EuroCommerce
for retail & wholesale

Single Market Barriers Overview

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Single Market Barriers

The Single Market is still far from complete. In many aspects, the European Union is still a mosaic of 28 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 don't notify new national technical requirements according to the procedure laid down in Directive (EU) 2015/1535, don't 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 17 June 2020.

Table of contents

Government Decree on Regional Sourcing: "Order No. 70 of April 14, 2020 on supplying supermarkets, that are retail chains, with primary products made in Bulgaria" (2020/37/BG – amended by 2020/40/BG)

The Decree obliges retailers to reserve sufficient room in stores for local food products – such as milk, fish, fresh meat and eggs, honey, fruits and vegetables – and ensure that 90% of milk products are sourced regionally (the districts where a supermarket is established or from neighbouring districts).

The Decree restricts the free movement of goods, as it creates more advantageous and competitive marketing conditions for domestic food products, discriminating against similar imported products.

- Art. 2 reserves at least 90% of the Bulgarian food retail market for domestic milk producers. This is a prohibited quantitative restriction on milk imports from EU producers.
- Overall, the Decree is infringing the free movement of goods by discriminating against foreign products vis-à-vis domestic products and will lead to higher costs and less choice for Bulgarian consumers.

The Decree further restricts the freedom of establishment in restricting the freedom of retailers to decide on their assortment, on the lay out of their sales surface, and to adapt their supply chain. Such restrictions may only be justified by overriding reasons of general interest, such as public health, and must be suitable and necessary for attaining that objective.

- The requirements on promoting local food products (by reserving part of store surface) under Art. 1 (1) and Art. 1 (2) of the Decree only cover part of the Bulgarian food retail market – i.e. retail chains with more than 10 stores – providing an unfair advantage to smaller competitors.
- In addition, the provisions of Art. 1 (4). infringe on contractual freedom as payments by producers are not required for the positioning of their products at a certain place within the store, a service provided by the retailer.
- Art. 1 (5) requires payment within 14 days of delivery. However, invoicing takes place only after delivery, when the final amount due is calculated. This provision would require retailers to make payments – amid heightened uncertainty about the final amount – in the absence of an invoice. This constitutes an unnecessary intrusion on economic and contractual freedom and would undermine business confidence in the Bulgarian food supply chain.
- The measure is disproportionate and is not the least restrictive measure to promote domestic production of foodstuffs.

Sanctions

- If this regulation is not complied with, sanctioning measures will be initiated in accordance with Art. 16a, para. 2 of the Measures and Trade Act in the context of the state of emergency declared by the National Assembly on March 13, 2020.

Status

- An amended version of the original text entered into force on 5 May. The Decree was not notified by Bulgaria to TRIS.

- On 14 May 2020, the Commission sent a Letter of Formal Notice to Bulgaria regarding discriminatory measures imposed on retailers, obliging them to favour domestic food products.
- Bulgaria has one month to reply to the concerns raised by the Commission. Without a satisfactory response, the European Commission may decide to send to Bulgaria a reasoned opinion.

Asks

- The Commission should ensure that the decree is in line with EU law.
- Bulgaria should withdraw the measure.

Czech Republic

Significant Market Power Act

Collection of acts 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

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).

Amendment current law

Who has significant market power:

- A buyer (retailer or wholesaler) has significant market power if its turnover for the sale of food and services related thereto in the Czech Republic exceeds CZK 5 billion for the most recently finished accounting period lasting 12 months, or
- A buyer who is a controlled person has significant market power if its turnover for the sale of food and services related thereto in the Czech Republic does not exceed CZK 5 billion for the most recently finished accounting period lasting 12 months, in case his turnover for the sale of food and services related thereto in the Czech Republic together with the turnover of the controlling person for the sale of food and services related thereto in the Czech Republic exceeds CZK 5 billion for the most recently finished accounting period lasting 12 months, or
- A purchasing alliance has significant market power when the joint turnover of its members for the sale of food and services related thereto in the Czech Republic exceeds CZK 5 billion for the most recently finished accounting period lasting 12 months.

Other provisions

- No distinction between economic dependencies.
- Breaches do no longer have to be considered permanent and having the goal to, or effecting significantly the competition in the relevant market - all and any breaches can be fined up to 10% of turnover of company or group.
- The purchase price for food products cannot be valid longer than 3 months from the date of the first food delivery, for which the purchase price has been agreed.
- There is also a list of concrete activities, which are considered as abuse of significant market power. 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.

