

Message 116

Communication from the Commission - TRIS/(2022) 03423
 Directive (EU) 2015/1535
 Translation of the message 115
 Notification: 2022/0441/IRL

Forwarding of a detailed opinion received by a Member State (Spain) (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 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: 202203423.EN)

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

2. España

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 Ministerio de Consumo

4. 2022/0441/IRL - B00

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

6. Notification No 2022/441/IRL

The Government of Ireland has submitted through the notification procedure of Directive (EU) 2015/1535, the draft regulation on public health — alcohol labelling 2022.

This project constitutes the development of the requirements set out in Article 12.1 of the Public Health (Alcohol) Act 2018, as regards the labelling of alcoholic beverages. In particular, the new draft regulation states that the following must be included:

- (i) a warning aimed at informing the public of the danger of alcohol consumption, in particular associated with the risk of liver disease
- (ii) a warning intended to inform the public of the danger of alcohol consumption during pregnancy, which may be made by the use of a specific pictogram
- (iii) a warning reporting the direct link between alcohol and deadly cancers
- (iv) the quantity of grams of alcohol contained in the package in question
- (v) the energy value expressed in kilojoules and Calories contained in that package; and
- (vi) details of the website where public health information will be given regarding alcohol consumption and the

related harms. (www.askaboutalcohol.ie)

The draft regulation also sets out the exact content of these indications, size, source and layout of each of the captions, as well as the pictogram mentioned in paragraph (ii). These indications shall also apply to electronic commerce and must be included in the information documents to be displayed in establishments selling this type of beverage.

The text of the draft regulation does not incorporate any recognition clause, nor was it included in the Public Health Act of 2018.

The notification distributed to the Member States indicates that a transitional period of 3 years will be granted for companies to adapt to the new requirements. However, the text of the draft does not contain any reference to this particularity, although the text of the Public Health Act 2018 did raise the possibility of a grace period for these issues.

According to the notification, the new labelling requirements are a consequence of the high alcohol consumption in Ireland, which places an enormous burden on the country's health administrations. The authorities consider that the Irish population, especially younger people, are unaware of the health hazards of alcohol consumption and believe that the draft regulation will help Irish consumers to be better informed of the associated risks and help them make healthier choices.

Without prejudice to the fact that the measure proposed by Ireland may be of great value from a healthcare perspective, in particular as it is included in a comprehensive project on the prevention of alcohol consumption, and the right of consumers to receive information on the effects of alcohol consumption, and without questioning its appropriateness from a public health perspective, it should be noted that this reasoned opinion is based on issues that may affect the free movement of goods in the EU.

In Spain's view, the draft regulation and the measures resulting from it are contrary to EU law for the reasons set out below.

1. First, the application of these measures constitutes a clear obstacle to the free movement of goods within the EU as consolidated in Article 34 TFEU, not being in line with the derogations provided for in Article 36 TFEU in so far as they are measures that hinder the free movement of goods and restrict trade beyond what is necessary. The labelling requirements of the Irish draft regulation will require the production of labels specifically adapted to the Irish market, putting operators in other Member States at a disadvantage, incurring additional costs that are difficult to bear, in particular as regards small and medium-sized producers of alcoholic beverages in the EU. This will be a disincentive for manufacturers from other Member States to market their products in Ireland, in practice constituting a disguised restriction on trade. In this respect, it is worth noting repeated case law establishing that labelling requirements constitute a measure equivalent to a quantitative restriction (see, *inter alia*, Case C-95/14 (Question for a preliminary ruling in Milan), C-33/97 (Colim), Opinion of the Advocate General in Case C-55/99 (Commission v France) C-473/98 (Toolex) or C-217/99 (Commission v Belgium)).

Although there is case law (Case C-104/75 (de Peijper), C-11/00 (Italian Republic) and C-170/04 (Rosengreen)) whereby a measure having an effect equivalent to a quantitative restriction on imports, such as the case at hand, could be motivated by reasons relating to the protection of human health and life within the meaning of Article 36 TFEU, it is necessary for this measure to be appropriate to ensure that the desired objective is achieved and that it does not go beyond what is strictly necessary to achieve it. From this case law, the need to apply measures that are effective, but that are at the same time the least restrictive of trade, is established.

In that regard, it is also appropriate to note, as the Advocate General points out in his Opinion in Case C-333/14 (Scotch Whisky Association), that it is the authorities of the country that adopts the measures which must comply with that principle of proportionality, in such cases it is appropriate for the Member State concerned to provide adequate evidence or an examination of the appropriateness and proportionality of the restrictive measure and of the precise data on which it is based.

However, the draft regulation submitted by the Irish authorities does not assess in greater depth the possible alternative measures which, having the same effect, are less restrictive of trade than those proposed.

2. Secondly, Ireland's draft regulation is a breach of harmonised EU provisions on food labelling, including beverages. In particular, it contravenes the provisions of Regulation 1169/2011 (reference 1), as well as Regulations 1308/2013 (reference 2) and 251/2014 (reference 3), both last amended by Regulation 2021/2117 (reference 4), which, *inter alia*, regulate the labelling of wines and aromatised wines, respectively.

