

# Legal Alert

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## Energy drinks for persons over the age of 18

In July last year, we [reported](#) that due to ongoing discussions, the possibility of limiting the sale of energy drinks to people over the age of 18 should be taken into account. As announced, this issue has been regulated in the draft Act amending the Public Health Act of February 9, 2023.

The draft Act introduces:

- the definition of "a drink with added caffeine or taurine" (a product in the form of a drink that is a foodstuff, included in the Polish Classification of Products and Services in class 10.89 and in Chapter 11, which contains caffeine in a proportion exceeding 150 mg/l or taurine, excluding naturally occurring substances);
- **ban on the sale of such an energy drink:**
  - ✓ **to persons under the age of 18** (the seller, in the event of doubts as to the buyer's age, may request a document confirming their age);
  - ✓ on the premises of the units of the education system;
  - ✓ in vending machines.

Unit packages of energy drinks will have to be **marked** by producers or importers with visible, legible, indelible and permanent information "Napój energetyzujący" or „Napój energetyczny" (ENG: "Energy drink"), surrounded by a border not smaller than 1/10 of the unit package and cover most of the surface separated this way.

Together with the above rules, the draft introduces penal sanctions for their violation:

- for violating the sales ban:
  - ✓ **a fine of up to PLN 2,000** (the same penalty is also to be imposed on the manager of a commercial or catering establishment who fails to comply with the supervision obligation and thus allows a violation of the prohibitions in this establishment);
  - ✓ possible **forfeiture of energy drinks**, even if they were not the property of the offender;
- for violation of the rules on mandatory labeling of products (in production or during import) - **a fine of up to PLN 200,000, restriction of liberty or both penalties jointly.**

The original draft also provided for **detailed conditions for advertising and promoting energy drinks**; they were to be similar to those currently in force for beer advertising. During the first reading of the draft Act, however, an amendment was proposed to **abandon the regulation of the conditions of advertising and promotion of energy drinks**. According to the applicant, the mere restriction of the possibility of selling products to persons under the age of 18 will mean that advertisements addressed to this group of consumers should not be expected.

According to the EFSA report published on the basis of a study involving over 52,000 residents of EU countries, consumption of energy drinks was admitted by 18% of children (3-10 years old) and 68% of teenagers (10-18 years old)<sup>1</sup>. Meanwhile, according to the justification for the draft, there are numerous negative expert opinions on the impact of energy drinks on the health of children and adolescents. As a consequence, the amendment to the Act aims to protect this group of vulnerable consumers.

The current stage of the legislative process can be found at this [link](#). According to the draft, the Act would enter into force on **January 1, 2024**.

The final wording of the Act is not yet known, but undoubtedly, if the draft is indeed adopted, it will revolutionize the energy drinks market in Poland.

If you have any questions or doubts, please don't hesitate to contact us.

Contact us!



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<sup>1</sup> Instytut Sportu - Państwowy Instytut Badawczy, „Energy drinks and the health of children and adolescents in Poland”, Zakład Fizjologii Żywnienia i Dietetyki, Warsaw, 2022, p. 3