



EUROPEAN COMMISSION

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

Message 981

Communication from the Commission - TRIS/(2025) 1581

Procedure for the provision of information EC - EFTA

Notification: 2025/9005/NO

Internal forwarding of the observations of a Member State (Austria).

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2. Austria

3A. Bundesministerium für Wirtschaft, Energie und Tourismus

Abteilung II/8

A-1010 Wien, Stubenring 1

Telefon +43-1/71100-805436

E-Mail: not9834@bmwet.gv.at

3B. Bundesministerium für Wirtschaft, Energie und Tourismus

Abteilung II/5

A-1010 Wien, Stubenring 1

4. 2025/9005/NO - C50A - Foodstuffs

5.

6. Austria opposes the draft Regulation prohibiting the sale of energy drinks to children under the age of 16, Notification 2025/9005/NO. With this draft Ordinance, Norway aims to prohibit the sale of energy drinks to children under the age of 16.

The Norwegian legislation infringes the principle of the free movement of goods laid down in Article 34 TFEU: The prohibition of the sale of energy drinks to persons under the age of 16 may hinder intra-Community trade and may therefore constitute a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 34 TFEU. According to the settled case-law of the Court of Justice, any measures of a Member State which are liable to hinder, directly or indirectly, actually or potentially, trade within the European Union are to be considered as measures having an effect equivalent to quantitative restrictions within the meaning of Article 34 TFEU (see CJEU, 23 December 2015, Case C-333/14, Scotch Whisky Association, § 31 with further references).

The legislation in question also cannot be justified on the basis of Article 36 TFEU (Article 34 does not preclude prohibitions or restrictions on import, export or transit when these are justified on grounds of public morality, public order or public security, the protection of the human, animal or plant health and life, the protection of national cultural goods of artistic, historical or archaeological value, or the protection of industrial and commercial property). Under Article 36 TFEU, however, such prohibitions or restrictions must not constitute a means of arbitrary discrimination or a concealed restriction on trade between Member States. Even if the objective of protecting the health of young people is taken as the criterion, measures are still incompatible with Article 34 if they are not appropriate to ensure the achievement of the objective or if they go beyond what is necessary to achieve it. That is the case here. The CJEU held that, in the event of a derogation from the principle of the free movement of goods, Member States are required to demonstrate 'that their rules are necessary to achieve the declared objective and that this objective could not be achieved by less extensive



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prohibitions or restrictions or by prohibitions or restrictions having less effect on intra-Community trade' (see CJEU Case C-198/14 Valev Visnapuu, par. 117 with further references).

A report by the European Food Safety Authority, EFSA, shows that as long as one is healthy, is not part of a problematic population group (persons with cardiac arrhythmias, pregnant/nursing women/breastfed infants), and does not exceed the recommended daily amount, there is no reason to classify energy drinks as harmful to health. EFSA also considers that the safe caffeine intake (3 mg/kg body weight per day) derived for acute caffeine consumption by adults can serve as a basis for the derivation of single doses of caffeine and the safe daily caffeine intake for the population subgroups of children and pregnant/breastfeeding adults.

As regards the prohibition proposed by Norway, it should also be noted that, for example, the liquorice from the liquorice plant, which is very popular there, has a sweetening power 50 times higher than that of conventional household sugar. Liquorice sweets often contain only a small proportion of raw liquorice and are mixed with other ingredients such as sugar, sugar syrup, flour, beeswax, gelatine and salmiak. (<https://www.aok.de/pk/magazin/ernaehrung/lebensmittel/lakritz-inhaltsstoffe-und-gesundheitsrisiken/>). However, a comparable prohibition of this product is not known.

Prohibiting the sale of energy drinks to persons under the age of 16 is not the least restrictive means, since information regulations could also achieve these objectives.

In summary, it should be noted that the Norwegian bill presents a serious obstacle to the free movement of goods. Setting an age limit of 16 years is arbitrary and without scientific basis. The planned measure is likely to restrict the internal market and is therefore rejected.

European Commission

Contact point Directive (EU) 2015/1535

email: grow-dir2015-1535-central@ec.europa.eu