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The EU's Deforestation-Free Products Regulation: Challenges and opportunities ahead

On 9 June 2023, *Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010* (hereinafter, *Deforestation-Free Products Regulation*) was published in the Official Journal of the EU and entered into force on 29 June 2023. While the rules will only start to apply 18 months after the entry into force, the Regulation has already led to heated debates with many of the EU's trading partners, especially among Developing Countries. This article delves into the key elements of the Deforestation-Free Products Regulation, which seeks to track commodities linked to illegal deforestation and forest degradation, prohibiting them from being made available on the EU market or exported from the EU.

The Deforestation-Free Products Regulation

On 17 September 2021, the European Commission (hereinafter, Commission) published its Proposal for the *Deforestation-Free Products Regulation*. The Proposal was part of a broader plan of action to address deforestation and forest degradation as outlined in, *inter alia*, the 2019 *Commission Communication on Stepping up EU Action to Protect and Restore the World's Forests* and the *European Green Deal*. The *Deforestation-Free Products Regulation* aims at ensuring that the EU's consumption of certain commodities and products does not contribute to deforestation and to further degrading forest ecosystems.

The *Deforestation-Free Products Regulation* establishes mandatory due diligence rules for operators and traders that place, make available, or export from the EU certain commodities, namely palm oil, cattle, wood, coffee, cocoa, rubber, and soy. The rules also apply to a number of derived products, such as "*chocolate, furniture, printed paper and selected palm oil-based derivates (used for example as components in personal care products)*".

The *Deforestation-Free Products Regulation* provides for a "*cut-off date*" of 31 December 2020, which means that "*only products that have been produced on land that has not been*

subject to deforestation or forest degradation after 31 December 2020 will be allowed on the EU market or to be exported from the EU". The *Deforestation-Free Products Regulation* also includes provisions on penalties and fines, which must be proportionate to the environmental damage and the value of the relevant commodities or products concerned and "*should be set at the level of at least 4% of the operators*' *annual turnover in the EU and include a temporary exclusion from public procurement processes and from access to public funding*".

The *Deforestation-Free Products Regulation* establishes a benchmarking system, which provides for the assignment of a level of risk related to deforestation and forest degradation (*i.e.*, low-, standard- or high-risk) to countries or parts thereof, within and outside of the EU. The risk category will then inform the level of specific obligations for operators, which include "*the collection of information, data and documents*", "*risk assessment measures*", and "*risk mitigation measures*". EU Member States' authorities are to carry out inspections and controls to ensure compliance. Products from "*low-risk*" countries will be subject to a "*simplified*" due diligence procedure and fewer obligations, which would mean limited compliance costs and a reduced administrative burden, while "*for relevant products from high-risk countries or parts thereof competent authorities should be required to apply enhanced scrutiny*". More specifically, when the products originate in countries or parts thereof classified as '*low-risk*', operators will not be required to carry out risk assessments and risk mitigation procedures and measures.

Importantly, the risk categorisation of countries or parts thereof will only be provided under a future implementing act, which is to be published by the European Commission within 18 months following the entry into force of the Regulation. According to Article 29 of the Regulation, "*On 29 June 2023, all countries shall be assigned a standard level of risk*" and "*the list of the countries that present a low or high risk shall be published by means of implementing acts no later than 30 December 2024*". Article 29 of the Regulation provides that the classification of low-risk and high-risk countries or parts thereof is to "*be based on an objective and transparent assessment by the Commission, taking into account the latest scientific evidence and internationally recognised sources*". More specifically, the classification is to "*be based primarily on the following assessment criteria: (a) rate of deforestation and forest degradation; (b) rate of expansion of agriculture land for relevant commodities; c) production trends of relevant commodities and of relevant products*". Recital 68 of the Regulation further notes that "*to ensure appropriate transparency and clarity, the Commission should make publicly available the data being used for benchmarking, the reasons for the proposed change of classification and the reply of the country concerned"*.

