

LEGAL OPINION ON THE AMENDMENT OF LEGISLATION ON WEBSHOPS THAT PRESCRIBES THE OBLIGATORY OFFER OF HUNGARIAN POST DELIVERY SERVICE

On 29 December 2023, with the Decree No. 685/2023 (XII. 29.) the Hungarian Government amended Government Decree No. 335/2012. (XII. 4.) on the detailed rules for the provision of postal services and postal services related to official documents, as well as on the general terms and conditions of postal service providers and on items excluded from or conditionally deliverable by postal services (hereinafter: Government Decree).

The following new Article 3/A has been added to the Government Decree:

"Section 3/A

For the delivery of goods sold under a distance contract pursuant to Government Decree No. 45/2014 (II. 26.) on the detailed rules of contracts between consumers and businesses, the possibility of using the postal service provided by the universal postal service provider for the delivery of goods sold under a distance contract shall be provided on the website of the commercial enterprise which provides goods on its commercial website, if the delivery of the goods sold is permitted by the universal postal service provider in its general terms and conditions."

The new regulation will enter into force on 28th March 2024, therefore, from this date it is obligatory to ensure the availability of the delivery services with the modified rules.

In practice, the new regulation means that a commercial enterprise (hereinafter: Enterprise) operating a webshop shall also ensure to its consumers to choose the parcel delivery service of the Hungarian Post (Magyar Posta - MPL) as option of delivery method.

There are two ways to ensure this by the Enterprise: (i) either by concluding an individual contract with Magyar Posta, specifying individual terms and conditions, (ii) or by registering on Magyar Posta's website and providing the service in accordance with Magyar Posta's general terms and conditions. In the latter case, the following prices must be – currently - displayed on the website of the Enterprise:

- Delivered to a parcel machine, Posta Pont or post office: gross 990 HUF/piece.
- For home delivery: 0-10 kg gross 1990 Ft/piece.
- For home delivery: up to 10-20 kg gross 2990 Ft/piece.
- For home delivery: up to 20-40 kg gross 5990 HUF/db.

Information on Magyar Posta's postal service, including its general terms and conditions, is available in English on the following website:

https://www.posta.hu/ugyfelszolgalat/aszf/postai_aszf

The above regulation is eligible to generate more turnover for the Hungarian Post in the parcel delivery sector as well, but the possibility of service deterioration also raised at the same time. The largest market players have so far expressed a moderate opinion regarding the new regulation, however, they clearly objected to the lack of adequate time for preparation of applications of new rules.

On 23 February 2024, the Ministry of National Economy issued a statement on a number of detailed questions, which are summarized below.

The new regulation shall be applied to business enterprises – ie. not just to legal entities but also to private persons providing goods for sale on their website - selling products through their commercial website *targeting Hungary*. However, since Magyar Posta only provides delivery services (i) within the framework of postal service contracts concluded in Hungary and (ii) for items dispatched within the territory of Hungary (i.e., it does not accept postal items from abroad), enterprises are not required to offer the option of using postal services provided by Magyar Posta for delivering items directly dispatched from abroad to consumers, as long as the general terms and conditions of Magyar Posta do not provide this option. However, if the enterprise chooses to deliver the purchased goods to the consumer - for example, from its warehouse in Hungary - via postal item dispatched within Hungary, then the provisions set forth in Section 3/A of the Government Decree shall be applied obligatorily. Hence, it is necessary to offer the parcel delivery services of Magyar Posta in such cases.

This practically means that legally also foreign enterprises shall apply the new regulation as soon as the general terms and conditions of Magyar Posta can ensure such service.

It shall also be noted that the 'website' of the enterprise with a commercial internet website hasn't been defined, yet, regarding social media and marketplace (for example FB Marketplace, eMag, Vatera, Vinted etc.) accounts specifically used for commercial activities.

The amendment to the General Terms and Conditions for Postal Services of Magyar Posta, which will come into effect from March 28, 2024, provides specifically targeted pricing for enterprises with commercial websites, allowing them to utilize the MPL Business Package service with prior registration. This service does not include the "home pick-up" extra service, which is exclusively provided by Magyar Posta to individuals. For senders with an individual contract - i.e. enterprises, including enterprises with a commercial website - Magyar Posta will provide door-to-door delivery of mail items exceeding 3 items per occasion without any extra charge.

Enterprises with commercial websites shall ensure the option for customers to select the postal service provided by Magyar Posta for the delivery of purchased goods on their website, with the postal (delivery) service of the universal postal service provider being displayed in the same manner as other postal services. In fulfilling this obligation, enterprises should aim to provide customers with the widest range of postal delivery methods compatible with the nature and characteristics of the specific product.

The legislator has indirectly taken into account the specific characteristics of goods sold by enterprises under distance contracts, where special attention must be paid to the compatibility between the nature of the goods and the suitability of the universal postal service provider's technology. For example, in relation to online food stores or stores selling goods to be delivered on the same day or with ensuring cool-chain, the new provisions of the general terms and conditions of Magyar Posta should be applied. However, in its General Conditions of Postal Services, Magyar Posta does not provide a postal service including same-day delivery, and, in its Appendix on items excluded from and conditionally transportable by post, it currently also states that it has the right to refuse to accept or to withdraw a consignment (not to provide the postal service) if it does not undertake to deliver the consignment for reasons of its own choice, for security reasons or in accordance with the applicable legislation. Currently it is not predictable for concerned enterprises that for certain content (e.g. food or products requiring cooling or freezing) that is currently subject to conditional delivery, the consumer choice provision can be

applied. However, in case of other products sold by the enterprise concerned for which the special delivery circumstances can be ensured by Magyar Posta, (i.e. the contents of the postal item remain intact and do not cause damage to the life, health and physical integrity of natural persons or to other objects, postal equipment and other items), it is obligatory to provide the consumer with the possibility of choosing the Magyar Posta's service.

The enterprises commercial website shall be modified to include the Hungarian Post in the selection of delivery options, which means a website development obligation. Furthermore, this actually places an extra burden on the webshop, as if someone chooses this option, the enterprise will have to deliver their parcel to the post office. Every extra cost that will be accounted beyond the delivery cost, shall be indicated separately.

Expectedly more questions and interpretations will arise as soon as the new regulation becomes effective, furthermore the current regulation 'forwards' the definition of conditions/possibility for fulfilling the obligation of a relevant enterprise to the General Terms and Conditions for Postal Services of Magyar Posta, which – in this light - shall be checked from time to time.

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