Message 201

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Notification: 2024/0396/HU

Forwarding of the response of the Member State notifying a draft (Hungary) to of Austria.

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1. MSG 201 IND 2024 0396 HU EN 15-01-2025 14-05-2025 HU ANSWER 15-01-2025
1. MSG 201 IND 2024 0397 HU EN 15-01-2025 14-05-2025 HU ANSWER 15-01-2025

2. Hungary

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3B. Nemzetgazdasági Minisztérium

4. 2024/0396/HU - C50A - Foodstuffs
4. 2024/0397/HU - C50A - Foodstuffs

5.

6. The detailed opinion submitted by Austria in relation to notifications No 2024/396-397/HU is answered as follows.

According to Article XVI of the Fundamental Law of Hungary (hereinafter: Fundamental Law), “Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development.” Article 6(4) of Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship provides that “the child shall have the right to be protected against environmental and social influences detrimental to his or her development, as well as against substances harmful to his or her health.’

At the same time, the protection of children’s health cannot be guaranteed with sufficient effectiveness only by means of labelling or other means of information or education. There is no guarantee that informing young consumers will have a real deterrent effect against excessive consumption of energy drinks. The ban on marketing activities to minors does not constitute a restriction on the free movement of goods, since it does not constitute an import or general marketing restriction, but only applies to a specific group of consumers.

On the one hand, the definition of the concept of energy drink with compositional characteristics makes it possible to define the exact product scope concerned and, on the other hand, it is precisely this regulatory solution that ensures that health protection objectives are achieved, since the health risk is related to individual ingredients. Considering the absence of such a definition in Community law, it is the Member States that need to establish compositional requirements if they are to protect children’s health. Harmonised rules may be established at a later stage, but this area must not remain unregulated in the meantime either.

Keeping young people healthy and encouraging them to lead healthy lifestyles is an extremely important public policy goal, as good health makes it easier to get on, to have a better quality of life and to live longer in good health. Good

health among young people is not only key to well-being, prosperity and development at the level of individuals and families, but also to the future at national level.

Available expert opinions (Hungarian Society of Cardiology, National Centre for Public Health and Pharmacy) agree that the excessive consumption of energy drinks by young people poses a significant health threat, in particular as a result of their impact on the cardiovascular system and other effects on physical and mental health (e.g. sleep disorder, irritability, increased risk behaviour when consumed together with alcohol, obesity due to high sugar content and the risk of developing type 2 diabetes).

While there is a risk of excessive consumption of caffeine and sugar for all ages, the age group particularly exposed to the adverse effects of energy drinks is young people under the age of eighteen.

The Hungarian Energy Drinks Association considers it important to share credible, factual information on energy drinks among customers, and therefore stresses that such products are only recommended for healthy adults, as no product with a high caffeine and sugar content is good for the developing body.

Energy drinks are beverages designed to increase physical performance and mental vigilance, and are available on the market in a variety of flavours and compositions to meet consumer and producer needs. They contain stimulant substances that help reduce fatigue and increase the level of energy in the organism.

From a nutritional-health point of view, it is a negative trend that the majority of young people consider energy drinks to be fashionable, almost like soft drinks, which are consumed unlimitedly or in large quantities due to the large-size (one-litre) packaging available in some cases, ignoring their caffeine content, which can trigger even more serious symptoms, depending on individual sensitivity.

Energy drinks are one of the most popular caffeine-containing drinks. In Hungary, experimenting with the effects of caffeine is typically first done at adolescent age.

According to the 2022 results of the WHO Childhood Obesity Surveillance Initiative, 34% of children aged 6-8 consume sugary soft drinks on a daily basis, and 1% consume energy drinks at varying frequencies. According to the 2022 results of HBSC research conducted in the 5th and 7th grades of primary school and the 9th and 11st grades of secondary school, the share of those consuming energy drinks daily is nearly 13.7% (compared to 8.9% in 2014), which is an increase compared to previous results. From the 5th to the 11th grade, the share of daily consumers has gradually increased nearly four-fold (from 5.7% to 20.1%). Almost three quarters (72.5 %) of the pupils interviewed consumed energy drinks once a week or less frequently at the time of the 2022 survey.

Since 1 November 2011, the public health authority has reported, on an ongoing basis, all incidents related to the consumption of energy drinks (sickness, possible health symptoms) to the National Centre for Public Health and Pharmacy (hereinafter: NNGYK).

From 1 November 2011 to 31 December 2023, 577 cases of incidents, sickness and potential symptoms related to the consumption of energy drinks were reported to the NNGYK. We assume that the consumption of energy drinks causes a much higher number of symptoms in young people, but most of them do not get medical attention, so they are not reported.

The amount of energy drink consumed varied from 1 decilitre to 2.5 litres (!) per person. Energy drinks were consumed together with alcohol in 109 cases (19%).

Based on the data received, consumption-related overdose has probably caused permanent health damage in 3 cases, fatalities were not reported. Based on the data, it was found that 74% (428) of the 577 persons affected by symptoms and nausea were young people aged 18 and under. The data suggest that, according to information received by the NNGYK, it is the primary and secondary school age groups that are mainly affected by a combination of symptoms

associated with the consumption of energy drinks, with 25% of cases occurring in educational institutions.

