EuroCommerce
Retail & Wholesale

Report

Updated 17 May 2024

# Single Market Barriers Overview

# Single Market Barriers

The Single Market is still far from complete. In many aspects, the European Union is still a mosaic of 27 different national markets. This overview provides some examples of barriers that retailers and wholesalers face in the Single Market. We ask the Member States, the Commission and the European Parliament to address the barriers identified here. The best way for the retail and wholesale sector to provide jobs and growth is to create a business-friendly environment where there is full competition and consumers can enjoy a wide range of high quality and safe products.

The main problems that the retail and wholesale sector still faces are:

- Flawed implementation and application of the **Services Directive** that hinders the freedom of establishment, the free movement of services and the freedom to provide a service;
- **National trade laws** that hinder business in the way they do business. Often these laws hamper competitiveness of the sector, are protectionist and undermine business models that are genuine and legal business models in other Member States. Particularly concerning are developments in **Central and Eastern Europe**;
- National requirements that hinder the **free movement of goods**. Member States do not notify new national technical requirements according to the procedure laid down in Directive (EU) 2015/1535, do not apply the principle of mutual recognition in non-harmonised areas, gold-plate directives, etc.

We also recognise some of the initiatives taken by the Commission to solve some of the examples mentioned in this paper. However, infringement procedures take a long time, are expensive and the outcome is uncertain. For businesses, this takes too long and they might decide to leave or not enter a market. In the end this deprives consumers of more choice, higher service and lower prices.

EuroCommerce welcomes an open dialogue with the Commission, the European Parliament and the Member States to improve the Single Market for Retail. This document is regularly updated.

The previous update was done on 3 April 2024.

Contact:
Ilya Bruggeman - bruggeman@eurocommerce.eu

# Table of contents

## Horizontal issues .....47

# Bulgaria

## 7 unlawful Ordinances of the Food Safety Agency

7 Ordinances about restrictions to the EU import of Fruits and Vegetables were issued in 2020.

**Fruits and vegetables**

- New amendments pose restrictions at the border for lorries transporting fruit and vegetables from EU countries. These remain blocked until the release of laboratory results of the pesticides residue tests, performed by official laboratories.
- The test costs are at the expense of the food enterprise – a further burden and the risk of fruits and vegetables getting spoiled (perishable goods are getting blocked).

**Easter eggs**

- Every year on Easter the Bulgarian food Safety Agency is issuing Ordinance about restrictions to the non-Bulgarian eggs. The eggs are subject to additional controls and laboratory tests; usually of 5 or 6 working days.
- Despite the Bulgarian government's stated objective to decrease the administrative burden in the State of emergency and the Emergency Epidemic State, the measures and the politic of Stimulus for the national Production would achieve the opposite effect and even more crucially in a time when a fall in investments in Bulgaria is expected.

**Offences**

- Breach of Articles 34-36 of the TFUE related to the free movement of goods in the EU.

**Ask**

- The Bulgarian government should ensure that the measures are proportionate and compliant with EU law.
- The European Commission should assess if the law is in line with EU law.

## Agri-Food Chain Management Act

The bill establishes a common legislative framework regulating the competent authorities that conduct policy in this field, perform official control over the components of the agri-food chain and carry out risk assessment along the agri-food chain.

**Provisions**

- Art. 43 of the Act contains **prohibition on the return of food** from wholesale and retail outlets to production sites, except in the cases referred to Art. 19 of Regulation (EC) No. 178/2002 (EU Basic Regulation).
- Daily needs for return of food mainly from the warehouses, e.g. due to incorrect labelling, wrong delivery - addressee, quantities or products, non-compliance with contractual terms, etc.
- Good quality food and safe for consumption.
- No need for disposal.

- Almost no possibility for donation (restrictions in the VAT Act, the food is not suitable for donation (e.g. wrong labelling), the food is not property of the business operator. i.e. he is not entitled to transfer it to a third entity)
- Significant expenses and losses for the business.
- Unjustified waste of food (not tolerated by the World Health Organization and the European Commission).
- Increase of the administrative burden in a time when a fall in investments in Bulgaria is expected.
- The prohibition could also undermine the warranty rights of wholesalers and retailers.

**Offences to the free movement of goods**

- Creation of unjustified internal market barrier Art. 28 of the Treaty on the Functioning of the European Union (TFEU)
- Quantitative restrictions on imports or at least measures having equivalent effect, hindering the on-line trade between member states (ECJ, Case 8/74 ("Dassonville")), according to Art. 34 of the TFUE.
- No justifications on overriding reasons of public interest under Art.36 of the Treaty on the Functioning of the EU (like in particular tax controls, the protection of public health, the protection of the fair trading and reasons for consumer protection)
- The prohibition applies (according to its wording) not explicitly to cross-border trade, but practically would affect it the most.
- The exception to the Prohibition (food may only be returned if considered unsafe within the meaning of Art. 19 of the EU basic regulation (return of food in case of recall/withdrawal)) lacks logic, since the unsafe food can be return while the safe one cannot.

**Offences to the EU Charter of Fundamental Rights**

- Breach of Art. 17(1) of the EU Charter of Fundamental Rights (everyone has the right to own, use, dispose of and bequeath their lawfully acquired possessions). The obligation to comply with property rights in accordance with Art. 17 EU Charter of Fundamental Rights applies in accordance with Art. 51, para. 1, sentence 1 EU Charter of Fundamental Rights, on the one hand, to the European Union and its institutions and, on the other hand, to the member states. This also includes the right to sell or return food to the manufacturer. Therefore, there is an interference with the right of property.

**Ofences to the freedom to conduct a business**

- Hindrance of the freedom to conduct business as per Art. 16 of the EU Charter of Fundamental Rights.
- Violation of the right of property of the food business operator.
- Interference with the entrepreneurial freedom to trade goods freely and to sell them back to the manufacturers, as per Art. 16 of the EU Charter of Fundamental Rights (entrepreneurial freedom (which according to the legal practice of ECJ includes, among other things, the commercial and industrial manufacture of products)[1] is recognized in accordance with Union law and national law and practice).
- Contradiction to the principle of proportionality which requires any restrictions and administrative regulation to be undertaken only insofar as they are justified with regard to the protection of public interest (as per practice of ECJ).

[1] Case 183/95 margin 41 ff

**Offences to the Directive (EU) 2015/1535 and the standstill period of Notification 2020/36/BG by TRIS**

- Despite prolongation of the standstill period and in breach of Directive (EU) 2015/1535, the Act was adopted and entered into force.
- Pursuant to EU case law2 the failure to respect the standstill period is a material procedural defect rendering the technical regulation at issue inapplicable and unenforceable against individuals.
- No actions on behalf of the Bulgarian state have been taken, since this provision is adopted with no substantial changes

> *Comparison between notified to TRIS (EK)/ adopted version*
> ***Article ~~48~~ 43.*** *It is forbidden to:*
> ~~*place on the market foods of animal origin obtained from emergency or sanitary slaughter, for which no official control has been carried out;*~~
> *return food from wholesale and retail outlets to production sites, except in the cases referred to in Article 19 of Regulation (EC) No 178/2002;*
> ~~*place on the market food unfit for human consumption.*~~

**Asks**

- The Bulgarian government should comply with the Directive (EU) 2015/1535 and amend the measure in accordance with the Commission detailed opinion.
- The Commission should ensure that this act is in line with EU law.

## Fiscal control on goods with high physical risk. Goods declaration system

Link to the law

**Provisions:**

- Covers most of the foodstuff.
- Companies are obliged to declare every transaction and every order of different foodstuff, also for transactions within Bulgaria. Some of the issues to inform: price, amount, etc.
- If the trader identifies differences between the information and the information provided by the supplier, the authorities have to inspect the transport. The unload is stopped.

**Status:**

- In force from 1 January.

**Offences:**

- The Commission should assess whether this measure poses a barrier to the free movement of goods.

[2] Case C-95/14, UNIC and Uni.co.pel

# Croatia

## Price caps

Price cap law

**Provisions**

- Price cap and capped retail margins for 30 different food products: sunflower oil, UHT milk, potatoes, cheese, pasta, eggs, sugar, flour, some fruits and vegetables and different meat parts for chicken, turkey, pork and beef, among others.

**Status**

- The Price Cap Law was supposed to expire on 31/3. But it was extended, not only in the duration, but also in the products covered (from 7 to 30 different products).

**Asks**

- The Commission should analyse if the restrictions are lawful, justified and proportionate and if the policy objectives of this law cannot be met by other less burdensome means.
- The Commission should look at potential disruptions and effects on the supply chain and other similar products.

## Trade Act: closing of stores on Sundays

**Provisions**

- Stores (as defined in law as ''store venue'' or store object'') are closed on Sundays and a store (object) can work maximum 16 Sundays in one year.
- ''object'' is also a warehouse and cannot do absolutely anything on Sundays when they are closed, including:
  - construction work (with this they are also restricting external service providers that are not obliged to comply with Trade Act)
  - deliveries for online sale is in general allowed but preparation of products in store/warehouse for delivery is not allowed.
  - food retailers are not any more allowed to prepare fresh products on Sunday so they can sell them on Monday.

**Status**

- Will apply as from 1 July 2023.

**Asks**

- The Commission should analyse if the restrictions are lawful, justified and proportionate and if the policy objectives of this law cannot be met by other less burdensome means.

# Czech Republic

## Significant Market Power Act (SMPA)

*Coll. Act No. 395/2022 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse Tereof*

**Amendments**

*Act No. 50/2016 of 13 January 2016 - amending Act No. 395/2009 on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof;* and *Acts 104/2017 Coll., 183/2017 Coll., 254/2020 Coll.*

**Proposed definition significant market power**

The regulation applies to buyers with annual turnover exceeding EUR 2 million. In addition to buyer annual turnover, supplier annual turnover is also of decisive importance for determining the scope of the Directive in relation to a specific business relationship. The buyer has significant market power if:

| *Buyers´ annual turnover is* | *and Supplier's annual turnover is* |
|---|---|
| min EUR 2 million | max EUR 2 million |
| min EUR 10 million | EUR 2 million - EUR 10 million |
| min EUR 50 million | EUR 10 million - EUR 50 million |
| min EUR 150 million | EUR 50 million - EUR 150 million |
| min EUR 350 million | EUR 150 million - EUR 350 million |

The buyer has also significant market power if Buyers´ annual turnover in the Czech Republic exceeds CZK 5 billion. According to the interpretation of the Office for the Protection of Competition, the rule that persons in a legal relationship, each with a with a turnover of more than EUR 350 million are excluded from the scope of the Act also applies.

On 1 January 2023, an amendment to the Act came into effect. It significantly expands the Act's scope both in terms of (i) who is affected as well as (ii) the obligations it imposes. All purchasers of food and agriculture products need to reassess whether they are now subject to the amended Act and revise their internal rules and contractual relations with suppliers accordingly.

