

Message 116

Communication from the Commission - TRIS/(2022) 03404
 Directive (EU) 2015/1535
 Translation of the message 115
 Notification: 2022/0441/IRL

Forwarding of a detailed opinion received by a Member State (France) (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 22-12-2022.

Comunicado detallado - Podrobné vyjádření - Udførlig udtalelse - Ausführlichen Stellungnahme - Üksikasjalik arvamus - Εμπειροπαιωμένη γνώμη - Detailed opinion - Avis circonstancié - Parere circostanziato - Detalizēts atzinums - Detali nuomonė - Részletes vélemény - Opinioni dettaljata - Uitvoerig gemotiveerde mening - Opinia szczegółowa - Parecer circunstanciado - Podrobný úsudok - Podrobno mnenje - Yksityiskohtainen lausunto - Detaljerat yttrande - Подробно становище - Aviz detaliat - Aviz detaliat.

Amplia el plazo del estatu quo hasta 22-12-2022. - Prodlužuje lhůtu pro stávající stav až do 22-12-2022. - Fristen for status quo forlænges til 22-12-2022. - Die Laufzeit des Status quo wird verlängert bis 22-12-2022. - Praeguse olukorra tähtaega pikendatakse kuni 22-12-2022. - Παρατείνει την προθεσμία του status quo μέχρι την 22-12-2022. - Extends the time limit of the status quo until 22-12-2022. - Prolonge le délai de statu quo jusqu'au 22-12-2022. - Proroga il termine dello status quo fino al 22-12-2022. - Pagarina "status quo" laika periodu līdz 22-12-2022. - Pratęsia status quo laiko limitą iki 22-12-2022. - Meghosszabbítja a korábbi állapot határidejét 22-12-2022-ig. - Jestendi t-terminu ta' l-istatus quo sa 22-12-2022. - De status-quo-periode wordt verlengd tot 22-12-2022. - Przedłużenie status quo do 22-12-2022. - Prolonga o prazo do statu quo ate 22-12-2022. - Časový limit momentálneho stavu sa predĺži až do 22-12-2022. - Podaljša rok nespremenjenega stanja do 22-12-2022. - Jatkaa status quo määräaika 22-12-2022 asti - Förlänger tiden för status quo fram till: 22-12-2022 - Удължаване на крайния срок на статуквото до 22-12-2022 - Prelungește termenul status quo-ului până la 22-12-2022.

Die Kommission hat diese ausführliche Stellungnahme am 21-09-2022 empfangen.
 The Commission received this detailed opinion on the 21-09-2022.
 La Commission a reçu cet avis circonstancié le 21-09-2022.

(MSG: 202203404.EN)

1. MSG 116 IND 2022 0441 IRL EN 22-12-2022 21-09-2022 COM 6.2(2) 22-12-2022

2. France

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4. 2022/0441/IRL - B00

5. Article 6(2), second indent of Directive (EU) 2015/1535

6. The French authorities have the honour to forward to the European Commission a detailed opinion on the draft Regulation entitled Public Health (Alcohol) (Labelling) Regulations, transmitted by the Irish authorities.

As a reminder, this draft implementing Regulation aims to implement Section 12 "Labelling of alcoholic beverages and information note in licensed establishments" of the Public Health (Alcohol) Act, 2018 of 17 October 2018.

In particular, the draft Regulation provides for the following obligations:

- three different health warning messages, namely:
 - o "Drinking alcohol causes liver disease",
 - o "There is a direct link between alcohol and fatal cancers",
 - o a logo on alcohol consumption by pregnant women,
- the amount of alcohol present in the container in grams of alcohol and the energy value of the product in the container in kilojoules and kilocalories,
- a public information website on alcohol consumption, according to the following text: " Visit www.askaboutalcohol.ie".

Each of these mandatory messages is governed by specific requirements in terms of size, type, colour and

characters. In addition, all this information should be presented in a rectangle at least 6 cm wide and 3 cm high, framed by a black border with a thickness between 1 and 2 mm.

This information must also be provided, in accordance with the terms set out in the text, depending on each situation:

- for reusable containers, through an accompanying document,
- in licensed establishments, through a dedicated display,
- on websites for the online sale of alcoholic beverages, on each page of the site.

This text is part of a desire by the Irish authorities to combat alcohol abuse and reduce its consumption in the country to limit the harm caused to individuals and society.

The French authorities would like to stress that they defend an ambitious approach to combating the harmful uses of alcohol. France was one of the first States to put in place the “pregnant women” pictogram and to adopt legislation on advertising.

Nevertheless, the French authorities believe that the draft Regulation notified by the Irish authorities appears incompatible with EU law.

