



spiritsEUROPE position on
Irish Public Health (Alcohol) (Labelling) Regulations 2022

TRIS NOTIFICATION 2022/441/IRL

27 July 2022

Background:

- On 27 January 2016, Ireland submitted a TRIS notification of a comprehensive new public health alcohol bill, covering inter alia advertising restrictions, minimum unit pricing, labelling.
- On 22 June 2022, the Irish government notified the European Commission about its proposal on mandatory Health Warning Labels (HWLs) on alcoholic beverage products.
- Pursuant to Article 12 of the Irish Public Health (Alcohol) Bill 2015, the detailed regulatory draft regulation remains in relation to the requirements for health warnings, health symbols and health information. In particular, the requirement for all alcoholic beverages sold in Ireland to carry two significant health warnings is of concern. According to the proposal, the labels on alcoholic beverage products must display a warning to inform people *about the danger of alcohol consumption in general and its direct link to fatal cancers, and/or the risk of liver disease*.
- The Bill would oblige all alcoholic beverages sold on the Irish market to carry on the label:
 - A warning that states “Drinking alcohol causes liver disease”;
 - A symbol, under the form of a pictogram, warning of the dangers of alcohol consumption when pregnant;
 - A warning that states “There is a direct link between alcohol and fatal cancers”;
 - The grams of alcohol in the container;
 - The number of calories in the container;
 - A link to the website www.askaboutalcohol.ie.

spiritsEUROPE position:

1. Internal Market disruption.

The Single Market is undoubtedly one of the greatest EU achievements that is fuelling economic growth and makes everyday life of European businesses and consumers easier. In large part, this

is due to simplification and harmonisation of regulations and processes across the Single Market. Differentiated national labelling rules from various Member States like the one proposed by Ireland would introduce numerous major supply chain complexities which would jeopardise and affect the proper functioning of the EU Single Market and frustrate its aims.

Therefore, if enacted, this planned measure would exert a significant negative impact on the proper functioning of the EU's Single Market, disrupting the free movement and trade flows of alcoholic beverages between Ireland and other EU Member States.

Indeed, it will be a logistical challenge to distinguish domestic and exported goods under Irish regulations and will lead to a discrimination in the Internal Market for alcoholic beverages on the EU's Internal Market. The labelling requirements will create a barrier to trade and entry in the Irish market and have the equivalent effect to quantitative restrictions, which is incompatible with Article 34 and 35 of the Treaty of the Functioning of the EU (TFEU). As a matter of fact – restrictive labelling requirements would oblige the reworking of alcohol packaging specifically for the Irish market. That could effectively hinder or even preclude market access for alcoholic beverages from other Member States, particularly for small and medium-sized enterprises.

For these reasons the proposed measures are in breach of the EU treaties. Additionally, regarding the provisions concerning nutritional information to be displayed on the labels of alcoholic beverages, these requirements are already fully regulated at EU-level.

Last but not least, the Irish Bill does not include any mutual recognition principle that should apply, e.g. for provisions regarding the pregnancy logo on label that are already applicable in other Member States (e.g. in France and Lithuania). This principle is to ensure that consumers receive information which is harmonised and easily understood across the Single Market. Therefore, a label change should not be imposed in this regard.

Ireland should insert in its legislation a mutual recognition clause, whereby it would accept imports of products bearing a similar logo, whilst these products are legally marketed in another Member State. The producers having such a similar logo already would not need to adapt the specific of form and colour requirements provided for in the Draft Regulations.

2. SMEs will suffer disproportionately.

The measure will place a disproportionate administrative and logistic burden on tens of thousands of producers of alcoholic beverages, adding significant pressure on costs of goods during inflationary times. Small and medium-sized craft distillers (SMEs) both in Ireland and the rest of the EU will be disproportionately affected by the measure – having to create Ireland-only labels for their different Stock Keeping Units (SKUs) would cause a significant cost and administrative burden that many will find difficult or impossible to absorb. Both Irish exporters and EU importers in Ireland will need to incorporate higher costs into their business models, and some may be forced out of the Irish market altogether. If, for certain producers, it would no longer economically viable to continue operations in the Irish market, this could lead to a substantial loss of competition and consumer choice. Irish consumers will lose out because they will have less choice and face higher prices as market competition will suffer. Moreover, Irish revenues from alcohol duties and indirect taxes will most likely reduce. The induced effect in the Irish value chain will also be felt.

3. Risk of undermining coherent EU harmonisation.

In the Communication of the Europe Beating Cancer Plan, the European Commission has already announced its intention to *‘propose a mandatory indication of the list of ingredients and the nutrition declaration on alcoholic beverage labels (FIC regulation) before the end of 2022 and health warnings on labels before the end of 2023’*.

In light of the planned harmonised approach at EU level in the coming months, the Irish measures should be put on hold at least until greater clarity on the future harmonised approach has emerged.

