



TRIS NOTIFICATION 2023/0125/HU - S50E

Notification of Draft Regulations of the HU Government Decree

Background

On 22 March 2023, Hungary submitted a draft government decree to TRIS notification on the detailed rules for setting and applying the deposit fee, as well as on the distribution of products with mandatory deposit fee.

Summary of the draft regulation

Based on the EU Directive on Packaging and Packaging Waste, member states must take measures to boost the use of packaging reuse systems and also to increase the overall collection and recycling rates of packaging materials. These measures include - among others - the implementation of deposit return systems (DRS).

The EU SUP directive also requires member states to meet certain collection targets for certain single-use plastic products (e.g. beverage bottles), which can be achieved by introducing a deposit fee on beverage packs to incentivize take-back of empty packages.

[The Act II of 2021 on the amendment of certain laws related to energy and waste management](#) (which also amends the Hungarian Act on Waste) set the legal framework for the Hungarian DRS scheme. The government decree submitted to TRIS notification defines the detailed rules regarding the establishment and operation of the DRS system.

Position of the Czech Association for Branded Products on the draft government decree

1) Calculation model of DRS financial contributions paid by the producer is not in line with EU extended producer responsibility principles

According to the draft government decree:

“§ 26:(3) The concessionaire shall allocate the amount of the DRS service fee paid by the producers and the amount of unclaimed deposits for products which are subject to the mandatory DRS scheme, on the activities carried out by the concessionaire related to products included in the DRS scheme and the operation of the DRS system. “

In line with the EU Waste Directive (implemented in Section 30/A(3) of the Hungarian Waste Act) the

concession company's **revenues must also include the sales revenue of secondary raw materials**, which, mutatis mutandis should be allocated to fund the activities carried out by the concessionaire related to products included in the DRS scheme and the operation of the DRS system and eventually to reduce the DRS service fee paid by the producers.

Section 30/A(3) of Hungarian Waste Act reads as follows:

*'3. Financial contribution paid by producers to comply with extended producer responsibilities
(a) covers at least the following costs of the products placed on the market by the producer:
(aa) cost of separate collection of waste along with its transport and treatment required to comply with waste management targets and taken into account revenues from reuse, **sale of secondary raw materials** and from unclaimed deposits"*

DIRECTIVE (EU) 2018/852 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste

"Member States shall take the necessary measures to ensure that the financial contributions paid by the producer of the product to comply with its extended producer responsibility obligations:

- (a) cover the following costs for the products that the producer puts on the market in the Member State concerned:
 - costs of separate collection of waste and its subsequent transport and treatment, including treatment necessary to meet the Union waste management targets, and costs necessary to meet other targets and objectives as referred to in point (b) of paragraph 1, **taking into account the revenues from re-use, from sales of secondary raw material from its products and from unclaimed deposit fees,**
 - costs of providing adequate information to waste holders in accordance with paragraph 2,
 - costs of data gathering and reporting in accordance with point (c) of paragraph 1.*
- (b) in the case of collective fulfilment of extended producer responsibility obligations, are modulated, where possible, for individual products or groups of similar products, notably by taking into account their durability, reparability, re-usability and recyclability and the presence of hazardous substances, thereby taking a life-cycle approach and aligned with the requirements set by relevant Union law, and where available, based on harmonized criteria in order to ensure a smooth functioning of the internal market; and*
- (c) do not exceed the costs that are necessary to provide waste management services in a cost-efficient way. Such costs shall be established in a transparent way between the actors concerned."*

2) HU DRS operator's legal status does not comply with minimum general requirements for deposit and return systems proposed by the European Parliament and of 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 outlined in the [proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending regulation \(EU\) 2019/1020 and directive \(EU\) 2019/904, and repealing directive 94/62/EC.](#)

"Minimum general requirements for deposit and return systems

Member States shall ensure that the deposit and return systems established on their territories meet the following minimum requirements:

(f) system operator is a non-profit and independent legal entity; “

3) Discriminative product marking requirements

Compared to the draft submitted for public consultation in November 2022, points 1.1 and 2.1 of Annex 1 to the draft regulation contain the following provision:

“In the case of products subject to a DRS, the following markings shall be affixed on the product or its label: **Hungarian GTIN number** and barcode, which cannot match the markings of the same product placed on the market before January 1, 2024.”

This regulation is a restrictive, trade barrier measure, since both the barcode, which otherwise operates as an EAN code in the territory of the European Union, and the GTIN number are international marking tools that can be generated and used in any countries to identify certain a product.

Furthermore, this provision constitutes a serious breach of one of the fundamental principles of the Treaty on the Functioning of the European Union (TFEU) ensuring the free movement of goods enshrined in Title II of the Treaty on the Functioning of the European Union (TFEU), in particular the 'quantitative restriction or equivalent effect' in the provisions of Article 34.

It should be pointed out that the exceptions laid down in Article 36 of TFEU cannot be applied in this case, since the Treaty clearly states that discrimination 'shall not be arbitrary'.

EU Commission in its “Communication from the Commission — Beverage packaging, deposit systems and free movement of goods (2009/C 107/01)” also advocates the use of simple and generic beverage packaging labels/EAN codes. **“The need for country-specific EAN-codes should be avoided as these codes could also make country-by-country packaging necessary which would risk again an impediment to cross-border trade”.**

In the light of the above comments and concerns the Czech Association for Branded Products respectfully requests the European Commission under the TRIS procedure, to issue a Detailed Opinion on the Hungarian Draft Regulation requesting the Hungarian government to make amendments to the draft regulation to reach 100% EU legal framework compliance.