**Other provisions**

- The Act contains a general clause prohibiting any abuse of significant market power. Significant market power is defined as a position allowing the buyer to force an unjust advantage on suppliers regarding the purchase of food products or the receipt or provision of related services.
- Also, other activities can be considered as abuse according to the Czech Antimonopoly Office's evaluation, leading to a broad interpretation.
- Implementation of supplier audits by retailers.
- Payment targets are set for all supplier contracts at 30 days after delivery.
- Companies whose annual financial statement must be, according to law, annually reviewed by an auditor must publish information on payment terms for their suppliers.
- There is a list of prohibited activities which is only illustrative and thereby creates legal uncertainty.

**Offences**

- The law especially discriminates large foreign retailers and wholesalers vis-à-vis local players. The new law does not foresee in an objective definition of market power that takes all factors into consideration (besides a random turnover threshold).

**Status**

- In place. Latest amendment came into effect in January 2023.
- On 23 July 2021, the European Commission launched an infringement proceeding against Czech Republic that failed to notify the complete transposition of the UTP Directive which should be implemented via the SMPA.
- Spring 2023 – the fast-track investigation on high prices of food: Office for the Protection of Competition | News - Significant Market Power | The Office starts a probe into the entire vertical chain for several food products in terms of price increase (uohs.cz).

**Asks**

- The Czech government should ensure the law is proportionate, does not undermine freedom of contract and give anti-competitive advantages to certain operators in the supply chain.
- The European Commission should assess if the law is in line with EU law.

## Food Law - Implementation UCPD amendment addressing dual quality [Food products]

*Act No. 174/2021 Coll., amending Act No. 110/1997 Coll., on Food and Tobacco Products and on amendments to Certain Related Acts, as amended (the "Food Act").*

Retailers may become liable for misleading practices of brand manufacturers.

**Provisions**

- The incorrect transposition of the Directive led to a stricter national rule that, therefore, infringes EU law.
- In national law, Section 10 (1) (g) says: '*The **placing on the market of food** shall be prohibited: **seemingly identical** to food placed on the market **in the other** Member States of the European Union, although the food placed on the market in the Czech Republic has a significantly different composition or properties unless justified by justified and objective facts and provided with easily accessible and sufficient information on this different composition or properties*'.
- The action considered in national law is the placement of food on the market. However, the Directive refers to commercial practices. These practices are usually done by the producer, who is usually responsible for the quality of the product. Due to unclear terms of the EU UCPD amendment Czech decision-makers are planning to make retailers liable for branded food products they market. This does not take into account that retailers have no control over the production and marketing methods of big international food brands.
- The Directive refers to "identical products", while the national law, that refers to "seemingly identical", the transposition is more restrictive and gives leeway for a divergent interpretation.
- The fine is set at up to €2 million.

- It is unclear when the packaging of food products is deemed to be similar or different.
- The provision is stricter than the text in the interinstitutional agreement.

**Status**

- The Food Act was published in the Collection of Laws in April 2021.
- Compliance with the quality ban is monitored by the State Agricultural and Food Inspection Authority (CAFIA); they published the working material "Basic inspection principles focusing on dual food quality" ENG_CAFIA_Dual quality_ working material_version_5

**Asks**

- The European Commission should ensure that the Directive is properly transposed.
- The Czech government should implement the text as agreed at EU level and make operators responsible according to their role in the supply chain (as in the General Food Law Regulation (EC) No 178/2002).

## Government Decree No 172/2015 Coll on laying down notification obligations to recipients of certain types of food at the point of destination

Pre notification procedure fruits, vegetables and products of animal origin.

**Provisions and offences**

- Retailers and wholesalers have to notify 24 hours upon import of certain fresh fruit, vegetables and products of animal origin the origin of the product – even from within the EU.
- Some problems that may occur:
  - Especially for FMCG orders could be placed within hours due to supply and demand. A 24h pre notification is an unnecessary delay;
  - Especially in border regions this causes problems;
  - If fresh products are not pre notified in time the supplier needs to wait at the border until the 24h deadline has passed (truck would need to keep engine running for functioning of the cooling system).

**Offences**

- The decree should have been notified according to the procedure laid down in directive 98/34/EC.
- The notification procedure hinders the free movement of goods in a disproportionate way.
- The procedure is an infringement of the Official Controls Regulation ((EC) No 882/2004) which only provides the possibility to check products after arrival.
- The procedure is creating unnecessary administrative burdens and high costs, without clear benefits for consumers.

**Status**

- Entered into force 1 August 2015.

- 24 January 2019 the European Commission opened infringement procedure (case number 20164222) against the Czech Republic.
- 25 July 2019 the European Commission sent a Reasoned Opinion to the Czech government for not complying with the Letter of Formal Notice.

**Asks**
- The Commission should ensure that the decree is in line with EU law.
- The Czech Republic should withdraw the measure.

# France

## General obligation of conformity

*Article L212-1 Consumer Code*

**Provisions**
- Currently importers must ensure that all products placed on the European market are compliant and safe.
- For harmonised products, they must ensure that the appropriate procedures have been applied by the manufacturer.
- For non-harmonised products, compliance with national regulations and the obligations listed in order of importance in the General Product Safety Directive applies.

**The French GIFI ruling says**
- Imported goods must be inspected after their arrival in the country, consequently, the French authorities do not recognise test reports prepared by accredited organisations outside the EU or even outside France.
- Failure by the importers to carry out their own inspection goes against French law. As a result, importers are obliged to carry out their own inspections in France.
- To overcome the difficulties of applying the principle of mutual recognition, the European Commission undertook its codification. Therefore, Regulation 765/2008 stipulates that Member States must take account of the reports issued, provided that the laboratories were audited by an accredited organisation.
- These laboratories could therefore be in China – examples are LCIE and UTAC labs whose Chinese subsidiaries received accreditation from the COFRAC (the French accreditation body) where their reports must be taken into account by the market surveillance authorities.
- Yet, in France, the GIFI arguments for the need to test products in France are further confirmed by recent audits -excerpt from a letter from the DGCCRF (audits of the regional directorates of the DGCCRF – 2015 – 2014 – 2013).
- Consequently, most businesses act in compliance with these national requirements and very few of them use the right of recourse available at national or European level.

**Offence**
- It violates the mutual recognition principle, a pillar of the Internal Market, as established in Articles 34-36 of the TFEU and in the Regulation (EU) 2019/515.

**Status**

- In force.

**Ask**

- Greater enforcement of the Regulation 765/2008: Member States must take account of the reports issued, provided that the laboratories were audited organisations outside the EU or even outside France.
- Better recognition of the presumption of conformity applied on the European market. It also implies a better recognition of tests of compliance by certified laboratories prior to importation.
- Find an effective way to step up the application of the principle of mutual recognition, specifically to recognise test reports issued by market surveillance authorities
- Create a European base of definitions and responsibilities that is not open to interpretation.
- Based on the compromises obtained during the legislative process for the draft Safety Package, we propose to level the playing field around on key issues sur as the definition of "placing on the market".

## Commercial Urban Planning

**Provisions**

- Opening a store in France takes at least 6 months for a renovation and several years for establishment.
- Establishment permit procedure is particularly obscure, since the French public authorities require a large number of studies, evaluations and justifications. Additionally, there has been an increase in commercial urban planning reforms in the recent years, which makes the opening of and operating physical stores more difficult
- As a result, there is an increase in the costs. In addition, the lack of clarity of regulatory tools may also deter operators from entering the market.

## Label on construction and wall/floor decoration products of VOC emission class (A✦, A, B, C, D)

*Environmental Code Art.L221-8: Art.180 of Law 2010-788 of 2010 July 12th 'providing National Commitment to the Environment (Law "GRENELLE II")*

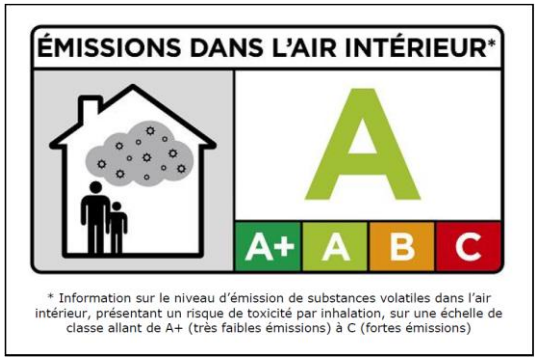
*Decree no 2011-321 of 23 March 2011 and Order of 13 May 2011 – relating to the labelling of construction products, wall or floor coverings and paints and lacquers with their volatile pollutant emissions*

**Provisions**

- Products need to be relabelled specifically for the French market, increasing costs without clear benefits to consumers.
- The decree implements a mandatory emission classification label of all construction products and other products used, exclusively or otherwise, indoors, based on emission testing, starting in 2012.

- The decree introduces an obligation to indicate on a label, placed onto the product or its packaging, the volatile emission pollutants when the product has been incorporated into the building or applied on a surface.
- The label on the products includes a large letter indicating the highest (worst) emissions class of the listed individual substances and the TVOC.
- The label must be 15 mm x 30 mm minimum, coloured or black & white. It includes a mandatory wording, in French: “Indoor air emissions” (“émissions dans l’air intérieur”).

**Example**




The label must be accompanied with a legible sentence, in French:
**English:** "*Information about the indoor air emissions of volatile substances posing an inhalation toxicity risk, on a scale from A+ (very low emissions) to C (high emissions)".
**French:** "* Information sur le niveau d’émission de substances volatiles dans l’air intérieur, présentant un risque de toxicité par inhalation, sur une échelle de classe allant de A+ (très faibles émissions) à C (fortes émissions).
Emission classes are based on their emissions after 28 days tested in line with ISO 16000 standards and calculated for the European Reference Room.
Possible heavy penal sanctions if the label is missing: €1,500 per product without label (€7,500/ product if the company is prosecuted).

**Status**
- In force.

**Ask**
- The French government should abolish this unnecessary mandatory national labelling requirement that fragments the internal market and hinders the free movement of goods.
- Besides, the different classes may not be understood by customers in various countries. The classes may be in contradiction with other existing rules in other countries.
- The Commission should examine which mandatory information requirements are really necessary and allow businesses to provide ‘nice to know’ information via modern digital technologies without overloading consumers with information they cannot absorb.

## Label on Furniture and furnishings of VOC emission class (A✦, A, B, C, D)

*Environmental Code Art.L221-8: Art.180 of Law 2010-788 of 2010 July 12th 'providing National Commitment to the Environment (Law "GRENELLE II")*

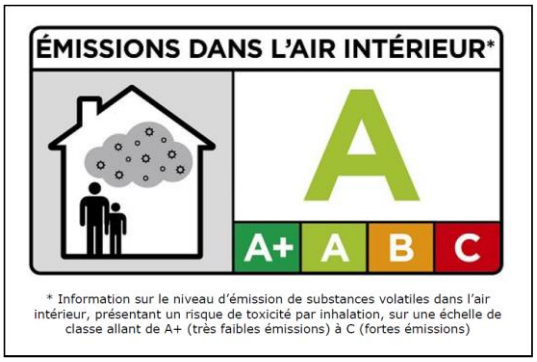
*Draft Decree (still under discussion) relating to the labelling of furniture and furnishings with their volatile pollutant emissions*

Products need to be relabelled specifically for the French market, increasing costs without clear benefits to consumers.

