



Mr. Radek Maly
Head of Unit
Internal Market, Industry, Entrepreneurship and SMEs Directorate-General
GROW.E.3
N105 4/66
B-1049 Brussels

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spiritsEUROPE's Comments Regarding TRIS Notification 2024/0032/BE

Dear Mr. Maly,

We are writing to you on behalf of spiritsEUROPE, the trade association representing the interests of spirits drinks in EUROPE, as we are concerned with the recent language in the [TRIS notification](#) submitted by Belgium to the European Commission on 19 January 2024 about the advertising of beverages containing alcohol.

Firstly, we fully support and agree with the need to encourage responsible drinking and to prohibit the advertising of alcoholic beverages to minors. The advertising of alcoholic beverages across the EU is already regulated by statutory regulation, such as the Audiovisual Media Services Directive (AVMSD), and industry self-regulation, based on national codes of conduct.

Alcohol advertising already includes messages to discourage excessive consumption and commercial organisations avoid alcohol advertising towards minors. The Responsible Marketing Pact, an initiative of the World Federation of Advertisers, is backed by Europe's largest alcohol producers and establishes clear guidelines on advertisement placement and content. It also sets new standards and controls for digital media to reduce minors' exposure to alcohol marketing and limit its appeal to minors.

Therefore, after analysing the draft decree, we would like to express our concern that the text goes beyond the Belgian Interfederal Alcohol Plan and causes legal uncertainty due to possible misinterpretation of its scope. In addition, it has the potential to cause barriers for SMEs and new entrants into the market.

We find the points below to be especially problematic:

Article 1: Definition of advertising. *“Advertising: 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.”*

The definition above does not correspond to the scope of the Interfederal Alcohol Plan, nor the European Audiovisual Media Services Directive, which defines audiovisual communications in article 1 as: *“Images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement”*).

The definition proposed in the draft decree would include such things as signposts near production sites, physical labels on bottles, non-alcoholic products which have the same brand as an alcoholic product, etc. This would mean that the health information message provided for in article 7 of the draft decree would apply to these situations as well, which we think is not the original intention of the Interfederal Alcohol Plan.

In addition, the inclusion of packaging in the scope of the draft decree would be particularly problematic due to its impact on the EU Single Market and the free movement of goods. The Single Market is undoubtedly one of the greatest EU achievements that is fuelling economic growth and makes the everyday life of European businesses and consumers easier. In large part, this is due to the simplification and harmonisation of regulations and processes across the Single Market. Differentiated national rules from various Member States like the one proposed by Belgium would introduce numerous major supply chain complexities, which would jeopardise and affect the proper functioning of the EU Single Market.

Article 6: Promotional campaigns: *“It is prohibited to offer beverages containing alcohol free of charge as part of a promotional campaign, except when the consumer buys a beverage containing alcohol and as part of tastings.”*

Our concern here is the imprecise wording concerning tastings. More clarity would be needed on the intention and rationale behind this provision, as it is unclear what would constitute a promotional campaign in that context and what activities would still be allowed (e.g. a free tasting when visiting a production site, providing free products for a charity event, sampling to introduce a new product to market with the consent of the consumer, etc). If the intent is to ensure the consent of the consumer when receiving a free drink, then this needs to be clarified in order not to limit private sponsorships, events, samplings and tastings.

Article 7: Health message: *“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.”*

We believe that this will have a significant impact on advertising and will create a technical barrier to trade within the internal market because print media originating from another member state intended

for sale or distribution in Belgium would be forced to adapt advertising to include the mandatory health messages, which would mean higher costs for publishers.

As a multi-lingual country, Belgium is a market where many non-Belgian print media is distributed, which is likely to include advertising for alcoholic beverages. Requiring these advertisements to include the Belgium-specific health information message would render their distribution in Belgium impossible unless the publisher creates a Belgium-specific edition, which might be too costly to do in many cases.

A further concern is that the wording of the health information message in article 7 is meant to be decided solely by the Health Minister and prohibits any other health message, educational slogan, or other wording except for the one provided by the Health Minister.

Article 7 of the Belgian draft decree may present challenges and potential conflicts with ongoing EU initiatives, national legislation in other member states, voluntary industry efforts, and private sector initiatives within Belgium itself. Clarity and alignment with broader EU objectives and regulations will be essential to address these concerns effectively.

Finally, the Belgian Interfederal Alcohol Plan states that *'In case alcohol marketing is allowed, an evidence-based health warning message must be added to each message*. However, the notification details in the TRIS procedure specify: *"In view of the dangers of alcohol consumption (cardiovascular risk, addiction, cancer, lasting effects on the brain etc.: dangers which need no further evidence), especially among minors..."* which is misleading and factually incorrect. The science is complex and simplistic messages are not well-suited to convey health-related messages, in context, in an evidence-based, proportionate, and meaningful way.

We would also like to stress that the available evidence indicates that health warning messages do not directly change behaviour and can therefore not be considered particularly effective or targeted tools to help reduce alcohol-related harm further.

In light of these concerns, we ask the European Commission to consider the detrimental impact that the proposed provisions would have on the functioning of the EU Single Market and would welcome clarification from the Belgian government on the above-mentioned aspects and the evidence supporting the proposed provisions.

We thank you for your consideration and remain at your disposal should you have any further questions on this topic.

Kind regards,

Ulrich Adam
Director General
spiritsEUROPE