Increased communication among interested actors and multi-stakeholder engagement will be crucial for compliance with the new rules, in particular with respect to the assessment of risk and the categorisation of the respective countries. The Commission should soon specify and clarify the relevant criteria and data used in the assessment, so that third countries can work towards compliance.

Operationalising the new obligations – The data issue

Operators that fall within the scope of the Regulation will be required to provide a due diligence statement demonstrating that their products, placed on the EU market or exported from the EU, were produced on land that has not been subject to deforestation or, in the case of relevant products that contain or have been made using wood, that the wood has been harvested without inducing forest degradation after 31 December 2020.

The practical implementation of the EU's Deforestation-Free Products Regulation has a number of challenges associated with it, both for the economic operators and the oversight bodies in the EU, including with respect to the availability of data and the monitoring capabilities. For the implementation of the rules, economic operators that place relevant commodities and products on the EU market or export them from the EU will be required to collect, organise, and retain supply chain information for five years, while the Commission will need to build credible and reliable information systems to consistently deal with the data

provided by operators in order to ensure the success of its Deforestation-Free Products Regulation. The information system and the consistency of the data will play a significant role in proving whether commodities are indeed "*deforestation-free*", and the Commission will rely on these elements to build trust in its relationships with trading partners and verify "*deforestation-free*" claims.

Among the information and data that economic operators must collect is the "*geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced, as well as the date or time range of production*". The geolocation and the traceability of the products are the key requirements that will pose particular challenges for economic operators, particularly for smallholders. Importantly, smaller producers often lack the necessary systems to provide the required traceability information, making them more vulnerable to exclusion from global markets.

Operationalising the new obligations – The time issue

Article 38 of the Regulation on '*Entry into force and date of application*' establishes a general timeframe of 18 months from the entry into force, which means that the new rules will apply from 30 December 2024. However, for small- and medium-sized enterprises, the timeline for application of the obligations will be of 24 months from the entry into force, with application only from 30 June 2025. The "*transition period*" has been a concern frequently raised by most interested stakeholders, in particular regarding the feasibility of achieving the necessary changes within these relatively short timeframes. Certain stakeholders suggested a longer "*grace period*" that would allow certain countries and industries more time to adapt.

In light of the time constraints and stakeholders' needs, the Commission is expected to address questions and provide clarifications to facilitate implementation. Article 15 of the Deforestation-Free Products Regulation also acknowledges the importance of providing "*technical and other assistance and guidance to operators*". The Commission and the affected stakeholders should cooperate, engage, and share information, with the objective of minimising disruptions in supply chains.

Many open questions remain

Notably, many details of the new rules have yet to be defined in future implementing acts. The Commission is required to develop implementing rules to, *inter alia*: 1) Establish rules for the functioning of the information system, including rules for the protection of personal data and exchange of data with other IT systems; 2) Establish the list of countries or parts thereof that present a low or high risk; and 3) Define the data, including their format, to be transmitted by operators and traders to comply with the obligation to submit the due diligence statement of a relevant commodity.

The provision of clear rules and additional guidance for companies and traders, along with the development of the information technology infrastructure and data management strategies, will be important elements for the successful implementation of the Regulation and to achieve the goals envisaged. The EU should work closely with producing countries and the affected stakeholders should raise any concern in the relevant *fora* so that all challenges can be overcome in a timely manner before the rules become applicable. Economic operators must prepare and seek legal and technological support as soon as possible, so as to be ready for compliance and to be able to interact with the EU and/or their respective Governments with a view to address problems and minimise trade irritants or market access barriers.