**Provisions**

- The planned legislation will implement a mandatory emission classification label of all furniture, exclusively or otherwise, indoors, based on emission testing, starting 01/01/2018.
- It will introduce an obligation that concerned products "will only be able to be made available on the market only if accompanied with a label (on product or packaging), indicating their emission characteristics of volatile pollutants in the product. In the frame of distance selling, this label shall be added to the product description. For other types of sales, the label shall be placed on the product or its packaging or in the vicinity of it so that it does not exist any uncertainty about the product to which it is applicable."
- The label on the products includes a large letter indicating the highest (worst) emissions class of the listed individual substances and the TVOC.
- The label must be 15 mm x 30 mm minimum, coloured or black & white. It includes a mandatory wording, in French: "Indoor air emissions" ("émissions dans l'air intérieur").

**Example**




The label must be accompanied with a legible sentence, in French:

**English:** "*Information about the indoor air emissions of volatile substances posing an inhalation toxicity risk, on a scale from A+ (very low emissions) to C (high emissions)".

**French:** "*Information sur le niveau d'émission de substances volatiles dans l'air intérieur, présentant un risque de toxicité par inhalation, sur une échelle de classe allant de A+ (très faibles émissions) à C (fortes émissions).

Emission classes are based on their emissions after 28 days tested in line with ISO 16000 standards and calculated for the European Reference Room.

Possible heavy penal sanctions if the label is missing: €1,500 per product without label (€7,500/ product if the company is prosecuted).

**Status**

- The draft law was notified to TRIS (2017/22/F), and the standstill period expired on 20 July 2017.
- The draft law is not withdrawn but still pending.
- Italy, Latvia, Poland, Spain, United Kingdom issued a detailed opinion, Austria, European Commission, Germany issued comments, and a number of other stakeholders made comments too.

**Ask**

- The French government should avoid to implement unnecessary mandatory national labelling requirement that fragment the internal market and hinders the free movement of goods. Besides, the different classes may not be understood by customers in various countries. The classes may be in contradiction with other existing rules in other countries.

- The Commission should examine which mandatory information requirements are really necessary and allow businesses to provide 'nice to know' information via modern digital technologies without overloading consumers with information they cannot absorb.

## Label to inform the consumer that the product falls within waste-sorting instructions on all recyclable products subject to Extended Producer Responsibility (packaging, paper, textile, furniture…)

*Decree 2014-1577 of 23 December 2014 relating to the common symbol of recyclable products which are subject to waste-sorting instructions.*

*+ TRIMAN unified recycling signage and marking system, User's Handbook (V2. December 2015)*

**Provisions**

- Products need to be relabelled specifically for the French market, increasing costs, fragmenting the internal market and without clear benefits to consumers.
- The Decree is providing an obligation, as from 1st January 2015, to label with following label all "recyclable" products, covered by an Extended Producer Responsibility scheme in France and subjected to specific waste-sorting instructions:

- Recyclable products = "Products that can be effectively recycled considering the actual technical and economic conditions". The label has to be 1cm² minimum, visible, legible, indelible, not hidden.
- The EEE, batteries and household chemical waste are excluded as they must already bear a crossed-bin label:

- Alternatively, if not applied directly on the product, the symbol may appear on the packaging, the instruction manual or any other media, including dematerialized.
- Even though the decree itself does not contain any sanction in case the label is not applied (sanction planned in draft text was removed after TRIS Notification and comments from Commission and other countries), as the Decree was transposed into the Environmental Code, not applying the symbol.
- NOTE: Even though the decree itself does not contain any sanction in case the label is not applied, (sanction planned in draft text was removed after TRIS Notification and comments from Commission and other countries), the legal risk is real and possibly high if symbol is not properly used.
- In the final French Decree published in 2014 in the French Official Journal, the sanctions initially included in the draft notified to the EU Commission were removed due to issue of comments by Belgium, Italy, Netherlands, Slovakia and issue of detailed opinion by Commission, Luxembourg, Portugal, Spain, United Kingdom.
- But it appears that France has found a way to go around the problem by referring to a general provision present in the Environmental Code. That provision provides heavy penalties (fine up to € 100.000 and 2-year imprisonment) in case of non-compliance to certain requirements of the same Code, including the one referring to "Triman" symbol.


This is clearly specified in the TRIMAN User's Handbook (Dec.2015) edited by the Ministry of Environment:
Europe.

That is creating a very high legal risk for EU companies selling concerned products on the French market.

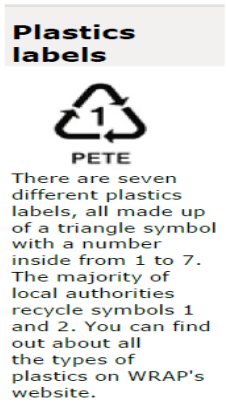
If we consider that the FR decree states that there must not be labels confusing with the French symbol, the difficulties will come if one product is submitted to various labels due to various legislations or standards within.

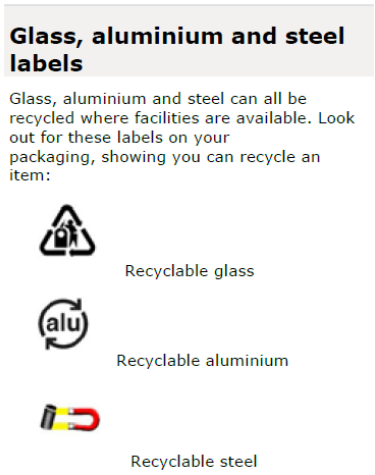
**Status**

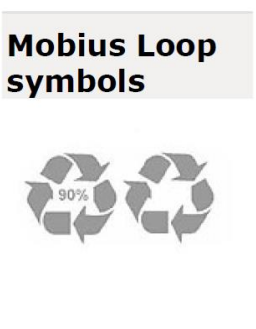
- In force.
- In France 2023 the Commission opened an infringement procedure against France on the TRIMAN logo.

**Ask**

- The French government should abolish this unnecessary national labelling requirement that fragments the internal market and hinders the free movement of goods. Besides, the different classes may not be understood by customers in various countries. The classes may be in contradiction with other existing rules in other countries.
- The Commission should examine which mandatory information requirements are really necessary and allow businesses to provide 'nice to know' information via modern digital technologies without overloading consumers with information they cannot absorb.


## EGALIM III – Trading relations with producers – Unfair Trading Practices Directive

*Tendant à renforcer l'équilibre dans les relations commerciales entre fournisseurs et distributeurs – (Loi Descrozaille)*

**Provisions**

- The law restricts the freedom of retailers to use the Single Market by imposing the application of French law in any negotiation involving products destined for French retailers' shelves.
- The idea is to support French producers against retailers.
- It gives huge powers to the manufacturers. Mainly to stop supplies and cancel the contract. This right in case producers and retailers do not find a common ground. This power is given only to suppliers.
- It affects central purchases and retail alliances.
- Retailers are refrained from making joint purchases with retailers present in other countries. This makes easier for multinational brands to establish Territorial Supply Constraints (TSCs) and obstacles to the free movement of goods. It increases unnecessarily the final price of the good for the consumer.
- It can result in an extension of the delivery times and in a restriction on the choice of products for consumers.
- French retailers and wholesalers are obliged to source an identical product available in neighbouring markets for a higher price than it is available for in the French market.

**Offences**

- It constitutes a restriction to the free movement of goods in the EU.
- The Commission should assess the proportionality of this law and whether it's in line with EU law, mainly Single Market and Competition law.

**Status**

- In force since 22 March 2023.

**Asks**

- The Commission should ensure the application of Single Market principles, including parallel importing, by all operators, including suppliers, so that consumers can truly benefit from it.
- The Commission should act on infringement cases.
- The Commission should assess the proportionality of the measure and its impact on consumers.

# Germany

## State planning laws for state plans/state planning programs and regional plans

**Establishment restrictions – urban/commercial planning**

- The establishment of any business (incl. industry, services) has to be in line with the German system of spatial planning and zoning legislation consisting of different federal, state and regional laws and regulations.
- This legislative framework - including the planning rules - aims to ensure the vitality of city centres and an optimal supply for the population of all regions in Germany. All retail formats can be established in city centres, including large scale retail. Large scale retail must be subject to defined rules based on the usually considerable external effects or attracting force: The large scale retail may not impair neighbouring municipalities (Prohibition of Impairment), must be situated at integrated urban locations (Integration Principle) and its catchment area may not materially exceed the city and surrounding area (Congruency Principle).
- Large scale retailers who wish to build outside central supply areas have to limit their centre-relevant range.
- Regional plans often restrict the municipality's right of planning/permitting retailers of more than 1200 m2 floor space and 800 m2 sale space with the reason that they can have a negative impact on the supply structure for consumers in the region.
- Exceptions are possible subject to a case-by-case assessment following a standardised procedure.
- The European Commission and two companies claim that in some regions the urban planning rules conflict with the principle of freedom of establishment and infringe the Services Directive by applying economic criteria to allow retail permits.

**Asks to the Commission**

- Carry out regular checks that regional urban planning rules are in compliance with EU legislation and the principles of the Single Market;
- Ensure that restrictions to the freedom of establishment are proportionate, non-discriminatory and necessary;
- Collect best practices of (regional) urban planning rules in each Member State to ensure optimal supply of the population, contribute to the preservation of vibrant city centres and promote a high diversity of retail formats, while respecting EU legislation on freedom of establishment; compare these best practices at EU level and use them as guidance to assess compliance with EU legislation.

**Status**

- EU-infringement proceeding against Germany started in 2009. A second letter of formal notice was sent to Germany in June 2015. No follow-up since then.

# Greece

## National and local planning laws

**Establishment restrictions – urban/commercial planning**

- Necessary to obtain an approval of environmental terms in order to obtain a building permit for projects over 20,000 m2
- Retail shops above 1,500 m2 need an approval from the region and/or the municipality in order to operate outside the greater Athens and Thessaloniki areas.

**Asks to the Commission**

- Ensure that restrictions to the freedom of establishment are proportionate, appropriate and necessary, and that city centre relevant range limitations, arbitrary size limits, planning permits that limit and new products, are avoided.
- Set up an expert group (with retail expertise) to develop guidelines aimed at harmonising interpretation and practices.
- Act more rapidly on infringement cases by strengthening enforcement control and speeding up infringement procedures.
- Carry out regular checks that national legislation is in compliance with EU legislation and the principles of the Single Market.

# Hungary

## Restriction establishment - Act CXII of 2014 on Modification of Act CLXIV of 2005 on Trade in connection with operation of undertakings in the interest of fair market practice

**Restrictions freedom of establishment World Heritage areas**

- Definition of hypermarkets and supermarkets was extended with wholesale activity.
- World Heritage: it is prohibited to establish and operate discount stores (400 m2 and above), supermarkets (2,500-5,000 m²) or hypermarkets (5,000 m² and above) on places belonging to the World Heritage defined by a separate law. Current stores may be operating until January 1st, 2018.

**Status**

- In force since 1 January 2015.

**Asks**

- The Commission should analyse if the restrictions to establishment are lawful, justified and proportionate and if the policy objectives of this law cannot be met by other less burdensome means.

