



**150** Jahre  
Deutscher  
Brauer-Bund e.V.



**VAB**

Verband der Ausfuhrbrauereien  
Nord-, West und Südwestdeutschlands e.V.

Berlin, 19. März 2026

## **Änderung der Alkoholregulierung in Polen / Bitte um Stellungnahmen der Bundesregierung**

Sehr geehrte/r

Polen hat der EU-Kommission und den Mitgliedstaaten kürzlich zwei weitere Gesetzentwürfe zur Prüfung und Notifizierung vorgelegt, mit denen eine drastische Verschärfung der Regulierung für alkoholhaltige und alkoholfreie Getränke verfolgt wird.

**Wir bitten die Bundesregierung, in den Verfahren [TRIS 2026/0016/PL](#) und [TRIS 2026/0033/PL](#) ausführliche Stellungnahmen abzugeben, in denen Polen gebeten wird, die Gesetzentwürfe zurückzuziehen, da sie**

- ein ungerechtfertigtes und unverhältnismäßiges Handelshemmnis darstellen;
- gegen die Grundsätze des freien Warenverkehrs, der Verhältnismäßigkeit, der Nichtdiskriminierung und der Rechtssicherheit verstoßen;
- Fragen hinsichtlich der Vereinbarkeit mit den in der Charta der Grundrechte der Europäischen Union verankerten Grundrechte aufwerfen sowie
- keine evidenzbasierte Begründung für die Notwendigkeit und Angemessenheit der vorgeschlagenen Maßnahmen enthalten.

Die Stillhaltefrist endet am 20. April 2026 bzw. am 27. April 2026.

Vorab möchten wir betonen, dass die deutsche Brauwirtschaft selbstverständlich das legitime Interesse von Regierungen anerkennt, Maßnahmen zur Förderung verantwortungsvollen Alkoholkonsums zu ergreifen. Solche Maßnahmen können einen wichtigen Beitrag zum Schutz der öffentlichen Gesundheit leisten, insbesondere wenn sie auf wissenschaftlicher Evidenz beruhen und gezielt problematische Konsummuster adressieren. Die beiden im Rahmen der TRIS-Notifizierungen 2026/0016/PL und 2026/0033/PL vorgelegten Gesetzesinitiativen gehen jedoch deutlich über eine sachgerechte Regulierung hinaus und enthalten weitreichende Maßnahmen, die erhebliche Auswirkungen auf den Binnenmarkt haben könnten.

Die beiden Gesetzentwürfe sehen unter anderem Maßnahmen vor, die die Kennzeichnung, den Verkauf, die Werbung, die Vertriebskanäle, die Preisgestaltung sowie die Verkaufszeiten alkoholischer und alkoholfreier Getränke betreffen, darunter insbesondere

- die Verpflichtung, alkoholische Getränke mit grafischen Hinweisen zu versehen, die Informationen bereitstellen über die schädlichen Auswirkungen von Alkohol auf Schwangere, das Verbot, nach dem Konsum von Alkohol Fahrzeuge zu führen sowie das Verbot des Alkoholkonsums durch Minderjährige (Artikel 13 Absätze 1c und 1d des „Gesetzes zur Änderung des Gesetzes über die Erziehung zur Nüchternheit und die Bekämpfung des Alkoholismus und Rundfunkgesetzes“ (im Folgenden als „Gesetz über die Erziehung zur Nüchternheit“ bezeichnet);
- neue und rechtliche unklare Definitionen von „alkoholischem Getränk“ und „alkoholfreiem Getränk“ (Artikel 2<sup>1</sup> Absatz 1 Nummer 11–12 des Gesetzes über die Erziehung zur Nüchternheit);
- eine weitreichende Ausweitung der Begriffe Verkaufsförderung und Werbung (Artikel 2<sup>1</sup> Absatz 1 Nummern 2–3 des Gesetzes über die Erziehung zur Nüchternheit);
- umfassende Werbeverbote – auch für alkoholfreie Getränke (Artikel 13<sup>1</sup> Absätze 1 bis 4a des Gesetzes über die Erziehung zur Nüchternheit);
- ein Verbot des Inverkehrbringens, des Verkaufs oder des Ausschanks von (i) Lebensmitteln und (ii) alkoholischen Getränken, deren Name, Marke, grafische Gestaltung oder Verpackung eine Ähnlichkeit oder Identität mit der Bezeichnung eines (i) alkoholhaltigen Getränks oder (ii) eines alkoholfreien Lebensmittels aufweist (Artikel 14<sup>1</sup> bis Artikel 14<sup>2</sup> des Gesetzes über die Erziehung zur Nüchternheit);
- ein landesweites vollständiges Verbot der Werbung für alle alkoholischen Getränke im gesamten Staatsgebiet (Artikel 13<sup>1</sup> Absatz 1 des „Gesetzentwurfes zur Änderung des Gesetzes über die Erziehung zur Nüchternheit und die Bekämpfung des Alkoholismus sowie des Gesetzes über die aus öffentlichen Mitteln finanzierten Gesundheitsdienstleistungen“, im Folgenden als „Gesetz zur Bekämpfung des Alkoholismus“ bezeichnet);
- eine erweiterte Definition von „Verkaufsförderung für alkoholische und alkoholfreie Getränke“, die u.a. Rabatte, Preisnachlässe, Treueprogramme und Bündelverkäufe umfasst (Artikel 2<sup>1</sup> Absatz 1 Nr. 2 des Gesetzes zur Bekämpfung des Alkoholismus);
- ein landesweites Nachtverkaufsverbot für alkoholische Getränke zwischen 22.00 und 6.00 Uhr (Artikel 14 Absatz 1b des Gesetzes zur Bekämpfung des Alkoholismus);
- ein Verbot des Verkaufs von Alkohol an Tankstellen (Artikel 14 Absatz 1 Nr. 7 des Gesetzes zur Bekämpfung des Alkoholismus) sowie
- erhebliche Beschränkungen des Fernabsatzes, wodurch Lieferungen nach Hause praktisch ausgeschlossen würden (Artikel 9<sup>6</sup> Absatz 1 des Gesetzes zur Bekämpfung des Alkoholismus).

