Message 103

Communication from the Commission - TRIS/(2024) 1054

Directive (EU) 2015/1535

Notification: 2024/0032/BE

Forwarding of the observations of a Member State (Bulgaria) (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 19-04-2024 BG COMMS 5.2 22-07-2024

2. Bulgaria

3A. Министерство на икономиката и индустрията
Дирекция "Техническа хармонизация"
ул. "Славянска" 8
гр. София 1052
тел.: +359 2 940 7336, +359 2 940 7522
факс: +359 2 987 8952
e-mail: infopointBG@mi.government.bg

3B. Министерство на земеделието и храните
бул. „Христо Ботев“ 55,
1606 гр. София
тел. център.: +359 2 985 11 383 / 985 11 384
факс: +359 2 980-62-56
e-mail: IBorisova@mzh.government.bg

4. 2024/0032/BE - C50A - Foodstuffs

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

6. The Republic of Bulgaria has reviewed and assessed the draft Royal Decree on advertising of beverages containing alcohol presented by the Federal Public Service for Public Health, Safety of the Food Chain and the Environment of the Kingdom of Belgium. The draft Decree has been notified in accordance with the notification procedure for technical regulations and rules as defined in Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (2024/0032/BE).
The draft Decree aims to introduce certain requirements and prohibitions related to the advertising of beverages with an alcoholic strength exceeding 0.5 % vol.
Article 1(1) of the draft document provides a definition of advertising which reads as follows:
“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”.
Article 7 of the draft Decree lays down the following:
“All advertising for beverages containing alcohol shall include 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 in advertisements; any other health

message, educational slogan or other wording is prohibited".
In view of the above provisions, we would like to point out the following:
As is apparent from that definition of advertising, the proposed requirements and prohibitions related to the advertising of beverages with an alcoholic strength of more than 0.5 % vol. shall also be applicable to the information contained on the label of the product or otherwise made available to consumers, as required by Regulation (EU) No 1169/2011 on the provision of food information to consumers.
Article 3(2) of the Regulation states that food information law shall aim to achieve in the Union the free movement of legally produced and marketed food, taking into account, where appropriate, the need to protect the legitimate interests of producers and to promote the production of quality products.
Chapter V of the Regulation specifies the requirements related to the provision of voluntary food information. Article 36(2) sets out the requirements to be met by food information provided on a voluntary basis:
— it shall not mislead the consumer, as referred to in Article 7;
— it shall not be ambiguous or confusing for the consumer; and
— it shall, where appropriate, be based on the relevant scientific data.
Article 38 specifies the general requirements related to the national measures by stating the following:
1. As regards the matters specifically harmonised by this Regulation, Member States may not adopt nor maintain national measures unless authorised by Union law. Those national measures shall not give rise to obstacles to free movement of goods, including discrimination as regards foods from other Member States.
2. Without prejudice to Article 39, Member States may adopt national measures concerning matters not specifically harmonised by this Regulation provided that they do not prohibit, impede or restrict the free movement of goods that are in conformity with this Regulation.
In relation to the directly applicable requirements of Regulation (EU) No 1169/2011 cited above, Bulgaria considers that it is not clear from the information provided under notification 2024/0032/BE as well as the commented provisions of the draft Royal Decree whether the envisaged requirements and prohibitions related to the advertising of beverages with an alcoholic strength exceeding 0.5 % vol. do not conflict or are in non-conformity, in particular with:
— Article 38(1) and (2) of Regulation (EU) No 1169/2011, given that Article 7 of the draft Royal Decree reads as follows:
"All advertising for beverages containing alcohol shall include 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 in advertisements; any other health message, educational slogan or other wording is prohibited";
— Article 36(2) of Regulation (EU) No 1169/2011, given that the second sentence of Article 7 of the draft Royal Decree reads as follows:
"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."

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European Commission
Contact point Directive (EU) 2015/1535
email: grow-dir2015-1535-central@ec.europa.eu