In the light of these circumstances and until then, unilateral Member State initiatives in the field of health warnings such as the Irish draft regulation, will undermine the harmonisation of the European Union’s approach.

Adoption of this legislation will supersede the intention of the European Commission to legislate in this area, contradict existing harmonised EU legislation, impose obstacles to producers in other Member States wishing to export alcoholic beverages to Ireland, particularly products that are

new to the market and introduce labelling requirements that would apply only in Ireland leading to a degree of territorial isolation.

Within the FIC revision, the European Commission might consider providing information to consumers through digital labelling as is already the case for wine products. Digital labelling allows companies to provide detailed and more contextualised information, scientifically established, easy to access and in the language of the consumer, without the need to change the packaging or negatively impact movement of products within the Internal Market. At present, the Irish proposal fails to offer such an alternative means of achieving the objectives of the notification while preserving the integrity of the Internal Market. Additionally, the FIC Regulation indicates harmonization of the alcohol beverage labelling, therefore additional requirement to put HWLs on the label is inconsistent with this regulation. Similarly, requirement to indicate the number of calories in the container is not aligned with the FIC Regulation.

4. Inaccurate and disproportionate health warnings not substantiated by evidence.

Cancer is a multi-factorial disease, the cancer risk cannot be evaluated in isolation, and studies suggest that lifestyle factors are important risk factors for cancer. The proposed specific warnings claiming a direct link between alcohol and fatal cancers and alcohol and liver disease are unjustified and disproportionate. As far as we are aware, no new expert research has been published.

The universal nature of the proposed health warning labels will be highly misleading and will have unpredictable consequences, notably on the overall extent to which moderate consumption may be pursued by individuals in the knowledge that such responsible consumption behaviours by healthy adults may be compatible with a balanced lifestyle. The Irish government has not proven any 'direct link' between alcohol consumption and cancer. In fact, scientific evidence shows that the existing links between nutrition/dietary intakes on the one hand and associated health risks on the other are highly complex and vary from individual to individual (due to factors such as e.g. age, gender, lifestyle, genetics).

Ireland has not provided any evidence that such labelling requirements are proportionate. Ireland has failed to demonstrate that the measure is appropriate to protect human health and that it does not go beyond what is necessary to attain that objective. It remains unclear whether the Irish

government has considered other less disruptive measures to convey relevant health information to consumers.

Health warning labels are strong interventions in the freedom of marketing of the producers, but have a very small effect on consumers, thus they are ranked among the weakest interventions. Evidence shows that repeated exposure to HWL increases awareness of their existence, but not necessarily of their messaging, and also increases the likelihood that they will be ignored.

In the EU, the vast majority of consumers of alcoholic beverages are moderate consumers. The Irish government has not given scientific evidence whether its proposed warnings may prompt reduced consumption by health-conscious moderate drinkers. Apparently, it has neither considered research that has shown that some groups, particularly those most at-risk of harm, may be least sensitive to warning labels¹.

Nonetheless, a Member State that intends to adopt a measure such as the Draft Regulations needs to assess the nature and scale of the restriction on the free movement of goods resulting from that measure by comparison with other possible measures which are less disruptive of trade within the EU.

Indeed, dematerialisation should be considered by the Irish authorities as an alternative means of achieving the same objectives as those set out in the notification ("to ensure that Irish consumers are directly informed of these risks and that they are supported in making healthier choices concerning their alcohol consumption") but in a more efficient way. Digital labelling allows companies to provide detailed information, scientifically established, easy to access and in the language of the consumer, without the need to change the packaging or negatively impact movement of products within the Internal Market.

The proposed health warnings fail to reflect the complexities that arise in considering the health risks for individual consumers, which vary significantly on the amount of alcohol consumed and the pattern of consumption. Thus, the warnings do not accurately inform consumers.

¹ Ringold, D.J., Boomerang effects in response to public health interventions: Some unintended consequences in the alcoholic beverage market. *Journal of Consumer Policy*, 2002. 25(1): p. 27-63

The European Parliament resolution on ‘Strengthening Europe in the fight against cancer’², emphasises ‘the role of a healthy diet in preventing and limiting the incidence and recurrence of cancer’. It also stresses that individual cancer risk can be reduced by an increased consumption of sustainably-produced plants and plant-based foods, such as fresh fruits, vegetables, whole grains and legumes.

In the light of the above, spiritsEUROPE requests the European Commission and EU Member States to issue a detailed opinion on the Irish Draft Regulation to block its adoption under de TRIS procedure and to consult the Standing Committee on Plants, Animals, Food and Feed (PAFF Committee) at the next meeting on 6th September.

² P9_TA(2022)0038 Strengthening Europe in the fight against cancer European Parliament resolution of 16 February 2022 - towards a comprehensive and coordinated strategy (2020/2267(INI))