



The Brewers of Europe

Secretary General

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Mr Margaritis Schinas
Vice-President of the European Commission
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Per e-mail:

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Brussels, 17 May 2023

Subject – TRIS Notification 2023/0125/HU
The Brewers of Europe's concerns and request for action

Dear Vice-President of the European Commission,

The Brewers of Europe is of the opinion that the notified draft legislation holds some positive elements. In particular, the equal treatment of alcoholic beverages is supported.

Notwithstanding, we would like to draw your attention to very serious concerns of Europe's brewing community as the proposal is discriminatory and not respecting existing European Union legislative provisions. We are addressing this in the following points.

The product marking requirements are discriminatory and in breach of the Single Market. The requirement for a specific Hungarian GTIN number and barcode is a restrictive, trade barrier measure. In principle, both the barcode and the GTIN number are international marking tools that can be generated and used in any country to identify a given product. Requiring these markings in a format exclusively accessible for producers with legal entities in the geographic territory of Hungary constitutes a serious breach of one of the fundamental principles of the Treaty on the Functioning of the European Union (TFEU) ensuring the free movement of goods enshrined in Title II of the Treaty on the Functioning of the European Union (TFEU), in particular the 'quantitative restriction or equivalent effect' in the provisions of Article 34. Exceptions laid down in Article 36 of TFEU cannot be applied in this case, since the Treaty clearly states that discrimination 'shall not be arbitrary'. Equally, the European Union Commission in its "Communication from the Commission — Beverage packaging, deposit systems and free movement of goods (2009/C 107/01)" also advocates the use of simple and generic beverage packaging labels/EAN codes: "*The need for country-specific EAN-codes should be avoided as these codes could also make country-by-country packaging necessary which would risk again an impediment to cross-border trade*".

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Proper transition time is needed for non-DRS stocks already put on the market to be exhausted.

According to Paragraph 41(3) a product placed on the market before 1 January 2024 - which qualifies as a product subject to DRS regime of this Regulation - may only be distributed until 29 February 2024 in accordance with the provisions in force before the entry into force of this Regulation. This transitional provision runs counter to sustainable management since the shelf life of beverages generally exceeds 2 months after they are first placed on the market. As from 1 March 2024 products placed on the market under before 1 January 2024 would have to be withdrawn from the shelves. This provision into only is completely unjustified, unnecessary and implies huge costs for both manufacturers and distributors, it also does not take into consideration the environmental ramifications. Based on European Union member states' practice the regulation should stipulate that products placed on the market before the entry into force of the regulation can be sold until stocks last. Equally, it is absolutely essential to grant a proper transition time for products to enter the market for at least 2 months after the DRS enters into force. This would avoid, for example, goods that for whatever reason were not able to reach the Hungarian market before 1 January 2024 to become illicit.

We would like to refer to the European Court of Justice ruling on the sufficient transitional period for setting up a DRS scheme (Case C-463/01). In the Court's view, setting up an operational system for returning single-use packaging requires a transitional period of more than six months. The period needs to be at least long enough to ensure a smooth transition from the present system, under which single-use packaging is not subject to the deposit obligation and can be handled by nationwide disposal systems such as DRS. With the final Hungarian DRS rules still not defined less than 8 months before the start of the DRS scheme, there is no final DRS legislation in place, there is no solid legal base to take the necessary steps by producers and retailers to reach 100% preparedness by 1 January 2024. According to European member states' practices setting up a DRS scheme requires usually at least 12-18 months after the relevant legislation is effective.

European draft legislation suspends the finalisation of new national initiatives which are not compliant with the spirit and wording of the proposal.

According to Articles 6(3) and 6(4) of the Directive (EU) 2015/1535 of the European Parliament and of the Council, Member States are required to postpone adoption of a "technical regulation" for 12 months where the Commission or the European Parliament and the Council "announce its intention to propose or adopt a directive, regulation or decision on the matter".

Indeed, several provisions in the Hungarian draft are not aligned with the Commission's proposal: e.g. the administrator is a for-profit and not independent legal and the calculation model of DRS financial contributions paid by the producer is not in line with the European Union extended producer responsibility principles.

In light of the above comments and concerns, The Brewers of Europe respectfully requests the European Commission to issue a Detailed Opinion on the Hungarian Draft Regulation requesting the necessary changes to be made.

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The Brewers of Europe stands at your disposal as ever should you wish to receive any further clarification on this dossier. We sincerely hope that as the guardian of the Treaties the European Commission will take the necessary stance on all these justified concerns and invite Hungary to amend its proposal so that it is aligned and in conformity with the European Union legislation and jurisprudence.

With best wishes



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