

Message 116

Communication from the Commission - TRIS/(2022) 03443  
 Directive (EU) 2015/1535  
 Translation of the message 115  
 Notification: 2022/0441/IRL

Forwarding of a detailed opinion received by a Member State (Portugal) (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 - Εμπειριστικωμένη 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. - Pratešia 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 22-09-2022 empfangen.  
 The Commission received this detailed opinion on the 22-09-2022.  
 La Commission a reçu cet avis circonstancié le 22-09-2022.

(MSG: 202203443.EN)

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

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4. 2022/0441/IRL - B00

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

6. Comprehensive Opinion of Portugal, to notification 2022/441/IRL (Ireland) of 21 June on the preliminary draft Regulations under Article 12 of the Public Health Law (Alcohol) 2018:

From the analysis of the draft Irish regulation, there was a prevision for a set of legal provisions which, unless better understood, aim to introduce restrictions on the placing on the Irish market of alcoholic beverage products from other Member States and may call into question the objectives of European harmonisation law by imposing new requirements on the labels of these products.

More specifically, the issue of labelling, which is harmonised at EU level through Regulation (EU) 1169/2011 and which applies to alcoholic beverages with an alcohol content of > 1.2 % and, consequently, the possible restriction and distortion of competition in the internal market, in particular through the following provisions of that draft Regulation, which include the new mandatory labelling terms for alcoholic beverages, namely:

- "A document with the quantity of alcohol in grams and the energy value in kilojoules and kilocalories for every quantity, measure or unit sold is available for inspection on request;

- “Energy/calorie labelling the quantity in grams of alcohol and the energy value expressed in kilojoules and kilocalories of each alcohol product - (Regulation 12 (v));
- “Drinking alcohol causes liver disease” (Regulation 12 (1)(i) of the Act of 2018 and shall subject to Regulation 6
- “Visit [www.askaboutalcohol.ie](http://www.askaboutalcohol.ie)” is prescribed for the purpose of section 12(1)(vi) of the Act of 2018;
- “There is a direct link between alcohol and fatal cancers” is prescribed for the purpose section 12(1)(iii) of the Act of 2018 and shall, subject to Regulation 6;
- “Drinking alcohol when pregnant harms your baby” (regarding this warning, is limited to the provided form in the diploma).

The introduction of these requirements may discourage European operators from entering Ireland’s already limited market, in addition to the fact that the alcoholic strength should follow the harmonised EU rules and therefore, s.m.o., the g/package requirement introduces a factor of uncertainty, contrary to Article 7 (fair information practices) of Regulation (EU) No 1169/2011.

More specifically, as regards the nutrition declaration — Energy/calorie labelling the quantity in grams of alcohol and the energy value expressed in kilojoules and kilocalories of each alcohol product — We believe that this is not in accordance with the rule laid down in Article 30(4) of Regulation (EU) No 1169/2011, which provides that the declaration contained in the packaging may be limited only to the energy value. In this sense, it is understood that these entries must be given in kJ and kcal/100g, so that the reference to ‘lime/package’ is contrary to the provisions of Annex XV thereto.

Also the reference to “alcohol product container”, as a translation for ‘packaging’, we believe that it does not constitute a recognizable and quantifiable ‘consumption unit’ within the meaning of Article 33.

As a result, reference should be made to Article 41 of Regulation (EU) No 1169/2011, namely:

‘Until the Union provisions referred to in Article 16(4) have not been adopted, Member States may maintain national measures concerning the listing of ingredients of beverages with an alcoholic strength by volume greater than 1.2 % by volume.’ It is therefore understood that, given the legal provision laid down herein and the adoption of national measures relating to the list of ingredients, exempted by Article 16(4) of Regulation (EU) No 1169/2011, the new labelling rules for that Irish project do not comply with that provision.

Furthermore, the absence of a ‘mutual recognition’ clause in the draft Irish Regulation disregards the principle laid down in European Union (EU) legislation, since it neglects the specific mutual recognition of products from other Member States which are lawfully marketed with equivalent but distinct symbols for the same purpose, such as the label of the pregnant woman, in which details of the shape and colour of the pregnant woman’s symbol do not apply to imported alcoholic beverages, where they are legally marketed with an equivalent symbol for the same purpose.

It should also be noted that a revision of Regulation (EU) No 1169/2011 is planned shortly, with the aim of providing more information to the consumer on alcoholic beverages, but avoiding the risk of fragmentation, as reflected in the European Commission report of 2017/03/13.

It is considered that the Irish Government should therefore consider including those legal provisions on non-harmonised matters in this new Irish legislative draft, under consideration, given that they will be discussed in the framework of the revision of Regulation (EU) No 1169/2011 so as not to create market distortions by limiting access to the Irish market to economic operators in the other Member States.

Furthermore, in this regard, the provisions of Articles 34 to 36 of the Treaty on the Functioning of the European Union (TFEU), and in particular Article 34 thereof, which states that ‘quantitative restrictions on imports (...) shall be prohibited between Member States’, considering that the legal, regulatory or administrative provisions of a Member State which hinder the importation (or export) constitute barriers to the free movement of goods.

In short, we consider that the draft Irish Public Health (Alcohol) (Labelling) Regulation 2022 under Regulation (EU) No 1169/2011 contains legal rules that could create barriers to the free movement of goods within the EU internal market (Articles 34 to 36 of the Treaty on the Functioning of the European Union) and conflict with the future revision process of Regulation (EU) No 1169/2011.

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