Following the export prohibition of nickel ore, the Government of Indonesia officially prohibits the export of bauxite ore and of bleached bauxite

On 10 June 2023, in line with *Law No. 3 of 2020 on Amendments to Law No. 4 of 2009 on Mineral and Coal Mining* (hereinafter, Mining Law), the Government of Indonesia officially prohibited the export of bauxite ore and of bleached bauxite, reportedly in order to encourage the development of domestic smelters. On 7 September 2022, Indonesia's President *Joko Widodo 'Jokowi'* had announced that Indonesia intended to gradually enact new export prohibitions on tin, bauxite ore, and copper, starting in 2023. According to Indonesia's Minister of Energy and Mineral Resources, *Arifin Tasrif*, the Government of Indonesia would only allow bauxite ore to be exported following its domestic processing and refining. The export prohibition on bauxite ore and bleached bauxite follows the export prohibition of nickel ore, which was imposed in January 2020, and which has been declared inconsistent with WTO rules by a WTO Panel. This move demonstrates once again Indonesia's rather *'protectionist'* and WTO-inconsistent approach regarding trade in raw minerals, for the benefit of domestic processing industries.

The rationale behind Indonesia's export restriction of raw minerals

One of Indonesia's long-standing industrial policy objectives is to develop domestic processing facilities and domestic capacities to increase the added value of raw materials, including for minerals. The development of Indonesia's *'downstream'* industry is part of the Government's ambition to transform the commodity-driven economy into a more industrial economy. Indonesia's Minister of Industry, *Agus Gumiwang*, noted that this policy approach would create more job opportunities and increase the country's export capabilities and the ability to compete in the international market. Notably, the so-called *'success'* of the export prohibition of nickel ore has encouraged the Government of Indonesia to also restrict the export of other raw minerals. Indonesia's President *Jokowi* noted that Indonesia's nickel trade value had surged from IDR 17 trillion (USD 1.12 billion), prior to the export prohibition, to IDR 450 trillion (USD 29.8 billion) in 2022, and estimated that, in 2023, "*the number will reach more than IDR 468 trillion or more than USD 30 billion*".

Legal basis of the export prohibition of raw minerals

Indonesia first introduced restrictions on exports of raw minerals in 2009 through *Law No. 4 of 2009 on Mining of Minerals and Coal*, amended by *Law No. 3 of 2020*, which provided that "*the management of minerals and coal must be controlled by the government to give real added value to the national economy".* Article 5 of the *Mining Law* provides the basis for the Government of Indonesia to introduce policies that prioritise domestic interests, allowing the Government to "*control its production and exports*". Article 170A of the Mining Law introduced export restrictions, providing that mining companies may only export minerals, such as nickel and bauxite, if they have met the prescribed requirements, namely the development of domestic refining or processing facilities, and cooperation with local smelters. Article 170A also requires companies to increase the added value of their commodities by processing and/or refining the raw material prior to export (see *Trade Perspectives*, Issue No. 19 of 17 October 2022).

Overview of the bauxite ore and bleached bauxite export prohibition

According to the *US Geological Survey,* Indonesia produced 21 million metric tonnes of bauxite in 2022, with approximately 85% of the production being exported. Indonesia's Ministry of Energy and Mineral Resources noted that, in 2022, Indonesia's bauxite reserves stood at around 4% or the equivalent of 1.2 billion metric tonnes of the total global reserves, which are estimated at 30.3 billion metric tonnes, placing Indonesia as the country with the sixth largest bauxite reserve in the world. Bauxite is a raw material that is used for large-scale production of aluminium, a metal that is widely used for, *inter alia,* aircraft construction, building materials, and electronic conductors.

The recently imposed export prohibition on bauxite ore and bleached bauxite marks the second time that Indonesia has imposed an export prohibition on this commodity. In 2014, the Government of Indonesia had imposed an export prohibition on various raw materials, including bauxite ore, nickel, tin, silver, gold, and chromium on the basis of *Government Regulation No. 1 of 2014*. Already at that time, the export prohibition was imposed with the objective to develop Indonesia's domestic smelting industry and to increase the exports of domestically processed mineral ores. However, the export prohibition resulted in a budget deficit and, coupled with pressure from the domestic industry, the Government of Indonesia eased the export prohibition of raw minerals in 2017 by allowing exports of raw minerals with certain contents or concentrations. For instance, bauxite with an aluminium content of at least 42% and lower-grade nickel ore with a concentration below 1.7% were allowed to be exported until December 2019.

