



## REPLIES TO CONCERNS FROM THE EUROPEAN UNION ON ALCOHOL LABELLING <sup>1</sup>

### STATEMENT BY KENYA AT THE MEETING OF THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE OF 19-20 MARCH 2014

The following communication, dated 21 March 2014, is being circulated at the request of the delegation of Kenya.

Kenya takes note of the concerns raised by the delegation from the European Union and wishes to respond as follows:

1. **Concern 1:** The size requirement of the health warning label Clause 30 of the notified draft states that: "Section 32 of the principal Act is amended—(a) by deleting the word "package" appearing in subsection (3) and substituting thereof the word "label". The EU understands that the new text of Section 32 of the Alcoholic Drinks Control Act, 2010 should read: "The statement and health warning referred to in subsection (2) shall comprise not less than 30% of the total surface area of the label". However, the notified draft amendment Bill contains a Memorandum of objects and reasons with a number of clauses. Clause 30 therein reads as follows: "Clause 30 seeks to amend section 32 of the Act so as to require that the health warning should be at least thirty percent of the label as opposed to the package – a requirement which the courts have upheld that it is impossible to implement. It is proposed in turn that the label should not be less than by percent of the total area of the package". The EU would like to receive clarification as regards the reasons for setting out the requirement provided in Clause 30, in particular whether more feasible size requirements have been considered. In this respect the EU would like to recall Article 2.2 of the TBT Agreement, which states that: "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."

2. **Response:**

- a. Section 32 (2) of the Alcoholic Drinks Control Act, 2010 requires that every alcoholic drink package contains two health warnings to comprise not less than 30% of the total surface area of the package and not 30% of the total surface area of the label as per the concern herein. The Memorandum of objects and reasons on the other hand requires that the label should not be less than fifty 50% of the total surface area of the package.
- b. The Senate through Senate Bill No. 10 of 2013 has proposed amendments to the Alcoholic Drinks Control Act, (ADCA) 2010.
- c. The Alcoholic Drinks Control (Amendment) Bill, 2013 seeks to amend Section 32 of the ADCA by deleting the word "package" appearing at Subsection 2 of section 32 of the

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<sup>1</sup> Kenya – Alcohol labelling: the alcoholic drinks control (licensing) regulations, 2010: legal notice no. 206:2010 (G/TBT/N/KEN/282/Rev.1).

ADCA and substituting it with the word "label". The Bill is currently pending before senate, and it is expected to pass in due course.

- d. However it should be noted that Section 32(2) of the ADCA is not currently being enforced as the High Court issued conservatory orders in August 2011, and the same have not been vacated.
- e. Kenya takes note of the concerns of the EU, and they will be taken into consideration in the review of the current law.

3. **Concern 2:** The EU notes that Section 32 (4) of the Alcoholic Drinks Control Act, 2010 provides that "all the warning labels specified in the Second Schedule shall be randomly displayed in each twelve-month period on a rotational basis and in as equal a number of times as is possible, on every successive fifty packages of each brand of the alcoholic drink and shall be randomly distributed in all areas within the Republic." The EU requests the requirement to alternate the warning to be applied in a way that would avoid creating unnecessary trade obstacles and unnecessary costs with regard to the legitimate objectives pursued. The European Union would be grateful if the above-mentioned comments could be taken into account and replied to before the adoption of the notified draft legislation.

4. **Response:**

- a. The requirement seeks to ensure that the four prescribed warnings under schedule IV of the Alcoholic Drinks Control Act, 2010 are evenly utilized thereby improving public awareness and education on the diverse health consequences associated with the consumption of alcohol.
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