Message 103

Communication from the Commission - TRIS/(2024) 1067

Directive (EU) 2015/1535

Notification: 2024/0032/BE

Forwarding of the observations of a Member State (Portugal) (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

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1. MSG 103 IND 2024 0032 BE EN 22-07-2024 22-04-2024 PT COMMS 5.2 22-07-2024

2. Portugal

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4. 2024/0032/BE - C50A - Foodstuffs

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

6. Comments on notification 2024/0032/BE (Belgium) of 19 January 2024 concerning the draft Royal Decree on the advertising of alcohol-containing beverages in media intended primarily for minors, raised by the Belgian Government to the European Commission in the TRIS database.

Following the notification to the Member States of the European Union by the Belgian Government of the order based on a draft Royal Decree on the prohibition of advertising of alcohol-containing beverages in media intended primarily for minors, Portugal hereby expresses its concern about the impact of this measure with regard to the proper functioning of the European Single Market.
The definition of “advertising” expressed in Article 1 of the draft Royal Decree as “any communication, regardless of the location, methods or techniques used, with the direct or indirect aim of promoting awareness of the brand or the sale of beverages containing alcohol”. For the purposes of this Decree, the affixing of a trademark or logo shall also be regarded as advertising.’ It appears to be indefinite and comprehensive and may thus lead to legal uncertainty, vagueness and instability on the market, in particular by considering the display of a trademark or logo in the very definition of advertising.

It should be noted that the definition of advertising in the draft Royal Decree does not correspond to the definition in Article 1(i) of the Audiovisual Media Services Directive (DIRETIVA 2010/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 10 March 2010, in its current wording), extending its objective to promote awareness of the brand and not only to the marketing of the product.

Moreover, by considering the trademark and/or logo as advertising and thus, for example, requiring the adaptation to the Belgian market of all the merchandising associated with a trade mark, the proposal for the Belgian Royal Decree will necessarily have a negative impact on the free movement of goods, one of the cornerstones of the EU internal market. The creation of unjustified barriers to trade between Member States, equivalent to quantitative restrictions on imports, is contrary to Article 34 of the Treaty on the Functioning of the European Union (TFEU).

Portugal considers that it is important for the Belgian Government to ensure compliance with existing legislation as well as with legislative harmonisation, taking into account existing rules in the other Member States and the implication that a broad definition of advertising represents under Article 34 TFEU, which prohibits “quantitative restrictions on imports and all measures having equivalent effect” between Member States.

In this context, it is noted that the Belgian Government should revise the broad definition of “advertising” in Article 1 of the draft Royal Decree in order to avoid future disputes and practices considered to be restrictive of imports, in violation of Article 34 TFEU.

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