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**Subject: Notification 2024/583/PL**

**Draft Regulation of the Minister for Agriculture and Rural  
Development on detailed requirements for the commercial quality of  
packaging of certain spirit drinks**

**Delivery of comments pursuant to Article 5(2) of Directive (EU)  
2015/1535 of 9 September 2015**

Sir,

Within the framework of the notification procedure laid down in Directive (EU) 2015/1535 <sup>(1)</sup>, the Polish authorities notified to the Commission on 18 October 2024 a draft “*Regulation of the Minister for Agriculture and Rural Development on detailed requirements for the commercial quality of packaging of certain spirit drinks*” (hereafter the “notified draft”).

The draft regulation provides that spirit drinks (with an alcohol content of more than 15 % vol.) with a unit package capacity of up to 200 ml may only be marketed in either bottle or can packaging. This is to prevent the marketing of the so-called ‘alco-pouches’. It is further explained that “*Public demands and signals from organisations fighting alcoholism point to the easy availability of spirit drinks in small packages as an important factor in promoting and increasing alcohol consumption. In view of the recent appearance of alcohol in pouches confusingly resembling children’s food products, it is necessary to regulate the type of packaging of certain spirit drinks in such a way that the packaging of this drink does not mislead consumers as to the content thereof*”.

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<sup>1</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1-15.

The examination of the notified draft has prompted the Commission to issue the following comments.

Article 1 of the notified draft provides that *“The Regulation lays down specific requirements for the commercial quality of prepackaging of spirit drinks whose nominal size shall be up to 200 millilitres”*.

According to Article 2 of the notified draft, *“Spirit drinks within the meaning of Article 2 of Regulation (EU) 2019/787 (...) in prepackages of a nominal size of up to 200 millilitres are placed on the market in bottles or cans whereby the labelling, within the meaning of Article 4(3) of the Regulation, of those bottles or cans:*

- (1) Must not raise doubt or be misleading as regards the identification of spirit drinks;*
- (2) Shall enable spirit drinks to be distinguished from other foodstuffs, in particular from foodstuffs intended for children”.*

Article 3 of the notified draft provides:

*“Spirits in individual prepackages of a nominal size of up to 200 millilitres placed on the market in accordance with the provisions in force in another Member State of the European Union or in Turkey, or originating in a Member State of the European Free Trade Agreement (EFTA) which is a party to the Agreement on the European Economic Area and marketed in accordance with the legislation in force in that State shall be deemed to comply with the requirements set out in § 2 provided that the labelling, within the meaning of Article 4(3) of the Regulation mentioned in § 2, of such prepackages complies with the requirements referred to in § 2.”*

Finally, Article 4 of the notified draft stipulates that *“Spirit drinks which were placed on the market before the date of entry into force of the Regulation in prepackages of a nominal size of up to 200 millilitres other than bottles or cans may remain on the market for 30 days from the date of entry into force of this Regulation”*.

Regulation (EU) 2019/787 <sup>(2)</sup> (hereafter “the Spirit drinks Regulation”) *“lays down rules on the definition, description, presentation and labelling of spirit drinks, as well as on the protection of geographical indications of spirit drinks; the ethyl alcohol and distillates used in the production of alcoholic beverages; and the use of legal names of spirit drinks in the presentation and labelling of foodstuffs other than spirit drinks”* (Article 1).

Article 2 of this Regulation provides for the definition of and requirements for spirit drinks. Article 9 of the Spirit drinks Regulation stipulates that *“Spirit drinks placed on*

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<sup>2</sup> (2) 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 for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008, OJ L 130, 17.5.2019, p. 1–54.

*the Union market shall comply with the presentation and labelling requirements set out in Regulation (EU) No 1169/2011, unless otherwise provided for in this Regulation”.*

The Commission notes that the rules contained in the notified draft concerning the type of packaging (bottles and cans) to be used for spirit drinks in prepackages of a nominal size of up to 200 millilitres are not regulated at EU level in the Spirit Drinks Regulation.

The Polish authorities have clarified in the notified draft and the justification document accompanying the notification that they included in the notified draft a mutual recognition clause, in order to contribute *“to increasing trust in mutual recognition as a principle that protects the public interest for all and opens the single market”*. According to Article 3 of the notified draft *“spirit drinks in individual packages of a nominal size of up to 200 milliliters placed on the market in accordance with the provisions in force in another Member State of the European Union (...) shall be deemed to comply with the requirements set out in Article 2 provided that the labelling (...) of such prepackages complies with the requirements referred to in Article 2”*.