## New “Plaza Stop” Act / Built Environment Act

**Restrictions retail establishment**

- Based on the amendment to Act LXXVIII of 1997 on the Built Environment the Government issued a decree setting out the technical, environmental, etc. conditions to constructing retail units with a surface greater than 400m².
- In practice, this could:
  - hinder retailers to construct new supermarkets or hypermarkets on lands already purchased;
  - for the same reason, lower the market value of land already purchased;
  - generally hinder retailers to construct further supermarkets or hypermarkets; and

  - hinder retailers to extend/develop/refurbish already existing supermarkets or hypermarkets.
- The additional provision (57/F. §) requires operators to make a similar assessment and obtain approval from the Competent Authority in case a commercial building of 400m2 or more is transformed or remodelled ("conversion permit").
- In order to understand the effect of the legislation, the historical development of the above is very important: the first restrictions were introduced in 2012 (Plaza Stop I), amended in 2015 (Plaza Stop II) and strengthened in 2018 (Plaza Stop III). Plaza Stop I was a restrictive and general law, in case of which the conditions of the relevant license were not defined. Plaza Stop II was introduced because the EU Commission required Hungary to define the procedure and conditions of the license. Although Hungary defined the conditions, in fact, they are still subjective and applied in a discriminative manner by the authority: international FMCG companies do not tend to receive any such license. As a result of the above, such companies started to rebuild existing buildings in order to open new stores. Plaza Stop III was introduced in order to restrict the possibility of rebuilding existing stores in order to open new stores (license requirement was introduced); in addition to the above, if the selling area of a store is amended, a license is required. *The tendency is that the Government intends still to restrict the expansion of international retailers which restrictions hinder also the modernisation of existing stores.* Further, beside of the Plaza Stop legislation, there is a strict parking place regulation (pro 10m2 selling area, a parking lot is required).
- European Parliament wants EU to sign up to Convention on recognition and enforcement of foreign judgments in civil and commercial matters Brussels, 23/06/2022 (Agence Europe) – The resolution by Sabrina Pignedoli (NI, Italy) recommending EU accession to the Convention on the recognition and enforcement of foreign judgments in civil and commercial matters was adopted by 576 votes to 8 with 14 abstentions on Thursday 23 June. Accession to this Convention will allow judgments in favour of EU companies or citizens to be enforced by an EU court in non-EU countries and territories, and vice versa in cases where the foreign judgments comply with EU law. The European Commission submitted this proposal in July 2021 (see EUROPE B12764A6). (Original version in French by Léa Marchal).

**Status**

- The Decree is in force since 1 February 2015, amended in August 2018.

**Asks**

- The Hungarian government should make sure that the application of the law is justified and proportionate.
- The Commission should assess if the law is in line with EU law.

## Act CLXVIII of 20 December 2010 on change of certain laws affecting the food retail sector

**Obligations in contrast to general principles of confidentiality:**

- The retailer has to publish the general contractual conditions of the supplier contracts on the internet or in a space accessible to consumers and has to send this to the agricultural administration body (National Food Chain Safety Office).

- The retailer of a certain size is obligated to publish in his business report the content of the services of the retailer to the supplier, the conditions for the delivery of these services, the maximum amount to be paid for its services.
- The obligation to create and publish a business report does not refer to a retailer whose net revenue in the previous year did not exceed 20 million Hungarian Forint.
- In case of breaches, the agricultural administration body can order a penalty of between 100,000 and 500,000.000 Hungarian Forint, not exceeding 10% of the trader's net turnover from the financial year previous to the date of the ruling establishing the infringement.
- Recourse to legal action for retailers is limited to one instance (with no recourse to appeal).
- The observation and enforcement authority is the agricultural administration body, for which the suppliers in the food industry can be considered as being part of its clientele. Due to the many undefined legal terms the agricultural administration body has a large scope of discretion.

**Status**

- In force since 1 February 2011.

**Asks**

- The Hungarian government should create and ensure legal certainty for all businesses. The restriction of contractual freedom can hinder existing genuine business models in the Single Market and therefore become a trade barrier and hinder investments.
- The Commission should assess if the law complies with EU law.

## Significant Market Power - Act CXII of 2014 on Modification of Act CLXIV of 2005 on Trade in connection with operation of undertakings in the interest of fair market practice

**Presumption of dominant market position**

- A conclusive legal presumption was introduced under which all retailers with net sales revenue from retail activities in excess of HUF 100 billion (approx. EUR 333 million) have a dominant market position.
- For example, a company in a dominant market position is prohibited from:
  a. restricting production, distribution or technical development to the detriment of final trading parties;
  b. refusing to establish or maintain business relations adequate for the nature of the transaction without any justification;
  c. influencing the other party's business decisions for the purpose of gaining unjustified advantages;
  d. rendering the supply and acceptance of goods contingent upon the supply or acceptance of other goods, or to render the conclusion of a contract conditional upon undertaking any commitment which, due to its nature or with regard to the usual contractual practice, does not form part of the subject of the contract;
  e. in connection with transactions of an identical value or of the same nature, discriminating against certain business partners without due cause, including the setting of prices, payment deadlines, discriminatory sales or purchase conditions or the employment of methods which cause disadvantage to certain business partners in the competition;

f. forcing competitors off the relevant market, or to use excessively low prices which are based not upon better efficiency in comparison to that of the competitors, so as to prevent competitors from entering the market; etc.

If any of the above conducts were established in connection with a given retailer, it would automatically be found to have infringed competition regulations without the Hungarian Competition Authority having to prove that the given retailer was at the same time also in a dominant market position.

**Status**

- Entered in force 2 January 2016 meaning the provision will be applied on the basis of the 2015 results of the retailers.

**Asks**

- The Hungarian government should safeguard that the law is justified and proportionate.
- The Commission should assess if the law is in line with EU law and does not hamper competitiveness in the Hungarian market.

## Hungarian Community Marketing Fund operated by the Milk Board- FM Decree No. 2/2015 (II.66)

**Provisions and offences**

- On 6 February 2015, Hungary's Minister of Agriculture issued a decree that obligates wholesalers, retailers and milk processing entities operating in Hungary to pay a contribution to the Community Marketing Fund operated by the Milk Board, the association of the Hungarian milk industry, to promote the consumption of milk. The levy to be paid is based on the total turnover of milk and milk products i.e. milk produced in and outside Hungary. The Milk Board, however, grants an exemption from the obligation to pay the levy to those entities that they subscribe as users of the Milk Board's trademark for milk products. The levy discriminates foreign milk for the following reasons:
- Entities with high turnovers are incentivised to opt for the use of the Milk Board's trademark (which cannot exceed HUF 5m per year) instead of paying the levy (which amounts to 0,05 percent of turnover of milk and milk products).
- Wholesalers and retailers may only subscribe as users of the Milk Board's trademark if milk and milk products of non-Hungarian origin amount to less than half of their turnover of such products.
- The Milk Board's trademarks are only available for milk and milk products that were produced in Hungary.
- This is an infringement of the free movement of goods.

**Status**

- In force from 15 February 2015 until 31 December 2024.
- Further extensions of the deadline are expected.

**Asks**

- The Hungarian government should abolish the discriminatory practices.
- The Commission should ensure that levy is in line with EU law.

## Hungarian retail sales tax amended ✦ additional tax

Originally designed as a temporary crisis measure, the tax has now been made permanent. Indeed, the tax rate has been progressively increased affecting only international companies with relatively high turnover. Despite the commitments made by the Hungarian government to Commission by not making the situation any worse and decreasing the tax, this has been dismissed by the Hungarian government and further increases have been introduced.

**Details of the tax**

- The tax base will be all (food & non-food) net retail sales, with cash tax payments on account due at the end of each month starting from 31 May 2020, using last year's retail sales divided by 12 for these payments on account.
- The tax was amended on 4 June 2022 (Extra Profit legislations): (i) for 2022, the legislation introduced a one-time extra tax (which is 80% of the tax paid in the last business year) in addition to the retail tax; (ii) for 2023 the tax rates were increased again.
- The tax brackets / rates are:
  - 0% on net sales revenue falling in the range of HUF 0 - HUF 500 million (€1,4 million);
  - 0.1% on the part of the net sales revenue which exceeds HUF 500 million up until HUF 30 billion (€85 million); from 2023, the rate is 0.15%;
  - 0.4% on the part of the net sales revenue which exceeds 30 billion up until HUF 100 billion (€285 million); from 2023, the rate is 1% and
  - The tax has been increased for 2022 from 2.5% to 2.7%. on the part of the net sales revenue which exceeds HUF 100 billion; for 2023, this rate was raised again up to 4.1%.
- The new retail tax will also apply to retail sales made by companies outside of the country to Hungarian customers via ecommerce.
- Mainly retail chains that are centrally organised are subject to the tax. As Hungarian market players are organized in franchise systems, they pay the lower rate, the international market players the highest.

**Status**

- According to the government only profit of retailers is affected by the law, but this is in practice not true. Retailers have traditionally a large turnover but low profit margins. In food retail margins are on average 1 to 3%. Turnover does not say anything about the profitability of retailers and is in EuroCommerce's view the wrong basis to tax retailers.
- In addition to the above, retailers are selling certain food products for which the Hungarian government introduced a price cap at a loss which has a negative affect on profits
- The increase of the tax levy on turnover will most likely lead to a situation where certain retail chains will be no longer profitable this and/or next year.

**Additional tax proposal**

In June 2022 the Hungarian government decided to propose a new and additional 'excess profit tax' on retailers and published a framework law early June 2022. It was amended in May 2023. The latest amendmend would apply for the year 2024. (*s. Magyar Közlöny 2023. évi 79. szám,*).

**Provisions of the additional tax**

- In 2022 retailers pay the above listed tax rates plus a new exceptional "excess profit tax" for 2022. This amounts to 80% of the crisis tax paid in 2021 payable as a lump sum.
- In 2023 no lump sum is imposed but increased tax rates as follows:
  - 0% on net sales revenue falling in the range of HUF 0 - HUF 500 million (€1,4 million);
  - 0.15% on the part of the net sales revenue which exceeds HUF 500 million up until HUF 30 billion (€85 million);
  - 1% on the part of the net sales revenue which exceeds 30 billion up until HUF 100 billion (€285 million); and
  - 4.1 % on the part of the net sales revenue which exceeds HUF 100 billion that should apply for 2023. After a commitment made by the Hungarian government to the Commission for not making the situation any worse by removing the tax increase from 2.7%, previously in place, to 4.1% for this threshold, the Hungarian government dismissed its Commitments with the Commission and on 31 May increased the retail tax for this threshold to 4.5% for 2024. Additionally, the margin of retail and wholesale's sectors is usually below 3%. In other words, the introduced excess profit tax is effectively a turnover tax. Therefore, this law will probably force all big players -usually foreign companies- to exit the Hungarian market. This situation will lead to the exit of all foreign-owned retailers.
- So far, this tax is limited to the years 2022/2023, but it may be extended. Under the Recovery and Resilience Facility, Hungary committed to not extending the retail tax at 4.1% beyond 2023 or not worsening the situation by further increasing the tax. However, the Hungarian government proposed on 31 May a tax increase for the highest threshold that would go from 4.1% to 4.5%.
- Since most of national businesses function under a franchise regime, their turnover is hardly ever above HUF 500 million. This leads in practice to their exclusion from the tax.
- International retailers are prohibited from restructuring their corporate structure in a similar way to optimise their tax obligation.

