Message 115

Communication from the Commission - TRIS/(2024) 1042

Directive (EU) 2015/1535

Notification: 2024/0032/BE

Forwarding of a detailed opinion received by a Member State (Italy) (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 22-07-2024.

Detailed opinion - Avis circonstancié - Ausführliche Stellungnahme - Подробно становище - Podrobné stanovisko - Udførlig udtalelse - Εμπεριστατωμένη γνώμη - Dictamen circunstanciado - Üksikasjalik arvamus - Yksityiskohtainen lausunto - Detaljno mišljenje - Részletes vélemény - Parere circostanziato - Išsamiai išdėstyta nuomonė - Sīki izstrādāts atzinums - Opinjoni dettaljata - Uitvoerig gemotiveerde mening - Opinia szczegółowa - Parecer circunstanciado - Aviz detaliat - Podrobné stanovisko - Podrobno mnenje - Detaljerat yttrande

Extends the time limit of the status quo until 22-07-2024. - Prolonge le délai de statu quo jusqu'au 22-07-2024.- Die Laufzeit des Status quo wird verlängert bis 22-07-2024.- Удължаване на крайния срок на статуквото до 22-07-2024. - Prodlužuje lhůtu současného stavu do 22-07-2024. - Fristen for status quo forlænges til 22-07-2024. - Παρατείνει την προθεσμία του status quo 22-07-2024. - Amplía el plazo de statu quo hasta 22-07-2024. - Praeguse olukorra tähtaega pikendatakse kuni 22-07-2024. - Jatkaa status quon määräaikaa 22-07-2024 asti. - Produžuje se vremensko ograničenje statusa quo do 22-07-2024. - Meghosszabbítja a korábbi állapot határidejét 22-07-2024-ig. - Proroga il termine dello status quo fino al 22-07-2024. - Status quo terminas pratęsiamas iki 22-07-2024. - Pagarina “status quo” laika periodu līdz 22-07-2024. - Jestendi t-terminu tal-istatus quo sa 22-07-2024. - De status-quoperiode wordt verlengd tot 22-07-2024. - Przedłużenie status quo do 22-07-2024. - Prolonga o prazo do statu quo até 22-07-2024. - Prelungește termenul status quo-ului până la 22-07-2024. - Predlžuje sa lehota súčasného stavu do 22-07-2024. - Podaljša rok nespremenjenega stanja do 22-07-2024. - Förlänger tiden för status quo fram till 22-07-2024.

The Commission received this detailed opinion on the 17-04-2024. - La Commission a reçu cet avis circonstancié le 17-04-2024. - Die Kommission hat diese ausführliche Stellungnahme am 17-04-2024 empfangen. - Комисията получи настоящото подробно становище относно 17-04-2024. - Komise obdržela toto podrobné stanovisko dne 17-04-2024. - Kommissionen modtog denne udførlige udtalelse den 17-04-2024. - Η Επιτροπή έλαβε αυτή την εμπεριστατωμένη γνώμη στις 17-04-2024. - La Comisión recibió el dictamen circunstanciado el 17-04-2024. - Komisjon sai üksikasjaliku arvamuse 17-04-2024. - Komissio sai tämän yksityiskohtaisen lausunnon 17-04-2024. - Komisija je zaprimila ovo detaljno mišljenje dana 17-04-2024. - A Bizottság 17-04-2024-án/-én kapta meg ezt a részletes véleményt. - La Commissione ha ricevuto il parere circostanziato il 17-04-2024. - Komisija gavo šią išsamiai išdėstytą nuomonę 17-04-2024. - Komisija saņēma šo sīki izstrādāto atzinumu 17-04-2024. - Il-Kummissjoni rċeviet din l-opinjoni dettaljata dwar il-17-04-2024. - De Commissie heeft deze uitvoerig gemotiveerde mening op 17-04-2024 ontvangen. - Komisja otrzymała tę opinię szczegółową w dniu 17-04-2024. - A Comissão recebeu o presente parecer circunstanciado em 17-04-2024. - Comisia a primit avizul detaliat privind 17-04-2024. - Komisia dostala toto podrobné stanovisko dňa 17-04-2024. - Komisija je to podrobno mnenje prejela dne 17-04-2024. - Kommissionen mottog detta detaljerade yttrande om 17-04-2024. - Fuair an Coimisiún an tuairim mhionsonraithe sin maidir le 17-04-2024.

