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Response to TRIS notification 2026/0161/BE

Dear Mr Radek,

On behalf of the Advertising Information Group (EU transparency number: 11220347045-31), an informal network of European advertising and media associations, we write to you regarding **TRIS notification 2026/0161/BE – Royal Decree on advertising of beverages containing alcohol.**

We fully support the need to encourage responsible drinking and to restrict the exposure of minors to alcohol advertising. The advertising of alcoholic beverages across the EU is already regulated comprehensively by both statutory regulation, such as the Audiovisual Media Services Directive (AVMSD), and industry self-regulation based on national codes of conduct and enforced by a network of self-regulatory bodies across Europe. This co-regulatory regime, as envisaged by the AVMSD, ensures that alcohol advertising neither targets minors nor encourages immoderate consumption. Belgium's own self-regulatory framework (the Advertising and Marketing of Beverages Containing Alcohol (AMBA)), administered by the Jury D'Ethique Publicitaire/Jury voor Ethische Praktijken Inzake Reclame (JEP), is designed to limit exposure of minors to alcohol marketing.

The Belgian Royal Decree introduces a regulatory framework whose scope and practical effects extend well beyond a targeted public-health intervention. By imposing broad and rigid obligations across advertising, digital, editorial and audiovisual media, the Decree will adversely affect cross-border economic activity, fragment EU-wide advertising and media services, and undermine established internal-market principles. These effects are not justified by the public health objective pursued. The concerns outlined below highlight how the Decree disrupts free-movement rules, sector-specific harmonisation frameworks and the principle of proportionality.

Free movement of services (Article 56 TFEU)

In practice, the scope of Article 8 extends beyond purpose-built advertising formats. Given the broad definition of "advertising", content in which alcohol brands appear in a promotional context – including certain forms of editorial or user-generated content – may fall within its scope, as the exemption in Article 8(3) is confined to trademark use in the context of events or sponsorship. The resulting obligation to append health warnings retrospectively and apply language specific requirements in Article 9 undermines the reuse of EU-wide advertising and media services and incentivises selective non-distribution in the Belgian market. This amounts to a restriction on the free movement of services under Article 56 TFEU.

Free movement of goods (Article 34 TFEU)

The Decree also restricts market access for imported alcoholic beverages, compounding these concerns under Article 34 TFEU. Foreign brands, which cannot rely on the same degree of pre-existing consumer familiarity as domestic producers, depend more heavily on advertising to establish a presence in the Belgian market, constituting a further restriction on the free movement of goods.

Digital services and AVMSD compatibility

The Decree’s application to digital advertising distributed via information society services raises concerns under the country-of-origin principle in Article 3 of the e-Commerce Directive. The obligations imposed are general and abstract, are not targeted at specific information society services, and do not satisfy the strict conditions for derogation set out in Article 3(4). The Court of Justice has confirmed that general and abstract measures applying indiscriminately to all providers of a category of services cannot satisfy this condition (C-376/22 Google Ireland; C-665/22 Amazon Services Europe; C-662/22 and C-667/22 Airbnb Ireland). These concerns are particularly acute for unpaid or organic brand content on social media, where it is extremely difficult to restrict geographic reach to Belgium or to insert Belgian-language health warnings into content not designed for territorial segmentation.

Parallel concerns arise under the Audiovisual Media Services Directive (AVMSD). The introduction of a 5-minute buffer around programmes aimed primarily at minors goes significantly beyond the coordinated standards under the AVMSD requirements and relies on an undefined concept of content ‘aimed primarily at an underage audience’, creating legal uncertainty for broadcasters and platforms.

Beyond the buffer requirement, by imposing additional advertising-related obligations on audiovisual content received from other Member States, the Decree risks undermining the AVMSD country-of-origin principle and may violate Belgium’s obligation not to restrict retransmission of audiovisual media services from other Member States for reasons falling within fields coordinated by the Directive (Article 3(1) AVMSD).

Substantive over-reach and proportionality

Beyond these structural incompatibilities, several substantive provisions further exacerbate these internal-market concerns. Article 6(2) has no clear equivalent elsewhere in the EU and goes substantially beyond the AVMSD standard, which requires only that alcohol advertising not be aimed specifically at minors. The age threshold of 25 is arbitrary, unsupported by evidence, and unrecognised as a legal category in any EU instrument. In practice, it requires separate production of Belgian-market advertising for any campaign featuring talent aged 18 to 25, imposing disproportionate costs on foreign advertisers running standardised pan-European campaigns and creating ancillary liability exposure for Belgian media carrying such content. In digital media, algorithmic targeting and platform audience demographics make compliance extremely difficult to determine in advance.