Besonders problematisch ist, dass einzelne Regelungen auch für alkoholfreie Varianten solcher alkoholhaltigen Getränke gelten sollen, für die sie gerade als Alternative zu alkoholhaltigen Produkten dienen können. Damit wird gesundheitspolitischen Erwägungen ein Bärendienst erwiesen.

**Für eine detaillierte rechtliche und sachliche Begründung der Gesetzentwürfe verweisen wir auf die in der Anlage beigefügten Eingaben unseres europäischen Dachverbands The Brewers of Europe.**

Auf einige zentrale Aspekte möchten wir besonders hinweisen:

Der Gerichtshof der Europäischen Union hat klargestellt, dass sich Mitgliedstaaten zur Rechtfertigung beschränkender Maßnahmen auf geeignete Beweise oder Untersuchungen zur Geeignetheit und Verhältnismäßigkeit stützen müssen (EuGH-Urteil vom 3. Dezember 2015, Scotch Whisky Association u. a., [RS C-333/14](#), Rn. 53 und 54).

Polen hat jedoch keine detaillierten Analysen, belastbare Daten oder Bewertungen weniger einschränkender Alternativen vorgelegt, die die Notwendigkeit und Verhältnismäßigkeit der vorgeschlagenen Maßnahmen belegen würden.

In der praktischen Wirkung führen die vorgesehenen Regelungen zudem zu widersprüchlichen Ergebnissen. So sollen für alkoholfreie Getränke teilweise strengere Werbe- und Verkaufsbeschränkungen gelten als für alkoholische Getränke. Beispielsweise könnten Gastronomiebetriebe weiterhin für Spirituosen werben, nicht jedoch für alkoholfreies Bier (z.B. durch Logos auf Bierdeckeln). Dies steht im Widerspruch zum erklärten Ziel, den Alkoholkonsum zu reduzieren und die öffentliche Gesundheit zu schützen.

Die Einzelheiten zu den geplanten Kennzeichnungsvorgaben für alkoholhaltige Getränke (Warnhinweise) sind noch nicht bekannt und sollen erst in einer Verordnung des Gesundheitsministers festgelegt werden. Neue polnische Kennzeichnungsvorschriften würden den Zugang von Produkten aus anderen Mitgliedstaaten massiv behindern oder sogar ganz verhindern. Wenn die Produkte nicht mit den geforderten Warnhinweisen und Angaben neu etikettiert werden, wären nicht-polnische Hersteller und Händler effektiv vom polnischen Markt ausgeschlossen. Dies ist mit EU-Recht nicht vereinbar und läuft zudem den Harmonisierungsbemühungen auf EU-Ebene zur Kennzeichnung zuwider. Die Europäische Kommission hat im „Europe’s Beating Cancer Plan“ angekündigt, einen Vorschlag zu verpflichtenden Gesundheitswarnhinweisen vorzulegen. Damit greift der polnische Gesetzgeber den EU-Bemühungen vor, indem er eine Regelung schafft, die nach der Annahme von Lösungen auf EU-Ebene höchstwahrscheinlich erneut angepasst werden muss – wodurch Unternehmen doppelte Anpassungskosten entstehen würden. Auch die darüber hinaus vorgesehenen Werbeverbote wirken sich unverhältnismäßig stark auf grenzüberschreitend tätige Unternehmen und neue Marktteilnehmer aus. Diese sind stärker auf Werbung angewiesen, um Markenbekanntheit aufzubauen, während lokale Produkte bereits über eine etablierte Marktposition verfügen.

Eine übermäßige und unangemessene Beeinträchtigung der unternehmerischen Freiheit ist auch in der Einführung eines absoluten Verbots der Werbung und Verkaufsförderung für alkoholfreie Getränke zu sehen. Diese Beschränkung gilt für Produkte, die kein Gesundheitsrisiko darstellen und sogar zu einem geringeren Alkoholkonsum beitragen können.

Auch die erweiterte Definition von Werbung und Verkaufsförderung umfasst praktisch alle üblichen Geschäftspraktiken wie Rabatte, Treueprogramme oder Bündelangebote. Dies geht weit über das hinaus, was zur Bekämpfung von Alkoholmissbrauch erforderlich wäre, und würde normale wirtschaftliche Tätigkeiten im Zusammenhang mit legalen Produkten erheblich einschränken.

