advertising information group.

Mr Radek MALY
Head of Unit, GROW.E.3
Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
European Commission

13 April 2026

Re: TRIS Notifications 2026/0016/PL and 2026/0033/PL – Concerns Regarding Advertising Restrictions and Single Market Compatibility

Dear Mr Maly,

The Advertising Information Group is a pan-European coalition representing national advertising associations, agencies, and media owners across the EU. We write to draw your attention to serious concerns arising from two draft legislative acts notified by Poland to the TRIS system in January 2026, specifically Notification 2026/0016/PL (notified 16 January 2026) and Notification 2026/0033/PL (notified 23 January 2026). While we note that these notifications cover several areas of alcohol regulation, this letter focuses exclusively on the proposed advertising and promotion restrictions and their compatibility with EU Single Market law.

1. Background and Context

The two draft acts form part of a coordinated reform of Poland's alcohol regulatory framework. Although notified separately, they pursue overlapping objectives and their advertising-related provisions are closely interconnected. AIG considers that they must be assessed cumulatively rather than in isolation.

AIG acknowledges that the protection of public health is a legitimate objective under EU law. However, the advertising restrictions proposed under both notifications raise serious questions of proportionality and compliance with the Treaty on the Functioning of the European Union (TFEU), in particular Articles 34, 36, and 56. Of particular concern is the fact that the impact assessment accompanying Notification 2026/0033/PL explicitly asserts that the draft "complies with European Union law" and contains no technical regulations requiring notification under Directive (EU) 2015/1535, a self-assessment that AIG considers to be incorrect and which underlines the need for the Commission's own rigorous scrutiny of both notifications.

2. Scope and Nature of the Proposed Advertising Restrictions

It is important at the outset to distinguish between 'advertising' and 'promotion' in the draft texts, as the two concepts are defined differently and carry distinct legal implications.

Both drafts amend Article $13^1(1)$ to introduce a blanket ban on the advertising and promotion of alcoholic and non-alcoholic beverages throughout Poland, removing existing exceptions that previously permitted beer advertising. On advertising, both drafts include a carve-out providing that information used for commercial purposes between entrepreneurs involved in the production, wholesale, and trade of alcoholic or non-alcoholic beverages shall not be considered advertising. No equivalent carve-out applies to 'promotion'.

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The definition of ‘promotion’ is substantially broadened in both drafts to encompass bonus sales, discounts, rebates, loyalty programmes, vouchers, coupons, and any financial or personal benefit linked to the purchase of alcoholic or non-alcoholic beverages. Because no B2B exemption applies, this definition may in practice extend to standard wholesale-level commercial arrangements throughout the distribution chain, a point developed further in Section 3 below.

Both drafts also extend the bans to ‘non-alcoholic beverages’ as newly defined, a category capturing any product which, by its name, trademark, graphic form, or packaging, exploits similarity or identity with an alcoholic beverage. This extension encompasses a broad class of legitimately marketed food and drink products and raises distinct Single Market concerns addressed in Section 3.

Polish law already imposes very restrictive constraints on alcohol promotion. Public encouragement to purchase alcohol is already completely prohibited (with the limited exception of beer), and permitted promotional activities are confined to a narrow group of consumers who have already decided to purchase, and to B2B relations within the distribution chain. The proposed measures would significantly narrow this already highly restricted space and the legal implications are considered in Section 3.

3. Compatibility with EU Single Market Law

3.1 Free Movement of Goods (Article 34 TFEU)

Article 34 TFEU prohibits quantitative restrictions on imports and all measures having equivalent effect. The CJEU has consistently held that any trading rule enacted by a Member State that is capable of hindering, directly or indirectly, actually or potentially, intra-EU trade constitutes a measure having equivalent effect to a quantitative restriction.[1]

A comprehensive ban on advertising and promotion, even one that is formally non-discriminatory, may fall within Article 34 TFEU where it substantially impedes market access for products from other Member States. This is particularly acute in the case of alcoholic beverages, where:

- Imported and newer brands are disproportionately reliant on marketing and promotion to establish distribution channels, secure retail shelf space, and build consumer recognition in a competitive national market.

