

Message 116

Communication from the Commission - TRIS/(2022) 03109
 Directive (EU) 2015/1535
 Translation of the message 115
 Notification: 2022/0441/IRL

Forwarding of a detailed opinion received by a Member State (Italy) (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. - Produzuje 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 31-08-2022 empfangen.
 The Commission received this detailed opinion on the 31-08-2022.
 La Commission a reçu cet avis circonstancié le 31-08-2022.

(MSG: 202203109.EN)

1. MSG 116 IND 2022 0441 IRL EN 22-12-2022 31-08-2022 COM 6.2(2) 22-12-2022

2. Italia

3A. MINISTERO DELLO SVILUPPO ECONOMICO

Direzione generale per il mercato, la concorrenza, la tutela del consumatore e la normativa tecnica
 Divisione VI - Normativa tecnica - Sicurezza e conformità dei prodotti
 00187 Roma - Via Sallustiana, 53
 tel. +39 06 4705.5368 - e-mail: ucn98.34.italia@mise.gov.it

3B. MINISTERO DELLE POLITICHE AGRICOLE ALIMENTARI E FORESTALI

Ufficio legislativo
 MINISTERO DELLO SVILUPPO ECONOMICO
 Direzione Generale per la politica industriale, l'innovazione e le piccole e medie imprese
 MINISTERO DELLA SALUTE
 Direzione Generale della Prevenzione sanitaria

4. 2022/0441/IRL - B00

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

6. With reference to the draft technical regulation 'Notification of Draft Regulations Under Section 12 of the Public Health (Alcohol) Act 2018', corresponding to notification No 2022/0441/IRL, the competent Offices of the Ministry of Agriculture, Food and Forestry Policy, the Ministry of Economic Development and the Ministry of Health have issued the following detailed opinion:

With reference to the above-mentioned notification, it should be noted that the Irish Government has prepared a draft regulation which provides, inter alia, for the placing of mandatory health warnings on the label of alcoholic beverages which, in particular, establish a direct correlation between alcohol consumption and certain diseases, such as liver diseases and fatal cancers, the indication of the quantity in grams of alcohol and the energy value expressed in kilojoules and kilocalories, as well as a pictogram on the prohibition of alcohol consumption during pregnancy.

The measures introduced by Irish legislation are considered to be in many respects contrary to European law.

1. Obstacle to the free movement of goods within the EU Single Market

The requirements to be met by imported products in relation to the draft Irish Regulation will oblige producers of wine in other Member States to adapt their labels, duplicating the costs and references intended for that specific market.

The Irish measure, if adopted, would entail a set of obligations for operators to ensure the creation of ad hoc labelling for products intended for the Irish market which, in view of the cost-benefit ratio – despite the possibility of using stickers – could lead companies, especially small and medium-sized enterprises (SMEs), to leave the Irish market, or may deter new entrants from entering that market. Unless wines are relabelled with the health warnings required by the draft Regulation, non-Irish producers and distributors would in fact be disadvantaged and excluded from the Irish market.

The relabelling of products will add a costly complexity for non-Irish EU producers exporting to Ireland, in an already high-cost inflationary context, not to mention the numerous uncertainties caused by the ongoing COVID-19 pandemic and the complexities resulting from the terrible Russian-Ukrainian conflict.

Such import restrictions – which constitute barriers to intra-Community trade – are prohibited in the single market.

Although there are certain exceptions provided for in the Treaty, such as the protection of human health, Ireland has not provided sufficient arguments on proportionality, nor has it demonstrated that the measure is suitable for protecting human health and that the measure does not go beyond what is necessary to achieve that objective. It is important for the Irish Member State to provide scientific evidence to justify the reason for accepting the introduction of a label concerning the direct relationship between alcohol consumption and fatal cancer risk. In this regard, the Court of Justice has consistently held that all measures of a Member State capable of preventing, directly or indirectly, existing or potential trade within the European Union are measures having an effect equivalent to quantitative restrictions within the meaning of Article 34 TFEU. In that regard, it is for the Irish authorities to demonstrate that the future Alcohol Act complies with the principle of proportionality, that is to say, what is necessary in order to achieve the objective claimed, in the present case, the protection of health, and that such an objective cannot be achieved by means of minor prohibitions or limitations or such as to be less detrimental to intra-Community trade.

Moreover, it is unclear whether the Irish government has considered other less impactful measures on the free movement of goods within the European Union.

Therefore, the rule creates a measure which has an effect equivalent to a quantitative restriction, which is prohibited by Article 34 TFEU.

2. Contrary to Article 9(1)(h) and Annex XII to Regulation (EU) No 1169/2011, Article 119(1)(c) of Regulation (EU) No 1308/2013 and Article 44 of Delegated Regulation (EU) 2019/33.

According to the Irish rule, the labelling of alcohol content must be expressed in grams of alcohol and the energy/calorie labelling must be indicated in kilojoules and kilocalories.

This provision introduces the obligation to indicate the alcohol content by calculating the grams contained in the drink instead of using the indication of the actual alcoholic strength by volume in accordance with Article 9(1)(h) and Annex XII to Regulation (EU) No 1169/2011, as well as Article 119(1)(c) of Regulation (EU) No 1308/2013 and Article 44 of Delegated Regulation (EU) 2019/33.

In this way, the Irish rule deviates from the EU regulations, adding, moreover, a further burden on producers, without this entailing better information for the consumer, as the consumer is now educated on finding information on the alcohol content in accordance with the established arrangements laid down in the harmonised rules at EU level.

The Irish proposal, therefore, would, if accepted, set a dangerous precedent that could pave the way for similar initiatives from other Member States and thus to the creation of individual national markets with regard to labelling rules, to the detriment of European consumers who would find themselves facing different and sometimes conflicting provisions on the labelling and presentation of alcoholic beverages.

Another issue concerns the quantitative labelling requirements set out in the Irish standard, which appear inconsistent and incompatible with current EU rules.

3. Health warnings

The so-called “health warnings” for alcoholic beverages, although they are not yet regulated at Community level, are a very sensitive subject for discussion, which is addressed in all Community fora, not least in the European Parliament, where the “Beating Cancer Plan (BECA)” is under discussion.

As part of this initiative, the European Parliament adopted a resolution on 16 February 2022 on ‘Strengthening Europe in the fight against cancer (BECA)’³, which, in paragraph 16, 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’.

It would therefore be desirable, in this context, that the Member States should not take unilateral initiatives which do not take into account the above-mentioned guidelines, as they could undermine future harmonisation of the EU standard on a subject that appears to be so complex and delicate.

‘Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 5(1) of this Directive, if, within the three months following that date, the Commission announces its finding that the draft technical regulation concerns a matter which is covered by a proposal for a directive, regulation or decision presented to the European Parliament and the Council in accordance with Article 288 TFEU.’

European Commission

Contact point Directive (EU) 2015/1535

Fax: +32 229 98043

email: grow-dir2015-1535-central@ec.europa.eu