Message 201

Communication from the Commission - TRIS/(2025) 0317

Directive (EU) 2015/1535

Notification: 2024/0583/PL

Forwarding of the response of the Member State notifying a draft (Poland) to comments (5.2) of European Commission.

MSG: 20250317.EN

1. MSG 201 IND 2024 0583 PL EN 21-01-2025 04-02-2025 PL ANSWER 21-01-2025

2. Poland

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4. 2024/0583/PL - C50A - Foodstuffs

5.

6. Further to the comment made by the European Commission (C(2025) 460 final) on the draft Regulation of the Minister for Agriculture and Rural Development on detailed requirements for the commercial quality of packaging of certain spirit drinks (Notification 2023/0583/PL), Poland refers to the specific comments contained in the commentary and provides the following clarifications.

Comment by the Commission: As a result of the analysis of the notified draft, the Commission noted that the provisions contained in the notified draft concerning the type of packaging (bottles and cans) to be used in spirit drinks in unit packets of a nominal size of up to 200 millilitres are not regulated at EU level in the Spirit Drinks Regulation.
As the Commission states, the Polish authorities […] included a mutual recognition clause in the notified draft to contribute to increasing trust in mutual recognition as a principle that protects the public interest for all and opens up the single market. Under § 3 of the notified draft, spirit drinks in unit packets of a nominal size of up to 200 millilitres marketed in accordance with the rules in force in another Member State of the European Union […] shall be deemed to meet the requirements laid down in § 2, provided that the labelling […] of such packets meets the requirements referred to in § 2.

Poland informs that spirit drinks produced in other Member States or in Turkey (or originating in an EFTA Member State) and marketed there in unit packets other than bottles and cans with a nominal size of up to 200 millilitres will be allowed to be marketed in Poland. However, the labelling of such spirit drinks shall not give rise to doubts or be misleading as regards the identification of spirit drinks and shall enable such drinks to be distinguished from other foodstuffs, in particular foodstuffs intended for children.

Comment by the Commission: According to the Commission, it remains unclear to what extent the requirement to use bottles or cans will ultimately affect products from other Member States, as according to the ‘Justification’ document accompanying the notified project, the responsibility for the quality and safety of food products placed on the market lies with 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 may create confusion as to the obligation of the importer or retailer to comply with the requirement to use bottles and cans provided for in the notified Polish project, even where they import or sell on the Polish market spirit drinks not in bottles or cans that are lawfully marketed in other Member States.

According to Poland, the horizontal principles contained in food law stipulate that it is the operator that is obliged to comply with the law. However, the proposed requirement to use only bottles and cans does not apply to entities that import or sell on the Polish market spirit drinks lawfully marketed in other EFTA Member States, subject to their labelling as indicated above.

Comment by the Commission: The Commission also noted that the Polish authorities aim to combat alcoholism by reducing the availability of spirit drinks in small packets, as this form of packaging is an important factor in promoting increasing alcohol consumption.

The Polish side informs that social demands and signals from organisations combating alcoholism in Poland indicate that the easy availability of spirit drinks in small packets is an important factor promoting and increasing alcohol consumption. Due to the appearance on the market of alcohol in sachets confusingly resembling children's food products (fruit mousse), it was necessary to regulate the requirements for the packaging of certain spirit drinks, including the labelling of the same, so as not to mislead consumers as to the intended use of the product contained in the packaging. We therefore confirm that the draft provision is intended not to mislead consumers as to its content and that the protection of public health is a legitimate objective that may justify restrictions on the free movement of goods on the basis of Article 36 TFEU.

Comment by the Commission: It follows from Commission notification 2024/583/PL that the Court of Justice has also recognised that it is for the Member States to decide on the level of protection of public health they wish to afford and how that level is to be achieved, and that that level may vary from one Member State to another. 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.

According to Poland, the proposed measures are limited to what is actually necessary to ensure the protection of public health and are proportionate to the objective pursued, which cannot be achieved by measures which are less restrictive of intra-Community trade.

Comment by the Commission: The Commission requested clarification as to whether the requirement to place spirit drinks on the market exclusively in bottles and cans applies generally to all operators established in Poland (including importers, wholesalers, and retailers) and may therefore also affect products from other Member States.

Poland again clarifies that the requirement to place spirit drinks on the market only in bottles and cans applies only to products produced in Poland and does not affect products produced in other Member States or in Turkey (or originating in an EFTA Member State). However, all products placed on the market in Poland must not raise doubts or mislead regarding the identification of spirit drinks, and the labelling must enable the distinction of such spirit drinks from other foodstuffs, in particular those intended for children.
The above provisions are a consequence of the placing on the market of tubes with a capacity of 100 ml and 200 ml containing alcohol with an alcohol content of 15% vol. and the social reaction to such products, which, due to their form of packaging, resembled fruit mousse intended for children. This solution is proportionate as it only applies to products placed on the market, i.e. spirit drinks, and limits the possibility of misleading consumers, e.g. by misrepresenting such products in shops.

Comment by the Commission: The Commission also requested the Polish authorities to provide clarifications on the proportionality of the requirement to pack spirit drinks only in cans and bottles, in particular in light of the existence on the market of spirit drinks packed in plastic containers other than cans and bottles that do not resemble tubes containing foodstuffs intended for children but would nevertheless be prohibited on the Polish market.

According to Poland, the proposed form of the provisions in the draft regulation will prevent Polish operators from using packaging in the form of sachets or tubes with a capacity of up to 200 ml containing spirit drinks. The market analysis shows that the regulation in question will also prohibit the placing on the market of packaging in the form of plastic cups with a lid, which a few years ago were produced by one of the companies. According to the information at its disposal, the company has withdrawn from the manufacture of such products (capacity of 40 ml and alcohol content of 30% vol.) and such products are not available on the market.

Comment by the Commission: According to the Commission, the risk of disruption to the free movement of products in the internal market would be further exacerbated by the very short transitional period provided for in § 4 of the notified project (30 days from the date of entry into force of the notified project).

According to Poland, the transitional period is sufficient for operators to adapt and will not disrupt the movement of such products on the internal market due to the absence of such products on the market at present. The proposed 30-day transitional period also seems appropriate in view of the risk of reintroducing alcotubes already produced onto the market.

At the same time, Poland informs that the Regulation on detailed requirements for the commercial quality of packaging of certain spirit drinks was published on 29 January 2025 in the Journal of Laws, item 118 (attached, PDF and doc.) The provisions of that Regulation shall apply from 30 January 2025.

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