- Whilst the draft texts include a carve-out from the definition of ‘advertising’ for B2B commercial information, no equivalent carve-out applies to the definition of 'promotion'. The promotion ban therefore extends to standard commercial arrangements throughout the distribution chain, including launch discounts, rebates, loyalty programmes, and other trade incentives, which are the principal tools upon which new market entrants and imported brands depend to compete with established domestic operators.

- Established domestic brands, with pre-existing consumer recognition, distribution networks, and retail relationships built up over many years, are able to absorb the loss of promotional tools far more readily than cross-border operators entering or seeking to enter the Polish market. The measures therefore do not affect domestic and imported products in the same manner in fact, even if they are formally non-

[1] Case 8/74, Procureur du Roi v Dassonville [1974] ECR 837.

discriminatory in law, the precise condition identified in Keck and Mithouard as necessary for selling arrangements to fall outside Article 34 TFEU.

- The extension of the bans to 'non-alcoholic beverages' as broadly defined creates an additional barrier to market access for food and drink products from other Member States that are lawfully manufactured and marketed under their existing names, trademarks, and packaging – a category captured by the new definition without any necessity or proportionality analysis.

In accordance with the reasoning in Keck and Mithouard (Joined Cases C-267/91 and C-268/91), the proposed restrictions therefore fall outside the selling arrangements carve-out and engage Article 34 TFEU.

3.2 Freedom to Provide Services (Article 56 TFEU)

Article 56 TFEU guarantees the freedom to provide services across the EU, including cross-border marketing, advertising, and media services. The proposed advertising bans would directly impede the provision of such services by operators established in other Member States. This concern is reinforced by the amendment to the Broadcasting Act introduced under Notification 2026/0016/PL, which extends the broadcasting prohibition to non-alcoholic beverages as newly defined, further restricting cross-border media and advertising services. To the extent that the promotion ban also reaches B2B and cross-border advertising arrangements, as its broad definitional scope suggests, it constitutes a further unjustified impediment to the freedom to provide services.

3.3 Impact on cross-border advertising and commercial communication services within the media ecosystem

From the perspective of the advertising and media sector represented by AIG, the proposed measures raise additional concerns regarding their practical impact on cross-border commercial communication activities across the internal market.

The blanket prohibition on advertising and promotion appears capable of affecting not only consumer-facing advertising of beverages as products, but also a wide range of commercial communication activities carried out by advertising agencies, media operators, publishers, broadcasters operating across Member States.

In particular, the broad definition of advertising and promotion, together with the extension of the prohibition to non-alcoholic beverages and to signs, symbols and trade marks associated with beverages, creates legal uncertainty as to the permissibility of standard forms of brand communication, including corporate branding, sponsorship visibility, trade marketing cooperation and cross-border campaign structures within the commercial communication value chain.

To the extent that such activities fall within the scope of the proposed prohibitions, the measures risk restricting the provision of lawful cross-border advertising and marketing services and may have wider implications for the functioning and financing of independent media across formats, which rely on commercial communication to support the provision of professional journalistic and media content.

The extension of the proposed prohibitions to non-alcoholic beverages appears to go beyond what is typically considered necessary to achieve public health objectives and raises distinct concerns from the perspective of access to lawful commercial information concerning alternative products within the internal market.

3.4 Proportionality and Article 36 TFEU

Article 36 TFEU permits derogations from the free movement of goods for reasons of public health, provided that the measures concerned are both necessary and proportionate. AIG notes the following significant deficiencies in the impact analysis accompanying the two draft acts:

- Both impact assessments explicitly state that alternative solutions were not analysed, on the grounds that partial measures would be insufficient. This is not a proportionality assessment; it is the absence of one. Under settled CJEU case law, the burden falls on the Member State to demonstrate that no less restrictive measure would achieve the same objective.

- The impact assessments rely extensively on WHO 'best buy' recommendations and reference the Lithuanian regulatory framework as a comparator, without demonstrating that Lithuania's media landscape and market structure are sufficiently comparable to Poland's to justify that reliance.

- No Poland-specific modelling is provided to demonstrate that a blanket ban, rather than targeted measures such as youth protection codes, age-verified digital marketing controls, or consumer education programmes, is necessary to achieve the stated public health objectives.

