

Feedback to TRIS Notification system

Belgian Royal decree on advertising of beverages containing alcohol.

Introduction

On 19 January 2024, Belgium notified the European Commission (“Commission”) of its intention to adopt secondary legislation on advertising of beverages containing alcohol (“the draft decree”), under the Technical Regulations Information System (“TRIS”) notification process. In particular, the draft decree aims at:

- Prohibiting advertisements for beverages containing alcohol in the media primarily aimed at minors;
- Prohibiting the free distribution of beverages containing alcohol except with the purchase of a beverage containing alcohol and during tastings;
- Imposing a health warning on all advertisements for beverages containing alcohol.

Copa and Cogeca would like to provide their remarks to the TRIS notification 2024/0032/BE of the Royal Decree on advertising of beverages containing alcohol.

Incomplete TRIS notification

The draft decree notified by Belgium authorities is incomplete and fails to provide information about the **content, the place, the format of the health message**, the scope of the legislation. It remains silent about the date of entry into force and date of application, and whether a transition period would be allowed. This lack of information is in total contrast with the provisions of EU Directive 2015/1535, which guarantees that the Member States and the European Commission have all the information necessary to detect, analyse, and measure potential obstacles within the internal market to avoid their negative effects.

This limitation would **impede the correct proceedings of evaluation for the responsible institutions and a balanced analysis of the actual effects that the decree would imply for the economy.**

Unclear definition of ‘advertisement’

In Article 1 of the draft decree, the definition of “advertising” and especially its last sentence “the affixing of a mark or logo shall also be regarded as advertising” can be interpreted as applying to absolutely all media, platforms and forms (labelling on the bottle included). The scope is not clear, leading to legal ambiguity. This uncertainty impedes **stakeholders’ capacity to anticipate precisely the potential impact of the forthcoming legislation.**

Moderate and Responsible drinking information and health warnings



Article 7 states 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.”*

This provision creates uncertainty for economic operators which will not be able to plan their activities given the potential changing circumstances decided by the sitting Minister.

Currently, health information on alcoholic beverages are not yet regulated within the EU legislation. The Commission has set up the objective to reduce harmful use of alcohol. Europe's Beating Cancer Plan mentions the possibility to rethink health warnings. Moreover, the European Parliament adopted the report on *“strengthening Europe in the fight against cancer”* which states that *“the European Parliament supports the provision of better information to consumers by improving the labelling of alcohol beverages to include moderate and responsible drinking information and introducing the mandatory indication of the list of ingredients and nutritional information, and in addition, by introducing digital labelling.”*

Considering the current inadequately defined scope of the draft decree, Article 7 could also be understood as applying to the labelling of alcoholic beverages.

Unilateral initiatives by Member States, such as the draft decree notified by Belgium, undermine future EU-wide efforts in harmonisation.

Barrier to trade in breach of EU law

The requirements proposed in the draft decree about the definition of advertising will impose obligations on alcohol producers selling their products in Belgium. Depending on the interpretation of these advertising regulations, it will necessitate modifications of the labelling to comply with Belgian laws.

Such adjustments will involve modifying labels that were previously compliant with regulations in the exporting Member State. These adaptations, with the editing and the printing of thousands new labels will further increase the financial and environmental cost of importing alcoholic beverages on the Belgian market, and the administrative burden on businesses, in particular SMEs.

Therefore, the draft decree would restrict the access of products from other Member States to Belgium and reduce the fluidity of the single market. This constitutes a measure having an effect equivalent to a quantitative restriction and a barrier to trade, which is prohibited by Article 34 TFEU.

In addition, should this be allowed and if other Member States follow suit in adopting similar unilateral measures, the resulting divergences would cause significant barriers to trade all across the EU and would lead to a fragmentation of the single market.

As a consequence, Belgium must withdraw its draft decree.

Conclusion

Copa and Cogeca underlines the inconsistency of the Royal decree with the EU Treaties insofar it creates a barrier to trade for products within the Single Market. Besides, the incomplete information that the draft Royal decree is lacking would prevent the responsible institutions from assessing the actual consequences of the Royal decree to the market.



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