Wir bitten die Bundesregierung daher, die geplanten polnischen Gesetze eingehend zu prüfen und im Rahmen der Notifizierungsverfahren ausführliche Stellungnahmen abzugeben, da die Vorschläge in mehrfacher Hinsicht mit europäischem Recht unvereinbar sind und den Grundsätzen des freien Binnenmarktes zuwiderlaufen.

Bei Rückfragen stehen wir gerne zur Verfügung und danken Ihnen im Voraus für Ihre Unterstützung.

Mit freundlichen Grüßen

Deutscher Brauer-Bund e.V.

Bayerischer Brauerbund e.V.

Verband der Ausfuhr-  
Brauereien Nord-, West- und  
Südwestdeutschlands e.V.

Anlagen:

Submission of The Brewers of Europe, TRIS Notification 2026/0016/PL

Submission of The Brewers of Europe, TRIS Notification 2026/0033/PL



**Following TRIS notification 2026/0016/PL, Member States and the European Commission are encouraged to issue a detailed opinion requesting that Poland:-**

- **Withdraw its draft decree** on the basis that it represents an unjustified and disproportionate barrier to trade, violates the principles of free movement of goods, proportionality, non-discrimination and legal certainty, contravenes fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, and lacks evidence-based justification demonstrating the necessity and appropriateness of the proposed measures.

## **1. Introduction**

First and foremost, we acknowledge and support the public policy objective of encouraging responsible alcohol consumption and protecting public health, in particular through measures aimed at preventing harmful drinking patterns and safeguarding vulnerable groups. We recognise the important role of consumer information – including, though not limited to, product labelling – in enabling consumers to make informed and responsible choices.

However, the legislative initiative notified under TRIS 2026/0016/PL goes significantly beyond the introduction of consumer information obligations. The Draft Act introduces a wide range of regulatory measures affecting not only alcoholic beverages, but also non-alcoholic products, including those that may constitute alternatives to alcohol consumption.

Given the scope and cumulative impact of the proposed measures, it is essential that they be assessed against the requirements of EU law, in particular the principles of proportionality, legal certainty, non-discrimination and the free movement of goods. Measures intended to protect public health must be necessary, appropriate and suitable to achieve their objectives and must not go beyond what is required to do so. In this context, the cumulative impact of the proposed measures – including the broad definition of 'non-alcoholic beverage', the blanket advertising and promotion bans, and the 'look-alike' market restrictions – must be assessed together, as their combined effect may substantially hinder market access, particularly for operators from other Member States.

## **2. The Draft Act**

The Draft Act introduces extensive and cumulative restrictions affecting both alcoholic and non-alcoholic beverages, including:

- a. **new and unclear legal definitions of 'an alcoholic beverage' and 'non-alcoholic beverage'** (in Article 2<sup>1</sup> paragraph 1 points 11 – 12 of the applicable Act of October 26, 1982, on upbringing in sobriety and counteracting alcoholism (hereinafter referred to as: "**the Act**");
- b. **a broad expansion of the concepts of advertising and promotion** (in Article 2<sup>1</sup> paragraph 1 points 2-3 of the Act);
- c. **far-reaching advertising bans** – also with respect to non-alcoholic beverages (in Article 13<sup>1</sup> paragraph 1-4a of the Act);

- d. **additional limitations on packaging, product presentation beverages** (in Article 13 paragraph 1a-1d of the Act);
- e. **prohibition on placing on the market, selling or serving (i) food products and (ii) alcoholic beverages whose name, trade mark, graphic shape or packaging exploits similarity or identity with the designation of, respectively, (i) an alcoholic beverage or (ii) a food product not containing alcohol** (in Article 14<sup>1</sup> – 14<sup>2</sup> of the Act).

What is most important, the new regulations extend to products that do not contain alcohol and may serve as alternatives to alcohol consumption, thereby risking effects that are inconsistent with the stated public health objectives.

The authors of the proposed regulations have not carried out a sufficiently detailed and evidence-based assessment demonstrating the necessity, appropriateness and proportionality of such far-reaching measures, nor have they reliably examined whether less restrictive alternatives could achieve the same objectives.

### **3. Breach of EU Law**

The Draft Act in relation to the regulations in question constitutes a breach of EU law, including:

#### **a. the principle of equal treatment and non-discrimination**

The proposed regulations concerning alcoholic and non-alcoholic beverages (including a ban on their advertising and promotion) lead to unjustified, discriminatory, and disproportionate treatment of producers and distributors of non-alcoholic beverages. In practice, the regulations in question result in alcoholic beverages, including those with a higher alcohol content, being placed in a more favourable legal position than non-alcoholic beverages.

For example, with regard to non-alcoholic beverages, the proposed ban on advertising and promotion is total. At the same time, advertising and promotion of alcoholic beverages is to remain permissible, among others, at separate stands or in outlets selling only alcoholic beverages, as well as in pubs and restaurants. The proposed regulations do not provide for an amendment to Article 13<sup>1</sup>(9) of the Act in its current wording, which allows the advertising and promotion of alcoholic beverages in these places. As a result, a restaurant will be able to advertise vodka on its premises but will not be able to advertise 0% beer (e.g., through logos on beer mats). This solution is internally inconsistent and contradicts the declared objective of the regulation, which is to reduce alcohol consumption and protect public health.