Status

- The government is assessing the review of the act, and possibly extend the application also to suppliers and not only retailers.
- Beginning of 2020 the Czech Constitutional Court ruled that the requirement in the law that all payments from the supplier to a buyer with significant market power must not exceed 3% of the supplier's annual net turnover for the last accounting period of 12 months for food products delivered was unconstitutional. Click here for the ruling.

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.

Amendment Czech Food Law (85%) – Czech origin requirements [Food products]

The amendment imposes a legal obligation on retailers to place 55% of food products of Czech origin on the market in 2021 (with an annual increase by 5 percentage points until 2027).

- "These are foodstuffs that fulfil the criteria for being placed on the market with a designation using the words "Czech food", a graphic representation set out by implementing legislation, or other information, primarily in verbal, figurative or graphic form, indicating that the country of origin of the foodstuff is the Czech Republic, regardless of whether they are actually labelled in the manner according to Art. 9b, paragraph 1 of the Act."
- The amendment further seeks to set out a rule for annual increases in the percentage of Czech foodstuffs on our market by 5 percentage points until the year 2027.

The amendment restricts the free movement of goods, as it creates more advantageous and competitive marketing conditions for domestic food products, discriminating against similar imported products.

- The newly introduced paragraph of Art. 9b reserves at least 55% of the Czech food business market for domestic producers. This culminates to 85% by 2027, as annual increases by 5 percentage points are foreseen in the same amendment. This constitutes a prohibited quantitative restriction on food imports from EU food producers.
- Overall, the amendment is infringing the free movement of goods by discriminating against foreign products vis-à-vis domestic products and will lead to higher costs and less choice for Czech consumers.

The amendment further restricts the freedom of establishment in restricting the freedom of retailers to decide on their assortment, on the lay out of their sales surface, and to adapt their supply chain. Such restrictions may only be justified by overriding reasons of general interest, such as public health, and must be suitable and necessary for attaining that objective.

- The measure is disproportionate and is not the least restrictive measure to promote domestic production of foodstuffs.

Status

- June 2020: amendment withdrawn and send back for debate to the parliament's standing committee for agriculture.

Asks

- The Czech government should notify any such amendment to TRIS before adoption.
- The Commission should ensure that such amendments are in line with EU law.

Amendment Czech Food Law (60%) – Czech origin requirements (II)

The amendment imposes a legal obligation on food business operators with an established sales area larger than 400 m^2 to ensure that 60% of food products offered are produced in the Czech Republic.

The amendment restricts the free movement of goods, as it creates more advantageous and competitive marketing conditions for domestic food products, discriminating against similar imported products.

- The newly introduced Art. 9d reserves at least 60% of the Czech food business market for domestic producers. This constitutes a prohibited quantitative restriction on food imports from EU food producers.
- Overall, the amendment is infringing the free movement of goods by discriminating against foreign products vis-à-vis domestic products and will lead to higher costs and less choice for Czech consumers.

The amendment further restricts the freedom of establishment in restricting the freedom of retailers to decide on their assortment, on the lay out of their sales surface, and to adapt their supply chain. Such restrictions may only be justified by overriding reasons of general interest, such as public health, and must be suitable and necessary for attaining that objective.

- The requirements favouring Czech producers only cover part of the Czech food retail market – i.e. retail chains with a sales surface larger than 400 m^2 – providing an unfair advantage to smaller competitors.
- The measure is disproportionate and is not the least restrictive measure to promote domestic production of foodstuffs.

Status

- Amendment now under discussion in Czech parliament.

Asks

- The Czech government should notify the amendment to TRIS.
- The Commission should ensure that the amended Czech Food Law is in line with EU law.

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

Interinstitutional agreement proposal for better enforcement and modernisation of EU consumer protection rules of 29 March 2019 / reference amendments Czech Food Law

Retailers may become liable for misleading practices brand manufacturers

- 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 while retailers have no control over the production and marketing methods of big international food brands.
- The Ministry of Agriculture proposed extending the list of forbidden foods in the Food Law.
- 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

- Amendment now under discussion in Czech parliament.

Asks

- The Czech government should notify the amendment to TRIS.
- The European Commission should provide guidance on when packaging is deemed to similar or different ensuring food producers are able to implement the new rules.
- 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).