The export prohibition for bauxite ore and bleached bauxite follows Indonesia's existing export prohibition for nickel ore. Article 170A of the *Mining Law* is an overarching provision that requires raw materials, including bauxite and nickel ores, to be processed and/or refined domestically before they may be exported. With the new export prohibition for bauxite ore and bleached bauxite, Indonesia's State revenue is expected to increase from IDR 21 trillion to approximately IDR 62 million, due to the export (and taxation) of higher-value processed bauxite products. In addition to bauxite, the Government of Indonesia had announced that it would also prohibit the export of raw copper in 2023.

Reactions from businesses and trading partners

Local miners have expressed their concerns about whether Indonesia would be capable of processing bauxite ore, as there are currently only four operating refining facilities in Indonesia, with a total output capacity of 4.3 million metric tonnes. The international reactions concerning this new export prohibition for bauxite appear not yet as significant as for the earlier export prohibition for nickel, as Indonesia's global market share of bauxite is less important, with very few export destinations for bauxite and 90% of it being exported to China. However, China's dependency on bauxite from Indonesia has decreased significantly in recent years. In 2013, prior to the first export prohibition of 2014, Indonesia still accounted for 68% of China's bauxite imports. However, according to data published by China Customs, when Indonesia first imposed its export prohibition on certain raw minerals, including bauxite, in 2014, imports of bauxite from Indonesia into China significantly decreased and, instead, imports from other trading partners increased. In 2022, imports from Australia accounted for 26% of China's bauxite imports, imports from Guinea for 58%, and imports from Indonesia accounted for merely 15%.

Inconsistent with Indonesia's WTO obligations?

Indonesia acknowledges that the export prohibition on bauxite ore and bleached bauxite could trigger the imposition of retaliatory measures by Indonesia's trading partners, including China. Notably, Indonesia's export prohibition is likely inconsistent with Article XI:1 of the General Agreement on Tariffs and Trade (GATT) 1994, which prohibits WTO Members from maintaining or imposing prohibitions or restrictions other than duties, taxes or other charges, "*whether made effective through quotas, export licences or other measures, on the exportation or sale for export of any product destined for the territory of any other Member*".

In 2019, the EU had filed a WTO dispute against Indonesia's export restrictions on raw materials (*DS592*). The Panel Report was circulated on 30 November 2022, with the Panel ruling in favour of the EU and concluding that Indonesia's export prohibition and domestic processing requirement for nickel ore were inconsistent with WTO rules. In particular, the Panel found that Indonesia's export prohibition and domestic processing requirement were inconsistent with Article XI:1 of the GATT 1994, as the measures constitute a prohibition or restriction on the exportation or sale for export of products from Indonesia that are made effective through "*quotas, import or export licences or other measures*" (see *Trade*

Perspectives, Issue No. 23 of 12 December 2022). Consequently, the Panel "*recommends that Indonesia bring its measures into conformity with its obligations under the GATT 1994*".

However, Indonesia's President *Jokowi* does not appear to mind that the export prohibition on bauxite ore and bleached bauxite could again trigger complaints from other WTO Member States. In fact, President *Jokowi* stated that, if China or other countries were to launch a WTO complaint regarding the bauxite ore and bleached bauxite export prohibition, Indonesia would be ready to face it.

Despite being one of Indonesia's main export destinations for bauxite, China might not file a complaint at the WTO regarding this matter, given that it has started growing its presence in Indonesia's downstream industry by building smelters and increasing its investment in the downstream industry. Still, the bauxite ore and bleached bauxite export prohibition would also impact other WTO Members that import bauxite from Indonesia, including the EU and Canada, which do not have a similar presence in Indonesia's downstream industry as China.