The severity of the problem is illustrated by the fact that a large proportion (76.6%) of all incidents related to the consumption of energy drinks required the use of healthcare services, including intervention by the ambulance, medical on-call services and hospitals. Research shows that adolescents who consume energy drinks report more health-damaging behaviours and are more likely to experience negative health indicators than adolescents who do not consume energy drinks. Negative health indicators (health condition rated as poor, multiple health complaints, insufficient sleep) were also found in persons who consumed energy drinks more rarely (Puupponen M, Tynjala J, Valimaa R Paakkari L,. Associations between adolescents energy drink consumption frequency and several negative health indicators BMC Public Health. 2023 Feb 6;23(1);258. doi: 10.1186/s12889-023-15055-6. PMID:36747163; PMCID: PMC9903583)

In the last decade, several scientific publications and position papers have been published on the negative, even longer-term effects of energy drink consumption on the health of people under the age of 18 (e.g. hypertension, sleep disorder, increased risk of developing certain chronic diseases such as type 2 diabetes, etc.) (https://www.who.int/news/item/13-12-2022-who-calls-on-countries-to-tax-sugar-sweetened-beverages-to-save-lives; https://assets.publishing.service.gov.uk/media/5b85548540f0b6214391e8d9/impact-assessment-for-banning-the-sale-of-energy-drinks-to-children.pdf; https://clinicalresearch.uhs.nhs.uk/news/energy-drink-intake-rising-among-teens-in-deprived-areas-amid-widening-inequality; Seifert, S.M., Schaechter, J.L., Hershorin, E.R., Lipshultz, S.E. 2011. Health effects of energy drinks on children, adolescents, and young adults. Pediatrics 127(3):511-28. Epub 2011 Feb 14.; Kaminer, Y. 2010.; Problematic use of energy drinks by adolescents. Child Adolesc Psychiatr Clin N Am 19(3):643-50.; Bigard, AX. Risks of energy drinks in youths. 2010. Arch Pediatr 17(11):1625-31.; Scalese, M., Denoth, F., Siciliano, V., Bastiani, L., Cotichini, R., Cutilli, A., & Molinaro, S. (2017). Energy Drink and Alcohol mixed Energy Drink use among high school adolescents: Association with risk taking behaviour, social characteristics. Addictive Behaviors, 72, 93–99. doi: 10.1016/j.addbeh.2017.03.016).

The physiological effects of caffeine-containing energy drinks have been reviewed in several independent scientific reports:

The over-consumption of energy drinks can lead to harmful effects such as increased stress, sleep disorder, affective disorder, increased suicidal tendency [Park, 2016].

In athletes, besides the performance-enhancing effect of energy drinks, even low or moderate doses of caffeine-containing energy drinks can be associated with adverse side effects such as insomnia and increased nervousness [Salinero, 2016].

With regard to the consumption of energy drinks, scientific publications highlight the risk of cardiovascular risks and arrhythmia, in particular in individuals with long QT syndrome (a disorder of the heart conduction system; clinical symptomatology that, under certain conditions, can lead to cardiac arrhythmia (ventricular tachycardia) and, less commonly, sudden cardiac death associated with ventricular fibrillation. The disease exists in congenital and acquired forms) [Enriquez, 2017; Piccioni, 2021].

One study compared the effects of energy drinks with other caffeine-containing control drinks, using a relatively high caffeine dose of 320 mg/day. The increase in systolic blood pressure was significantly higher in the group consuming energy drink compared to the consumption of the caffeine-containing control drink, which the researchers explained by the presence of other bioactive ingredients of energy drinks (taurine, l-carnitine and ginseng) [Fletcher, 2017].

Thus, the potential negative health effects are presumed to be so high in number that it is found appropriate to legally define the range of products which should use the term ‘energy drink’ in their labelling. In addition, it is necessary to set a maximum limit for certain ingredients. However, on the basis of the comments received, this limit has been clarified in a way that, compared to the previous proposal, according to which any compound belonging to the methylxanthines group should be subject to the regulation if a quantity of at least 15 mg/100ml is present; a marketing or service ban should apply to quantities exceeding 15 mg/100ml. In addition, we have clarified that tea and coffee-based drinks are not

covered by the regulation, the concept of energy drink will only be defined narrowly. The protection of children's health can only be fully guaranteed through this complex three-level regulatory solution.

These provisions are essential, on the one hand, for promoting conscious consumer behaviour and, on the other hand, for compliance with and monitoring of the provisions prohibiting sale or offer to consumers in order to protect the health of those under 18 years of age.

According to Article B(1) of the Fundamental Law, Hungary is an independent, democratic state governed by the rule of law. One of the fundamental requirements of the rule of law is that public bodies must operate within the organisational framework laid down by law, according to the rules of operation established by law, and within limits regulated by law in a manner that is transparent and predictable for citizens. [Resolution 56/1991 of 8 November 1991 of the Constitutional Court] The requirement of legal certainty derives from the requirement of the rule of law, which requires the state, including the legislator, to ensure that legislation as a whole, its sub-areas and its individual rules are clear, unambiguous, predictable in their impact, and foreseeable for the addressees of the norm. The requirement of legal certainty is fulfilled by Act CXXX of 2010 on Legislation, Section 2(1) of which stipulates that laws must have a regulatory content that is clearly understandable to the addressees.

It follows from these requirements that it is necessary to set out clearly, and, accordingly, legislation aimed at protecting the health of children must clearly define the ingredients, or related limit values, to which the prohibition must apply in the case of compliant non-alcoholic beverages in order to protect the health of children. In order for this law to be enforceable, it must necessarily be accompanied by marking requirements to ensure awareness raising and identification. This ensures that those subject to the regulation are able to identify the products covered by the legislation beyond doubt, and that the authority designated for inspection can consistently exercise its powers of inspection and sanctioning.

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