In addition, the ban on advertising non-alcoholic and alcoholic beverages also disproportionately affects entities importing products from another country compared to local products (which already have established recognition). The proposed ban may hinder market access for foreign producers to a greater extent than for local producers and may therefore be discriminatory.

#### **b. the principle of proportionality (Article 5(4) TEU)**

**The unclear definition of non-alcoholic beverages** may in practice cover products containing less than 0.5% alcohol, such as liqueur-filled chocolates in the shape of bottles or apple juice lemonade in a dark bottle resembling beer. Products that do not contain alcohol may include: non-alcoholic wines, non-alcoholic beers, canned energy drinks (similar in packaging to canned beers), and mineral waters in green glass bottles. The inclusion of so many product categories in the proposed regulations violates the principle of proportionality.

Another example of a violation of the above principle is the proposed **ban on the marketing, sale, and serving of food products similar to alcohol and alcohol similar to food products**, which may result in a ban on the placing on the market of food products that, for example, are sold in packaging that resembles alcoholic beverages (e.g., glass bottles or cans).

Notwithstanding the above, another example of excessive and inappropriate interference with the freedom to conduct business will be the introduction of an absolute ban on the advertising and promotion of non-alcoholic beverages. This restriction covers products that do not pose a health risk and may even encourage reduced alcohol consumption.

It is worth noting that available market data indicate that the growth of the non-alcoholic beer segment is linked to increased consumer awareness of the negative effects of alcohol consumption, and advertising these products provides access to information about alternatives to alcohol and supports more responsible consumer decisions.

The proposed regulations also refer to the appearance of alcoholic beverage packaging (including its material and maximum capacity), as well as the appearance and content of information placed on packaging. According to the drafters' assumptions, the planned changes are aimed at limiting the influence of packaging aesthetics and marketing messages on consumer decisions.

Given the intrusive nature of these regulations, which directly affect the way products are presented, labeled, and marketed, these measures should be subject to a thorough assessment of their necessity, adequacy, and proportionality in light of the declared public health objectives. In particular, it should be demonstrated that the restrictions on the appearance of packaging are indeed capable of contributing to the achievement of these objectives and that they do not go beyond what is necessary to achieve them.

The proposed regulations referred to above have not been supported by evidence of their proportionality (necessity and adequacy) in accordance with the requirements of EU law. The explanatory memorandum to the draft law does not present any data or analyses that would justify the above. Such far-reaching restrictions should be justified by facts (i.e., reliable analyses and data). As follows from EU case law "(...) in each specific case, it is for the national authorities to demonstrate that the national legislation at issue in the main proceedings complies with the principle of proportionality, that is to say, that it is necessary to achieve the objective pursued and that that objective cannot be achieved by means of prohibitions or restrictions of lesser scope or having a lesser impact on intra-Union trade. To that end, it is for those authorities to provide the necessary evidence in that regard. **The Member State's statement of reasons must be accompanied by an analysis of the suitability and proportionality of the measure adopted by that State, as well as precise data in support of its arguments** (judgment of 23 December 2015, *Scotch Whisky Association and Others*, [C-333/14](#), EU:C:2015:845, paragraphs 53 and 54).

The CJEU also regularly applies the following formula in its case law: *'The justifying reasons which may be invoked by a Member State must be accompanied by an **analysis of the relevance and proportionality of the restrictive measure adopted by that State and by data supporting that State's*** (see: judgment of the CJEU of 19 October 2016, C-148/15, *DEUTSCHE PARKINSON VEREINIGUNG EV v. ZENTRALE ZUR BEKÄMPFUNG UNLAUTEREN WETTBEWERBS EV*, ZOTSIS 2016, No. 10, item I-776). Such analyses are missing from the draft law in question.

Importantly, there are other, less burdensome solutions to the problem, such as the obligation to clearly label the product as non-alcoholic in advertising. The proposed regulation is therefore excessive and disproportionate.

### **c. principles of free movement of goods and services, freedom of establishment**

From the perspective of European Union law, such broad prohibitions (including advertising, promotion, the marketing of "similar" products and packaging requirement) as provided for in the Draft Act may constitute a measure having an effect equivalent to the quantitative restrictions referred to in Article 34 TFEU. According to the established case law of the Court of Justice of the European Union, absolute restrictions on advertising may significantly impede market access, in

particular for entrepreneurs from other Member States who do not have established brand recognition on the domestic market. Consequently, this regulation may lead to unequal treatment of importers and distort the free movement of goods.

Although measures restricting advertising may be justified on the grounds of public health protection under Article 36 TFEU, they must meet the requirements of necessity, proportionality, and non-discrimination. In the present case, the drafters have not demonstrated that an absolute ban on advertising non-alcoholic beverages is a measure necessary to achieve the declared regulatory objectives.

Furthermore, the restrictions provided for in the Draft Law go beyond goods and also cover services, including advertising, marketing, event organization, and sponsorship activities. This constitutes an independent basis for concern in light of Articles 56 and 49 TFEU (freedom to provide services and freedom of establishment). Cross-border service providers—such as advertising agencies, media houses, digital platforms, and event organizers—are directly affected by the total ban on advertising and promotion of non-alcoholic beverages under the Draft Law. The CJEU consistently requires that restrictions on services be necessary, consistent, and proportionate — standards that the Draft Act does not meet, given the acknowledged lack of any assessment of less restrictive alternatives.