The '*success'* that Indonesia gained from "*downstreaming*" nickel and other raw minerals was achieved at the expense of WTO consistency and of Indonesia's credibility as a WTO Member. Further, as a WTO Panel has previously ruled that the nickel ore export prohibition is inconsistent with WTO rules, the bauxite ore and bleached bauxite export prohibition, which has the same legal basis, would likely again be considered as inconsistent with WTO rules. To support the development of domestic processing industries, while ensuring compliance with WTO rules, Indonesia could adopt other policy approaches, such as providing incentives or subsidies to increase investments in the smelter industry and other downstream industries without resorting to export prohibitions. Improving its investment climate, upgrading its infrastructure, fighting the scourge of corruption, enhancing regulatory transparency and strengthening the rule of law are also arguably other elements that would help attracting investments, including in the sector of minerals processing, while honouring its international trade obligations.

Towards specific agreement on raw materials?

It appears unlikely that the Government of Indonesia would stop imposing measures to prohibit the export of raw materials anytime soon. A workaround could be the negotiation of bilateral arrangements regarding the access to raw materials, possibly negotiated in the context of bilateral preferential trade arrangements. For instance, the EU has recently begun negotiating Strategic Partnerships on Raw Materials with third countries, with the aim of facilitating investments in sustainable and resilient value chains for raw materials. The EU intends to sign such partnerships with Argentina and Chile, which would cover the development of value chains, going "*beyond extraction*" and would also aim at upholding human rights and environmental objectives.

Given the ongoing negotiations between the EU and Indonesia for a Comprehensive Economic Partnership Agreement (CEPA), this instrument could be the *forum* within which innovative rules and concessions could be worked out bilaterally. This would, arguably, also offer Indonesia the ability to address other trade irritant with the EU, notably in relation to the many '*green initiatives*' that the EU has been developing and that have often been perceived by Indonesia as discriminatory or trade restrictive.

Uncertain future for Indonesia's protectionist policies?

As Indonesia will hold presidential elections in 2024, it remains to be seen whether President *Jokowi's* successor would follow the same approach to raw materials and would continue to impose export prohibitions of raw materials. Economic operators and Indonesia's trading partners should assess the new rules and consider taking the necessary legal steps in order to address or minimise the effects of this controversial policy.

WTO Members, EU Member States, and affected businesses express concerns about Ireland's health labelling rules for alcoholic beverages

On 22 May 2023, Ireland's Minister for Health *Stephen Donnelly* signed the *Public Health (Alcohol) (Labelling) Regulations 2023* into law, which provide that the labels of alcoholic products must state the calorie content and grams of alcohol in the product. Labels will also warn about the risk of consuming alcoholic beverages when pregnant and of the risk of liver disease and fatal cancers deriving from alcoholic consumption. The new rules will apply from 22 May 2026 and the three-year transition period aims at giving businesses sufficient time to prepare for the changes. Ireland's new law has generated concerns among EU Member States, WTO Members, and the affected businesses, with many arguing that it is discriminatory vis-à-vis imported products and not based on science.

The *Public Health (Alcohol) (Labelling) Regulations 2023*

The consumption of alcoholic beverages has been identified as causing significant public health harms in Ireland. In response to this threat, in 2018, the Government of Ireland enacted the *Public Health (Alcohol) Act* for the protection of human health (see *Trade Perspectives*, Issue No. 2 of 26 January 2018). Under Section 12 of the Public Health (Alcohol) Act, the Minister for Health is empowered to make regulations to require that the labels of alcoholic products contain the following: 1) A warning to inform consumers of the danger of alcohol consumption; 2) A warning to inform consumers of the danger of alcohol consumption when pregnant; 3) A warning to inform consumers of the direct link between alcohol and cancers; 4) The quantity of grams of alcohol contained in the product; 5) The number of calories contained in the alcoholic product; and 6) A link to a website that gives information on alcohol and the related harms. Based on Section 12 of the *Public Health (Alcohol) Act*, the Public Health (Alcohol) (Labelling) Regulations, with their requirement for mandatory health warning labels on all alcoholic product packaging, apply to all alcoholic products sold in Ireland, whether produced domestically or imported into the country.