In 2016, they had tabled a detailed opinion on the original Public Health (Alcohol) Act bill, considering in particular that the proposed labelling rules were:

- likely to fragment the internal market and impact its functioning,
- disproportionate and therefore likely to have an effect equivalent to quantitative restrictions within the meaning of Article 34 of the Treaty on the Functioning of the EU (TFEU),
- likely to result in de facto discrimination for imported products.

The draft implementing Regulation published by the Irish authorities confirms these risks

1. The risk of fragmentation of the internal market

The regulatory framework for the labelling and presentation of alcoholic beverages is harmonised at the European level through horizontal provisions (Regulation (EU) No 1169/2011 (INCO) and sectoral provisions (Regulations 2019/787 on spirits, 251/2014 on aromatised wine products and 1308/2013 and 2019/33 on wines). While the EU Treaties allow Member States to conditionally adopt additional provisions in the name of public health, it is important to note that the European Commission has already announced its intention to propose “the mandatory indication (...) of health warnings” on wine labels by the end of 2023” (European Cancer Action Plan). At the same time, the European Commission has begun work to revise the Consumer Information Regulation on foodstuffs, which will include the labelling of alcoholic beverages.

In addition, Article 6(3) of Directive (EU) 2015/1535 laying down a notification procedure in the field of technical rules in particular for agricultural products provides:

‘Member States shall postpone the adoption of a draft technical regulation (...) for 12 months (...) if, within three months of [the receipt of the notification], the Commission announces its intention to propose or adopt a directive, regulation or decision (...) on the matter’.

This draft Irish text therefore runs counter to the maintenance of a harmonised regulation for alcoholic beverages within the EU, which is the only way to ensure smooth functioning of the single market.

The process of adopting the Irish regulation should therefore at least be put on hold while the EU adopts harmonised provisions on the labelling and presentation of alcoholic beverages. Irish authorities could put forward their views in future negotiations between Member States on developments in European regulations

2. Disproportionality of measures and risk of barriers to trade

The requirement of a general warning on the dangers of alcohol (unlike a targeted communication on the dangers of alcohol during pregnancy or a communication targeting excessive alcohol consumption) is an unprecedented initiative within the EU.

However, labelling policy choices can only be made, on the one hand, by taking into account health, economic and cultural considerations and, on the other hand, by enacting tools that are proportionate and consistent with general food legislation.

The draft Regulation will require exporters to specifically distinguish products for the Irish market, thereby reducing their overall ability to benefit from the internal market. In addition to these distinguishing costs, there will also be efforts to adapt to the next European legislation planned for 2023, which is supposed to pursue the same objective. These new requirements will therefore constitute a barrier to entry into the Irish market, in particular for small and medium-sized enterprises exporting wine and spirits to Ireland (which in France constitute the vast majority of operators active in this market) and new entrants. They could indeed be prevented from marketing alcohol on the Irish market in view of the additional costs involved.

Furthermore, while the draft provides for a transitional period of three years, it does not contain any stock disposal clause for products already placed on the Irish market, creating significant uncertainty for exporters as these provisions apply to all distribution channels.

In addition, the French authorities question the failure of the Irish authorities to take into account the possibilities offered by the dematerialisation of information.

Dematerialisation should be seen by the Irish authorities as an alternative means of achieving the same objectives as those set out in the notification, but in a more efficient way, by further clarifying the information provided to the consumer and reducing the impact on both businesses and the single market.

In addition to adapting the content of the messages delivered, dematerialisation also enables companies to provide detailed, scientifically established, easily accessible information in the language of the consumer, without the need to change the packaging or have a negative impact on the circulation of products within the internal

market.

3. Inadequate compliance with the provisions of Regulation (EU) 2021/2117 on wine labelling

We would like to point out that certain indications are already mandatory at the European level on the labelling of wines: alcoholic strength by volume, indication of allergens (including sulphites), indication of sugar content on sparkling wines.

Furthermore, Regulation (EU) 2021/2117, published on 2 December 2021, will amend the labelling rules for wines and aromatised wines by making it mandatory to submit the list of ingredients and the nutrition declaration of those products after 8 December 2023. It will provide clarity for consumers and meet public health requirements for the labelling of wine products. There is already a substantial effort on the part of the industry to combat excessive alcohol consumption and better inform consumers about the nature of these products.

It should be added that the Irish authorities' nutritional requirements are not compatible with those now agreed for wines in the EU. Indeed, the draft Irish Regulation requires labelling on the quantity of alcohol present in the container in grams of alcohol, as well as the energy value of the product present in the container in kilojoules and kilocalories, whereas the European Regulation in question allows operators to dematerialise the list of ingredients and display a nutritional declaration that is limited to the energy value (in kcal or kj) on the label, on condition that the nutritional table is available in a dematerialised form.

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