- The impact assessment accompanying Notification 2026/0033/PL evaluates its restrictions in isolation, without assessing their cumulative interaction with those introduced under Notification 2026/0016/PL. Under EU proportionality principles, the combined restrictive effect of the two acts must be considered together.

- The limited point-of-sale exemption under Notification 2026/0033/PL (Article $13^1(9)$), covering wholesale outlets, specialist retailers, and on-premises venues, does not remedy the disproportionality of the overall prohibition – particularly given the absence of any equivalent exemption under Notification 2026/0016/PL.
- Less restrictive alternatives have not been assessed or ruled out. Targeted measures, such as advertising codes restricting consumer-facing practices likely to encourage impulsive or excessive consumption, mandatory age-verification requirements for digital marketing, or consumer education programmes, could plausibly achieve the stated public health objectives without imposing a blanket prohibition. Poland has not demonstrated why such alternatives would be insufficient.

In the absence of a robust necessity and proportionality analysis, it cannot be concluded that the proposed advertising restrictions meet the threshold required under Article 36 TFEU to justify derogation from Single Market principles.

4. Disproportionate Sanctions

The proportionality concerns identified above are compounded by the sanctions regimes accompanying both notifications, which themselves risk restricting market access.

Notification 2026/0016/PL introduces fines of between PLN 10,000 and PLN 500,000 for breaches of the advertising, packaging, and promotion rules (Articles 454–457). Notification

2026/0033/PL goes further: Article $45^2(1)$ provides for fines of between PLN 30,000 and PLN 1,000,000 or a custodial sentence, or both, for breaches of advertising and promotion rules.

The introduction of custodial penalties under Notification 2026/0033/PL is manifestly disproportionate to the nature of the alleged infringement. Criminal proceedings carry serious personal and reputational consequences, including the risk of a criminal record and the long-term professional limitations that may follow from a conviction. The cumulative effect of substantial financial penalties combined with custodial sanctions risks creating a significant chilling effect on legitimate commercial communication, discouraging operators from other Member States from entering or remaining in the Polish market. Even the fine-only regime under Notification 2026/0016/PL, with penalties reaching PLN 500,000, carries a substantial deterrent effect that may discourage cross-border operators from engaging in entirely lawful commercial activity in Poland. Both regimes are capable of constituting a restriction on trade within the meaning of Article 34 TFEU.

5. Requests to the Commission

In light of the above, AIG respectfully requests the Commission to:

- Assess jointly the advertising and promotion provisions of Notifications 2026/0016/PL and 2026/0033/PL. Although notified separately, the two acts form part of a single coordinated reform whose cumulative restrictive effect on intra-EU trade must be assessed as a whole. The Commission should also scrutinise Poland's assertion in the impact assessment accompanying Notification 2026/0033/PL that the draft complies with EU law and contains no technical regulations requiring TRIS notification.
- Conclude that the proposed restrictions may give rise to unjustified barriers to the free movement of goods and services within the Single Market, contrary to Articles 34 and 56 TFEU.
- Inform Poland that the advertising and promotion provisions should be reconsidered to ensure compliance with Articles 34, 36, and 56 TFEU, in particular, that: the promotion ban must be accompanied by a B2B carve-out equivalent to that in the advertising definition; the extension of the proposed bans to non-alcoholic beverages as broadly defined raises distinct concerns under EU law and should be subject to a separate and evidence-based necessity and proportionality assessment, in particular given that restrictions designed to address public-health risks associated with alcohol consumption are being applied to products that do not contain alcohol; less restrictive measures have not been properly assessed and the necessity of a blanket prohibition has therefore not been demonstrated in accordance with Article 36 TFEU.
- Inform Poland that the custodial penalties introduced under Notification 2026/0033/PL are disproportionate in the context of advertising regulation and should be removed, and that both sanction regimes should be reviewed for their potential chilling effect on legitimate cross-border commercial activity.
- Request renotification if Poland intends to maintain measures that disproportionately affect imported products, cross-border operators, or providers of cross-border advertising and media services.

AIG remains available to provide any further information or analysis to support the Commission's assessment of these notifications. We would welcome the opportunity to discuss these concerns further at your convenience.

Yours sincerely,

Konrad Shek
Director

Advertising Information Group (AIG)