

Joint industry comments on TRIS notification [2023/125/HU](#) (Hungary)

Government Decree laying down detailed rules on the establishment and application of deposit fees and the marketing of products with a deposit fee

1. Object of the TRIS contribution

On 22 March 2023, Hungary notified to the TRIS portal a Government Decree laying down detailed rules on the establishment and application of deposit fees and the marketing of products with a deposit fee (hereafter 'the draft Decree'). The draft Decree, lays down rule related to mandatory deposit return schemes in Hungary in relation to products with a deposit fee (mandatory or voluntary).

Background to the draft Decree:

According to the Brief Statement of Grounds, 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 requires Member States to take measures to increase the share of reusable packaging on the market and the number of packaging reuse systems. These measures include, *inter alia*, the use of deposit refund schemes and the setting of targets.

Further, Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment requires Member States to meet a target for certain single-use plastic products, which can be achieved by introducing a deposit fee.

Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste requires Member States to take specific measures to prioritise prevention and recycling against landfilling and waste incineration, including deposit return schemes and other measures to encourage the efficient collection of used products and materials.

In view of the above, the Hungarian government proposes to introduce and operate a mandatory deposit refund scheme under extended producer responsibility schemes with a view to transpose the obligations imposed by the above-mentioned Directives in national law, thereby increasing the reuse of packaging, recycling or other recovery of packaging waste and preventing and reducing the impact of certain plastic products on the environment.

While we support the objectives of the draft Decree, we contest its lawfulness on the following grounds:

- > The draft Decree **pre-empts the forthcoming revision of the Directive 94/62/EC on Packaging and Packaging Waste**, for which the EU Commission has published a legislative proposal on 30 November 2022. The Decree therefore infringes Article 6 (3) of Directive (EU) 2015/1535 on Technical Regulations Information System (TRIS)¹.
- > The scope of application of the draft Decree **exceeds the scope of application of Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment** as it covers, *inter alia*,

¹ Article 6 (3) of Directive (EU) 2015/1535 on TRIS states: "[...] Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 5(1) of this Directive, if, within three months of that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU.

beverage bottles *with a capacity of up to 6 litres*. It also fails to exempt from its scope of application the packaging of wine, aromatised wine products and spirit drinks, as established in Article 44 (2) (a) of the **EU Commission proposal for a Regulation on Packaging and Packaging Waste (PPWR)**.

- > **The requirement in Section 7 that a product with a mandatory deposit fee may only be marketed if it bears the labelling provided in Annex 1 of the draft Decree will create unjustified barriers to intra-EU trade** and consequently amount to quantitative restrictions on imports or measures having equivalent effect, which are prohibited by article 34 of the TFEU.

2. Infringement of EU legislation

The measure proposed by the Hungarian Government infringe Directive (EU) 2015/1535 on the Technical Regulations Information System, EU legislation and TFEU provisions on Single Market.

Infringement of Directive (EU) 2015/1535 on the Technical Regulations Information System

We welcome the submission from the Hungarian Government of the draft Decree to the Technical Regulations Information System (TRIS).

The draft Decree, however, infringes Art. 6 (3) of Directive (EU) 2015/1535 on TRIS, which prescribes that Member States shall postpone the adoption of a draft technical regulation for 12 months when the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU. The EU Commission intention to revise the Packaging and Packaging Waste Directive was well known to Hungary at the time of elaboration of the draft Decree. Such intention was publicly announced by the Commission as part of the New Circular Economy Action Plan², adopted in March 2020, and has been confirmed by the publication of the EU Commission proposal for a Regulation on Packaging and Packaging Waste on 30 November 2022³.

It is notable to observe that, despite the above, Hungary has decided to proceed with the adoption of requirements that clearly pre-empt, and to some extent contradict, harmonisation efforts at EU level, namely:

- > **Article 44 and Annex X of the EU Commission proposal for a PPWR**, which prescribes the establishment by Member States of deposit and return systems for single-use metal beverage containers and plastic beverage bottles with a capacity of up to three litres and that such systems meet the minimum criteria listed in Annex X to the proposal. The draft Decree will pre-empt the adoption of EU-wide rules on deposit and return systems and seems to contradict some of the minimum criteria proposed in Annex X of the PPWR proposal, i.e. the fact that the Hungarian DRS would be operated by a concession company seems contrary to the requirement in point f) of Annex X to the PPWR.
- > **Article 11 (1) of the EU Commission proposal for a PPWR**, which establishes that packaging subject to deposit and return systems shall be marked with a harmonised label to be established by the EU Commission. The introduction of a unilateral marking requirement by Hungary will pre-empt the adoption of harmonised DRS labels at EU level.

