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Warsaw, 1<sup>st</sup> of August 2023*

## FOR Communication 16/2023:

### State paternalism strikes at freedom of choice: restrictions on energy drink sales

#### Synthesis:

- Sejm (Polish lower house of parliament) has passed a law prohibiting the sale of energy drinks to individuals under the age of 18. New regulations also ban the sale of such beverages in educational institutions and vending machines. Restrictions are to come into effect on January 1, 2024.
- The law was supported by PiS, as well as groups supporting the ruling camp, the Left, and Polska 2050. Only seven MPs from the Konfederacja, Libertarians, one MP from the Civic Coalition (Tadeusz Zwiefka), and Paweł Szramka voted against<sup>1</sup>.
- This regulation will be among the strictest in the European Union. To date, only Lithuania and Latvia<sup>2</sup> have prohibited the sale of energy drinks to those under 18 years old.

Last Friday, the Senate (Polish upper house of parliament) voted in favor of adopting the law without a single opposing vote. However, several amendments were proposed. Firstly, the restrictions would come into effect from July next year. Secondly, energy drinks produced before the law comes into force could still be sold without restrictions for two more years. Thirdly, the Senate excluded vending machines located in facilities accessible only to adults from the ban.<sup>3</sup> However, it can be reasonably assumed that the Sejm will reject the Senate's amendments.

Energy Drinks, as defined by the Act, are beverages containing caffeine in a concentration exceeding 150 mg/l or any addition of taurine<sup>4</sup>. Typically, an energy drink contains approximately 300-320 mg/l of caffeine<sup>5</sup>, which means that a standard can of such a beverage contains about 80 mg of it. According to data referenced by the Council of Ministers, the daily caffeine intake of children should not exceed 2.5 mg/kg of body weight. Therefore, a 40-kilogram child can consume up to 100 mg of this substance daily.

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<sup>1</sup> <https://sejm.gov.pl/Sejm9.nsf/agent.xsp?symbol=glosowania&NrKadencji=9&NrPosiedzenia=79&NrGlosowania=180>

<sup>2</sup> C. Snowden, Nanny State Index '23, European Policy Information Center, 2023, p. 16–17.

<sup>3</sup> Senate of the Republic of Poland, Report of the Committee on Science, Education and Sport, and Health (print no. 1071 Z)

<sup>4</sup> Sejm of the Republic of Poland, Report of the Health Committee on the parliamentary bill amending the Public Health Act (print no. 3498).

<sup>5</sup> M. Białas, H. Łuczak, M. Jeżewska, Ocena zawartości kofeiny w wybranych napojach bezalkoholowych, „Bromatologia i Chemia Toksykologiczna”, XLIV, 3, 2011, p. 632.

Based on the same data, the daily intake of caffeine from energy drinks in children slightly exceeded 3 mg/day, and among those who consume them regularly, it was just under 43 mg/day<sup>6</sup>.

The Council of Ministers' position also states that, according to the European Food Safety Authority, it is not recommended for individuals under the age of 16 to consume energy drinks<sup>7</sup>. However, the government deemed this sufficient justification to introduce a ban for all minors "due to the ease of age verification," even though there is no basis for setting the age limit so high. Age of students can be verified based on school identification cards, including digital mLegitymacja.

Another controversial point of this amendment is that, according to the parliamentary print, the ban on the sale of energy drinks will apply to all educational system units. However, according to the Education Law, this also includes institutions only adults can attend. Therefore, it will not be possible to sell energy drinks in teacher training centers or social service worker colleges. The ban will also affect adults who are not currently in contact with children.

#### **Availability of caffeine to children:**

The passed law only prohibits the sale of beverages with the appropriate concentration of caffeine, in which it does not occur naturally. Therefore, it does not apply to coffee or tea-based beverages. The caffeine content in coffee can be significantly higher than in energy drinks. Depending on its strength, instant coffee can contain even 380-730 mg of caffeine per liter of beverage. That's over twice as much as in energy drink. A regular 160-milliliter serving of coffee will thus contain noticeably more caffeine than a can of an energy drink<sup>8</sup>. A similarly high concentration of caffeine can be found in instant black tea or dark chocolate – just 330 ml of strongly brewed tea or a bar of dark chocolate can provide the body with as much caffeine as is found in a can of an energy drink<sup>9</sup>.

Children will also still be able to purchase sweetened beverages with a lower caffeine concentration. Cola-type drinks typically contain about 100 mg of caffeine per liter<sup>10</sup>. Therefore, a 0.85-liter bottle of cola is enough to consume more caffeine than in a typical energy drink. Access to caffeine will remain unrestricted for children, the legislator will arbitrarily block access to only one product type.

