

POSITION ON BELGIAN DRAFT ROYAL DECREE ON ADVERTISING OF BEVERAGES CONTAINING ALCOHOL

TRIS NOTIFICATION 2024/0032/BE

FRAMEWORK

Belgium authorities adopted on 29th March 2023 the first Inter-federal strategy to fight harmful and excessive use of alcohol 2023 – 2028 and an action plan covering the next 3 years 2023 – 2025. A new action plan will be adopted to cover the 2026 – 2028 period.

The Action Plan for 2023-2025 delineates both overarching and targeted objectives, comprising a total of 75 actions. Notably, it prioritizes addressing vulnerable target groups such as youth, pregnant women, heavy drinkers, and the homeless

Belgium authorities adopted on 14th March 2024 a law in the framework of the above-mentioned strategy to restrict alcohol sales (on highways, in hospitals and automatic distributors) and modifications in the national LPA for alcoholic beverages.

On 19 January 2024, Belgium notified, under the Technical Regulations Information System (“TRIS”) notification process, the European Commission of its intention to adopt secondary legislation on advertising of beverages containing alcohol. TRIS notification 2024/0032/BE – “Royal Decree on advertising of beverages containing alcohol”.

The main elements of the draft decree are:

- to provide a definition of advertising and of beverages containing alcohol.
- to prohibit advertising for beverages containing alcohol before and after a programme as well as in newspapers and periodicals or on digital media that are aimed primarily at a minor audience.
- to prohibit advertising for beverages containing alcohol when a film that is aimed primarily at a minor audience is broadcasted in a cinema.
- to prohibit 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.
- 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.

ACIBEV POSITION

ACIBEV welcomes the opportunity to provide comments to the draft Royal Decree “on advertising of beverages containing alcohol” notified by Belgian authorities to the European Commission through the TRIS process in January 2024.

The wine sector shares the objective of the Belgian inter-federal strategy to fight harmful and excessive use of alcohol 2023 – 2028 and is strongly committed (notably through the coordination of Wine in Moderation²) to promote moderate and responsible consumption of alcoholic beverages, to fight harmful use of alcohol, and to reduce the exposure of minors to audiovisual commercial communications for alcoholic beverages. It is worth to mention that these aspects are already addressed by legislation and by self-regulatory advertising codes at both European and national levels.

The Belgian royal decree provides only very limited elements for member States, European Commission and stakeholders to assess not only what specific provisions will be adopted and implemented but also on the scope of application of the future legislation and moreover do include several serious flaws:

1. Limited elements related to future provisions

The draft decree currently lacks comprehensive information regarding future provisions, posing challenges for stakeholders in providing specific feedback. Two main issues contribute to this limitation:

a) Lack of Clarity on Health Information Message:

The draft decree, Article 7, fails to specify the content and format of the health information message required for advertising alcoholic beverages. This omission restricts stakeholders' ability to evaluate the proposed message's accuracy, potential disproportionality, scientific basis, and alignment with both the Belgian strategy and Europe's beating cancer plan, which prioritize combating harmful alcohol consumption.

b) Ambiguity in the Definition of "Advertising"

The definition of "advertising" outlined in Article 1 of the draft royal decree lacks clarity from a legal perspective since its scope is not clear. Consequently, uncertainty arises regarding the legislation's exact scope, resulting in legal ambiguity. For instance, it remains unclear whether even the display of a specific wine logo on a bottle's front or back label would constitute advertising under the proposed definition. It is worth to mention that the definition of advertising provided in article 1 does not correspond to the scope of the European Audiovisual Media Services Directive.

These uncertainties hinder respondents' ability to provide meaningful input and anticipate the potential impact of the forthcoming legislation. Clarifying these aspects is essential to ensure effective implementation and compliance while fostering stakeholder engagement in the regulatory process.

2. Risk undermining coherent EU legislation harmonization

Members States should not adopt legislation on matters already harmonized by EU legislation.

1. Health Warnings

While health warnings for alcoholic beverages are not yet regulated in EU law, the European Commission has already announced in 2021 its intention to address this issue in the framework of its Communication to the European Parliament and the Council - “Europe’s Beating Cancer Plan”³. Specifically, the Commission plans to propose mandatory health warnings for alcoholic beverages as part of its efforts to curb harmful alcohol consumption. The evidence-gathering phase, initiated in 2023, is expected to conclude by April 2024.

