

TRIS NOTIFICATION 2023/0125/HU – S50E
Notification of Draft Regulations – HU Government Decree

Purpose of the draft regulation

The purpose of establishing a deposit return system is to reduce the environmental impact and to return the valuable raw materials back to material loop and economic cycle.

Three set of European directives are relevant to the introduction of the planned DRS:

- Waste management [Directive \(EU\) 2018/851](#)
- SUP directive [Directive \(EU\) 2019/904](#)
- A new Circular Economy Action Plan [COM/2020/98](#)

Different collection targets have been set by the EU in line with the environmental impact of packaging materials. **Differentiated producer contribution fees** and differentiated deposit fees are required for each material stream in line with collection targets and real costs. The European Union **bans cross-financing between streams through EPR** (extended producer responsibility). **The higher market value of metal cannot subsidize the collection and recycling costs** incurred by plastic packaging.

Based on this approach and the best Scandinavian recycling models, it is advised to recommend setting **differentiated deposit fees** and **differentiated producer contribution fees** in accordance with the **collection targets of each material type** and **capacity of beverage packaging**.

The position of Hungarian Energy Drinks Association on the draft Decree

The Hungarian Energy Drinks Association has commented on the draft Government Decree (Decree) on the detailed rules for imposition and application of the deposit return scheme (DRS) system and the distribution of products subject to the deposit fee (Notification No. 2023/0125/HU - S50E) submitted by the Government of Hungary for notification to the European Commission.

To assist the European Commission in its work, we would like to submit our comments on the Decree:

1. Imposition and application of a variable deposit fee

The draft Decree prepared by the Government of Hungary imposes a mandatory deposit fee for non-refillable beverage containers through the introduction of a new DRS system. The proposed deposit fee is set at HUF 50 per container, irrespective of the packaging material or its size. Based on international examples and our own professional experience, we see significant risks in the introduction of the proposed uniform deposit fee, regarding the level of the deposit fee for aluminium beverage cans.

In our view, the adoption of the uniform deposit fee as currently set out in the draft Decree would favour large, polluting PET plastic packaging - which is unfit for contributing to a truly closed loop circular economy - over environmentally friendly, aluminium beverage cans - which recycle forever without any loss of quality and would therefore result in a significant reduction in the latter category. The draft Decree is counterproductive to government efforts to achieve a circular economy.

The effectiveness and success of the future waste management schemes and DRS system to be introduced can be guaranteed if they are based on proven, successful systems, leveraging, for example on the historical experience of the Nordic countries, which also differentiate between packaging materials in the case of the return fee.

In Europe, Sweden and Denmark have the best-performing DRS systems, with both countries achieving recycling rates of over 90%. The deposit fees for aluminium cans are SEK 1 and DKK 1, which translate into respectively HUF 35 and HUF 48 at 2021 exchange rates. It is also worth considering the average wages in each country when determining the deposit fee. In 2021, the average wage in Sweden was five times higher than the average wage in Hungary and three and a half times higher in Denmark than Hungary as a comparison. Applying these to Hungary and adjusting the proposed HUF 50 deposit fee in Hungary by the average wage difference, we would realistically get deposit fees for aluminium cans between HUF 7 and HUF 13.

We call on the European Commission to support our efforts towards a circular economy by setting **variable deposit fees for beverage packaging in Hungary** as follows: PET and glass packaging under 0,75L: HUF 25 and above 0,75L: 50 Ft; aluminium beverage cans: HUF 10.

2. The calculation of financial contribution paid by manufacturers is not compliant with the EU Principle of Extended Producer Responsibility as disregards the income of collected waste materials sold

According to the 2018/ 851 EU Waste Directive the revenues of EPR activities performed **must include the sales of secondary raw materials** and should be allocated to pay for the concessionaire's activities related to the products included in the DRS system's operation, with the goal of eventually lowering the DRS service fee paid by the producers.

The current version of the draft Decree refers to the Hungarian Waste Law (2012. / CLXXXV.) that is not in line with the above principles as in section 53/E§ (3) bans the EPR operators to reduce their service fee by the income from waste materials sold. This DRS regulation must be adjusted to comply with EPR principles laid in 2018/851 in a way that the income generated by the sales of the collected materials should be regarded as the income of DRS operation. Thus, the calculation of the producers' fee should regard the unredeemed deposit and the value of materials sold.

3. The legal position of the HU DRS operator does not meet the minimal standards as specified by the European Parliament and the Council

A for-profit and not-independent legal entity has been selected to operate the HU DRS system which does not comply with minimum requirements for deposit and return systems. Based on the Regulation of the European Parliament and the Council on packaging and packaging waste, amending regulation (EU) 2019/1020 and directive (EU) 2019/904, and repealing directive 94/62/EC, it does not meet the minimal requirements for DRS.

4. A sufficient transitional period of time is needed for readiness

There is currently no final DRS legislation in place, the EU notification procedure has only just begun (and could take up to 12 months), and there is therefore no strong legal foundation to support producers' and retailers' efforts to **achieve 100% readiness** by the start of the DRS scheme on 1 January 2024. From the implementation date of the applicable law, it typically takes at least 12 to 18 months to set up a DRS scheme, according to practices among European member states.

In 2004, the European Court of Justice in its judgment amending the German packaging legislation did not consider a transitional period of six months to be sufficiently long. The draft Regulation on the introduction of a mandatory return system proposed by the Hungarian Government also sets a six-month transitional period, which is not sufficient in the light of the above-mentioned precedent. It is proposed to set the transitional period at a minimum of one year.

We recommend a 12 to 18 months transitional period from the point at which the notification process has been finalized and accepted.