#### **Ineffective regulations:**

The ineffectiveness of state regulations can be evidenced by the widespread consumption of alcohol among young people. According to the ESPAD report from 2019, nearly half of the children aged 15-16

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<sup>6</sup> Position of the Council of Ministers on the print. 3258, p. 4,  
<https://orka.sejm.gov.pl/Druki9ka.nsf/0/F658460F199D0BEFC12589EA003EB650/%24File/3258-s.pdf>

<sup>7</sup> Position of the Council of Ministers on the print nr 3258, p. 3.

<sup>8</sup> M. Jarosz i in., Zawartość kofeiny w produktach spożywczych, „Bromatologia i Chemia Toksykologiczna”, XLII, 3, 2009, p. 779.

<sup>9</sup> M. Jarosz i in., Zawartość kofeiny w produktach spożywczych; J. Sierpiński, Kofeina zabroniona i dozwolona, 15.07.2023, <http://sierp.libertarianizm.pl/?p=2393>.

<sup>10</sup> M. Białas, H. Łuczak, M. Jeżewska, Ocena zawartości kofeiny w wybranych napojach bezalkoholowych, p. 632.

consumed alcohol in the last month, and over 80% have consumed alcohol at some point of their lives<sup>11</sup>. Among the age group on the verge of adulthood, consumption is even more common – over three-quarters drank alcohol in the last month<sup>12</sup>.

Despite these restrictions being in place for years, teenagers reach for alcohol, bypassing state bans. In every European country, there are regulations limiting the sale of alcohol to young people, yet fifteen or sixteen-year-olds still consume it. The widespread consumption of alcohol is more a matter of culture and society's education than the imposition of bans. There is no reason to believe it will be any different with energy drinks.

### **Paternalistic state:**

In several European countries (Germany, Belgium, Denmark, Austria, Malta, Cyprus, Luxembourg), individuals who turn 16 or 17 can purchase certain (beers, wines) or all alcoholic products<sup>13</sup>. If such lower limits go hand in hand with education, young people can gradually become accustomed to such substances, as it ceases to be a "forbidden fruit" for them. Meanwhile, in Poland, sixteen or seventeen-year-olds will not be able to legally buy even an energy drink.

The Nanny State Index measures the level of restrictiveness of regulations governing the sale and consumption of food, non-alcoholic beverages, alcohol, tobacco, and e-cigarettes in 30 European countries (EU countries, as well as the UK, Turkey, and Norway). Poland currently ranks ninth (the higher the position, the more paternalistic the state)<sup>14</sup>. Only a few other Central and Eastern European countries, as well as Ireland, Finland, Norway, and Turkey, have stricter restrictions than Poland. Western countries largely trust the responsibility of their citizens, while countries of the former Eastern bloc largely use the strong hand of the state to regulate every aspect of life.

### **Summary**

There is no substantive basis for introducing a ban on the sale of energy drinks to minors. Teenagers will still be able to consume caffeine in many different ways, and the law will significantly limit their access to one of its sources. It seems that the law is, in a way, an element of the pre-election campaign. A new enemy has been found so that the government can heroically defend Polish children against him.

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<sup>11</sup> European Monitoring Centre for Drugs and Drug Addiction, ESPAD Report 2019. Additional tables, Publications Office of the European Union, 2020, p. 35-39, [http://www.espad.org/sites/espad.org/files/20203880\\_TD0320532ENN\\_PDF.pdf](http://www.espad.org/sites/espad.org/files/20203880_TD0320532ENN_PDF.pdf)

<sup>12</sup> TVN24, 80 percent of 15- and 16-year-olds drank alcohol in 2019. What is the situation now? There is no research. 22.08.2022, <https://tvn24.pl/polska/80-procent-15-i-16-latkow-piloalkoholw-2019-roku-jak-jest-teraz-badan-nie-ma-5838342>

<sup>13</sup> European Union Agency for Fundamental Rights, Purchasing and consuming alcohol, <http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/purchasing-and-consuming-alcohol>.

<sup>14</sup> <https://nannystateindex.org>.

A policy of mindless prohibition instead of educating society may not yield the desired results and is a manifestation of the state's paternalism. The actions are disproportionate to the threat associated with the abuse of such drinks. Responsible consumption of energy drinks by teenagers is not associated with any particular danger, and the data presented by the Council of Ministers does not indicate that the problem of abusing caffeine and energy drinks is actually widespread.

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