In addition, there is no justification for further tightening the regulations when the current provisions of the Act — despite allowing beer advertising within a strictly defined scope—do not lead to an increase in alcohol consumption. Market data confirm a systematic decline in beer sales with a simultaneous increase in the consumption of non-alcoholic beer (0.0%). It is also worth noting that approximately three million small bottles of vodka are sold in Poland every day, of which one million are purchased by Poles before noon. In light of the above statistics, the proposed regulations do not address the real social problems in Poland.

Moreover, in practical terms, the proposed packaging requirements (particularly if the proposed graphical indications will be defined in a manner specific to Poland), may force operators to create Poland-specific stock-keeping units (SKUs), increasing production and logistics costs, that may discourage supply to the Polish market. This would not only hinder market access for products lawfully marketed in the EU, but could also reduce the range of products available to Polish consumers. Such an outcome would be misaligned with the internal-market objective of ensuring the free movement of goods lawfully marketed in the Union and preserving a wide choice of products for consumers.

#### **d. Charter of Fundamental Rights of the European Union**

Among the examples of violations of the principles enshrined in the Charter of Fundamental Rights of the EU, it should be noted that:

- **Article 16 (freedom to conduct a business)** is violated by the total ban on advertising and the ban on marketing “similar” products, which restrict the basic commercial activity relating to legal products.
- **Article 11 (freedom of expression and information)**, which covers commercial communication, is violated by the suppression of legal information about non-alcoholic alternatives.
- **Article 17(2) (protection of intellectual property)** is violated because the criteria of “similarity” and “identity” in the definition of a non-alcoholic beverage are clearly linked to trademarks and product presentation, thereby restricting legitimate brand extension strategies (e.g., 0.0% product variants) without objective and verifiable criteria.

Such interference with fundamental rights requires particularly careful justification and precisely tailored measures requirements that the Draft Law does not meet.

\*\*\*

Furthermore, the above-mentioned ambiguity of the definition (including “non-alcoholic beverage”) and the defining criteria (including “similarity,” “symbol objectively referring to alcohol”) is compounded by the severity of the sanctions provided for in the Draft Act, which include fines ranging from PLN 10,000 to PLN 500,000 and enforcement through criminal proceedings. This combination has a significant “chilling effect”: economic operators, unable to reliably predict which elements of packaging or marketing activities will be considered to violate the prohibition, will be inclined to over-comply by withdrawing legal products and communications from the market. The CJEU considers such practical restrictions on market access to be significant factors undermining proportionality, especially when the normative criteria lack the precision necessary for consistent and predictable application.

Moreover, the CJEU requires that public health restrictions be consistent and systematically pursue the stated objective. The extension by the Draft Act of total bans to non-alcoholic alternatives (i.e. products that may support the reduction of alcohol consumption) risks producing effects that are inconsistent with the stated objective of protecting public health. If the objective is to reduce harmful consumption patterns, suppressing communication about non-alcoholic alternatives undermines both the necessity and the adequacy of these measures.

#### **4. Summary**

##### **a. National measures must be necessary, adequate and proportionate to the pursued objective. The proposed regulations do not meet these requirements, as they:**

- introduce vague and overly broad definitions that undermine legal certainty and foreseeability for economic operators;
- impose disproportionate and unjustified bans on advertising, promotion and the placing on the market of products, including in relation to non-alcoholic beverages;
- result in discriminatory effects and unjustified obstacles to market access, in particular for products and service providers from other Member States;
- lack evidence-based justification, fail to assess less restrictive alternatives, and risk effects inconsistent with the stated public health objectives by restricting non-alcoholic alternatives to alcohol consumption.

##### **b. Consequently, the proposed regulation violates:**

- the free movement of goods (Articles 34–36 TFEU);
- the freedom to provide services and freedom of establishment (Articles 49 and 56 TFEU);
- the principle of proportionality;
- the principles of non-discrimination and legal certainty; and
- contravenes fundamental rights enshrined in the Charter of Fundamental Rights of the European Union.



**Following TRIS notification 2026/0033/PL, Member States and the European Commission are encouraged to issue a detailed opinion requesting that Poland:-**

- **Withdraw its draft decree** on the basis that it represents an unjustified and disproportionate barrier to trade, violates the principles of free movement of goods, proportionality, non-discrimination and legal certainty, contravenes fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, and lacks evidence-based justification demonstrating the necessity and appropriateness of the proposed measures.

**1. Introduction**

First and foremost, we acknowledge and support the public policy objective of encouraging responsible alcohol consumption and protecting public health, in particular through measures aimed at preventing harmful drinking patterns and safeguarding vulnerable groups, including children and adolescents.

However, the legislative initiative notified under TRIS 2026/0033/PL goes significantly beyond evidence-based public health interventions.