5. Draft Decree to postpone by 12 months to align with EU DRS Regulations

As part of the ongoing revision of the Packaging and Packaging Waste Directive, the European Parliament and Council about to publish proposals for general binding requirements for DRS systems to be implemented in all Member States.

According to Directive (EU) 2015/1535 of the European Parliament and of the Council, Member States are **obliged to delay the adoption of "technical regulations" by 12 months**.

6. Clarification of placing on the market during the transitional period

According to Article 41 Section (3) of the draft Decree, products placed on the market before 1 January 2024 which are part of the DRS system under this Decree may be marketed until 29 February 2024 based on the provisions in force before the entry into force of this Decree.

This transitional period is not sufficient for a sustainable viewpoint as shelf life of beverages is typically between 12 to 24 months after production.

We recommend the precise definition of the concept of marketability, as well as the improvement of the wording of transitional period so that products manufactured before the start of the DRS system can be **placed on the market until 29 February 2024 and then sold until their expiration date, without setting any further transitional deadline for such beverages**. The amendment will avoid hundreds of millions of products still on the shelf at that time that are compliant with food safety requirements from becoming waste, thus preventing the significant financial losses for the market participants concerned.

7. Labelling of the deposit fee on the products

Section (1) Part (2) of Annex 1 of the draft Decree sets out how the symbol for the deposit fee is to be defined. According to the proposed label, the DRS system symbol

includes displaying the amount of deposit fee. Given the current economic situation and high inflation, we recommend that **the symbol should not include the amount of the deposit fee**. In the event of any change in the amount, products in packaging with the previous amount will no longer be marketable and will be thrown away, thus generating additional unnecessary and avoidable waste, which would also result in a significant financial loss for market participants concerned. The amendment would **reduce the environmental impact of the waste generated**, while at the same time not causing financial losses to producers and distributors.

8. Scope of acceptance of country list issuing GTIN number

As proposed in the Section (2) Part (1) of Annex 1 of the draft Decree, the product must have a Hungarian GTIN number. This regulation restricts the market by implementing a trade barrier. Barcode operates as GTIN number as an international marking tool that are generated to use in any county for product identification. Therefore, we propose to amend this part of the draft Decree **to allow foreign GTIN numbers** to be applied to beverage packaging. The draft Decree should consider foreign issuers, who cannot comply with the current form of the draft regulation. This provision constitutes a restriction of the free flow of services and limits their trading activity. Accordingly, we propose to extend the Decree to include foreign GTIN numbers.

9. Beverage packaging inclusion in DRS system on a practical basis

According to Article 2 Section (1) Part (1) of the draft Decree, the DRS system includes consumer packaged ready-to-drink (RTD) or concentrated beverage products with a volume of between 0 to 6 litres of which more than 5 000 units are produced and put into circulation per year by producers. When determining the inclusion of different sized RTD-s into DRS system, it is important to take into account the capacity and capability of the reverse vending machines (RVM) available.

We highly recommend to reduce narrow down and define the size of included beverage packaging between 0,1 l and 5 l instead of the originally proposed 0 to 6 litres.

The inclusion of beverage containers below 0,1 l and above 5 l in the DRS system makes it much more costly to operate than the environmental benefits of maintaining such DRS system. Below 0,1 l and above 5 l sized packaging are in fact a small fraction of the total waste stream. These can be recovered through selective collection and recycling at the household level.

10. Use of the nearest DRS system point in the event of a failure of an RVM

According to Section (13) of the draft Decree, the distributor providing the possibility of return packaging via an RVM is obliged to recollect the non-reusable products subject to DRS system in the event of a failure of their RVM, by redeeming these products with manual acceptance.

With an RVM, the distributor can collect approximately four times as many bottles as if manual return option was provided. In the event of a failure of the RVM, manual return greatly increases the cost of operating the system.

We recommend deleting the corresponding part of this paragraph. A solution can be the **development of an application that can always provide consumers with information about the location of the nearest operating RVM.**

11. Placing on the market a special form of beverage packaging

According to Article 41 Section (2), special-shaped products with a capacity of between 0,1 l and 5 l, which was already in use before 1 January 2024, are not part of the DRS system after launch. These may be placed on the market and marketed after 1 January 2024 in accordance with the provisions in force before 1 January 2024. This paragraph **removes the possibility for manufacturers to produce and place on the market special-shaped drink packaging after 1 January 2024.**

We propose amending the section to **allow marketing and distribution of special beverage packaging** with a capacity of between 0,1 l and 5 l submitted for registration to the concessionaire after 1 January 2024.

12. Precise definition of direct reimbursement

Article 15 Section (2) specifies that in case of RVM, the deposit fee is refunded directly. It is proposed to clarify **how this refund is to be made** in the draft Regulation.

13. Distributors' recycling obligation

According to Article 16 Section (1), the distributor shall take back all products for the same deposit fee as the one he has put on the market. It is proposed to amend the paragraph to clarify the **type of products to which the take-back obligation applies**, i.e. to take back all products with an EAN code and part of the DRS system.

14. Point of sale communication

Article 1 of Section (17) states that it is the distributor's responsibility to inform the consumer about the method and process of DRS system. Article 2 states that the concession company is responsible for any change of the return condition for compulsory return products, which is welcomed. It is advised to elaborate on roles and responsibilities of consumer communication on the system.

We respectfully request the European Commission under the TRIS procedure to consider our comments and concerns that we elaborated above and issue a Detailed Opinion on the Hungarian Draft Regulation to enquire the Hungarian government to make amendments in order to meet the EU regulations while ensuring proper transition time for a successful DRS implementation.