

Legal Alert

Changes in rules for labelling of goods: Savings for businesses

December 2014

In January 2015, amendments to the Business Freedom Act concerning information about an enterprise introducing goods onto the market in Poland will go into effect. The change in the regulations will mean savings for businesses from the European Economic Area which will not have to design special packaging to include the details of the distributor of the product on the Polish market.

Existing regulation

Under the current Art. 20 of the Business Freedom Act, an enterprise introducing goods onto the market in Poland is required to state directly on the product or on the packaging or instructions, or in some other commonly accepted method provide written information in Polish identifying the enterprise and its address, along with information identifying the product. This regulation has been interpreted as requiring placement on goods of the address of the distributor or importer of the goods with its registered office in the territory of Poland.

As pointed out in the justification for the bill to amend this regulation, this obligation not only generates costs (because a business with its registered office elsewhere in the EEA responsible for labelling of the goods is required to prepare a special label for the product for the Polish market containing information about the distributor in Poland), but may also be regarded as a measure effectively imposing quantitative restrictions in violation of the European Union's principle of the free flow of goods.

Amendment

In the new wording, Art. 20 of the Business Freedom Act will impose an obligation to provide information concerning the "producer" of the goods within the meaning of the Act on General Safety of Products. Therefore it will be sufficient to indicate directly on the product or on the packaging or instructions, or provide in writing

in some other commonly accepted method, the name and address of one of the following entities:

- The producer of the product with its registered office in the EEA
- The entity acting as the producer by placing its name on the product
- The representative of the producer which does not have its registered office in the EEA
- The importer, if the producer without its registered office in the EEA has not appointed a representative, or
- Another entity which participates in trading of the product, if its actions could affect the properties connected with the safety of the product.

The amendment also requires that information identifying the product will need to be provided only when the use of the product is not obvious.

As under current law, this regulation will not apply to goods for which separate regulations impose special rules for labelling (e.g. foods, medicines, cosmetics, medical devices, and toys).

Change in regulation and consumer sales

The justification for the bill assumes that in the case of sales involving consumers, the issue of labelling will continue to be governed by the Act on Special Conditions for Consumer Sales and Amending the Civil Code, which requires the seller to provide information at the point of sale identifying the producer or importer of the product. However, from 25 December 2014, i.e. before the new wording of Art. 20 of the Business Freedom Act enters into force, regulations of the Consumer Rights Act will enter into force, superseding the Act on Special Conditions for Consumer Sales and Amending the Civil Code. The Consumer Rights Act introduces a provision in the Civil Code requiring that prior to conclusion of a contract, consumers be provided information including the producer or importer of the product (Civil Code Art. 546¹). If the product is sold in unit packaging or in a set,



the information should be placed on the product or permanently affixed to it (Civil Code Art. 546²).

Effective date

The wording of the amending act submitted to the President of Poland for signature reflects revisions by the Senate providing that the amending act will enter into force not on 1 January 2015, but 14 days after publication in the Journal of Laws. All indications are that the new wording of Art. 20 of the Business Freedom Act will enter into force sometime during the first half of January 2015.

When to change product labelling?

The new rules will apply to labelling of goods introduced into trading in Poland after the effective date of the amendment.

Notwithstanding entry into force of the amendment, it will still be possible to introduce goods into trading in compliance with the prior regulations on labelling with information about the enterprise, but no longer than 36 months after the effective date of the amendment—in other words, until about the middle of January 2018.

Consequences of erroneous labelling

As is currently the case, introduction into trade of goods not labelled in compliance with the regulations will constitute a petty offence, punishable by a fine under the Petty Offences Code. Moreover, if the labelling is misleading and constitutes an unfair market practice for purposes of the Act on Combating Unfair Market Practices or an act of unfair competition under the Act on Combating Unfair Competition, and is found by the President of the Office of Competition and Consumer Protection to infringe the collective interests of consumers, the business may be charged a fine under the Act on Competition and Consumer Protection of up to 10% of its annual revenue (or from 18 January 2015, up to 10% of its annual turnover).



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