Amendment Consumer Protection Law - Implementation UCPD amendment addressing dual quality [Non-food products]

Draft act amending Act No 634/1992 on consumer protection

Amendment Consumer Protection Law

- Ministry of Industry and Trade proposed amendment of the Consumer Protection Law prohibiting the sale of products of different quality in the same packaging.
- "Any marketing of a product as a product identical to one marketed *in another Member State* of the European Union despite having substantially different composition or characteristics, unless justified by legitimate and objective fact." The text is again stricter than the agreed as in the interinstitutional agreement i.e. instead of 'in other Member States' the Czech proposal says 'in another Member State'.
- 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.
- Retailers and wholesalers are affected when it concerns private label products.

Status

- The draft law has been notified to TRIS (2019/258/CZ), deadline is extended to 29 November 2019.
- When the notification period expires, the Czech authorities can adopt the provision.

Asks

- The European Commission should provide guidance on when packaging is deemed to similar or different ensuring non-food producers are able to implement the new rules.
- The Czech government should implement the text as agreed at EU level and ensure that operators and ensure that operators are responsible for their role in the food supply chain, in line with the General Food aw Regulation (EC) No 178/2002.

Ban of door-to-door sales at local level

- According to Article 18 (3) of Act 455/1991 on trade licensing, a municipality may prohibit the selling of goods and services carried away from business premises.
- On this basis, many Czech municipalities have already adopted local decrees prohibiting or restricting off-premises sales.
- The wording of the local bans varies depending on the municipalities, resulting in uncertainty for traders. Sellers are prevented from operating in large parts of the country, due to lack of legal clarity.
- According to a recent research, off-premises selling is banned in areas covering more than 50% of the country's population. Cities like Brno, Ostrava, Karlovy Vary, Plzen, and the capital, Prague, are under such ban.
- The percentage is most likely to be higher since a pattern emerges when taking into account the population of the city; the smaller the community, the more likely it is to have bans or restrictions against off-premises contracts.
- By assessing the scope of the different local bans it becomes clear that all different kind of off-premises sales are prohibited or restricted except for the main problematic one: sales excursions.
- Many of these sales excursions events are unfair and aggressive, thus forbidden by Directive 2005/29/EC on Unfair Commercial Practices. Directive 2011/83/EU on Consumer Rights also protects consumers in respect to contracts negotiated away from business premises by bringing a single set of common core rules for off-premises sales.
- Another constraint in the Czech Republic relates to a mandatory two weeks' pre-registration notice for direct sellers. The Czech Trade Inspectorate obliges sales agents to provide local authorities information related to sales events such as the agenda of the venue, the number of participants, and other elements.
- This compulsory pre-registration, particular to direct selling is discriminatory, creates an unnecessary burden for the trader, restricts face-to-face contact and limits the sellers' economic performance. The bans are discriminatory, go against EU law, diminish consumer choice and drive down economic growth and competitiveness.

Status

- The Trade Act is in force since 2 October 1991.
- An increasing number of municipalities continue to adopt local bans.

Asks

- The Commission should ask the Czech Government to bring the Trade Act in line with Directive 2005/29/EC and Directive 2011/83/EU.
- The Czech government should ensure effective means for authorities to enforce compliance with the law and penalize rogue traders with deterring sanctions.

7-day payment ban for "organised events" – Act nr 378 on Consumer Protection

- According to paragraph §20b (1) of Law nr. 378 on Consumer Protection, amended on 9 December 2015, a trader selling products or services through an "organised event" cannot accept any payment within 7 days after the conclusion of the contract. This obligation also applies to pre-payments or any other charges.
- Such ban is burdensome because it
  - goes against the business model of direct selling companies;
  - disrupts the collection of payments done by self-employed entrepreneurs, a majority of them working under a commission-based system;
  - potentially increases the risk of unnecessary cancellation and refund of products purchased, resulting in a negative impact on job creation and economic growth.
- According to paragraph §20b (2), non-compliance with the above-mentioned provision is considered to be a serious breach of the Consumer Code and is to be punished accordingly.
- Directive 2011/83/EU on Consumer Rights, under Article 9 (3), states that Member States may maintain existing national legislation prohibiting the trader from collecting the payment from the consumer during the given period after the conclusion of the contract. However, since the 7-day payment ban in the Czech Republic dates from end 2015, such national provision falls outside of the scope of the Directive and is clearly not in line with the EU consumer acquis.
- Furthermore, this national provision goes against the level of harmonisation brought by Article 4 of Directive 2011/83/EU, which forbids Member States to introduce diverging provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive.
- Any penalties laid under this national provision are also an infringement of the Consumer Rights Directive.

Status

- Paragraph § 20b of Law nr. 378 on Consumer Protection is in force since 9 December 2015.

Asks

- The Commission should ensure the Czech Consumer Law nr. 378 is in line with Directive 2011/83/EU and abrogate paragraph § 20b.

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

- 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).
- 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

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.

Status

- Law 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".

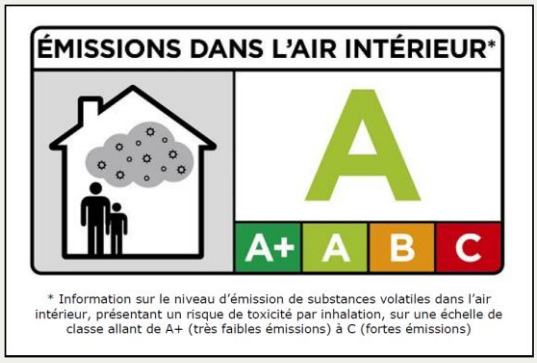
Label on construction and wall/floor decoration products of VOC emission class (A+, A, B, C, D)

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

- 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

- Law 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.

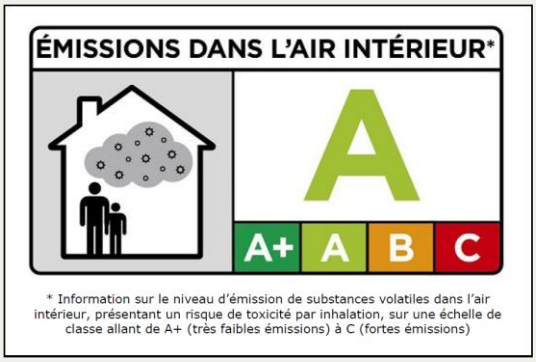
Label on Furniture and furnishings of VOC emission class (A+, A, B, C, D)

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.
- 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)

- 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.

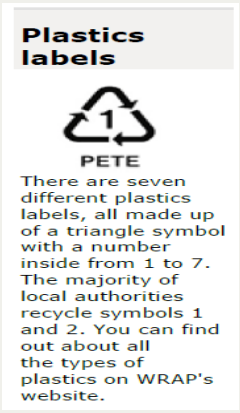
If we consider that the FR decree states that there must not be labels confusing with the French symbol, the difficulties will come if one product is submitted to various labels due to various legislations or standards within.

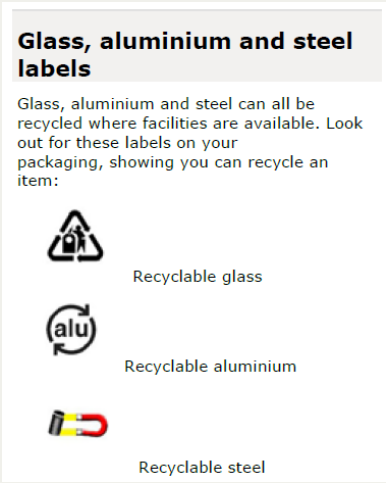
Status

- Law in force.

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.





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 m^2 floor space and 800 m^2 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.

The Commission should:

- 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 m^2
- Retail shops above 1,500 m^2 need an approval from the region and/or the municipality in order to operate outside the greater Athens and Thessaloniki areas.

The Commission should:

- 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").

Status

- The Decree is in force since 1 February 2015.

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 XCV of 12 October 2009 on the Prohibition of the Unfair Distribution Practices conducted against suppliers of agricultural and food industry products

Under Hungarian law, retailers are obliged to apply the same profit margins to domestic and imported agricultural and food products. This may discourage sales of imported agricultural and food products in comparison to domestic ones, as it may make it more difficult for importers and retailers to offer imported products, which are usually less well known to the domestic consumer, at more attractive prices.

Restrictions to contractual freedom:

- The agreement of terms of contract which transfer the one-sided risk from the retailer to the supplier.
- Listing fees.
- Shifting the costs for logistics to the suppliers.
- Fee for the positioning of the products at a certain place within the markets.
- Payment targets of over 30 days after delivery for all food products.
- In case of late payment the trader has to pay twice the interest rate of the Central Bank; the supplier may unilaterally withdraw the interest from the bank account of the trader.
- Contractual exclusion of default interests or contractual fines or contractual secondary conditions of the retailer (the retailer is obliged to agree to such clauses if the supplier so wishes).
- Apply the same profit margins to Hungarian agricultural products – considered to be the same based on their composition and organoleptic properties - as they apply to non-Hungarian agricultural products of the same type.
- Sale below purchase price.

Status

- The law is in force since 1 January 2010.
- Amended 1 August 2012 by Act LXXXIX of 2012.
- In February 2017, the Commission sent a Letter of Formal Notice. The Commission raised concerns that these rules go against the principle of the free movement of goods and undermine the free formation of selling prices of agricultural products on the basis of fair competition.
- On 8 March 2018 the Commission sent a Reasoned Opinion to Hungary on the grounds that the national rules on retail sale of agricultural and food products are incompatible with EU law.
- On 24 January 2019, the Commission referred the case to the European Court of Justice, reference nr. DC 108565.

Asks

- The Hungarian government should abolish the amendment mentioned above that discriminates against foreign products.
- 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 ensure the law complies 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

- The law is 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)

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 2017.

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 proposal [108/2020/HU]

Originally designed as a temporary crisis measure, the tax has now been made permanent.

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 will be payable up to the end of the state of emergency period**.** No indications as to when this will be.
- 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);
  - 0.4% on the part of the net sales revenue which exceeds 30 billion up until HUF 100 billion (€285 million); and
  - 2.5% on the part of the net sales revenue which exceeds HUF 100 billion
- The new retail tax will also apply to retail sales made by companies outside of the country to Hungarian customers via ecommerce.
- Franchisees are exempt, only retail chains that are centrally organised are subject to the tax

Status

- The text was published in the Hungarian State Gazette on 14 April 2020.
- Already some changes have been proposed to the proposal, which will be discussed by the Hungarian Parliament in mid-June.
- Many taxes on retailers have been suggested by governments in CEE. Many of these taxes have been challenged by the Commission and found in breach of EU law. These taxes have a negative impact on foreign investment and may lead to higher prices for consumers.

Asks

- The Hungarian government should ensure that the tax is consistent with EU law.

Italy

Ministerial Decree for labelling October 14, 1981

Labelling requirements

- 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"
- 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.

- 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.

Retail Establishment: LEGISLATIVE DECREE 25 November 2016, n.222

Identification of procedures subject to authorisation, certified notification of commencement of business activity (SCIA), assent by silence and communication and definition of administrative regimes applicable to certain activities and procedures, pursuant to article 5 of the law of 7 August 2005, n. 124.

Unclear powers for municipalities restricting services activities

- 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.

Luxembourg

Territorial Supply Constraints

Restrictions of the cross-border supply of goods

Retailers are not always free to choose the procurement platform. These constraints:

- Mostly lead to higher procurement prices on the wholesale market and therefore higher consumer prices.
- 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.

- In practice this means 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.

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.

Poland

Act on Retail Sales Tax – planned for 1 January 2021

Discriminatory and disproportionate tax

- The proposal entails:
  - The tax would only apply to retailers
  - Franchisees are exempt
  - Online sales are exempt
  - Monthly turnover of less than 17M Zloty would be exempt from the tax
  - Monthly turnover of 17M to 170M Zloty would be subject to a 0.8 % tax
  - Monthly turnover exceeding 170M Zloty would be subject to a 1.4 % tax
  - At this stage, the applicability 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 would mainly affect large foreign retail chains and would set market players with large stores on a competitive disadvantage vis-à-vis retailers with smaller stores, franchise 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 if the tax constituted unlawful state aid.
- The Commission has appealed, a CJEU hearing is planned for 1 September, final ruling will come in H1 2021.
- The Polish government has postponed the application of the tax until 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.
- At the very least, the Polish government should postpone the application of the tax until the final ruling of the CJEU.
- 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 Antimonopoly Office which is obliged to start an investigation.
- The law affects buyer and supplier equally, but the Antimonopoly Office 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 find up till 50 m EUR.
- The maximum penalty for violation of the law would be up till 3% of the turnover of the year before the punishment if the party unintentionally violated the law.
- The government tabled amendments introducing reference prices for a number of agricultural products.

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 will need to be updated for implementation Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain in Poland.

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

Act 150/2016 of 18 July 2015 on Food Trade [SOLVED]

Current amendments under discussion

- A requirement to source 51% of merchandise volumes in core product categories via the short supply chain.
- Obligation to display and promote Romanian products.
- The term “short supply chain” is not sufficiently defined and thus creates legal uncertainty for the trading companies.
- Payment term from 60 days to 30 days. For fresh products the payment term is 7 days. This is very short and the definition of fresh products is very broad and includes e.g. wine, sugar, water.
- The prohibition of fees for any service provided by the trading company to the supplier is to be regarded as a critical interference in the business model of modern trade formats, which are often based on these services, which are explicitly allowed by EU legislation (Regulation no 330/2010 ‘Block Exemption Regulation’ and the guidelines on vertical restraints (2010/C 130/01).

Status

- Law in force since 18 July 2016.
- The Commission has opened an infringement procedure on 15 February 2017.
- **On 25 February 2020 the Romanian Chamber of Deputies has amended the Romanian Food Law and removed the contested provisions.**

Asks

- The Romanian government should ensure the amended law is fully in line with EU law.
- The Romanian government should make sure all relevant amendments are properly notified according to EU 2015/1535 notification procedure before adopted by the Parliament.
- The Romanian government should create legal certainty to assure investments and retailers’ business model.
- The Commission should ensure that the amended law complies with EU law.

New amendment

- Services, discounts and any other obligation requested by traders to Romanian producers or food products cannot exceed 5% of the value of the marketed product.
- Retailers have the obligation for products like milk and dairy, meat and meat products, fruit, vegetables and products produced therefrom, bakery and used confectionery products, produced by Romanian producers, to ensure display and sales space of at least 50% of the existing surface used for food marketing. Thus, a minimum of 20% of this space should be allocated for all local producers.
- The cap of 5% would further undermine the business model of large retailers in Romania.
- The obligation to display Romanian and products of local producers is discriminating foreign products vis-à-vis Romanian products and is a quantitative restriction of the free movement of goods.

Status

- Under discussion in the Romanian Parliament.

Asks

- The Romanian government should ensure the amended law is fully in line with EU law.
- The Romanian government should make sure all relevant amendments are properly notified according to EU 2015/1535 notification procedure before adopted by the Parliament.
- The Romanian government should create legal certainty to assure investments and retailers' business model.
- The Commission should ensure that the amended law complies with EU law.

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

Current amendments proposed by the Government to the President

- Redefinition of the terms "wholesale" and "cash and carry type of trade".
- Banning stores larger than 400 m2 to the 'peri-urban territory' (outside of city and town centres)

Restrictions on freedom of establishment

- Banning new stores larger than 400 m² from Romanian towns and cities would be disproportionate breach of the freedom of establishment. The Romanian government should consider less distortive measures to help small businesses that are in line with EU law.
- Banning large stores could also be counterproductive. This may result in more consumers shopping in the peri-urban area, which would have a devastating impact on retailers in Romanian cities and towns. High streets would become less attractive places to shop and suffer from a vicious circle of store closures. This decline in consumer footfall will hurt the economic viability of the remaining shops in city-centres.
- In practice, this hinders retailers to construct new shops and shopping malls on lands already purchased. For the same reason this:
  - lowers the market value of land already purchased;
  - generally hinders retailers to construct further shops and shopping malls and
  - hinders retailers to extend/develop/refurbish already existing shops and shopping malls.

Status

- The amendments are under discussion in the Romanian Chamber of Deputies, however on 31 August 2020 a vote of no confidence is scheduled which may delay discussions
- On 10 July 2020 the Romanian government's assessment supported the amendments, despite raising doubts about their compliance with EU law. The Romanian government argued that using territorial restrictions to 'support small traders and artisans', as presented in these amendments, constitutes an infringement of the Services Directive (2006/123/EC).

Asks

- The Romanian government should notify the amendments to the European Commission, ensure that new legislation is non-discriminatory, proportionate and justified.
- The Commission should assess whether the law is in line with EU law.

Amendment Consumer Protection Law - Implementation UCPD amendment addressing dual quality

Legislative proposal on sanctioning the double quality standard for consumer products and services (BP335 / 14.05.2019)

Unlawful extension producer liability to retailers

- The proposal undermines legal certainty for retail businesses, by introducing very high fines (max 4% turnover) and in case of repetition the possibility to suspend retailers operating licence for 6 months.
- Suspending the operating licence of a retailer is disproportionate.
- Retailers should only be held accountable for private label products, for all brand products, brand manufacturers bear the responsibility i.e. the measure should be in line with EU product law.

Status

- The proposal is pending discussion and adoption
- http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=17856

Asks

- The Romanian government should implement the text as agreed at EU level.
- The Commission should ensure the law is in line with EU product law.

Slovakia

Food Act (152/1995 Coll)

Including Act No. 91/2019 Coll. of 28 March 2019, second part amending the Food Act

Disproportionate obligations retailers and shifting responsibilities from producers to retailers & wholesalers:

- Disproportionate penalties for retailers & wholesalers: Fines between €1,000 and €5 million if products with an exceeded best before or use by date are found during official controls. A 3rd fine imposed within 36 months from the first fine results in €1 to €5 million. Fines in other countries for same violation:
  - Germany up to €100
  - Poland €120
  - Bulgaria max. €2,000
- Appealing to a penalty has no longer a suspensory effect since 1 May 2019, fines have to be paid immediately [abolished July 2020]
- More responsibilities for retailers and wholesalers concerning quality safety (QS), less for producer.
- Labelling of products whose sell-by date is less than 24 hours.
- In June 2019 a foreign-owned retailer received the first €1 million fine that under the new provision had to be paid immediately. After appeal to the Slovak Court annulled the immediate payment of the fine. However, the government is not planning to amend the law.

Status

- Law and several amendments are in force.
- Foreign-owned retailers have already been fined €1 million multiple times between 2015 and 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. 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.
- Slovakia now has three months to respond to the arguments raised by the Commission. Without a satisfactory response, the European Commission may decide to send to Slovakia a reasoned opinion.

Asks

- The Slovak government should ensure legal certainty for businesses.
- The Slovak government should abolish the possibility to impose disproportionate fees.
- The Slovak government should abolish measures that create unequal conditions of competition between domestic products and imported products.
- The Slovak government should respect the free movement of goods.
- The Slovak government should abolish the reporting obligation for the origin of foods.
- The Slovak government should notify all technical requirement imposed on products according to the 2015/1535 procedure.
- The Commission should guard the proper enforcement of Regulation (EC) No 178/2002 on General Principles and Requirements of Food Law.

Infringement Free Movement of Goods

- Retailers and wholesalers have to ensure that at least 50% of food and agricultural products in promotions are of Slovak origin.
- This is a direct infringement of the Free Movement of Goods.
- Slovak government introduced strict guidelines.

Status

- In force since 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. 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.
- Slovakia now has three months to respond to the arguments raised by the Commission. Without a satisfactory response, the European Commission may decide to send to Slovakia a reasoned opinion.

Asks
- The Commission should ensure Slovakia respects EU law.
- The Slovak government should abolish the measure.

Pre-notification procedure 'imported products'
- 24 hours upon import of certain fresh fruit, vegetables and products of animal origin, retailers and wholesalers have to pre-notify the origin of the product (even from within the EU).
- The notification should have been notified according to the procedure laid down in the directive 2015/1535 .
- The pre-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.

Amendment to the Law on Prices

Proposal to regulate retail prices, which may lead to higher prices for consumers.

Slovak MPs submitted the proposal, so no inter-departmental review or public debate in advance is necessary before submitting the proposal.

The amendment proposes new definitions for:
- reasonable profit;
- reasonable mark-up (maximum double of mark-up of the same, interchangeable or comparable product from another supplier);
- economically more advantageous position of seller and buyer at the sale and purchase of food. Further it should state what should be considered unreasonable price by the sale and purchase of food.

Moreover, the fines for potential violation of this Act should be increased and the minimum fixed fine should be 50.000 EUR.

Status
- Discussed in the Slovak Parliament
- The act is envisaged to enter into force on 1 March 2019

Asks
- The Slovak government should ensure the final law proportionate and non-discriminatory, and not breaches or hinders the application of EU Law.

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.
- Maximum payment term 20 days ***after the delivery even without an invoice,*** 10 days for selected food articles. In practice it is difficult to pay without an invoice.
- 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.
- Prohibition to purchase below the supplier's economically justifiable costs. Something that retailers and wholesalers only can know if they violate Slovak competition rules.
- Prohibition to reduce purchase prices for any reason other than for promotional actions or reasons stated in the Slovak Commercial Code.
- Maximum fines up to EUR 500,000.

