European Commission

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On Draft Law "Amendments to the Law on Circulation of Alcoholic Drinks" (Commission Report — TRIS/(2016) 03952, notification No. 2016/0686/LV - C50A)

The Saeima of the Republic of Latvia is reviewing the draft law "Amendments to the Law on Circulation of Alcoholic Drinks" (hereinafter referred to as the Draft Law). The said Draft Law considerably and unreasonably restricts the producers of Latvia and the European Union Member States and contradicts the European Union legal rules.

At the moment the Draft Law is being reviewed in two readings and, prior to its review in the third and final reading, it has been sent to the European Commission for reconciliation. Notification No 2016/0686/LV — C50A with regard to the aforementioned has been published on the European Commission home page.

In view of the aforementioned, we would like to point out that the Draft Law considerably and unreasonably restricts the producers of Latvia and other European Union Member States and contradicts the European Union legal rules, and can create a precedent that would lead to unfounded restriction of free movement of goods among the Member States.

1. **The contents of the Draft Law fail to comply with the aim of the Draft Law.** Pursuant to the Draft Law annotation, the aim of the Draft Law is to restrict the trade of "strong beer" in large packaging units. The explanatory statement of the Draft Law also indicates that "*Due to the lower price of plastic bottles, beer and cider that are filled into 2–2.5 litre plastic bottles are cheaper than beer and cider that are filled into smaller volume glass bottles or cans."* Regardless of the fact that the explanatory statement contains a reference to 2–2.5 litre packaging, the Draft Law restricts quite smaller packaging units. The Draft Law provides for a prohibition on bottling the beer, fermented drinks, intermediate products and other alcoholic drinks whose alcoholic strength by volume exceeds 5.8% in package whose volume exceeds 0.5 litres, as well as on bottling the alcoholic drinks of the said categories whose alcoholic strength by volume is lower than 5.8% in packaging whose volume is larger than 1 litre. Furthermore - the Draft Law does not impact alcoholic drinks if they are bottled in glass, ceramic, wooden or metal.

2. **The adoption of the Draft Law would considerably increase the hazard of environment pollution.** By prohibiting PET package larger than 0.5 litres for beverages with alcohol content of 5.8% and over and package larger than 1 litre for beverages with alcohol content below 5.8%, the environment will be polluted by much larger amount of the used package than till now since a larger number of package units will be launched to the market, which will result in much larger amount of pollution.

3. **The Draft Law would cause legally unfounded damages to producers.** According to the calculations, made by Latvian producers, the amount of damages caused to the beer branch in Latvia in the first year only, after the Draft Law becomes effective, would constitute EUR 3.3 million, the required investment EUR 3.1 million, **the total financial impact will amount to EUR 6.4 million, which is constituted as follows:**

   3.1. Writing-off of the amortization of current investments for EUR 250,000–EUR 50, 000 (residual value of the format) X 5 bottling lines), e.g. the purchase and assembly of one small brewery bottling installation cost EUR 150,000, for a large brewery — about EUR 3 million;

   3.2. Investments that are required for the adaptation of a beverage bottling line to the legislation requirements EUR 500,000 (redirection of the format EUR 100, 000 EUR X 5 bottling lines + for the purposes of ensuring capacity, the assembly of new lines is possible EUR 2.6 million or import from Lithuania);

   3.3. Increase of manufacturing costs resulting from the efficiency reduction EUR 860, 000;

   3.4. Increase of transportation and logistics costs EUR 1,600,000, resulting from the efficiency reduction of transported and loaded litres;

   3.5. Increase of production materials costs EUR 618,000, in relation to the increase in the number of production units — at the moment one 2L preform, further on even two or more preforms (2L PET weighs 50 grams, 1L PET weighs 36 grams X 2 = 72 grams (increase 44%)).

4. The Draft Law contradicts the European Union legal rules. The restrictions under the Draft Law are prohibited pursuant to Article 34 of the Treaty on the Functioning of the European Union (hereinafter referred to as "TFEU"). The packaging restrictions, which are laid down by the Draft Law, fail to comply with the exception under Article 36 of TFEU and fail to conform to the legal acts of the European Union. The evaluation of the necessity and efficiency of the restrictions, which are laid down by the Draft Law, is not sufficient to substantiate the appropriateness of this Draft Law for the achievement of the goal set.

Free movement of goods is one of the four EU fundamental rights, which was already consolidated in the practice of the Court of Justice of the European Union in 1979. The Court of Justice of the European Union indicated that goods that are legally manufactured in one member country shall be regarded as such also in other

member countries. Article 34 of TFEU (Article 28 of the former Treaty of the European Communities (TEC)), which provides that "the quantitative import restrictions and other measures with similar effect are prohibited among the Member States", shall apply to trading of goods, within the EU framework, including alcoholic beverages. The same way Article 35 of TFEU (TEC Article 29) lays down the prohibition against quantitative restrictions or other limitations with similar effect to the export goods.

Since the manufacturers of other countries that produce the alcoholic beverages, which are affected by the amendments, will not be able to trade goods in Latvia without their adaptation to the Latvian market and any adaptations require investment, it can be concluded that the amendments will hamper the introduction of these goods to the Latvian market.[1]

5. **The Draft Law unreasonably restricts competition.** If the Draft Law comes into force, unfounded competition advantages would be given to those producers of alcoholic drinks that are not influenced by the said Draft Law, as well as to those that are influenced by it but who, due to the specificity of their manufactured production, do not bottle their production in PET packaging in the amount as, for instance, beer and cider producers do.