**Asks**

- The Commission should ensure that the tax is consistent with EU law.
- The Hungarian government should ensure a business-friendly environment for all EU-based retailers in Hungary and should allow businesses to make profit.
- The Hungarian government should comply with its commitments made to the European Commission.
- The Commission should review the Commitments undertaken by the Hungarian government and make sure that these are fulfilled.

## Food Waste Prevention act

**Restrictions retail establishment**

- Foodstuff with an expired date of minimum durability (but not with an expired use by date) may be placed on the market free of charge, provided that it complies with the requirements set out in Regulation (EC) No 852/2004.
- The regulation **differentiates between food retailers** with net sales of more than HUF 100 billion (approx. EUR 270 million) in the previous calendar year (hereinafter referred to as "**100+ Retailers**") and other food business operators. Stricter rules apply to 100+ Retailers which are typically multinational retailers:

  - 100+ Retailers are entitled to donate food to the benefit of a charitable organization and obliged to offer it free of charge at least 48 hours before the expiry of the date of minimum durability.
  - Other food retailers are only entitled to donate to charitable organizations but are not obliged to offer it free of charge at least 48 hours before the expiry of the date of minimum durability.
- The legislation can be interpreted in a way so that multinational retailers cannot sell the relevant food in the last 48 hours before expiry, while other retailers can. There is no need to donate it before said expiry date – in several cases, food products may even be donated months after the passing of their expiry date.
- The Hungarian Government established a **Food Rescue Center** – a non-profit undertaking **owned by the Hungarian State** – to coordinate and monitor nationwide food redistribution. The Food Rescue Center is not designated as a charitable, non-profit organization. As a result, retailers are expected to cover VAT and corporate income tax for donated products – even if the final beneficiaries are charitable organizations.
- The competent authority may under certain circumstances impose a **food rescue fine up to 0.6% of the food chain supervision fee**.

**Offences**:
- The law against food loss **discriminates against – mostly foreign owned – 100+ Retailers**, as only they are subjected to restrictive donation rules. In this sense, the law could be interpreted as a form of **coercion to donation or quasi-expropriation of goods**.
- The law provides for a **limitation of property rights** without a justifiable reason – an effective food waste redistribution system is already in place.
- **The law lacks proportionality**, as only a small number of market actors are subject to serious limitations of rights.

**Status:**
- New rules introduced starting from 1 February 2022.
- All food retailers must also prepare and follow a food waste reduction plan, which was to be submitted for the first time by 31 May 2022. In addition, all food retailers must perform food rescue activities in accordance with their respective plans and appoint a food rescue officer.
- Currently, the Food Rescue Center did not properly start its operations. Therefore, no data transfers are taking place at the moment. However, currently it does not have an adequate, modern data transfer software system to support the flow of donations and has to be monitored how this will be further developed.

**Asks:**
- The Hungarian government should make sure that the application of the law is justified and proportionate.
- The Commission should assess if the law is in line with EU law.
- Certain goods cannot be de facto donated such as frozen or refrigerated products and alcoholic beverages. Such products should be exempted.
- For products with a minimum date of durability between 48 hours and 14 days – such as baked goods – the law has drastically reduced retailers' sales time frame. Products that fall into this category should therefore equally be exempted from the law.

## DRAFT: Unfair Trading Practices – Ban of comparative advertising

Amendment Nr. T/6075. of Act XCV of 2009 on the Prohibition of Unfair Trading Practices Applied Against Suppliers Relative to the Marketing of Agricultural and Food Products

**Provisions**

- Ban on comparative advertising without the express consent of the suppliers of the product. This would be considered an unfair trading practice.
- In practice, it prohibits the use of comparative advertising, hindering competition.
- Comparative advertising is already regulated in Hungary in the Act on Business Advertising Activity and supervised by the Hungarian Competition Authority.

**Status**

- Parliament has voted in favour of the amendment, which is awaiting promulgation.

**Asks**

- The Hungarian government assess whether this measure is proportionate.

## Promotion Obligation

Government Decree 162/2023 of 5 May 2023.

**Provisions**

- Follow up measure of the previous price caps on certain food products, it applies to almost the same product categories.
- The Hungarian government established a markup obligation forcing retailers to sell certain food products at a loss: 15% below supply price. Retailers are forced to have these products in stock.
- It affects companies with a turnover higher than HUF 1 billion.
- Retailers are forced to carry out the burden for the whole supply chain as the price cap does not affect suppliers/wholesalers.
- Consequently, traders are forced to sell at a loss without compensation.
- Obligation to keep stocks. Delisting prohibited.
- The authority introduced strict control with short deadlines and high fines. In January 2023, the minimum mandatory quantity of stocks of products covered by the price cap was doubled, making bigger the retailers' losses.

**Status**

- In force from 1st June 2023.
- Extended several times until the end of June 2024.

**Asks**

- The Commission should assess whether this measure is proportionate and does not affect the supply chain.

## Price Monitoring

Government Decree 163/2023 of 8 May 2023.

**Provisions**

- This Decree obliges retailers whose turnovers in the previous business year exceeded HUF 100bn (covering all members of EuroCommerce) to supply price data to the price-monitoring system operated by the Hungarian Competition Authority (the GVH) as of 1 July 2023.
- Retailers whose annual turnovers did not exceed the HUF 1bn threshold during the previous business year may supply data on a voluntary basis.
- Retailers must supply the GVH with price data by the end of the day preceding the day on which the price will become applicable. The price data must include the lowest daily retail prices of products, which are to be identified at a later stage by the Minister in charge of economic development. The GVH must ensure public access to the collected price data.

**Status**

- In force as from 1 July.
- Extended until 30 June 2024.
- Products groups will be extended.

**Asks**

- The Hungarian government should assess whether this measure is proportionate and does not pose additional burdens on companies.

## Circular Economy

Government Decree 80/2023 (III. 14.) on detailed rules for the operation of the extended producer responsibility system (EPR)
DRS

**Provisions**

- EPR: Hungary has introduced extra high rates which will have a negative effect on the purchase price of goods.
- DRS: in Hungary a concessor, MOHU (a company of the Hungarian Oil Company), took over the obligations of the State/Producers and introduced a system, where retailers are obliged to take back one-way goods, however, the ownership of the goods belongs to MOHU. The DRS system is extremely expensive and had a negative effect on purchase price of the goods. In addition to the above, the legislation introduces a deposit logo which the label must contain. Manufacturers or the first trader in Hungary must register the product in the system and send a sample product to the system operators 45 days before the import of the forint. Without this, the product cannot be placed on the Hungarian market.
- Retailers will also have to pay a service fee and a connection fee. If the trader is the first distributor in Hungary, he is also obliged to pay the DRS fee. For grocery stores with a sales floor larger than 400 square it is mandatory to have a DRS-machine in the store. The machine is provided by MOHU and the retailer is entitled to a handling fee for the returned bottles.

The costs of installing the vending machine (e.g. construction) will not be reimbursed to the retailers.
- According to the accounting and tax legislation, the consideration for the product plus the deposit fee for the single-use product is recorded as net sales revenue. That means, the deposit fee charge subject to retail tax. As this item does not show up as actual sales revenue for the trader (since it is paid to the consumer on the returned bottle) traders would have to pay retail sales tax on an item with no real sales result.

**Status**
- EPR: In force as from 1 July 2023.
- DRS: in force as from 1 January 2024

**Asks**
- EPR: the fee is extremely high. According to the legislation, it should be proportional in terms of costs.
- DRS: the costs of the system are high; not just because of the above-mentioned cost and fee but also because of the tax regulation of the DRS. According to a new legislation draft deposit fee deposit fee is recorded as net sales revenue. That means retailers should pay retail-tax after the deposit fee as well.
- Cross financing: as MOHU is not only responsible for industrial waste, one-way products, but for communal waste as well, in case of which the state introduced a price cap. It can not be excluded that MOHU intends to finance communal waste related engagement from the fees earned from DRS and EPR. This would be contrary to the EU legislation.

# Italy

## Ministerial Order for labelling October 14, 1981

**Labelling requirements provisions**
- Need for labelling in Italian of all products containing down and feathers that they comply with the legislation. “L’imbottitura è stata sottoposta al procedimento di bonifica di cui al D.M. 10/11/76 e D.P.R.  N. 845 del 23/1/75”.

**Offences**
- The laws limits the free movement of goods.

**Status**
- In force

**Asks**
- The Italian government should abolish this unnecessary national labelling requirement that hinders the free movement of goods.
- The Commission should ask the Italian government to abolish the labelling requirement.

## Health Ministry decree of 21 March 1973 on 'Hygiene rules for packaging, containers and utensils intended to come into contact with foodstuffs or personal-use products', relating exclusively to stainless steel.

**Provisions and offences**

- Italian authorities don't apply the principle of mutual recognition for foreign stainless steel products, thereby fragmenting the internal market and creating additional costs without benefits to consumers.
- In the absence of harmonised EU legislation, the guidance document published by Council of Europe in the Resolution CM/Res(2013)9 on metals and alloys used in food contact materials articles is a strong and valid tool to ensure safety for consumers.
- CM/Res (2013)9 offers a well-documented and in-depth guidance in order to ensure compliance with Article 3 of Frame Regulation (EC) No 1935/2004.
- The 1973 Decree stands in conflict with the metal ions migration limit values given in CM/Res (2013)9. The Decree has a default of 0.01 ppm for three metals ions (Cr, Ni, Mn), while CM/Res (2013)9 has settled different release limits for 21 metals ions based on toxicological evaluations. The conflict in limits creates confusion and makes it difficult for business operators to relate to one or the other.
- A second complication arises when the 1973 Decree stands in conflict with CM/Res (2013)9 in terms of selected food simulant for acidic food and test principal. In CM/Res(2013)9 the appointed acidic food simulant (citric acid 5 g/L) is based on new and thorough scientific evaluations so that it represents real food in a more realistic way.
- The CM/Res (2013)9 also introduces a new approach when it comes to the measuring of the surface area based on the determination of the rectangular box enwrapping the food contact part of an article.
- As the Decree 1973 is not aligned with CM/Res(2013)9 in its methodology and we understand that a growing number of Member States are aiming to implement the guidance in their national legislation, the business operators will be obliged to perform two different kinds per product. In our view this is very inefficient and costly.
- In addition, recently a new obligation was introduced to notify (by July 31, 2017 for each store) to the health authority the trade of any food contact materials such as steel, plastic, glass, rubber, adhesives, cork, resins, inks; tissues, paper, cardboard, wood, etc. (Article 6 of Legislative Decree 29/2017 - named "MOCA notification"). This obligation is perceived as very burdensome and hindering the free movement of goods.

**Status**

- In force.
- TRIS notification 2015/213/I.

**Ask**

- Italian authorities should apply the principle of Mutual Recognition when assessing the presumption of conformity applied on the European market. It also implies recognition of tests methods and test reports of compliance by certified laboratories.

- EuroCommerce believes that a strong alignment and consistency of Italian legislation with CM/Res (2013)9, **signed also by the Italian authorities**, would ensure an equal level of safety to consumers and at the same time efficiency for economic operators.

