita* alcohol consumption figures, misses what should be the relevant objective: reducing alcohol misuse.

In addition, the draft regulations are proposed at a time when alcohol consumption in Ireland has significantly declined (see annex I for more info).

I. WINE SECTOR POSITION AND CONCERNS ON NEW AMENDMENTS – TRIS NOTIFICATION 2019/423/IRL

A. Description of Regulations 2019 on sale and supply of Alcohol Products

Main Message

The purpose of these draft regulations **is to regulate promotions that incentivise alcohol consumption**. They address the promotion and selling arrangements of alcohol products in so far as they relate to the sale or supply of such products at a **reduced price or free of charge** to someone, on the purchase of another alcohol product or with another product or service.

The sale or supply of alcohol products at a reduced price is defined in these regulations to include; the **awarding of bonus points or loyalty card points or any similar benefit** arising from a purchase of an alcohol product, permitting the use of such points or benefits to obtain alcohol or another product or service at a reduced price or free and also, permitting the use of such points or benefits arising from the purchase of any product or service to obtain alcohol products either at a reduced price or free.

More precisely, the regulation prohibits:

- that any person sells or supplies, or causes to be sold or supplied, an alcohol product at a reduced price or free of charge to any person on the purchase by that person, or any other person, of (a) one or more other alcohol products (whether of the same or a different kind), or (b) any other product or service;
- that any person sells or supplies, or causes to be sold or supplied, an alcohol product for a period of 3 days or less at a price less than that being charged for the alcohol product on the day before the commencement of the period concerned;
- that a person advertises or promotes, or causes to be advertised or promoted, the sale or supply of alcohol products in a manner specified under the two other prohibitions.
- a person from selling an alcohol product at a reduced price for a period of less than 3 days.

As stated in the above chapter the definition of a reduced price includes the **awarding of bonus points or loyalty card points or any similar benefit**. These Regulations shall come into operation on 1 September 2020.

B. CEEV main comments

CEEV believes the draft regulations notified to be disproportionate and contrary to EU legislation.

In addition, the regulations fail in tackling the real concern of harmful use of alcohol and creates uncertainty impact on Irish market and EU wine producers.

The draft regulation is contrary to Article 34 Treaty of Functioning of the EU (TFEU), which relates to intra-EU imports and prohibits “quantitative restrictions and all measures having equivalent effect” between Member States.

- **Market and Competition disturbance.** The regulation aims at prohibiting wine producers or retailers to propose their products at a reduced price (even if MUP compliant) for periods of less than 3 days. This unjustified and arbitrary possibility represents a clear disturbance of the competition of the Irish market.
- **Complexity and uncertainty.** The exclusion of alcoholic beverages from the award of bonus or loyalty card points will increase complexity and uncertainty for retailers and other actors in managing the

award systems. As an example, air companies allowing passengers to use their miles to purchase special premium wines offered in their catalogue should adapt the system when operating in Ireland? In parallel, Credit Cards awarding bonus or miles for any purchase made, would be contrary to the Irish draft legislation when the expenditure concerns alcoholic beverages.

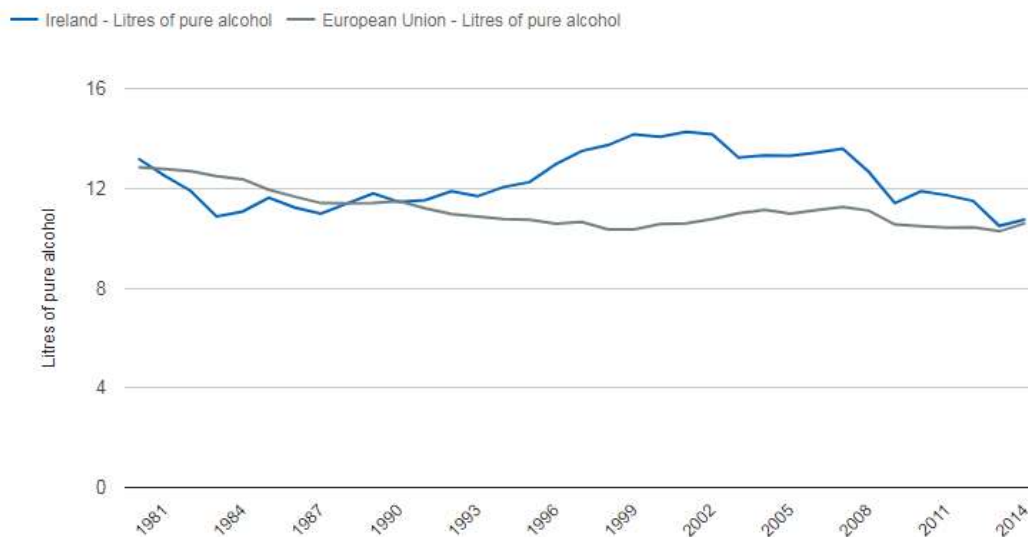
- **Wine clubs.** Wine companies have developed around the world wine clubs where consumers can get access to exclusive offers and purchase for special wines. These advantages may be granted to the members of the wine club on the basis of the loyalty points. This practice would be prohibited under the new regulations even if the wine will be sold at a price above the MUP, and if not linked to the misuse of alcohol.