Ireland's alcohol health warning label is tacitly approved by the European Commission

On 21 June 2022, the Government of Ireland had notified the draft *Public Health Alcohol Labelling Regulations* to the European Commission (hereinafter, Commission) under the EU's *Technical Regulation Information Service* (TRIS) procedure. During the consultation process on the draft *Public Health Alcohol Labelling Regulations*, conducted under the TRIS procedure, six EU Member States (*i.e.*, Croatia, Denmark, Greece, Latvia, Poland, and Slovakia) submitted comments, and eight EU Member States issued detailed opinions (*i.e.*, Croatia, Czechia, France, Hungary, Italy, Portugal, Romania, Slovakia, and Spain). At the same time, numerous health NGOs and industry representatives also issued comments in the context of the TRIS procedure. While the health NGOs supported the measure, the industry essentially argued that Ireland's national attempt to regulate food labelling could fragment the EU's Single Market by creating different labelling requirements for companies operating in the sector.

It must be noted that Ireland is not the first EU Member State to introduce additional labelling rules on alcoholic beverages. In France, operators have the choice between a pictogram or the written message "*The consumption of alcoholic beverages during pregnancy, even in small quantities, can have serious consequences on the health of the child*". The TRIS consultation process formally ended on 22 December 2022, with no objections raised by the Commission, which procedurally amounts to a tacit approval (see *Trade Perspectives*, Issue No. 3 of 13 February 2023).

Discussions in the WTO Committee on Technical Barriers to Trade (TBT)

Following the TRIS procedure, on 6 February 2023, Ireland's Department of Health notified the *Public Health (Alcohol) (Labelling) Regulations* (G/TBT/N/IRL/4) to the WTO's Committee on Technical Barriers to Trade (hereinafter, TBT Committee). WTO Members, namely the US and

Mexico, reportedly raised concerns over the new regulations. Argentina, Australia, Chile, Cuba, and New Zealand also "*expressed reservations about the regulation*".

Ireland's new rules were on the agenda of the TBT Committee meeting of 21 June 2023. According to sources, the Dominican Republic, Mexico, and the US raised concerns that Ireland's new alcohol labelling requirements could present a barrier to trade. Additional WTO Members also intervened during the meeting, some supporting the complaints made by others, including Argentina, Australia, Canada, Chile, Colombia, Cuba, Guatemala, Japan, and New Zealand. The objections addressed requirements for exporters to produce labels specific to Ireland from 2026, which would be costly and affect the ability of businesses to move products within the EU Single Market. However, speaking on behalf of Ireland, a representative from the Commission reportedly denied that businesses would be required to produce specific labels for Ireland, adding that the required labelling information could be placed on the products with a sticker after they were imported into Ireland, also noting the three-year transition period. In fact, Regulation 10(1)(b) of the Public Health (Alcohol) (Labelling) Regulations provides, in relevant part, that *"[…] the health warnings, health symbol and health information on the container of an alcohol product shall be – […] included on a sticker affixed to the container of the alcohol product […]*".

During the discussions, some WTO Members stressed the importance of having harmonised regulations across the EU's Single Market. While there are plans for EU-wide regulations that would include labels for alcoholic beverages, the Commission representative stated that such initiative was in the early stages, with an impact assessment still ongoing. In fact, in *Europe's Beating Cancer Plan*, the Commission has announced that, before the end of 2023, it would look into a proposal for health-related information on alcoholic beverages.