## Regional planning laws

**Establishment restrictions – urban/commercial planning**

- In some regions the urban/commercial planning rules conflict with the principle of freedom of establishment as retailers are required to provide economic data in the context of the impact assessment of the retail project, typically for the largest structures; the mere fact that economic data is required from the applicant may infringe the Services Directive: DGR_04154_180_07112016_pdf (regione.piemonte.it)
- In many regions the urban/commercial planning rules conflict with the principle of freedom of establishment as extra fees (e.g., up to +30% of the urbanization costs in the Marche Region for very large retail structures) are imposed on medium and large structures of the retail sector only, originally to cover part of the urbanization costs but now requested for the most diverse purposes (e.g., to contribute to the revitalisation and development of small shops, particularly in city centres): DGR n. 1096 del 05.09.2022 - Allegato 1.pdf (regione.marche.it) (art.4)

**Status**

- A formal complaint has been submitted at national level on the illegitimacy of extra-fees imposed on medium and large retail structures as provided by the Marche Region law (art. 4).

**Asks to the Commission**

- Carry out regular checks that regional urban planning rules are in compliance with EU legislation and the principles of the Single Market.
- Ensure that restrictions to the freedom of establishment are proportionate, non-discriminatory and necessary.
- Check if these laws are in line with the Services Directive.

## Retail Establishment: Legislative Decree 25 November 2016, n.222

*While retail SMEs benefit from a simple notification of commencement of business activity (SCIA) - as acknowledged by DG GROW to the Italian authorities in the context of the RRI update) -, this simplified procedure is not applicable to large retail structures.*

Unclear powers for municipalities restricting services activities.

**Provisions and offences**

- Article 1, paragraph 4, of the decree gives municipalities the power to restrict authorisation for services activities in areas, if these activities are incompatible with the preservation of cultural heritage, after agreement with the Region, Minister of Cultural Heritage and Minister of Tourism, and possible consultation of stakeholders.

- Protecting cultural heritage is a legitimate public interest, but the decree is unclear on how a municipality should guarantee its decision not to grant an authorisation is proportionate and non-discriminatory. Therefore, the provision creates legal uncertainty for retailers and it is unclear what conditions a retailer should meet to obtain an authorisation.
- For example:
  - In Florence stores must have an assortment of almost 50% of Tuscan products;
  - Rome has prohibited new retail activities in UNESCO World Heritage Areas, obliges retailers to sell specific products or certified products (Protected Designation of Origin, Protected Geographical Indication), including labelling requirements;
  - Genoa prohibits new retail activities in the historical centre (also UNESCO World Heritage) and an obligation to display the list or raw materials used

**Status**

- In force since 28 August 2015

**Asks**

- The Italian government should ensure that all authorisation procedures relevant measures relating to the Services Directive are notified to the European Commission.
- The European Commission should assess if the provision is in line with EU law.

# Poland

## Act on Retail Sales Tax – entered into force on 1 January 2021

**Discriminatory and disproportionate tax**

- The Act entails:
  - The tax applies only to retailers
  - Online sales are exempt
  - Monthly turnover of less than 17M Zloty is exempt from the tax
  - Monthly turnover of 17M to 170M Zloty is subject to a 0.8 % tax
  - Monthly turnover exceeding 170M Zloty is subject to a 1.4 % tax
  - The application of the measure does not seem to be subject to any expiry.
- The tax would not apply to online sales
- The tax is discriminatory because it mainly affects large foreign retail chains and sets market players with large stores on a competitive disadvantage vis-à-vis retailers with smaller stores and online.
- The tax might have a negative impact on economic growth and jobs.

**Status**

- 16 May 2019 the General Court of the EU annulled the Commission decision that the tax constituted unlawful state aid. It considered the Commission assessment flawed, but did not assess whether the tax constituted unlawful state aid.
- The Commission has appealed, on 16 March 2021 the final ruling upheld the General Court's verdict.
- The tax has entered into force 1 January 2021.

**Asks**

- The Polish government should ensure that any law is justified, proportionate and non-discriminatory. This will foster competition to the benefit of Polish consumers.
- The Commission should make sure the tax is not applied in a discriminatory way.

## Shopping mall tax - Polish Corporate Income Tax Act

**Discriminatory tax against mostly foreign-based owners of big shopping malls**

- Among others, the tax introduces a monthly levy of 0.035% on the owners of buildings e.g. shopping malls and large shops (commercial properties) that have a value of more than PLN 10m (~€2,35m).
- In practice most bigger shopping malls and stores are owned by foreign investors, including foreign retail chains, which will pay most of the tax and making it discriminatory vis-à-vis smaller local players.
- On 1 January 2019 a number of amendments entered into force. The threshold amount applying to each individual building is now replaced by a PLN 10 million for all buildings together i.e. increasing the amount over which the tax is levied.
- The tax applies now to all buildings regardless the use.

**Status**

- The law came into force on 1 January 2018. The amendments entered into force 1 January 2019.

**Asks**

- The Polish government should ensure that any law is justified, proportionate and non-discriminatory. This will foster competition to the benefit of Polish consumers.
- The Commission should assess if the tax is proportionate, non-discriminatory and does not constitute unlawful state aid.

## Law on combating abuse of market power in contracts on purchasing farm and food products

**Preferential treatment of food suppliers**

- The law aims to eliminate unfair practices in food and introduces preferential treatment for food suppliers: protection moved from common courts to the competition authority (UOKiK). Suppliers of other products still need to seek redress via common courts.
- Every entrepreneur who suspects abuse of market power could report this to the competition authority (UOKiK) which is obliged to start an investigation.
- The law affects buyer and supplier equally, but the competition authority (UOKiK) said this law is aimed at large retailers and not suppliers.
- Competent authorities would have the power to demand access to all necessary documents, access to buildings and transport means.
- Non-cooperation could be fined up till 50 m EUR.
- The maximum penalty for violation of the law would be up to 3% of the turnover of the year before the punishment if the party unintentionally violated the law.

- The law extended the application of the UTP by introducing a new "black" practice that is completely prohibited, which is the lowering of the price retroactively for goods delivered, which depending on how this is interpreted, could lead to forbidding product rebates in promotions.

**Status**

- The law is in force since 11 December 2018.
- Amendments reference prices on the table.
- Several investigations have been initiated into large retailers.
- The law has been updated and includes the implementation Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain in Poland as of 1 May 2022.

**Asks**

- The Commissions should assess if the law is in line with EU law and ensure the law is justified, proportionate and non-discriminatory.

## Act on Combating Unfair Competition

**Unfair benefits for suppliers:**

- The interpretation of the civil courts: in order to remove all entrance barriers to the market place for suppliers, all agreements with terms on anything but retail margins are not permitted:
- All suppliers who have demanded back paid conditions have been awarded those by the courts.
- Modern, competition orientated retail is not possible any longer as e.g. different services and strengths of the different retailers can no longer be taken into account via conditions.
- The current business model based on conditions is not workable any longer, transition to n/n prices in necessary. It can be assumed that the market and the pricing structures will become more transparent and as a result competition will be hindered.
- Paradoxically it can be assumed that the court decisions are in fact hindering some suppliers from entering into the market as e.g. the risks of listing a new product 'flopping' for retailers can no longer be balanced between retailers and suppliers by conditions (e.g. through sales increasing measures).
- Law against unfair competition includes rule which stipulates that the ratio of own-brands in dis-count supermarkets cannot make up more than 20% of the overall product range. Due to lacking definition and details this rule is not applicable in practice.

**Status**

- The Polish government is working on a definition for discounters in relation to limit retailer brands.

**Asks**

- The Polish government should ensure a fair and neutral jurisdiction according to EU law.
- The Polish government should ensure legal certainty to assure investments and respect for retailers' business model.

# Portugal

## Food Safety Tax

*Article 9 of Decree-Law 119/2012*

**Discriminatory tax, possibly constituting unlawful state aid**

- Annual tax on food retailers "in return for the guarantee of food security and quality" with an annual revenue of about €7m.
- Exempt are food retailers with a sales area smaller than 2000m2 and micro-enterprises.
- The revenue of the tax go the Sanitary and Food Safety Fund (FSSAM), which is a state fund.
- The Fund´s activities - e.g. official food safety controls, support prevention and eradication of animal and plant diseases and encouraging qualitative development of agricultural products - mainly benefit the economic activity of agricultural producers (farmers) and which costs should thus normally be borne by them and not by retailers.

**Status**

- In force since 2012.
- 26 July 2017, the ECJ issued a preliminary ruling (Case C-519/16), but lacked sufficient information from the referring Portuguese Court to define if the tax is discriminatory and distorts competition.

**Asks**

- The Portuguese government should make sure the tax is in line with EU law.
- The Commission should ensure the tax is in line with EU law.

# Romania

## Transposition of the "Omnibus" Directive - consumer protection

*Government Emergency Ordinance 58/2022 for amending and supplementing normative acts in the field of consumer protection*

**Provisions and offences**

- It contains an incorrect transposition of the Directive. The original text of the Directive (EU) 2019/2161 considers as a misleading commercial practice '*any **marketing** of a good, in one Member State, as being identical to a good marketed in other Member States, while that good has significantly different composition or characteristics, unless justified by legitimate and objective factors'*. In the Romanian transposition the word "marketing" is replaced by '***commercialization'***, which is highly inaccurate.
- The use of the term 'commercialization' thus transfers the responsibility for the content of food and non-food products, which could have a differentiated quality - from the producer - the entity that has virtually the know-how and all the information in this regard, to traders of goods and which are practically unable to apply this provision since they do not have this information.

- New amendment proposal: *"In the case of an investigation of an activity of commercialization of a good on the national territory, presented as identical to a good sold in other member states of the European Union, although the respective good presented the suspicion that it has different composition or significant characteristics, traders who put on the market in Romania, have the obligation to submit to the National Authorities for Consumer Protection, at request, all the labels related to the goods sold in the other member states of the European Union, within 30 days from the date of the request, in order to verify and comparing the respective labels with that of the good sold in Romania.*

**Status**

- Applicable since 28 May 2022.
- The law approving and amending Government Emergency Ordinance 58/2022 is currently in the parliamentary procedure for final approval and is pending to be debated in the parliamentary committees.
- National Authority for Consumer Protection approved on 6 June 2022 the procedure for establishing and applying the sanctions provided in this rule.

**Asks**

- The Romanian authorities to review the interpretation and application of the Omnibus Directive in accordance with the guidance documents published by the European Commission on 17 December 2021, which detail: "*Therefore, compliance activities with Article 6 (2) (c) should focus primarily on producers of goods. Usually, retailers alone do not influence the composition or packaging of the products they sell*[3].The Commission should ensure the proper transposition of the Directive.

## Transposition of the Unfair Trading Practices (UTP) Directive

*Law 81/2022 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain*

**Provisions:**

- Some provisions may be disproportionate and could affect the proper functioning of the European Single Market. Therefore, and other provisions of EU law, could be a violation of the free movement of goods, freedom of establishment or a disproportionate burden on the retail sector and are subject to unclear interpretations which limit the principle of contractual freedom of the parties.