MSG: 20241042.EN

1. MSG 115 IND 2024 0032 BE EN 22-07-2024 17-04-2024 IT DO 6.2(2) 22-07-2024

2. Italy

3A. Ministero delle imprese e del Made in Italy
Dipartimento Mercato e Tutela

Direzione Generale Mercato e Tutela
Divisione II - Normativa tecnica - Sicurezza e conformità dei prodotti, qualità prodotti e servizi
00187 Roma - Via Molise, 2

3B. Ministero dell'Agricoltura, della Sovranità Alimentare e delle Foreste

4. 2024/0032/BE - C50A - Foodstuffs

5. article 6, paragraph 2, second indent of Directive (EU) 2015/1535

6. With reference to the draft technical regulation on the 'Royal Decree on advertising of beverages containing alcohol', corresponding to notification No 2024/0032/BE, the Legislative Office of the Ministry for Agriculture, Food Sovereignty and Forestry issued the following detailed opinion:

Subject: Draft technical regulation 'Royal Decree on advertising of beverages containing alcohol', corresponding to notification No 2024/0032/BE – Detailed opinion

On last January 19, the Belgian Ministry for Health notified under the TRIS procedure (2024/0032/BE) a measure concerning the advertising of beverages containing alcohol.

The aim of the draft, as stated in the Communication from the Commission – TRIS (2024)1075, is as follows: The purpose of this draft Royal Decree is also to impose a health warning on all advertisements for beverages containing alcohol. Only health warnings laid down by the Minister may be displayed on these advertisements. Other slogans, health warnings or other warnings may therefore no longer be displayed on these advertisements; these include the slogans provided for in the Agreement on the Advertising and Marketing of Beverages Containing Alcohol. The rule provides that: 'In order to better inform the public about the dangers of alcohol, health warnings shall be obligatory on advertisements for this type of beverage.'

Advertising of alcoholic beverages in the European Union is regulated both by primary legislation, such as Directive 2010/13/EU on audiovisual media services (AVMSD), and by industry self-regulation codes. In particular, Directive 2010/13/EU, recently amended by Directive (EU) 2018/1808, in Article 22 already prohibits advertising of alcoholic beverages aimed at minors. Even the self-regulatory code of the industry, cited above, states that 'commercial communication relating to alcoholic beverages must not [...] address or refer to, even indirectly, minors and that 'commercial communication of alcoholic beverages must never, not even implicitly or indirectly, be addressed to, appeal to, refer to or depict minors''.

Italy has always supported the need to encourage responsible alcohol consumption and not to target the advertising of alcohol to minors.
In Italy, in fact, since 2001, Law No 125 of 30 March 2001 has provided for a prohibition on the sale of alcoholic beverages to minors under the age of 18 and Article 689 of the Criminal Code provides for the arrest up to one year for serving alcoholic beverages to minors under the age of 16. In addition, pursuant to the new Article 14b of Law No 125 of 30 March 2001, administrative penalties are laid down in case of administration or sale of take-away alcoholic beverages to minors under the age of 18 (penalties and, if a recurrence, suspension of activity).
It should also be noted that, in Italy too, the advertising of alcoholic beverages and spirit drinks is prohibited if transmitted during programmes aimed at minors and within fifteen minutes before and after the broadcast of such programmes or if it positively represents minors who are consuming alcoholic beverages or spirit drinks, or, again, where it is intended for places mainly frequented by minors under the age of 18.

Italy therefore welcomes initiatives aimed at protecting minors with respect to alcohol consumption.