ANNEX I: Alcohol Consumption in Ireland – Some elements of context

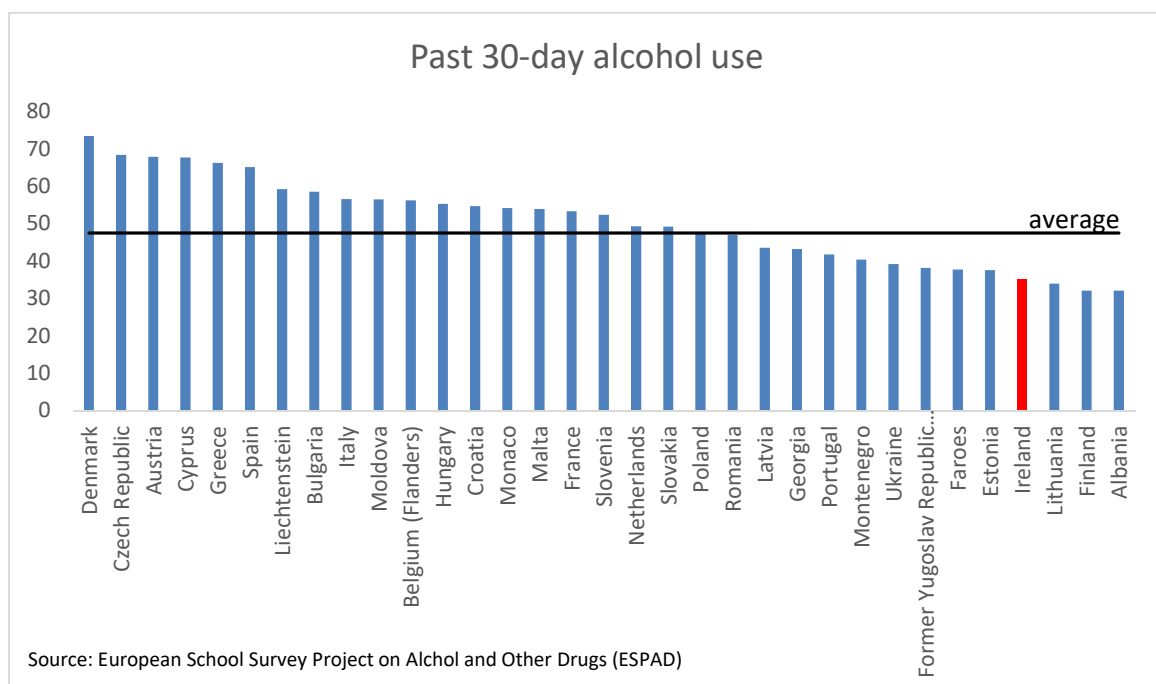
- The Irish Public Health (Alcohol) Bill is being discussed at a time when alcohol consumption in Ireland has significantly declined. According to the World Health Organisation, alcohol consumption in Ireland has fallen by 25% since 2005. It is on par with European per capita consumption averages (The Irish government uses OECD average instead, which includes countries such as Turkey and Israel).
- ESPAD (European School Survey Project on Alcohol and Drugs) showed underage drinking in Ireland has declined across all metrics (between 1999 and 2011). Ireland ranks 22 out of 25 EU countries surveyed for the % of 15-16 year olds having consumed alcohol. The frequency of 15-16 year olds' consumption is much lower than the European average, and the percentage abstaining from alcohol higher too.

5. How does the evolution of per capita consumption rate compare across selected countries?

For people aged 15+



Source: WHO



Source: European School Survey Project on Alcohol and Other Drugs (ESPAD)