**Offences to the EU competition law**

- Restrictions on private label products - The restrictions imposed on private-label products prevent many food producers without strong brands (typically SMEs) from competing against the owners of strong brands (typically large food producers).
- Restrictions on discounts - The prohibition of quality discounts will reduce competition by limiting the ability of small, unsophisticated suppliers to sell through outlets of modern retail.

[3] https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52021XC1229(05)&from=EN

- The prohibition to return unsold agricultural and/or food products restricts competition from new agricultural and food products. This will reinforce brand addiction and strengthen the positions of strong brands to the detriment of new entrants.
- The prohibition to apply the same terms for retail and wholesale. By prohibiting to apply to the wholesale channel the commercial terms that were agreed for the retail channel, the Romanian UTP Law hampers competition on the wholesale market of agricultural and food products.

**Status**
- Applicable since 15 April 2022
- Subsequent regulatory acts: Government adopted an implementing regulation on the procedure for registration, investigation and settlement of complaints.
- Commission initiated communications with the Romanian authorities.

## Draft law banning large outlets from city and town centres

*PLx 195/2020 for the modification and completion of the Government Ordinance no. 99/2000 regarding the sale of products and services on the market*

**Provisions:**
- The draft law will exclude large outlets from city and town centres. This may be disproportionate.

**Status**
- The draft law is pending to be debated in the Chamber of Deputies – the decisional chamber, after passing by the Senate.

**Asks**
- The Romanian authorities should review the proportionality of the restriction in accordance with the Services Directive and the Visser Judgement -C-360/15 and C-31/16-.
- If approved, any restriction should be duly notified to the Commission in line with the Services Directive.
- The Commission should ensure the compliance of the rule with the EU law.

## Ban on products with Nutri-Score labelling

*Decision of the Romanian Consumer Protection Authority (ANPC) on the ban of products with Nutri-Score labelling*

**Provisions:**
- In September 2022, the Romanian Consumer Protection Authority issued a ban on products with Nutri-Score label in the Romanian market, as the authority considers it misleading to consumers.

**Status**
- The ban applies as from 1 February 2024.
- Initially, the decision should have entered into force on 1st of November 2022. Nevertheless, this was postponed several times until 1st of February 2024, in anticipation of the

Commission's proposal revising the Food Information to Consumers Regulation, which was expected in December 2022.
- In December 2022, EuroCommerce sent a letter to the Commission (DG GROW & DG SANTE) raising awareness on the principle of mutual recognition and free movement of goods.

**Offences**
- The decision constitutes a restriction to the free movement of goods in the Single Market.

**Asks**
- The Commission should ensure the compliance of the rule with the EU law and free movement of goods.
- The Commission should provide clear guidance on the application of the Unfair Commercial Practices Directive (UCPD).

# Slovakia

## Act No. 91/2019 Coll. of 28 March 2019 on Unfair Terms in the Food Trade Amending and Supplementing Certain Acts

**The act is infringing numerous provision of EU law and disproportionately violates the freedom of contract between retailers/wholesalers and their suppliers**

This new act is a review of the act on unfair trading practices from 2013.

**Contested provision (first part law, second part are amendments to the food law)**
- **Catch all clause:** any conduct not included in the inappropriate conditions list is liable to be determined as unlawful by the Slovak authorities.
- Limitation of logistics fees to 3% of the suppliers' turnover, for distribution services provided. Meaning retailers and wholesalers may have to provide such services at a loss. This provision was in the Letter of formal notice presented by the Commission.

**Status**
- Entered into force 1 May 2019.
- On 2 July 2020, the Commission sent a Letter of Formal Notice to Slovakia requesting it to remove restrictions in the food retail sector. Many of the previous infringements identified in it were removed. However, the limitation of logistics fees to 3% of the suppliers turnover remains in place.
- In the letter, the Commission considers that the Slovak measures create more advantageous marketing conditions for domestic products and restrict retailers' freedom to decide on their assortment and the layout of their sale surfaces. Such measures are against EU rules on free movement of goods and freedom of establishment, and result in barriers prohibited under Articles 34 and 49 TFEU, and under the Services and e-Commerce Directives.

**Asks**
- The Slovak government should refrain from disproportionate and unnecessary restrictions to the freedom of contract between retailers and their suppliers.

- The Slovak government should ensure legal certainty and ensure a business-friendly environment where all businesses can compete fair and freely.
- The Commission should proceed quickly with the infringement procedure and ensure that the Slovak law is compliant with EU law.

# Spain

## National and Regional laws on retail

Retailers in Spain face severe restrictions in the establishment and in the exercise of their activity both at Central Government and Autonomous Regions

### Retail Establishment:

**Central government:** The main regulatory framework of the retail activity is:
- Retail law 7/1996
- Law 20/2013 market unit, single market

**Autonomous regions:**
17 Autonomous Regions with delegated powers on retail and special planning law.
Restrictive regulation regarding retail and city planning:
- The authorisation procedures (article 9 (1) Services Directive) are not transparent; there is no justification of the necessity of such procedures. Moreover, the criteria for granting authorization are not proportionate and not justified by overriding reasons of general interest.
- The economic needs test is still applied in certain autonomous regions
- In most regions there are two different authorisation procedures (municipality and autonomous regions), participation of competitors in granting permits, excessive intervention of the authorities.
- The implementation of the Services Directive has resulted in an increase of administrative burden (more procedures, requirement of documents, etc.)

**Status**
- All the retail laws are in force.

**Asks:**
- Ensure that restrictions to the freedom of establishment are proportionate, appropriate, and necessary, and that city centre relevant range limitations, arbitrary size limits and planning permits that limit the new entrances, are avoided.
- Ensure the correct implementation of the Services Directive at national/regional level.
- Ensure the correct implementation in Spain of the Law 20/2013 on market unit, as has been pointed out by the European Commission in the Spanish country specific recommendations in the framework of the Semester Report
- Set up an expert group at EU level (with retail expertise) to develop guidelines aimed at harmonising interpretation and practices.

- Act more rapidly on infringement cases by strengthening enforcement control and speeding up infringement procedures.
- Carry out regular checks that national legislation complies with EU legislation and the principles of the Single Market.
- Ensure Spanish authorities notify the European Commission those proposals for laws, regulations or administrative provisions that could affect the Services Directive (Article 15.7)

## Large retail outlet tax

**In the following Autonomous Regions:**

**Catalonia**: Law 5/2017 on special taxes
**Asturias**: Legislative Decree 1/2014 regarding own taxes in Asturias.
**Aragon**: Legislative Decree 1/2007 on environmental taxes.
**Navarra:** Law 30/2018 that modifies certain taxes
**Valencia**: Law 6/2022 on climate change and the ecological transition of the Valencian Region

**Status**

- A special tax on establishments of more than 2,500m² surface area in four regions
- A complaint has been filed with the Commission (DG TAXU: Infringement procedure 2015/4238; DG COMP SA 36205).
- Preliminary ruling by the Spanish Supreme Court (C233-16 TO C237-16), regarding the large retail tax in Catalonia, Asturias and Aragon.
- The effect of such measures is that mainly large foreign retailers established in Spain are subject to the payment of the tax.
- The Court of Justice of the European Union (ECJ) ruled in April 2018 that the tax on large retail establishment in several Spanish regions does not hinder the freedom of establishment or constitutes unlawful state aid. In addition, existing state aid for shopping centres and commercial establishments partially exempts the absence of environmental accreditation of the tax and the lack of accreditation of a minimum threshold.
- For fiscal purposes, Catalonia made a distinction between collective and individual retail establishments. This led to the exemption of collective large retail establishments (e.g. shopping malls) from the tax. This created a distinction between two categories of establishment that are objectively in a comparable situation in respect of the public policy objectives of environmental protection and town and country planning. The ECJ therefore considers that the exemption of collective large retail establishments from the tax is selective and is therefore likely to constitute unlawful state aid if the other conditions set out in Article 107(1) of the TFEU are met.

**Asks:**

- Ensure taxes are justified, proportionate and non-discriminatory and do not impede the freedom of establishment.
- Eliminate taxes on large commercial establishments and any specific taxes based on the size or type of retail

## Regional Catalonian Act 5/2017 taxation of sweet beverages

**Provisions**

- The law imposes a tax on sweet beverages, and only applies in the Spanish region of Catalonia.
- This tax represents an entrance barrier for the sweet beverages traded in Catalonia.
- Catalonia is the only region in Spain levying such a tax, hereby distorting the market and, infringing the right to equal treatment and non-discrimination
- Retailers are obliged to add the tax to the consumer purchase price.
- Article 72 of the Law prescribes the tax should be levied on sugary drinks containing added caloric sweeteners such as sugar, honey, fructose, sucrose, corn syrup, maple syrup, nectar or agave syrup and rice syrup (e.g. sodas, as well as drinks of fruit nectar and fruit juices, sports drinks, energy drinks, tea or coffee drinks, sweetened milks, vegetables and flavoured waters).
- There are two types of levies according to the sugar content:
  - Beverages with more than 8 grams of sugar per 100ml: 0,15 euros / litre.
  - Drinks between 5 and 8 grams of sugar per 100ml: 0,10 euros / litre.
- The tax is finally paid by the consumers, resulting in a significant price increase in these products.

**Offences**

- The law distorts the Spanish retail market, the free movement of goods and the internal market.

**Status**

- In force since 1 May 2017
- There has already been a Ruling that that cancels the Development Regulation but maintains the tax.

**Ask**

- The European Commission should assess if the regional law is in line with EU law.
- The Catalonian government should ensure any law is justified, proportionate and non-discriminatory and that does not break with the national market unit.

## Spanish Royal Decree 928/1987 on the labelling of the composition of textile products.

*This Royal Decree has been modified over the years to adapt the law to the development of harmonised legislation on textile fibre names and it was last modified in 2011.*

**Provisions**

- Products need to be relabelled for the Spanish market, increasing costs without clear benefits to consumers. It fragments the Internal Market and the principle of mutual recognition is not applied.

- Article 6 of the Royal Decree related to labelling is relevant to this case. 6.3 Importer Tax Identification Code Textile for products imported from third countries.
- "All indications shall be written at least in Spanish".
- Note 1: Definition of textile products of article 2 of Regulation (EU) No 1007/2011 applies.
- Article 8 on the affixing of labelling provides further details. "Mandatory labelling of textile products mandatory that is compulsory for their placing in Spanish market and their selling to the consumers
- It is resulting from above provisions that to comply with point 6.3, the economic operators should print on the textile product labels the fiscal identification number of the officially registered importer in Spain.

**Status**

- Law in force

**Ask**

- The Spanish government should abolish this specific requirement or apply the principle of mutual recognition for foreign products.
- The European Commissions should assess the compatibility of the requirement with EU law.
- The Commission should examine which mandatory information requirements are really necessary and allow businesses to provide 'nice to know' information via modern digital technologies without overloading consumers with information they cannot absorb.

## The new Anti- fraud law 11/2021

*Ley 11/2021, de 9 de julio, de medidas de prevención y lucha contra el fraude fiscal.*

**Provisions and infringements**

- Article 18 establishes a limit on the amount to pay in cash in the retail stores in 1.000€ (before it was 2.500).
- It results against the Opinion of the European Central Bank of 15 March 2022 on limitations to cash payments (CON/2022/9).

