



TRIS Notification - Belgian Royal Decree on advertising of beverages containing alcohol

Submission of The Brewers of Europe

March 2024

Following TRIS notification [2024/0032/BE](#), Member States and the European Commission are encouraged to issue a detailed opinion requesting that Belgium:-

- **Withdraw its draft decree** on the basis that it is incomplete and does not allow Member States of the European Commission to properly assess the impact the proposed measures may have on the Single Market.
- **Wait until the European Commission has published its draft proposal** on the labelling of alcoholic beverages.
- **Only re-notify a draft decree under the conditions that it considers the below-listed elements** and provides clear technical specifications that can be properly assessed by the European Commission and Member States.

Introduction

First and foremost, we fully support the need to encourage responsible drinking and to restrict alcohol advertising to minors. The advertising of alcoholic beverages across the EU is already regulated comprehensively by both statutory regulation, such as the Audiovisual Media Services Directive (AVMSD) or the EU Directive on unfair commercial practices, and through industry self-regulation based on national codes of conduct and enforced by self-regulatory bodies across Europe. The co-regulatory regime, as envisaged by the AVMSD, ensures that alcohol advertising is not targeted at minors and does not encourage immoderate consumption.

Incomplete TRIS notification

The draft decree does not contain enough information on the proposed measures and should be withdrawn.

The draft decree that has been notified is incomplete as it lacks important information that could help the European Commission and the Member States to take an informed position. The following important information is missing from the draft decree:

- Full clarification of the scope (see below for further details).
- No details are provided on the content of the health message.
- No indication of the date of entry into force and date of application, and whether a transition period (and the length thereof) would be allowed.

Therefore, the notification by the Belgian government does not meet the expected standards from a TRIS notification that should allow the European Commission and Member States to have at their disposal the necessary information¹. Consequently, the Belgian government should withdraw its draft decree and only resubmit it once it contains the actual details upon which the European Commission and Member States can take an informed position.

¹ Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), Recital 5: "It is essential for the Commission to have the necessary information at its disposal before the adoption of technical provisions. Consequently, the Member States, which are required to facilitate the achievement of its task pursuant to Article 4(3) of the Treaty on European Union (TEU), must notify it of their projects in the field of technical regulations."

Other important considerations the Belgian government should consider.

- Undefined and wide-ranging scope extending beyond advertising.

The definition of “advertising” as provided in Article 1, paragraph 1, of the draft decree and especially its last sentence (“*the affixing of a mark or logo shall also be regarded as advertising*”) can be understood as applying to absolutely all media, platforms and forms, ranging from traditional advertising (on TV, on the radio, in print and online publications) to branded glassware, clothing, or the label of a bottle or can. The scope is all-encompassing, going beyond traditional advertising and therefore undefined. The definition to be provided in any revised decree should be clearly framed, specific and actionable.

- Provisions related to the health information message.

Article 7 of the draft decree foresees 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.*”. The wording of this article contains several flaws and unintended consequences the Belgian government should address in a revised decree to be resubmitted.

- The draft decree does not contain any provisions concerning the date of entry into force, the date of application or whether a transition period is foreseen (and the length thereof). This key set of information should be added to a revised decree to be renotified via the TRIS procedure.
- No technical specifications are shared concerning the content or the form of the health information messages. Therefore, neither Member States nor the European Commission can assess whether the requested health information message would represent any barrier to trade and whether these potential trade barriers would be proportionate and justified. As a consequence, the Belgian government should withdraw its draft decree and only resubmit once the detailed provisions are clearly defined.
- Considering the current inadequately defined scope of the decree (see Article 1, paragraph 1 of the draft decree), the provisions could also be interpreted as applying to the labelling of alcoholic beverages. The European Commission is currently working on publishing a proposal for the labelling of alcoholic beverages as part of the EU Beating Cancer Plan that was announced in 2021. Whilst the publication of this proposal has been delayed (initially scheduled for the end of 2022), the Commission hired a consultancy, ICF, to prepare a Study on the Effectiveness of Health Information on Alcoholic Beverages that will feed into the Commission’s proposal on the matter. Therefore, since the European Commission has expressed its intention to publish a proposal on the matter, considering Article² 6 Paragraph 3 of the Directive, the Belgian government should withdraw its decree and wait for the European Commission’s proposal on the matter to secure a harmonised approach at EU-level and avoid unnecessary barriers to trade.

² Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), article 6, paragraph 3: “*With the exclusion of draft rules relating to services, Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 5(1) of this Directive, if, within three months of that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU.*”

- Moreover, the current Belgian provisions foresee that any other health information message, educational slogan, or wording should be prohibited. This represents an issue as many operators in the industry are providing additional voluntary information that may not be covered by the as yet undefined health information message. Furthermore, many operators produce in markets where such messages are already mandatory and – whilst possibly different in terms of format – are aligned in terms of scope, intentions, and effects. Therefore, this provision may result in:
 - A decreased level of information for the consumers.
 - A disproportionate and unjustified barrier to trade as operators exporting to Belgium would have to redesign their labels and other material on which the brand or company logo appears, even if the messages they currently share either on a voluntary and/or on a mandatory basis are similar to the intended message foreseen by the draft decree.

Therefore, based on all the above-listed elements, the Belgian government should:

- **Withdraw its draft decree** on the basis that it is incomplete and does not allow Member States or the European Commission to properly assess the impact the proposed measures may have on the Single Market.
- **Wait until the Commission has published its draft proposal** on the labelling of alcoholic beverages.
- **Only re-notify a draft decree under the conditions that it considers the above-listed elements** and provides clear technical specifications that can be properly assessed by the Commission and Member States.