

Legal Alert

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New guidelines for borderline products!

An **updated guideline for borderline products** has been published on the European Commission website.

For many product categories (e.g. medical products, food supplements, cosmetics), the law specifies detailed requirements, including: regarding composition, purpose, presentation or advertising. For a product to legally appear on the market, it must meet the standards for the group of products to which it belongs. The selected legal framework may have a key impact on the feasibility and profitability of marketing the product; the rules for placing on the market, the costs involved and the length of the procedure vary. Importantly, it is not allowed to place the same product on the market in different categories at the same time. In practice, however, in the case of some products, choosing only one appropriate category is not obvious; **such products are called borderline products** (PL: “*produkty z pogranicza*”).

Doubts regarding the appropriate product category arise especially in the case of innovative products that fall outside the statutory definitions and whose classification at the time of marketing is not

supported by case law or the well-established position of supervisory authorities. If the product is sold in several EU countries, the matter is further complicated by the possibility of different classifications adopted by individual Member States; the classification of a product in one country as, for example, a food product does not guarantee that such category will be maintained in another country.

Guidelines (based on examples), published by the European Commission, provide some assistance to entrepreneurs. **Although they do not constitute a source of law, they provide valuable guidance on the classification of individual products.** The new version of the EU guide covers two new product categories:

- 1) glues/adhesives intended to nails, false eyelashes, jewellery on teeth,
- 2) magnetic eyeliners.

The guideline can be found at the [LINK](#).

The decision to place a new product on the market should be preceded by an analysis of possible product categories; in case of any questions or concerns regarding classification, please don't hesitate to contact us.



Contact us!

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