

Warsaw, January 20, 2024

Employers' Association Polish Spirits Industry (ZP PPS) input on the draft regulation on detailed packaging requirements for certain spirit beverages. (Notification 2024/0583/PL (Poland))

The Employers' Association of the Polish Spirits Industry is against the positioning of alcohol pouches next to food products intended for children. Alcoholic beverages are products intended exclusively for adults and should be treated as such. All ZP PPS members comply with current regulations on the sale and promotion of alcoholic beverages. In addition, as part of self-regulation, they signed the Code of Good Marketing Practices, which states that spirit drinks must not be targeted at minors. None of the members of the ZP PPS produce spirits in plastic sachets, nor do they target minors with their products.

Notwithstanding the fact that, as an industry, we oppose any practice of misleading consumers and support efforts to avoid such practices, we draw attention to certain formal objections to the Draft Regulation. In particular, the Draft only applies to spirit drinks with a capacity of up to 200 ml. In Poland, most alcohol is consumed in beer - 54%, followed by spirits - 38% and wine - 8%. Beer is often the first alcohol of choice for young people due to its easy physical availability, there is greater acceptance of its consumption by minors and it is the cheapest. We are of the opinion that all alcoholic beverages, i.e. beer, wine and spirits contain the same substance - alcohol, are products available only to adults and their packaging in all available capacities must not mislead consumers or encourage minors to consume them.

The Draft may result in restriction of the free movement of goods and constitute de facto closure of the Polish market for spirit beverages that do not meet new requirements.

We support all measures aimed at curbing underage consumption of alcoholic beverages, but legislation should clearly define the rules for marketing specific products. The Draft Regulation reads that 'spirit drinks (...) must not give rise to doubt or be misleading with respect

to the data enabling the foodstuff to be identified and distinguished from other foodstuffs, in particular foodstuffs intended for children'. We would like to point out that already today spirit drinks, irrespective of the packaging and its capacity, have an excise band, the so-called strip stamp, affixed to the packaging, which distinguishes them from non-alcoholic beverages. In addition, in accordance with Regulation 2019/787¹, the label of a spirit drink should include the category to which the product belongs or the words 'spirit drink' and its legal name. There are therefore already at least 2 elements on the packaging of each spirit drink that distinguish it from other foodstuffs. The draft regulation does not specify how else the packaging for spirit drinks should be distinguished from the packaging of other foodstuffs, leaving this matter to the personal subjective judgement of the inspector.

Food law regulations also apply to spirit drinks, including Article 7(1) of Regulation 1169/2011, according to which: 'Food information shall not be misleading, particularly:

(a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production; (...)'.

According to Article 7(4) of Regulation 1169/2011², the above prohibition applies to, inter alia, 'the presentation of foodstuffs, in particular their shape, appearance or packaging, the packaging materials used, the way in which they are arranged and the setting in which they are

¹ Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications of spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008.

² 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.

displayed'. Thus, there are already regulations in place prohibiting misrepresentation, also relating to the appearance and packaging of foodstuffs.

Please note that the Draft may raise serious doubts as to its compliance with the provisions of Regulation 2019/787. They allow the sale of alcoholic beverages in protective packaging, including, m.in others, in "cartons, boxes, containers and bottles". The proposed regulations narrow down the categories of permissible packaging of spirit drinks. EU regulations are of general application, binding in their entirety and directly applicable in all Member States (Article 288 TFEU). Moreover, in accordance with the principle of primacy developed in the case law of the CJEU, EU law has the primacy of application over the national law of the Member States. In the so-called EU approach, this principle applies to all national provisions of the Member States, regardless of their place in the hierarchy of sources of law (including laws and regulations). Consequently, Member States may not legislate in conflict with EU law.

Regulations on the labelling of food (including alcoholic beverages), as well as regulations prohibiting the use of practices infringing the collective interests of consumers, provide for severe sanctions that could currently be applied to entrepreneurs using unfair, unethical practices. In particular, public authorities (e.g. the State Sanitary Inspectorate) are entitled to withdraw products from the market that do not meet the requirements; in the case of activities constituting practices infringing the collective interests of entrepreneurs, the President of the Office of Competition and Consumer Protection may impose a fine of up to 10% of annual turnover.

In the light of the comments presented above, we appeal to consider taking advantage of the possibilities provided for by the law already in force instead of introducing new legal requirements giving room for over-interpretation by the control authorities. This regulation doesn't come with definition of bottle or can and leaves it solely to the subjective judgement of the inspector as to whether or not the product complies with this regulation.