In accordance with Article 9 of Regulation (EU) 1169/2011, in combination with the specifications laid down in Article 28 thereof (reference 5), the actual alcoholic strength by volume of beverages containing more than 1.2 % by volume of alcohol shall be indicated on the labelling. This shall include the figure corresponding to the actual alcoholic strength by volume, including a maximum decimal place, followed by the symbol '% vol' and may be preceded by the word 'alcohol' or by the abbreviation 'alc.'. There is nothing to say that, as is the case in the Irish draft regulation, it is necessary to indicate the quantity of grams of alcohol contained in the packaging of the product in question.

While it is true that Article 38 of Regulation (EU) No 1169/2011 allows for the adoption of national measures with regard to matters harmonised by that Regulation (such as the indication of the actual alcoholic strength), that option is only possible where those measures are covered by Union law and do not entail an increase in obstacles to the free movement of goods, including discrimination, with respect to food from other Member States.

However, as has already been pointed out in point 1 of this reasoned opinion, this new requirement to indicate the quantity in grams of alcohol contained in the packaging of alcoholic beverages becomes a clear obstacle to the free movement of goods in so far as it will oblige operators from other Member States to label their products in a unique manner when they are destined for Ireland, which entails a partitioning of the Union market, as well as additional costs for companies, reducing their competitiveness in order to position themselves in that country.

Consequently and unless the Irish authorities determine the need to include this new requirement and the proportionality of the measure in order to achieve the desired objective, in line with the case-law cited in paragraph 1 of this opinion, it is suggested that this new requirement on the indication of the grams of alcohol contained in the packaging of the alcoholic beverage would not be covered by Article 38 of Regulation (EU) 1169/2011 and would entail a clear deviation from the harmonised provisions on food labelling, being contrary to Union law.

Furthermore, the Irish draft also sets additional requirements by including mandatory health warnings on the labelling of alcoholic beverages (paragraphs (i), (ii) and (iii) of Article 12.1 of the Public Health Act (alcohol) 2018). Such warnings are not covered among the labelling aspects harmonised at a European level. Although justified in accordance with Article 39 of Regulation (EU) 1169/2011, it also has to comply with Article 36 TFEU, which is not duly justified.

3. Last but not least, the Irish draft regulation comes at a time when the Commission has already expressed its intention to legislate in this area, which should lead the European Commission to implement Article 6(3) of Directive (EU) 2015/1535 and, consequently, to paralyse the adoption of this regulatory text.

In accordance with that Article, Member States are to postpone the adoption of a draft technical regulation, twelve months from the date on which the Commission receives notification of the technical regulation, if within three months of that date the Commission communicates its intention to propose or adopt a directive, regulation or decision on this matter, in accordance with Article 288 TFEU.

In the present case, the European Commission has already indicated its intention to legislate with regard to the labelling of alcoholic beverages. Thus, in February 2021, the European Commission within the framework of the European Cancer Plan, announced that it would propose the introduction of mandatory indications such as the list of ingredients and the nutrition declaration on the labels of all alcoholic beverages (reference 6), before the end of 2022, also mentioning the possibility of incorporating health warnings in the labelling of such beverages before the end of 2023.

This regulatory development will be carried out precisely by revising Regulation (EU) 1169/2011 in order, on the one hand, to give more and better information to the consumer of alcoholic beverages, and on the other hand, to create a level playing field for all operators in the EU by harmonising all the labelling requirements of this type of product at EU level, thus avoiding that possible national provisions on the matter may in practice constitute real obstacles to intra-Community trade.

Under these conditions, the adoption of the Irish Regulation on the terms proposed by the Irish authorities could interfere with the development of the Community proposal. In addition, the possible lag that could occur between the entry into force of both provisions could cause disruption and costs for EU operators, create some confusion in the EU's own alcoholic beverage market, apart from the fact that a barrier to the free movement of goods is being created.

That is why we understand that the European Commission should make use of the prerogative conferred on it by Article 6(3) of Directive (EU) 2015/1535 by forcing Ireland temporarily to halt the adoption of the draft regulation as it has done in similar cases. In this regard, one could point to notification 2022/0070/HU, which was communicated under this Directive on 4 February 2022 and which also aimed to establish provisions on honey labelling.

In conclusion, and as explained throughout this document, Spain considers that the draft regulation on the labelling of alcoholic beverages constitutes a clear obstacle to the free movement of goods, in breach of Article 34 TFEU and contravenes relevant provisions of EU law, which would oblige the Irish authorities to reconsider the content and desirability of approving said draft.

References

1) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the

Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004.

2) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

3) Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91.

4) Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union.

5) This Article excludes the products of Chapter 2204 of the Common Customs Tariff, including wines, for which the specific rules indicated and which have been mentioned above will be included. This legislation, as regards the obligation to indicate the actual alcoholic strength by volume, is similar to that laid down in Regulation (EU) No 1169/2011.

6) It should be noted that, in the case of wine and aromatic wines, Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 already incorporates this requirement, although it will not apply until 8 December 2023.

Madrid, 21 September 2022

European Commission

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