

/ Czech Republic: New regulation on food advertising

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Last year, an amendment to the Advertising Regulation Act (Act No. 40/1995 Coll.) was adopted in response to warnings from the European Commission

concerning the unsatisfactory implementation of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market ("Directive"). The official complaint of the European Commission was directed primarily against the regulation that goes beyond the framework provided for in the Directive and against the duplicate regulation in the Czech Advertising Regulation Act and Consumer Protection Act.

Before the effectiveness of its amendment, the Act stipulated that food advertising should not be misleading, and also contained examples of such faulty behaviour – e.g. recommending food products with reference to unspecific clinical studies or attributing effects or properties that the food product does not have.

Since August 2015, § 5d (2) of the Act newly sets out that: *Advertising of food products must meet the requirements set out by the directly applicable EU regulation on the provision of information on food to consumers, and the directly applicable regulations of the European Union which set out the rules for the use of the designations of origin and geographical area, and traditional expressions.*

The previous clear definition of responsibilities was thus replaced by the reference to a number of directly applicable regulations of the European Union, which situation is not very comfortable for a normal user. Let us briefly focus on the content of the regulations.

The Directive prohibits stating misleading information on food products, above all in four cases. The first case is the stating of misleading information as to the characteristics of a food product and its nature, identity, properties, composition, quantity, shelf life, country of origin or place of provenance, method of manufacture or production. The second case is the attributing of effects or properties that the food product does not have. The third case is the creating of an impression that the food product has special characteristics, in a situation where all similar food products actually have the same characteristics, in particular by expressly emphasising the presence or absence of certain ingredients or nutrients. The last expressly prohibited acting is the creating of an impression, based on the appearance, description or depiction, that a particular food product or an ingredient is present, although in reality a component naturally present or an ingredient normally used in that food product has been substituted with a different component or ingredient.

The Directive also sets out that information on a food product must be accurate, clear and easily comprehensible to consumers.

Further, information on a food product may not attribute to the product any property that may prevent, alleviate or cure any human disease, nor may it refer to any such properties. However, certain variations for natural mineral waters and food products for particular nutritional use are tolerated.

The Directive also expressly confirms that the provisions of the preceding paragraphs also apply to advertising and presentation of food products, their shape, appearance or packaging, the packaging materials used, the way they are arranged, and the place at which they are displayed.

The new wording of the Advertising Regulation Act also mentions additional requirements for the use of the designations of origin and geographical area, and traditional expressions, e.g. protection against any practices that might mislead consumers as to the true origin of any agricultural or food product.

If the above obligations are breached, the customer that has ordered faulty food advertisement may be sanctioned, even repeatedly, by a fine of up to CZK 2 million (approximately EUR 74,000). The entity that has processed such faulty

advertisement may be fined in a similar manner.

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