In the framework of this initiative, it is worth to mention that the European Parliament has adopted a resolution of 16 February 2022 on “strengthening Europe in the fight against cancer”⁴. Notably, point 16 of the resolution advocates for 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.

Any future initiatives related with these issues should take in consideration those elements.

Consequently, unilateral Member State initiatives in the field of health information such as the Belgian draft decree on advertising of beverages containing alcohol, will undermine, at this stage, the harmonization of rules in the European Union as well as the impact and efficiency of such measures. Coordination and alignment with EU-wide initiatives are essential to ensure cohesive and efficient strategies in combating harmful alcohol consumption across the European Union.

3. A barrier to trade in breach of EU law that undermines the Single Market

The requirements outlined in the Belgian draft decree, particularly concerning the definition of advertising, as outlined in “article 1” of the draft Royal Decree will impose obligations on manufacturers and importers of alcoholic beverages. Depending on the clarity and interpretation of these advertising regulations, it will necessitate adjustments to the labelling of imported products to comply with Belgian laws.

Such adjustments will involve modifying labels that were previously compliant with regulations in the exporting Member State. This adaptation process will impose burdensome administrative and financial challenges on operators involved in the importation and distribution of alcoholic beverages.

This is to be considered a measure having an effect equivalent to a quantitative restriction, which is prohibited by Article 34 TFEU.

Therefore, careful consideration and clarification of the Belgian draft decree's implications, especially regarding its impact on imported products, are essential to ensure compliance with EU law and uphold the principles of free movement of goods within the European Union. Cooperation and dialogue between Belgian authorities and

relevant stakeholders, including manufacturers, importers, and EU regulatory bodies, may be necessary to address potential conflicts and mitigate adverse effects on the internal market.

4. Article 7 “only the message laid down by the Minister may be displayed

The second sentence of article 7 is stipulating that “*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 article – depending on future clarification related to the definition of advertising - might raise concerns in light of the following factors:

- Ongoing work of the European Commission on a legislative proposal on health warnings for alcoholic beverages within the Europe’s beating cancer plan.
- National legislations already into force in some member States asking operators to provide compulsory health information to consumer on the label. (e.g. the pregnant women logo in France)
- Voluntary initiatives of private companies in providing health related messages to consumers (e.g. the Wine in Moderation logo).
- Recent initiative of Belgian private sector to adopt the following new health message for alcoholic beverages advertising: Alcohol abuse damages your health “within a self-regulation”

In summary, 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.

5. Moderate consumption vs harmful use of alcohol

The notification message underscores the dangers associated with alcohol consumption, emphasizing its links to cardiovascular risks, addiction, cancer, and lasting effects on the brain. However, it fails to differentiate between moderate alcohol consumption and harmful alcohol use, overlooking decades of scientific research on the subject.

While the moderate consumption of wine with the meals and within the context of a healthy lifestyle, can be useful to maintaining a lower disease/mortality risk, consuming alcohol in excess of guidelines, whether by regularly drinking in excess or by sporadic binge drinking, is associated with a range of long-term chronic diseases that reduce quality of life and life expectancy.

Messages concerning wine consumption and health should be based on scientific evidence and avoid oversimplifications or misleading assertions. Emphasizing the importance of moderation and responsible consumption while acknowledging the harm related to harmful use of alcohol is crucial for promoting informed decision-making among consumers.

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ASSOCIAÇÃO DE VINHOS E ESPIRITUOSAS DE PORTUGAL



Considering the above, ACIBEV requests the European Commission and EU Member States to issue, under the TRIS procedure, a detailed opinion on the Belgian royal decree to block its adoption.

ACIBEV - Portuguese Wine and Spirits Association is a non-profit business association established in January 1975, which represents a significant part of the sector's turnover - production, distribution and trade of wines and spirits as well as vinegar and distillation of wine products.

Its Associates have an annual turnover of more than eight hundred million euros, 60% of which are generated through export. Among our Associates are the majority of national export companies, leading companies in the various demarcated regions and companies that create brands that add value to Portuguese wines.

The key focus of ACIBEV is to assure an open business environment that allows the sustainable development of a legitimate and responsible business.

ACIBEV fights against political measures which create restrictive barriers whether they are technical or non-technical and defends our member's interests at the national and international levels.

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