Infringement of EU legislation, TFUE provisions on Single Market and TEU provisions

The draft Decree infringes the following EU legislation and TFEU provisions:

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "A New Circular Economy Action Plan For a cleaner and more competitive Europe", COM/2020/ 98 final, p. 8 "[...] the Commission will review Directive 94/62/EC to reinforce the mandatory essential requirements for packaging to be allowed on the EU market and consider other measures [...]" and p. 13 "[...] In addition, the Commission will put forward waste reduction targets for specific streams as part of a broader set of measures on waste prevention in the context of a review of Directive 2008/98/EC."

³ On 30 November 2022, the EU Commission published its Proposal for a Regulation on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC. The proposal is available [here](#).

- > **Article 9 of the single-use plastics Directive (SUP Directive, (EU) 2019/904)**, which establishes that deposit-refund schemes may be established to ensure the separate collection for recycling of single-use plastic beverage bottles *with a capacity of up to 3 litres*. According to the draft Decree, the scope of application of the Hungarian provisions will cover beverage containers of up to 6 litres. The draft Decree is therefore over-transposing the SUP Directive requirements.
- > **Article 34 TFEU**, which prohibits “quantitative restrictions on imports and all measures having equivalent effect between Member States”. Quantitative restrictions can only be justified by one of the public interest grounds set out in Article 36 TFEU or by one of the overriding and mandatory requirements developed by case-law in the EU Court of Justice. Such rules must be necessary in order to attain legitimate objectives and be in conformity with the principle of proportionality, which requires that the least restrictive measure be used. The proportionality of measures mandated by the draft Decree can be questioned. Hungary has failed to provide adequate justification on the need and proportionality to adopt a unilateral marking requirement which would require the use of an Hungarian GTIN number and bar code. Such measure raises competition issues and the marking of products covered by DRS could better addressed by an EU-wide approach, which the draft Decree currently undermines.
- > **Article 4(3) TEU**: In line with the principle of sincere cooperation, a Member State should refrain from adopting legislation to address an issue which can only be adequately resolved at EU level and in a field which the EU intends to harmonise. This is the case for the packaging legislation. Hungary should not pre-empt the setting of harmonised rules at EU level. These matters should be dealt with at the EU level as part of the ongoing revision of the Packaging and Packaging Waste Directive.

3. Conclusions

Pursuant to the EU principles of subsidiarity and sincere cooperation, Hungary should abstain from imposing unilateral requirements which will pre-empt forthcoming EU legislation, create barriers to trade and distortion of competition. Based on the findings from our contribution, we submit the following requests to the Commission:

- to inform Hungary that the draft Decree is in breach of Article 6 (3) of Directive (EU) 2015/1535 on TRIS;
- to invite Hungary to postpone the adoption of the draft Decree for a period of twelve months from the date of receipt by the Commission of the notification, in line with Article 6 (4) of Directive (EU) 2015/1535 on TRIS;
- to adopt a detailed opinion concluding that the draft Decree may create barriers to the free movement of goods in Europe, as well as distortion of competition and should not be adopted in its current form since it contravenes TFEU Single Market provisions and EU legislation.

Signatories



ACE - the Alliance for Beverages Cartons & the Environment



AGMPM - Association of Greek Manufacturers of Packaging & Materials



The Brewers of Europe

Brewers of Europe



CEFLEX - A Circular Economy for Flexible Packaging



Cicloplast – Spanish Association of Plastics Transformers and Raw Materials Producers for Promoting Plastics Packaging Recycling



CICPEN - Czech Industrial Coalition for Packaging and the Environment



European Aluminium



ECMA - The European Carton Makers Association



EGMF - The European Garden Machinery industry Federation



EUBP - European Bioplastics



EuPC - European Plastics Converters



EUROPEN – The European Organisation for Packaging and the Environment



EXPRA - Extended Producer Responsibility Alliance



NMWE - Natural Mineral Waters Europe



PAKKAUS - The Finnish Packaging Association



Pro Carton - Association of European Cartonboard and Carton Manufacturers



PRO EUROPE - Packaging Recovery Organisation Europe



spiritsEUROPE



SZZV - Slovak Association for Branded Products



UNESDA - Soft Drinks Europe



UNIONPLAST - The Italian Plastics Converting Association