**Ask**

- The Commission should carefully assess whether this provision is proportionate to the objectives pursued and constitutes a restriction to the free movement of capital.

## Spanish Special tax on non-reusable plastic packaging, included in a Waste Law 7/2022

*Ley 7/2022, de 8 de abril, de residuos y suelos contaminados para una economía circular.*

**Status**

- Entry into force in January 2023.

**Provisions and infringements**

- The special tax on non-reusable plastic packaging is a tax of an indirect nature that levies the use of non-reusable packaging that contain plastic, whether they are presented empty, or if they are presented containing, protecting, manipulating, and presenting merchandise.
- The following are included in the objective scope of this tax:
  - Non-reusable packaging that contain plastic.
  - Semi-finished plastic products destined to obtain packaging
  - Plastic products intended to allow the closure, marketing or presentation of packaging
- The tax base will be constituted by the amount of non-recycled plastic, expressed in kilograms, contained in the products that are part of the objective scope of the tax.
- The tax rate will be 0.45 euros per kilogram.

**Ask**

- The Commission should carefully assess whether this law fragmentates the Internal Market on non-reusable packaging and waste.

## Charging points for electric vehicles

*Real Decreto-ley 29/2021, de 21 de diciembre, por el que se adoptan medidas urgentes en el ámbito energético para el fomento de la movilidad eléctrica, el autoconsumo y el despliegue de energías renovables.*

**Provisions and infringements**

- The rule provides that car parks attached to buildings for use other than residential or existing car parks not attached to buildings must comply, before January 1, 2023, with the commitment to establish a recharging station for electric vehicles for every 40 parking spaces, thus advancing by two years the date the Directive 2018/84 on energy efficiency of buildings, had set for January 1, 2025.
- The aforementioned obligation directly affects Spanish retail companies, as they must install, in accordance with the legal ratio, more than 20,000 recharging points in less than 8 months, which causes enormous logistical, infrastructure and cost problems that make it impossible to achieve the objective pursued.

**Ask**

- The Commission should assess the proportionality of such measures in accordance with the objective pursued.

## Obligation to label products in regional language

*Law 22/2010 of the Catalan Consumer Code* and *Law 4/2023 of Consumers Status in the Basque Country*

**Provisions**

- Article 128.1: *Law 22/2010 of the Catalan Consumer Code*: Products made available to consumers in Catalonia must be labelled in Catalan, including information, safety warnings, precautions, warranties, handling instructions, etc.
- Article 83: *Law 4/2023 of Consumers Status in the Basque Country*: Obligation for large retailers to make certain elements (signs, notices, communications, written or verbal, offers, forms, contracts, etc.) available in Basque and Spanish or bilingually.

**Status**
- In force
- In Catalonia, retail companies are being sanctioned.

**Offences**
- These laws limit the free movement of goods and cause the fragmentation of the Single Market. As they will not only be impossible for national operators to comply with but will also severely restrict access for operators from other EU Member States.

**Asks**
- The Spanish Government should abolish this unnecessary regional labelling requirement that hinders the free movement of goods.
- The Commission should ask the Spanish Government to abolish the regional labelling requirement.
- The digital labelling could be proposed in order to avoid fragmentation of the EU single market which could arise from sectoral and/or national/regional legislation.

## Compulsory labelling of packaging

*Spanish Royal Decree 1055/2022*, on packaging and packaging waste.

**Provisions**
- Article 13. Marking and information obligations. It establishes some voluntary marking requirements on packaging, and others mandatory from January 2025 and prohibits the use of certain expressions, such as "environmentally friendly".
- The mandatory marking requirements are as follows:
  - The fraction or container in which to deposit household packaging waste.
  - Reusable packaging and the symbol associated with the Deposit, Return and Refund System (DRRS).
  - Compostable plastic packaging will inform of the UNE EN 13432:2001 standard certification.
  - Compostable packaging in home or industrial composting will bear the indication "do not leave in the environment.
- Article 11 of the proposed European Packaging Regulation (Regulation on packaging and packaging waste) regulates on Article 11, the labelling of packaging and provides for the adoption of an implementing act after the publication of the Regulation. The Spanish Royal Decree 1055/2022, on packaging and packaging waste, is likely to enter into force before the European Regulation and the implementing act establishing a harmonised label and specifications for labelling requirements in the EU.

- Other provisions of the Royal Decree 1055/2022 related to new obligations for domestic and commercial packaging producers and importers (also distributors regarding own brands):
  - New obligation to belong to a RAP system (Extended Producer Responsibility), individual or collective (30 Jun 2024) regarding commercial packaging waste.
  - Producers and importers have to register in a new packaging section of the Registry of Product Producers ( March 31, 2023)
  - Distributors can only purchase packaged products from producers with an identification number in the new Producers Registry
  - Producers and importers must report annually amount of packaging placed in Spanish Market.

**Offences**

- These laws limit the free movement of goods and cause the fragmentation of the Single Market. As they will not only be impossible for national operators to comply with but will also severely restrict access for operators from other EU Member States

**Status**

- The Royal Decree is already approved. The labelling requirement comes into force in January 2025.

**Asks**

- The Spanish Government should repeal these mandatory labelling requirements on packaging and wait for the European Regulation to establish mandatory information requirements on packaging in the EU framework.

# Horizontal issues

## Territorial Supply Constraints and other unfair industrial practices

**Restrictions of the cross-border supply of goods**

- Retailers are not always free to choose where to source their products in the Single Market. Large brand manufacturers at times impose 'territorial supply constraints'4 on retailers and wholesalers which prevent them from sourcing in EU countries other than the one the distributors are established. These constraints:
  - Mostly lead to higher procurement prices on the wholesale market and therefore higher consumer prices. A Commission study found that the restrictions cost EU consumers more than €14 billion5. Addressing TSCs now is more important than ever as EU consumers face a cost-of-living crisis.
  - Can result in an extension of the delivery times.
  - Can restrict the choice of products, which makes it difficult to meet consumer demand within the local market.

[4] More information can be found here: https://www.eurocommerce.eu/singlemarket4all/

[5] Study on territorial supply constraints in the EU retail sector, European Commission, 2020

- In practice this means, for example, that Luxembourger retailers and wholesalers are obliged to source an identical product available in neighbouring markets from, for example, the Belgian market for a higher price than it is available for in the French and German market.
- Large manufacturers uses not only TSCs, but also unjustified price increases and delivery stops that increases sourcing prices and pushes up prices at retail level. Due to their private label business, retailers and wholesalers know that many of these demands are not based on increased costs: instead, the reference to general inflation is used as an excuse to further improve the already high profit margins of manufacturers6.

**Asks**

- The Commission should ensure the application of Single Market principles, including parallel importing, by all operators, including suppliers, so that consumers can truly benefit from it;
- The Commission should act on infringement cases.
- The Commission should recognise TSCs as a serious infringement of article 102 of the Treaty on the Functioning of the EU in the upcoming Guidelines on abuses of dominance under competition rules.

## Cost of living and pressure on retailers

**Status**

- Retailers are being blamed by EU media, suppliers and certain public authorities for pushing up prices during the crisis. However, retailers face high energy costs and increased prices on raw materials and ingredients while competing in a highly competitive sector with low margins (below 3%).
- A number of studies (Belgium, Lithuania, France, Netherlands, Sweden, Germany) concluded that retailers have not profiteered form the crisis and that in fact their margins decreased as they absorbed some cost increases.

**Asks**

- The Commission should ensure a proper functioning of the Single Market, tackling the matter of TSCs imposed by large manufacturers and addressing protectionist tendencies by member states (see France and the law Egalim III above) which prevent retailers to make use of the Single Market to the benefit of consumers.

[6] Large brands such as Pepsi, Henkel, Unilever, Nestlé and Coca-Cola were reporting margins of respectively 15,9%, 17%, 16,9 and 31%for the first half of 2022; also see: https://on.ft.com/3RZl5K9.

## Price transparency tools

**Status**

- Certain countries are introducing price comparison tools (websites, apps, etc.) to better understand the price increases. Other countries are establishing price observatories for the same purpose. Mainly: Belgium, Bulgaria, Croatia, Hungary,
- The necessary information to make it viable requires that the different actors of the supply chain make public their costs and prices.
- None of the tools concluded that retailers were responsible for increased prices:
  - **Belgium**: The government price observatory has carried out a study on food prices, finding that retailer margins have decreased in 2021 and 2022.
  - **Czech Republic**: the government looked at price transmission in the supply chain between 2018 and 2023 for certain essential food products. They did not see collusions or anti-competitive behaviour. However, the government is developing a price app with information on prices of basic foodstuffs.
  - **Lithuania**: after a pressure campaign against retailers blaming them for high prices, the national Bank of Lithuania conducted an investigation on price construction. The study shows that retailers increased their prices proportionately, while producers benefited the most from inflation.
  - **Austria**: retailers have to report price of certain products on a daily basis to a price database. It feeds into price a price comparison app.

**Breach**

- This may be against competition rules and disclose trade secrets.
- For certain cases, where retailers do not agree to participate, they face bad PR or retaliation by public authorities from certain countries.

## Fragmentation and missing harmonisation of waste related policies

**Status**

- Fragmentation of the single market is also seen in waste legislation and regulations, a worrisome development which retailers and wholesalers believe is an obstacle for the transition towards a Circular Economy.
- Not enough high-quality recycled material is available, while conflicting European legislation hampers its use. Fragmentation can be found in different areas, reaching from different national decisions regarding when waste ceases to be waste (end-of waste criteria) due to diverging or unclear criteria, different requirements and rules for extended producer responsibility schemes in the EU up to difficulties to ship waste for recycling or reuse from one Member State to another.
- Harmonization regarding EPR.
- Administrative costs especially for certain economic operators such as retailers and wholesalers active cross-border. We experienced different requirements in areas like:

reporting for different waste streams (for textiles some MS either already have an EPR or are in the process of developing national EPR schemes).

- We also experienced distortions of the Single Market in relation to national packaging labelling legislation. Member States taking unilateral measures and introducing divergent requirements to improve labelling, sorting and collection of packaging and goods and their potential for recycling may be well-intentioned, but also pre-empt legislative developments at EU level like the Packaging and Packaging Waste Regulation, compromise the effectiveness of an EU-wide approach and fragment the Single Market.

**Asks**

- Creating a real Single Market for Waste is paramount to underpin the goal of a Circular Economy. Without proper and well-functioning rules for the waste phase circular business models will not be able to thrive.
- The Commission and the co-legislators should consider the effect on the free movement of goods and ensure a proper functioning of the Single Market in all waste-related proposal like the Packaging and Packaging Waste Regulation, Waste Framework Directive or the Waste Shipment Regulation to support circular business models and help retailers and wholesalers in their sustainability transition.

**Contact:**
**Ilya Bruggeman - bruggeman@eurocommerce.eu**

**EuroCommerce** is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 27 countries and 5 million companies, including leading global players and many small businesses. Over a billion times a day, retailers and wholesalers distribute goods and provide an essential service to millions of business and individual customers. The sector generates 1 in 7 jobs, offering a varied career to 26 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector.