Statement
June 2023

EuroCommerce comments on TRIS Notification Nr. 2023/0125/HU regarding Government Decree on the detailed rules for the establishment and application of deposit fees and the marketing of products with a deposit fee

Notification: 2023/0125/HU

From 1 January 2024, a deposit-refund system (DRS) is introduced in Hungary for every glass, aluminium and plastic drink container with a capacity of 0 to 6 litres. Consumers will have to pay a deposit fee when buying a drink, which they get back when returning the empty packaging. The Government Decree on the detailed rules for the establishment and application of deposit fees and the marketing of products with a deposit fee (hereinafter: Decree) obliges shops bigger than 400m² that sell drinks in such packaging to install a return vending machine. Hospitality units (less than 0.1 litres or more than 3l) will have to take back the drink containers manually.

Retailers are committed to the transition to a circular economy and with it a mandatory deposit system. In order for EU objectives to be effectively achieved, regulation is needed that is beneficial for all economic operators; does not impose disproportionate and unjustified costs on businesses and is in line with EU legislation.

1. The legally prescribed Hungarian EAN code (GTIN) is incompatible with the EU internal market, as it prevents the free movement of goods

Annex 1 to the Government Decree, point 1.1. requires that the marking to be used in the case of a non-reusable product with a mandatory deposit fee is the Hungarian GTIN number and bar code of the product (which cannot be the same as the ones of a product placed on the market before 1 January 2024).

Every business needs a barcode if it wants to sell its products commercially. To do this, each item should be barcoded. The barcode is based on an identification number called Global Trade Identification Number (GTIN). GTIN is a unique and internationally recognized product identifier. The length of GTIN depends on the type of product and where it is sold. In Europe GTIN-13, also known as GTIN-EAN, is used in trade, which is widely used in commerce worldwide. The EAN 13 barcode is a 13-character code: the first two or three digits are the country code indicating the country in which the manufacturer is registered. In the case of Hungary, this is 599. If a company would like to use the Hungarian GTIN number 599 on its product, it must register and sign a contract with a barcode organization (e.g., GS1). This means that for products manufactured for the Hungarian market, the manufacturer must be authorized to use the 599 Hungarian GTIN, regardless of whether the product already has a valid, regular GTIN.

As a result of the regulation, a beverage product legally produced and put on the market in a member state could not be legally distributed on the Hungarian market until it has a Hungarian GTIN code and a Hungarian bar code. This would mean that the regulation would apply to a product imported to Hungary from abroad, but not to a similar domestic product, since products manufactured in Hungary usually have a Hungarian GTIN number.

This legislation adopted by Hungary is capable of - directly or indirectly, actually, or potentially - hindering Internal Market trade and is considered a measure with the same effect as quantitative restrictions.

The prohibition of measures with the same effect as quantitative restrictions can only and exclusively be justified by non-economic considerations (for example, public morality, public order, or public safety). In the present case, there is no such reason. The introduction of the mandatory redemption system is one of the important pillars of the circular economy, which is not only a national interest, but also a European Union interest, which contributes to the fulfilment of the European Union waste target values.

Non-Hungarian manufacturers, who legally marketed their products in other EU member states, would be able to market their products on the Hungarian market only at a disproportionate additional cost (the Hungarian market would require a special code; it is not economical to code the products manually).

Furthermore, this provision of the Degree also raised questions related to the interoperability of this new DRS with existing IT systems based on GTIN codes. The GTIN product identifier is based on open standards and does not indicate a country of origin or the national market a product is offered on. If a GTIN code is correct, it can be used everywhere, not only in the country the GTIN originated from.

Therefore, we believe that this requirement in the Degree could lead to barriers to the free movement of goods and that the Commission should assess the potential impact on the EU Single Market.

2. The regulation on the distribution of previously manufactured products seriously threatens the European Union's efforts against food waste

Section 41 (3) provides, that a product placed on the market before 1 January 2024, which is considered to be a product with a mandatory deposit fee under this Decree, may be marketed until 29 February 2024.

Products that were previously placed on the Hungarian market can only be distributed until February 29, 2024, after which they must be withdrawn from the market. This is a cause for concern, as this means that a large quantity of products of impeccable quality, suitable for human consumption would be thrown away and become waste. With the introduction of the provision, a significant amount of beverage products would end up in landfills, including products that, due to their nature, are not suitable for donation (e.g., alcoholic beverages).

This level of food waste would have significant economic, social, and environmental impacts and would unnecessarily increase the amount of food waste produced by manufacturers and retailers, contradicting efforts to halve food waste by 2030.

Moreover, in respect of products purchased by a retailer from outside Hungary, the Hungarian public administration follows the approach that these products will be placed on the market by the Hungarian retailer that imported the products as set out in a public announcement in connection with the restriction of single-use plastics. In contrast, the products purchased from Hungarian producers qualify as placed on the market by way of their procurement by the retailer from the Hungarian producer[1]. As a consequence of this approach beverages procured from outside Hungary on or before December 31, 2023, will not qualify as already placed on the Hungarian market and therefore be excluded from being marketed until February 29, 2024, which in the case of beverages produced in other EU Member States clearly infringes the free movement of goods.

Based on the above, the extremely short transition period seriously threatens the achievement of the goals set out in Article 191 of the EU Treaty. This part of the draft regulation goes against the roadmap related to the realisation of a resource-efficient Europe and the goals set out in the circular economy package. With respect to the discriminatory nature of the transition period as explained above, the transition period is obviously contrary to Article 34 of the TFEU.

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[1] The announcement is available under the following link in Hungarian with the relevant part starting from 8:30: https://www.youtube.com/watch?v=m42SxJvVdfk