Other WTO Members reportedly accused Ireland of requiring health warnings that were not based on objective scientific evidence. In the meeting, a representative from the World Health Organisation (hereinafter, WHO) took the floor to speak about the harms to health associated with alcohol consumption, stating that the WHO's *International Agency for Research on Cancer* (IARC) categorised alcohol as a group 1 carcinogen. To counter common beliefs that low or moderate levels of alcohol consumption are safe or even beneficial, the WHO also informed the meeting that no level of alcohol consumption could be considered safe for health.

Consistency with WTO law?

Regarding the WTO law consistency of Ireland's law, according to Article 2.2 of the TBT Agreement, "*Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia, the protection of human health or safety, animal or plant life or health, or the environment*". The Government of Ireland argues that the high volumes and harmful patterns of alcohol consumption in Ireland were responsible for an enormous burden of public health harms and healthcare costs. The regulations are designed to reduce these harms and the related costs for the protection of the health of Irish citizens. The labelling regulations apply to all alcoholic products sold in Ireland, whether produced locally or imported. Therefore, in accordance with Article 2.1 of the WTO TBT Agreement, products imported from the territory of any other WTO Member will be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

According to Article 2.2 of the TBT Agreement, WTO Members must ensure that technical regulations do not create unnecessary obstacles to international trade. For this purpose, technical regulations must not be more trade-restrictive than necessary to fulfil a legitimate objective (*e.g.*, the protection of human health). Arguably, the objective of the alcohol warning labels could be addressed by more effective and less trade-restrictive public policies. For instance, Ireland's regulations require the quantity of grams of alcohol and the number of calories contained in the alcoholic product to be indicated. If such nutritional information were

to be provided, the rationale for imposing additional warnings is no longer clear. Other less trade-restrictive information measures, such as campaigns to encourage the population to eat and drink healthily and promoting physical activity programmes, also appear to be available.

Article 2.4 of the TBT Agreement provides that, in principle, technical regulations must be based on relevant international standards, where they exist. Section 5 of the *Codex Guidelines on Nutrition Labelling* recommends, in relation to supplementary nutrition information, that it should be intended to increase consumers' understanding of the nutritional value of their food, assisting in interpreting the nutrient declaration. The *Codex Guidelines on Nutrition Labelling* state that the information in the nutrient declaration "*should not lead consumers to believe that there is exact quantitative knowledge of what individuals should eat in order to maintain health, but rather to convey an understanding of the quantity of nutrients contained in the product*". Arguably, a warning label is not the right tool to increase consumers' understanding of the nutrients contained in the product.

Additionally, the manner in which the legitimate public health objective is pursued appears to be incompatible with the list of prohibited claims under section 3 of the *Codex General Guidelines on Claims*. For instance, Section 3.5 of the guidelines prohibits "*claims which could give rise to doubt about the safety of similar food or which could arouse or exploit fear in the consumer*". Arguably, the warning labels, in case they are considered claims, risk demonising alcoholic beverages, whose consumption in moderation can, arguably, be part of a healthy diet.

Relevant industry associations **complain to the European Commission**

On 16 May 2023, the European alcoholic beverages organisations *spiritsEurope, Comité Européen des Entreprises Vins,* and *Brewers of Europe* submitted formal complaints asking the European Commission to open an infringement procedure against Ireland for allegedly breaching EU law with the new law on labelling rules for alcoholic beverages, which the complainants consider "*a disproportionate and unjustified barrier to trade contrary to Articles 34 and 36 of the Treaty of Functioning of the EU, thereby jeopardizing the EU Single market*". Following complaints from citizens, businesses or other stakeholders, according to its rules of procedure, the Commission has 15 days to confirm receipt of the complaints and 12 months to decide whether to initiate a formal infringement procedure.

Outlook

In response to the TBT Committee meeting, Minister *Donnelly* reportedly said that, while the Government of Ireland would go ahead with the regulations, it would take the concerns "*very seriously*" and would "*engage internationally*", adding that Ireland went through a "*long process*" with the EU and that the EU now supports Ireland's position. Stakeholders should monitor the further discussions within the TBT Committee, while businesses should start familiarising themselves with the new rules and prepare for their entry into effect on 22 May 2026, assuming that Ireland will not be forced to amend its legislation.