**2. The Draft Act**

The Draft Act introduces a wide range of measures affecting the sale, promotion, advertising, distribution channels, pricing, and hours of sale of alcoholic beverages, including, in particular:

- a total ban on advertising and promotion of all alcoholic beverages nationwide (**Article 13<sup>1</sup> paragraph 1 of the Act**);
- an expanded definition of "promotion of alcoholic beverages" covering discounts, rebates, loyalty programmes, bundled sales, and any form of material or personal benefit to the purchaser (**Article 2<sup>1</sup> paragraph 1 point 2 of the Act**);
- a nationwide ban on the sale of alcoholic beverages intended for consumption off the premises between 22:00 and 6:00 (**Article 14 ust. 1b of the Act**);
- a prohibition on the sale of alcohol at petrol stations and healthcare facilities (**Article 14 ust. 1 of the Act**);
- a ban on the retail sale of ethyl alcohol in any form other than liquid (**Article 14<sup>1</sup> of the Act**);
- restrictions on distance selling, permitting only collection at a physical point of sale with mandatory identity and age verification, effectively eliminating home delivery (**Article 9<sup>1</sup> of the Act**);
- amendments concerning the sale of beer and beverages containing up to 4.5% alcohol in self-service shops with a sales area below 200 m<sup>2</sup> (**Article 9<sup>6</sup>(1) of the Act**).

The authors of the proposed regulations have not carried out a sufficiently detailed and evidence-based assessment demonstrating the necessity, appropriateness and proportionality of such far-reaching measures, nor have they reliably examined whether less restrictive alternatives could achieve the same objectives.

### **3. Breach of EU Law**

The Draft Act in relation to the regulations in question constitutes a breach of EU law, including:

#### **a. THE PRINCIPLE OF EQUAL TREATMENT AND NON-DISCRIMINATION**

- **Discrimination based on distribution channel:**

The total ban on advertising and promotion does not apply to promotion conducted inside wholesale warehouses, points selling only alcoholic beverages, and at points selling alcoholic beverages intended for consumption on the premises. This creates discrimination in favour of on-trade establishments (bars, restaurants) and specialised alcohol retailers, while placing general retailers, supermarkets, and distance sellers at a significant competitive disadvantage.

The proposed regulations discriminate against retailers who sell alcohol alongside other products (the vast majority of retail outlets) compared to specialised alcohol shops and on-premises consumption venues. This distinction lacks objective justification in relation to the stated public health objectives.

- **Discrimination affecting cross-border operators:**

The ban on advertising and promotion disproportionately affects entities importing products from another Member State compared to products already established in the Polish market. The proposed ban may hinder market access for foreign producers to a greater extent than for local producers, as new entrants typically rely more heavily on advertising and promotional activities to build brand awareness and cannot benefit from established recognition. Consequently, the proposed ban may hinder market access for foreign producers to a greater extent than for local producers, and may therefore be discriminatory in nature. Local products typically already have established recognition in the domestic market and consequently do not rely on advertising to the same extent as foreign products, which are usually less known to consumers. The regulations may therefore violate the principle of equal treatment under EU law.

#### **b. THE PRINCIPLE OF PROPORTIONALITY (ARTICLE 5(4) TEU)**

The Draft Act violates the principle of proportionality in multiple respects:

- **Total advertising ban without evidence of necessity:**

The Draft Act introduces a total ban on advertising and promotion of all alcoholic beverages. The Impact Assessment submitted together with the Draft Act fails to provide sufficient evidence-based justification demonstrating the necessity of the proposed regulations, nor does it establish that they are necessary, appropriate, or proportionate to achieving the stated public health objectives. Available market data and research from other jurisdictions demonstrate that less restrictive measures — such as content restrictions on advertising, time and place restrictions, or mandatory messages — can effectively achieve public health objectives without imposing a total ban. The drafters have not demonstrated why such alternatives were considered inadequate.

- **Excessive restriction on promotion of alcoholic or non-alcoholic beverages**

The expanded definition of 'promotion of alcoholic or non-alcoholic beverages' captures virtually all standard commercial practices, including discounts, rebates, loyalty programmes, bundled sales, coupons, and any other material or personal benefit to purchasers. This goes far beyond what is necessary to prevent harmful consumption patterns and effectively prohibits normal, lawful commercial activity relating to legal products. The combined effect of the expanded promotion ban, the complete ban on advertising alcoholic beverages, and the other proposed changes creates an overly restrictive framework that eliminates all price

competition and commercial flexibility, without evidence that such extreme measures are necessary to achieve public health objectives.

- **Blanket ban on sales at petrol stations:**

The prohibition on the sale of alcoholic beverages at petrol stations applies without distinction to all petrol stations, regardless of their characteristics, location, or customer profile. No evidence has been provided to demonstrate that alcohol sales at petrol stations contribute significantly to drink-driving or other public health harms in Poland, nor has any assessment been made of whether less restrictive alternatives (such as restrictions on hours of sale, requirements for separate areas, or enhanced age verification) could achieve the same objectives.

- **Nationwide night-time sales ban:**

The nationwide prohibition on the sale of alcoholic beverages intended for consumption off the premises between 22:00 and 6:00 applies uniformly across the entire country without accounting for local circumstances, existing local policies, or evidence of specific harms associated with night-time sales in different localities. The Draft Act does allow municipalities to establish broader restrictions between 21:00 and 9:00, but the mandatory nationwide restriction between 22:00 and 6:00 represents a significant interference with local autonomy and commercial freedom without demonstrated necessity.