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. 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.
- Slovakia now has three months to respond to the arguments raised by the Commission. Without a satisfactory response, the European Commission may decide to send to Slovakia a reasoned opinion.

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 ensure that the Slovak law is compliant with EU law.

Ban of door-to-door sales at local level

- Similarly to the regulatory burdens in Czech Republic targeting off-premises sales (particularly door-to-door), Slovakia has also put in place discriminatory measures that go against EU law, diminish consumer choice and hinder economic growth.
- Certain Slovak local authorities replicate off-premises selling restrictions at local level (e.g. Bánovce nad Ondavou, Hrhov, Úľany nad Žitavou, Záhorce, among others).

Status

- A number of municipalities continue to have in place local bans.

Asks

- The Commission should ask the Slovak Government to make sure ban of door-to-door sales are in line with Directive 2005/29/EC and Directive 2011/83/EU.
- The Slovak government should ensure effective means for authorities to enforce compliance with the law and penalize rogue traders with deterring sanctions.

Spain

National and local laws on establishment

Retail Establishment

Retailers in Spain face barriers in their market access and in the exercise of their activity e.g. sales and promotions and large retail outlet taxes, both at Central Government and Autonomous Regions

Central government

- Law 7/1996 on retail trade management.
- Law 20/2013 on market unit.

Autonomous regions

- **Andalusia**: Legislative Decree 1/2012, which approved the Retail Law text.
- **Aragon**: Law 4/2015 on Retail.
- **Balearic Islands**: Law 11/2014 on Retail.
- **Canary Islands**: Legislative Decree 1/2012, which approved the Retail Law text.
- **Cantabria:** Law 1/2002 on Retail.
- **Castile and Leon**: Legislative Decree 2/2014 on Retail.
- **Catalonia**: Law Decree 1/2009 on the organization of commercial facilities, Law 18/2017 on retail, services and exhibitions.
- **Community of Valencia**: Law 3/2011 on Retail.
- **Extremadura**: Law 3/2002 on Retail.
- **Galicia**: Law 13/2010, onRetail.
- **Murcia**: Law 11/2006, on Retail and organization of commercial facilities.
- **Navarra**: Law 17/2001, on Retail.
- **Pais Vasco**: Law 7/1994, on Retail.
- **Principado Asturias**: Law 9/2010, on Retail.
- **La Rioja:** Law 3/2005 on Retail and Regulation.

Restrictions retail establishment:

15 different laws in the 15 autonomous regions that decide the establishment and functioning of new brick and mortar stores and shopping centres; use of environmental planning to impede the opening of new shopping centres:

- 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 permits are not proportionate and not justified by reason of general interest.

- The economic needs test is still applied in certain regions (effects on business models, instruments to regulate commercial density, harmonisation of social and economic development with production sectors, commercial impact assessment, number of employees in relation to sales area, distribution of sales space, etc.)
- In most regions there are two different authorisation procedures (municipality and autonomous regions), participation of competitors in granting permits, excessive intervention of authorities.
- The implementation of the Services Directive has resulted in an increase of administrative burden (more procedures, requirement of documents, etc.)

Status

- All the 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 products, 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 is in compliance 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.

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

Status

- A special tax on establishments of more than 2,500m² surface area in four regions (resulting in costs for businesses of 250 million per year).
- 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.
- Current situation: Constitutional Court

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

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

- The law imposes a tax on sweet beverages, and only applies in the Spanish region of Catalonia.
- This tax represents an entrance barrier for this 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
- The Catalonian Government is expecting a tax revenue of €31m in 2017.
- 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.

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.

- 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.

COVID19 crisis

Due to the COVID 19 crisis, there are 17 temporary Regulations in Spain which will remain force until there is a vaccine. In those Regulations there are restrictions, e.g. 75% capacity of retail stores, hygiene and safety measures, masks are compulsory when the social distance of 1.5 meters cannot be guaranteed, etc.

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EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 31 countries and 5.4 million companies, both leading multinational retailers such as Carrefour, Ikea, Metro and Tesco, and many small family operations. Retail and wholesale provide a link between producers and 500 million European consumers over a billion times a day. It generates 1 in 7 jobs, providing a varied career for 29 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.