Recently adopted EU legislation

Trade Law

- *Council Regulation (EU) 2023/1191 of 16 June 2023 amending Regulation (EU) 2021/2283 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products*

- *Council Implementing Decision (EU) 2023/1197 of 19 June 2023 authorising Poland to apply reduced rates of excise duty to heavy fuel oil, natural gas, coal*

and coke, used as heating fuels, in accordance with Article 19 of Directive 2003/96/EC

- *Commission Decision (EU) 2023/1313 of 22 June 2023 approving, on behalf of the European Union, the amendments to Annex 14-B of the Agreement between the European Union and Japan for an Economic Partnership*

- *Decision No 1/2023 of the EU-Switzerland Joint Committee of 12 June 2023 amending Tables III and IV of Protocol 2 to the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972, as amended (2023/1314)*

- *Regulation (EU) 2023/1231 of the European Parliament and of the Council of 14 June 2023 on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland*

- *Regulation (EU) 2023/1321 of the European Parliament and of the Council of 14 June 2023 amending Regulation (EU) 2020/2170 as regards the application of Union tariff rate quotas and other import quotas to certain steel products transferred to Northern Ireland*

- *Council Decision (EU) 2023/1323 of 27 June 2023 on the signing, on behalf of the Union, of the Free Trade Agreement between the European Union and New Zealand*

Trade Remedies

- *Commission Implementing Regulation (EU) 2023/1301 of 26 June 2023 amending Commission Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products*

- *Commission Implementing Regulation (EU) 2023/1330 of 29 June 2023 imposing a definitive anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

- *Commission Implementing Regulation (EU) 2023/1331 of 29 June 2023 amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products*

Customs Law

- *Council Regulation (EU) 2023/1190 of 16 June 2023 amending Regulation (EU) 2021/2278 suspending the Common Customs Tariff duties referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 on certain agricultural and industrial products*

- *Decision No 1/2021 of the EU-Serbia Stabilisation and Association Council of 6 December 2021 amending the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, by replacing Protocol 3 thereto concerning the definition of the concept of 'originating products' and methods of administrative cooperation [2023/1320]*

Food Law

- *Council Decision (EU) 2023/1180 of 8 June 2023 establishing the position to be taken on behalf of the European Union with regard to certain resolutions to be voted on at the 21st General Assembly of the International Organisation of Vine and Wine, to be held on 9 June 2023*

- *Commission Implementing Regulation (EU) 2023/1195 of 20 June 2023 laying down rules for the details and the format of the information to be made available by Member States on the results of official investigations concerning cases of contamination with products or substances not authorised for use in organic production*

- *Commission Implementing Regulation (EU) 2023/1202 of 21 June 2023 amending Implementing Regulation (EU) 2021/2325 as regards the recognition of certain control authorities and control bodies for the purpose of importing organic products into the Union*

- *Commission Implementing Regulation (EU) 2023/1203 of 21 June 2023 amending Implementing Regulations (EU) 2018/2019 and (EU) 2020/1213 as regards certain plants for planting of Malus domestica originating in the United Kingdom*

- *Commission Delegated Regulation (EU) 2023/1225 of 22 June 2023 on temporary exceptional measures derogating from certain provisions of Regulation (EU) No 1308/2013 of the European Parliament and of the Council to address the market disturbance in the wine sector in certain Member States and derogating from Commission Delegated Regulation (EU) 2016/1149*

- *Commission Implementing Regulation (EU) 2023/1317 of 28 June 2023 on temporary derogation from Implementing Regulation (EU) 2016/1150 as regards certain measures to address the market disturbance in the wine sector*

Felipe Amoroso, Ignacio Carreño, Joanna Christy, Tobias Dolle, Alya Mahira, and Paolo R. Vergano contributed to this issue.

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