EUROPEAN COMMISSION
Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Message 201

Communication from the Commission - TRIS/(2025) 0318

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 Austria.

MSG: 20250318.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. Following Austria’s comment (MSG 103 of 21 January 2025) on the draft Regulation of the Minister for Agriculture and Rural Development on specific requirements for the commercial quality of packaging of certain spirit drinks (Notification 2023/0583/PL), Poland (PL) refers to the specific comments contained in the commentary and provides the following clarifications.

Comment from AT: In Poland, an excise stamp is affixed to spirit drinks, irrespective of their packaging and capacity. Spirit drinks can therefore be distinguished from non-alcoholic drinks. In addition, the label of the spirit drink shall include the legal name in accordance with Regulation (EU) 2019/787. Those two elements clearly identify spirit drinks as such and clearly distinguish them from other foodstuffs, in particular from foodstuffs intended for consumption by minors.
Position of Poland (PL): Under the current rules, all spirit drinks are subject to excise duty. The minimum rate of excise duty for spirit drinks is set by EU legislation (Directive 92/84/EEC) at ECU 550. However, each country may determine the rate of excise duty.
Nevertheless, not all EU countries apply excise stamps (bands) on spirit drinks. In the case of Poland, such an obligation exists; however, for technical reasons, excise stamps for packaging in the shape of a sachet (soft tube) must be affixed to the packaging and not to the closure of such packaging. The above may result in such a band not being visible on its packaging and thus mislead the consumer as to the true nature of the product.
As regards the obligation to include the legal name of a spirit drink in the labelling of spirit drinks, this information is mandatory under the provisions of Regulation 1169/2011. Detailed rules on its application are laid down in Regulation 2019/787.
However, affixing the legal name to the soft-sachet packaging, with its description, presentation, and labelling, may mislead the consumer, despite the affixing of both the excise stamps and the legal name of the spirit drink, e.g. where these elements are not affixed to the label on the front of the packaging.
The above solution is preventive and has been introduced due to social demands and concerns of organisations fighting alcoholism, which point to the easy availability of spirit drinks in small packages as an important factor promoting and increasing alcohol consumption. In view of the appearance on the market of spirit drinks in sachets confusingly resembling the packaging of food products for children, which at the same time may facilitate the consumption and

bringing of spirit drinks to mass events (soft packaging), Poland considered it necessary to introduce this regulation.

Comment from AT: Regulation (EU) No 1169/2011 on the provision of food information to consumers already lays down rules prohibiting misleading practices, including as regards the appearance and packaging of food. In order to legally place a spirit drink on the EU market, it is necessary to comply with these legal provisions. Therefore, the Polish requirements go beyond the provisions of EU food law on labelling. Spirit drinks are legally produced and marketed in other EU Member States. The draft regulation hinders the free movement of goods and infringes the principle of mutual recognition. The notified draft Regulation therefore constitutes a prohibited measure having equivalent effect under Article 34 TFEU. The envisaged measures restrict the internal market and should therefore be rejected.
Position of PL: Regulation 1169/2011 lays down the rules for the provision of food information to consumers. The key principle is not to mislead the consumer as to the true nature of the food. The Polish requirements do not go beyond, but relate to, the provisions of EU food law on labelling.
PL also informs that a mutual recognition clause has been included in the national legislation.

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