The draft Belgian decree, although aimed at protecting minors from alcohol consumption, presents some significant

shortcomings and problems that require clarifications and additions to the text, in particular with regard to the introduction of information messages containing health warnings.

1. Lack of determination and completeness of the rule

Article 7 of the Decree provides that: 'All advertising for beverages containing alcohol shall contain a health information message, the content and form of which shall be laid down by the Minister. Only health information messages laid down by the Minister may be mentioned on advertisements; any other health message, educational slogan or other wording is prohibited.'
Such an indeterminate rule can create a state of uncertainty for operators in the sector and thus lead to a possible barrier to the free movement of goods within the Union.

From the reading of the rule, in fact, it is not possible to know what the content and form of the information message will be, which will be decided with a subsequent 'technical regulation' by the responsible Minister. This makes the Belgian proposal for a decree difficult to assess, since the true content of the concept of 'technical regulation' within the meaning of Directive 2015/1535 is not fully expressed in the notified proposal and is instead referred to a subsequent measure by the Minister.
The draft decree should therefore clarify as soon as possible:
1) what is the health information message in terms of its content and format;
2) what are the messages that will be authorised in the advertisements;
3) which messages will be prohibited.

Finally the lack of clarity of the current rule does not allow an assessment of the proportionality of the initiative, of the scientific basis justifying the health warnings to be imposed and of compliance with the European 'Beating Cancer Plan'.

2. Ambiguity in the definition of 'advertising'

The problem identified is further worsened by the definition of advertising set out in Article 1, which is not clear from the point of view of the scope. In fact, according to Article 1 of the draft decree, 'advertising' means 'any communication, regardless of the location, means or techniques used, with the direct or indirect aim of promoting brand awareness or the sale of beverages containing alcohol. For the purposes of this Decree, the affixing of a mark or logo shall also be regarded as advertising.'
This definition of advertising, first of all, does not correspond to what is stipulated in the European Audiovisual Media Services Directive, but more importantly, it appears so broad and poorly defined that it is unclear what is included and what is excluded from the concept of "advertising."
Therefore, if the scope of the rule is not clarified more fully and clearly, there could be a barrier to trade in breach of EU law. In fact, if labels are also to be included in that definition of advertising, this could lead to new obligations for producers of alcoholic beverages who would, where appropriate, have to adapt the labelling of exported products in order to comply with the laws of Belgium. Those adjustments would entail an obligation to modify labels in order to make them compliant with the legislation of the Member State of origin of the product and would produce a measure having equivalent effect to a quantitative restriction, prohibited by Article 34 TFEU.

3. Risk of undermining the harmonisation of legislation at European level and creating a barrier to the free movement of goods

Although health warnings on alcoholic beverages are not yet regulated by EU legislation, the European Commission has already announced, in 2021, its intention to address the issue in the framework of its Communication to the European Parliament and the Council on the "European Beating Cancer Plan". Specifically, the Commission plans to propose mandatory health warnings for alcoholic beverages as part of its efforts to curb harmful alcohol consumption. As far as we know, the evidence-gathering phase, which started in 2023, is expected to be completed shortly. On 16 February 2022, on the same initiative of the Commission, the European Parliament adopted a resolution on 'Strengthening Europe in the fight against cancer'. In particular, paragraph 16 of the resolution highlights the need to provide more information

to consumers by improving the labelling of alcoholic beverages to include information on moderate and responsible drinking and introducing the mandatory indication of the list of ingredients and nutritional information, and in addition, by introducing digital labelling.
Member States, therefore, also under Directive (EU) 2015/1535, should refrain from adopting legislation on issues on which regulatory activity is ongoing at European level.
Therefore, any initiative relating to this issue must take into account these elements and unilateral initiatives by the Member States in the field of health information, such as the draft Belgian decree, that at this stage undermine the harmonisation of European Union rules and the impact and effectiveness of such measures.

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In light of the problems identified, with reference to the notification referred to above, it is proposed to issue a detailed opinion, as it is considered that the draft could create barriers to the free movement of goods in the internal market.

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