   Taking into account that the requirement to alcoholic beverage producers for the introduction of new types of goods packaging especially for the Latvian market incurs considerable costs to those producers that are affected by the requirements, set out in the Amendments, the conclusion is drawn that these producers are disadvantaged in comparison with the producers that do not have to introduce any changes to the production. Likewise the necessity to adapt the production can refrain or hamper the entrance of new participants into the market, unreasonably limiting competitiveness and free movement of goods in EU.[2] Unfounded restriction of competitiveness will affect not only the producers of Latvia but also other EU Member States.

6. **The Draft Law unreasonably restricts free movement of goods in the European Union and can create an irreversible precedent for further restrictions of free trade among the Member Countries.** The restrictions in the Draft Law shall be regarded as unreasonable because the set goal can be achieved by means that restrict free movement of goods less. The legal framework under the amendments does not comply with the proportionality principle, namely, it is unnecessary for the achievement of the goal set and this goal can be achieved by other means that would affect the EU internal trade to lesser extent.[3] Latvia has not evaluated other possible alternatives that would equally apply to all alcoholic beverages, respectively would reduce alcohol consumption and related problems, but would not restrict the beer producers so substantially.

7. **Lithuanian experience.**

[1] On Draft Law "Amendments to the Law on the Circulation of Alcoholic Drinks" No LP 606/12, Sorainen, Riga, 09.11.2016. Page 3-4.

[2] On Draft Law "Amendments to the Law on the Circulation of Alcoholic Drinks" No LP 606/12, Sorainen, Riga, 09.11.2016. Page 6;

[3] The same, page 6.

The Associations draw Commission's attention to the fact, that, currently, Paragraphs 4 and 5 of Article 18 of the Law on Alcohol Control prohibit sale in Lithuania of the following:
"4) alcoholic beverages belonging to the groups of beer, fermented beverages, alcoholic cocktails bottled in packaging of more than 1 litre, except for the cases where such beverages are bottled in glass, ceramic, wooden or metal packaging, in retail sales outlets;

5) alcoholic beverages belonging to the groups of beer, fermented beverages, alcoholic cocktails the ethyl alcohol by volume of which exceeds 7.5 %, bottled in packaging of more than 0.5 litre, except for the cases where such beverages are bottled in glass, ceramic, wooden or metal packaging)."

On the 15th of December, 2014 the Standardization Department of Lithuania represented to the Commission Notification Detail regarding the Draft Law of the Republic of Lithuania amending Articles 18 and 34 of Law No I-857 on Alcohol Control, including Brief Statement of Grounds as follows (excerpt):

"Consumption of beer and cider stronger than 7.5 % ABV bottled in 2 litre plastic bottles contributes significantly to the overall consumption of alcohol. According to data from a survey conducted by the market research company AC NIELSEN, beer in plastic containers holding more than 1 litre (i.e. holding 2 or 2.5 litres) made up 46 % of all beer sold on the Lithuanian retail market, while the same statistic for cider was as high as 79 %. In the last five years, these sales have risen by 40%. In 2011, beer stronger than 7.5 % ABV made up 26.1 % of all beer sold on the Lithuanian market."

The consumption, habits of Latvian citizens and the Latvian beer market situation is completely different compared to Lithuania, but planed limitations are more extensive. At present in Latvia 99% of beer 5.9%-7.0% ABV in plastic containers are holding more than 0.5 litre. Accordingly the Draft Law *"1.[3] It is prohibited to sell beer, fermented beverages and other alcoholic beverages which are produced by mixing several alcoholic beverages in packaging units which volume exceeds: 1) 0.5 litres, if the amount of absolute alcohol in mentioned alcoholic beverages exceeds 5.8 per cent per volume; (...)* According to data from a survey conducted by the market research company AC NIELSEN, sales of beer 5.9%-7.0% ABV bottled in plastic containers in 2016 made up 9.3% from the total beer market, which is almost three times less than in 2011, when sales of beer 5.9%-7.0% ABV bottled in plastic containers made up 25.9%. Particular data do not include HoReCa (Hotel Restaurant Café) segment and are calculated only based on retail data.

Accordingly facts represented by the Standardization Department of Lithuania to the Commission in the Brief Statement of Grounds, *"This problem is particular exceptionally to Lithuania; there is no information that it would be popular in other Member States to purchase strong beer in large PET containers."* Associations representing the Latvian beer industry confirm and information represented above proves that it is not popular in Latvia to purchase strong beer in large PET containers. It contains only 9.3% of the total retail beer market and is decreasing without any limitations.

Planned Law on Alcohol Limitations will have a significant impact on imports from EU countries. In 2016, beer 5.9%-7.0% ABV filled into containers holding more than 0.5 litre was imported into Latvia from several EU countries. These imports amounted to more than 30 % of all imported beer sales on the Latvian retail market.

On 1 November 2016 the international sworn attorneys' bureau "Sorainen" drew up an opinion in which the non-compliance of the Draft Law with the European Union legal rules was pointed out. We are enclosing the text of the drawn-up opinion.

Taking into account that the Draft Law in the current edition contradicts the legal acts of the European Union and commitments, which were undertaken by the Republic of Latvia upon its accession to the European Union, we request to stop the further advancement of the Draft Law.

Enclosure: sworn attorneys' bureau "Sorainen" opinion on the Draft Law "Amendments to the Law on the Circulation of Alcoholic Drinks".

Yours sincerely,

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