The Commission therefore understands that the notified draft excludes the application of the requirement that individual packages are in bottles or cans in respect of spirit drinks lawfully marketed in another Member State or in Turkey (or originating and lawfully marketed in a Member State of the EFTA). It is, however, not clear to what extent the requirement to use bottles or cans will not in the end affect products from other Member States as, according to the “Justification” document accompanying the notified draft, *“The quality and safety of food products placed on the market is the responsibility of the operator who places the food on the market and it is the operator who is required to comply with the law. The definition of commercial quality requirements for the packaging of spirit drinks will make it mandatory for operators marketing these drinks to bring the packaging used into line with the regulations adopted in the proposed regulation”*. This provision might create ambiguity as to the obligation for an importer or a retailer to comply with the requirement to use bottles and cans provided for in the Polish notified draft, even in case they import or sell on the Polish market spirit drinks not in bottles or cans that are lawfully marketed in other Member States.

In view of the legal uncertainty regarding the applicability of the packaging requirement to products from other Member States, the Commission considers that there is a possibility that the notified draft might restrict the free movement of goods lawfully marketed in other Member States.

According to the Court of Justice of the EU, *“although the requirement that a particular form of packaging must also be used for imported products is not an absolute barrier to the importation into the Member State concerned of products originating in other Member States, nevertheless it is of such a nature as to render the marketing of those products more difficult or more expensive either by barring them from certain channels of distribution or owing to the additional costs brought about by the necessity to*

*package the products in question in special packs which comply with the requirements in force on the market of their destination”* <sup>(3)</sup>.

The risk of disruption of the free movement of products within the internal market would be further aggravated by the very short transition period provided for in Article 4 of the notified draft (30 days from the date of entry into force of the notified draft).

The Commission would like to recall that in the case where a measure is liable to restrict the free movement of goods, it should satisfy the conditions set out in the judgments of the Court of Justice of the EU on Articles 34-36 TFEU with respect to their justification and proportionality.

It follows from the message accompanying the notified draft that the Polish authorities aim at fighting alcoholism by making less easily available spirit drinks in small packages as such packages are an important factor in promoting an increasing alcohol consumption. They consider it necessary to regulate the type of packaging of certain spirit drinks in such a way that the packaging of this drink does not mislead the consumer as to the content thereof. The Commission acknowledges that the reason referred to in the message accompanying the notified draft - the protection of public health – is a legitimate objective that can justify restrictions to the free movement of goods under Article 36 TFEU <sup>(4)</sup>. The European Court of Justice also recognised that it is for the Member States to determine the level of protection they wish to afford to public health and the way in which that level is to be achieved and that the level may vary from one Member State to another <sup>(5)</sup>. Nevertheless, the Court also clarified that in exercising their discretion relating to the protection of public health, the Member States must comply with the principle of proportionality. The means which they choose must therefore be confined to what is actually necessary to ensure the safeguarding of public health; they must be proportional to the objective thus pursued, which could not have been attained by measures which are less restrictive of intra-Community trade <sup>(6)</sup>.

The Commission therefore invites the Polish authorities to clarify whether the requirement to place on the market spirit drinks exclusively in bottles and cans applies generally to all operators established in Poland (including importers, wholesalers, retailers) and therefore might also affect products from other Member States. Should that be the case, the Commission invites the Polish authorities to provide explanations regarding the proportionality of the requirement to package spirit drinks exclusively in cans and bottles, in particular in view of the existence on the market of spirit drinks packaged in plastic containers other than cans and bottles which do not look like pouches containing foodstuffs aimed for kids but would nevertheless be banned on the Polish market.

The Polish authorities are invited to take into account the above-mentioned comments.

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<sup>3</sup> ()See Case C-261/81, Walter Rau, Judgement of 10 July 1982, ECLI:EU:C:1982:382, para. 13.

<sup>4</sup> ()See Case C-333/14, Scotch Whisky Association, ECLI:EU:C:2015:845, para. 35.

<sup>5</sup> ()See Case C-663/18, Criminal proceedings against BS and CA, Judgement of 19 November 2020, ECLI:EU:C:2020:938, para. 85.

<sup>6</sup> ()Same case, para. 89.

The Commission furthermore invites the Polish Government to communicate the adoption of the definitive text of the draft technical regulation concerned, in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Wolfgang Bartscher  
Director-General  
Directorate General for  
Agriculture and Rural  
Development