The free sampling ban in Article 7 raises further proportionality concerns. The permitted exceptions are extremely narrow, covering only co-purchase scenarios and tastings, and exclude standard trade marketing practices including press hospitality, brand activation events, and samples provided to professional retail buyers, none of which correspond to the consumer harms the Decree ostensibly targets. The undefined scope of both 'promotional campaign' and 'tastings' means operators cannot determine with certainty whether a given activity is lawful, creating a real risk of criminal liability for entirely legitimate commercial conduct. No distinction is drawn based on context, target audience, or quantity, making the provision a blunt and disproportionate instrument that extends well beyond what is necessary to achieve the stated public health objective.

The proportionality of the Decree is further undermined by the absence of a clear scientific consensus supporting the specific warning 'Alcohol is harmful to your health'. Belgian authorities bear the burden of proving that consumption (not merely abuse) of alcohol is harmful. However, the 2025 National Academies of Sciences review[1] and other studies indicate no such consensus exists, making the specific wording disproportionate and inaccurate.

The concerns raised by the mandatory health warning regime in Article 8 extend beyond product advertising in the narrow sense. Unlike the AVMSD, which limits its scope to audiovisual commercial communications, the Decree's definition of advertising extends to 'acts' intended directly or indirectly to promote the sale of alcoholic beverages – capturing non-communicative conduct that no EU instrument regulates in this way, and creating legal uncertainty that is itself incompatible with the principle of legal certainty as a general principle of EU law. Given the breadth of the definition of "advertising" and the detailed format and language requirements attached to the warning obligation, the Decree is liable to affect a broad range of cross-border commercial communication activities, including standardised pan-European campaign structures, sponsorship visibility, and brand-related media content.

In practice, these requirements may significantly limit the reuse of advertising and media materials across Member States and create additional compliance burdens for advertisers,

[1] https://nap.nationalacademies.org/resource/28582/Highlights_Alcohol_and_Health.pdf

agencies, publishers, broadcasters and digital media services operating on a cross-border basis. This may also have wider implications for the financing of media content and the functioning of the European commercial communication ecosystem.

Further proportionality concerns arise from the substantial proportion of French-speaking Belgians who consume French audiovisual services, which continue to carry the French statutory warning under the AVMSD country-of-origin principle and are unaffected by the Belgian Decree. Belgian and other EU-origin advertisers would be held to stricter rules than foreign media reaching the same audiences, weakening both the public health rationale and proportionality case.

The Decree was adopted without a formal impact assessment. Non-compliance is subject to severe criminal sanctions – penalties up to €150,000 after surcharges and potential imprisonment – applying to foreign companies and platforms. These concerns are compounded by the enforcement architecture: compliance monitoring is entrusted to officials of the Federal Public Service Public Health acting under the Law of 24 January 1977, a framework designed for food safety, not media regulation. These officials lack the sectoral expertise to apply concepts such as 'indirect promotion' or 'acts' in a digital advertising context, or to take account of the country-of-origin principle under the AVMSD. For cross-border operators, the prospect of criminal sanctions applied by non-specialist inspectors using undefined criteria is itself a significant deterrent to market participation in Belgium.

These concerns are not without precedent. The Commission's own comments on a comparable TRIS notification (2018/22/IRL, relating to the Irish Public Health (Alcohol) Act 2018)[2] explicitly stated that a targeted approach would be more appropriate and that requiring reprinting of pan-European publications for a single page of alcohol advertising was disproportionate.

Forward-looking and process

Under the principle of sincere cooperation (Article 4(3) TEU), Belgium should refrain from adopting national measures that risk pre-empting forthcoming EU harmonisation. This concern is particularly relevant in light of the EU Beating Cancer Plan. If the Plan produces harmonised rules under Article 114 TFEU, national gold-plating of this kind could be called into question.

Additionally, our concerns raised with respect to the prior TRIS notification (2024/0032/BE) remain unaddressed. The current Decree represents an escalation rather than a resolution of those concerns. Taken together, the breadth of the Decree, its cumulative effects, and its interaction with EU sectoral legislation provide strong grounds for scrutiny under the TRIS procedure. The Belgian measures risk constituting unjustified barriers to the free movement of goods and services within the internal market. In light of the concerns outlined above, we

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[2] https://www.politico.eu/wp-content/uploads/2018/05/Commission-comments-Irish-alcohol-bill.pdf

respectfully invite the Commission to issue a detailed opinion pursuant to Article 6(2) of Directive 2015/1535/EU, and urge Belgium to withdraw or substantially revise the Decree before adoption.

We thank you for your time and consideration and remain at your disposal should you want to discuss our concerns further.

Yours sincerely,

Konrad Shek
Director
Advertising Information Group