- **Distance selling restrictions:**

The restrictions on distance selling, which permit only collection at a physical point of sale with mandatory identity and age verification, effectively eliminate home delivery of alcohol. While age verification is a legitimate objective, the blanket prohibition on delivery — rather than requiring robust age verification at the point of delivery — is disproportionate and goes beyond what is necessary to prevent underage access.

- **Lack of evidence-based justification:**

As established by the Court of Justice of the European Union, "(...) in each specific case, it is for the national authorities to demonstrate that the national legislation at issue in the main proceedings complies with the principle of proportionality, that is to say, that it is necessary to achieve the objective pursued and that that objective cannot be achieved by means of prohibitions or restrictions of lesser scope or having a lesser impact on intra-Union trade. To that end, it is for those authorities to provide the necessary evidence in that regard. **The Member State's statement of reasons must be accompanied by an analysis of the suitability and proportionality of the measure adopted by that State, as well as precise data in support of its arguments** (judgment of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraphs 53 and 54).

The CJEU also regularly applies the following formula: "*The justifying reasons which may be invoked by a Member State must be accompanied by an analysis of the relevance and proportionality of the restrictive measure adopted by that State and by data supporting that State* (see: judgment of the CJEU of 19 October 2016, C-148/15, *DEUTSCHE PARKINSON VEREINIGUNG EV v. ZENTRALE ZUR BEKÄMPFUNG UNLAUTEREN WETTBEWERBS EV, ZOTSIS* 2016, No. 10, item I-776)."

The explanatory memorandum to the Draft Act contains general policy statements and references to WHO recommendations, but lacks detailed analyses, precise data, or

assessment of less restrictive alternatives that would demonstrate the necessity and proportionality of the proposed measures. In particular, the explanatory memorandum does not provide:

- empirical data demonstrating the specific public health harms caused in particular by advertising, promotional pricing, night-time sales, or sales at petrol stations in Poland;
- analysis of the expected public health benefits of the proposed measures;
- assessment of less restrictive alternatives and reasons for their rejection;
- evidence that the cumulative restrictions are necessary and proportionate to achieve the stated objectives.

#### **c. PRINCIPLES OF FREE MOVEMENT OF GOODS AND SERVICES, FREEDOM OF ESTABLISHMENT**

##### **• Free movement of goods (Article 34 TFEU):**

The cumulative restrictions provided for in the Draft Act — including the total advertising ban, the prohibition on promotional pricing, the restrictions on distribution channels (petrol stations, distance selling), and the nationwide night-time sales ban — constitute measures having an effect equivalent to quantitative restrictions within the meaning of Article 34 TFEU.

According to the established case law of the Court of Justice of the European Union, measures that hinder market access constitute restrictions on the free movement of goods. Absolute restrictions on advertising may significantly impede market access, in particular for economic operators from other Member States who do not have established brand recognition on the domestic market and who rely on advertising and promotional activities to enter and compete in the market. Consequently, these regulations may lead to unequal treatment of importers and distort the free movement of goods.

The prohibition on sales through certain distribution channels (petrol stations, home delivery via distance selling) and during certain hours (22:00-6:00 nationwide) further restricts market access by limiting the availability of sales outlets and times when products may be offered to consumers. These cumulative restrictions create significant barriers to entry and expansion for operators from other Member States.

These restrictions on market access are further compounded by an internal inconsistency in the Draft Act: while imposing significant restrictions on advertising and promotion, it simultaneously introduces distance selling of alcoholic beverages — a distribution channel not previously regulated under the Act on upbringing in sobriety and counteracting alcoholism. This expansion of distribution channels, including for high-proof spirits (including vodka), is manifestly inconsistent with the stated objective of reducing alcohol availability and consumption. The Draft Act therefore simultaneously restricts marketing communications while expanding consumer access to alcoholic beverages through new and more convenient purchasing channels, thereby undermining the coherence and consistency of the regulatory framework.

In addition to creating barriers to intra-Union trade, the proposed regulations are inconsistent with Article 1(1) of the Act on upbringing in sobriety, which provides that State policy shall aim at changing the structure of consumption from high-proof towards low-proof beverages. By imposing identical restrictions on all alcoholic beverages regardless of alcohol content, the

Draft Act eliminates regulatory differentiation that would create market incentives for such a structural shift.

The Draft Act also creates additional barriers to the free movement of goods through provisions that are unclear and may result in discriminatory treatment of low-alcohol beverages imported from other Member States. The proposed amendment to Article 96(1) of the Act contains evident drafting errors and grammatical inconsistencies. Its wording may be interpreted as prohibiting the sale of beer and beverages containing up to 4.5% alcohol in self-service shops with a sales area below 200 m<sup>2</sup> and in other retail outlets where the seller conducts direct sales, while simultaneously permitting the sale of high-proof spirits (such as vodka) in those same outlets. Such an interpretation would be manifestly discriminatory, contrary to the stated public health objectives, and would create unjustified barriers to trade in low-alcohol products from other Member States, thereby further restricting market access in violation of Article 34 TFEU.

Although measures restricting advertising and distribution may be justified on grounds of public health protection under Article 36 TFEU, they must meet the requirements of necessity, proportionality, and non-discrimination. As demonstrated above, the drafters have not provided the evidence-based justification required under EU law to demonstrate that the proposed measures are necessary and proportionate.

- **Freedom to provide services and freedom of establishment (Articles 49 and 56 TFEU):**

The restrictions provided for in the Draft Act go beyond goods and also cover services, including advertising, marketing, promotional activities, and distance selling services. This constitutes an independent basis for concern in light of Articles 56 and 49 TFEU (freedom to provide services and freedom of establishment).

The total ban on advertising and the expanded definition of prohibited promotion directly affect cross-border service providers — such as advertising agencies, media houses, digital platforms, event organisers, and promotional marketing firms — by eliminating an entire category of lawful commercial communication relating to legal products.

The restrictions on distance selling, which effectively prohibit home delivery, disproportionately affect cross-border distance sellers and e-commerce platforms, which rely on delivery services to reach consumers across borders.

The CJEU consistently requires that restrictions on services be necessary, consistent, and proportionate — standards that the Draft Act does not meet, given the acknowledged lack of any assessment of less restrictive alternatives or evidence-based justification for the necessity of the proposed measures.

#### **d. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

The Draft Act interferes with fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, including:

- **Article 16 (freedom to conduct a business):**

The total ban on advertising and promotion, the prohibition on sales at petrol stations, the nationwide night-time sales ban, the minimum pricing rule, and the restrictions on distance selling collectively impose severe restrictions on the basic commercial activities relating to legal products. These cumulative restrictions substantially limit the freedom to conduct

business in a lawful economic sector without adequate justification demonstrating their necessity and proportionality.

- **Article 11 (freedom of expression and information):**

The total ban on advertising suppresses lawful commercial communication about legal products. Freedom of expression, as protected by Article 11 of the Charter, covers commercial communication. The blanket prohibition on all forms of advertising and promotion — without evidence that less restrictive content-based or placement-based restrictions would be inadequate — constitutes a disproportionate interference with freedom of expression and the right of consumers to receive information about lawful products.

- **Article 17 (right to property, including intellectual property):**

- The total advertising ban restricts the ability of trademark owners to use advertising and promotional communication to build and derive value from their intellectual property rights. Additionally, the prohibition on advertising or promoting products, services or entrepreneurs using names, trademarks, graphic designs or packaging that are similar to or identical with the designation of an alcoholic beverage (Article 13<sup>1</sup> paragraphs 2-3 of the Act) creates uncertainty regarding the permissible scope of trademark use and brand extension strategies, even for non-alcoholic products. While intellectual property rights are not absolute, restrictions must be justified and proportionate — requirements that the Draft Act fails to meet in the absence of evidence-based demonstration of necessity.

Such interference with fundamental rights requires particularly careful justification and precisely tailored measures — requirements that the Draft Law does not meet.

**e. LACK OF LEGAL CERTAINTY AND FORESEEABILITY**

- The expanded definition of "promotion" includes vague and open-ended criteria such as "other unnamed material or personal benefits" and "other forms of publicly encouraging the purchase", which lack precision and foreseeability. Economic operators cannot reliably predict which commercial practices will be considered to fall within the prohibition.
- The draft law provides, among other things, for financial penalties ranging from PLN 30,000 to PLN 1,000,000 and the possibility of imprisonment for violating advertising and promotion prohibitions.
- The combination of vague, imprecise definitions and severe sanctions creates a significant "chilling effect": economic operators, unable to reliably predict which activities will be considered to violate the prohibitions, will be inclined to over-comply by withdrawing lawful commercial activities. The CJEU considers such practical restrictions on market access to be significant factors undermining proportionality, especially when the normative criteria lack the precision necessary for consistent and predictable application.

#### 4. Summary

##### a. **National measures must be necessary, adequate and proportionate to the pursued objective. The proposed regulations do not meet these requirements, as they:**

- introduce excessively broad restrictions that go far beyond what is necessary to achieve the stated public health objectives, including a total ban on advertising, prohibition of all forms of promotional pricing, blanket bans on sales at entire categories of outlets (petrol stations) and during specific hours (22:00-6:00 nationwide), and effective prohibition of home delivery through distance selling restrictions;
- introduce vague and overly broad definitions (particularly the concept of "promotion") that undermine legal certainty and foreseeability for economic operators, compounded by severe criminal and administrative sanctions;
- result in discriminatory effects and unjustified obstacles to market access, in particular for products and service providers from other Member States, who are disproportionately affected by the advertising ban, distribution channel restrictions, and limitations on commercial practices;
- lack evidence-based justification, fail to assess less restrictive alternatives, and fail to provide the detailed analysis and precise data required under EU law to demonstrate the necessity, appropriateness and proportionality of the proposed measures;
- interfere with fundamental rights (freedom to conduct business, freedom of expression and information, protection of intellectual property) without adequate justification.

##### b. **Consequently, the proposed regulation violates:**

- the free movement of goods (Articles 34-36 TFEU);
- the freedom to provide services and freedom of establishment (Articles 49 and 56 TFEU);
- the principle of proportionality (Article 5(4) TEU);
- the principles of non-discrimination and legal certainty;
- fundamental rights enshrined in the Charter of Fundamental Rights of the European Union (Articles 11, 16, and 17).