

TOWARDS A CLEANER PLANET– THE IMPLEMENTATION OF THE DEPOSIT GUARANTEE SYSTEM IN ROMANIA

Associate professor **Marta-Claudia CLIZA**¹
Lecturer **Laura-Cristiana SPĂTARU-NEGURĂ**²

Abstract

This study started from the desire to present to the general public information on waste management, this representing a main goal in the European Union agenda, a series of legislative measures approaching waste in general and packaging waste in particular being adopted in recent years, as will be seen below. Further changes are expected in the management of plastic packaging waste, given that the European Union has agreed to introduce a new own resource based on non-recycled plastic waste amounting to EUR 0.80/kg as of January 1st, 2021, followed by the adoption of the Regulation laying down the multiannual financial framework for the years 2021 to 2027³, as well as the Council decision on the system of own resources. We believe that the dissemination of the deposit guarantee system, an important tool for supporting circular economy, could boost domestic reforms in the field of environmental protection and would facilitate waste recycling, in order to improve living standards and to promote social welfare of the EU Member States.

Keywords: deposit guarantee system, environment, recycling, circular economy, European Union.

JEL Classification: K32, Q01, Q56

1. Introductory considerations on the extended producer responsibility

The extended producer responsibility is an approach of the environmental policy where the producer's responsibility for a product is extended to the post-consumption stage of a product's life cycle. In practice, the extended producer responsibility implies the fact that the producers take responsibility for the collection of packaging waste coming from the products they introduce on the market and for their sorting before recycling.

The extended producer responsibility schemes can allow producers to exercise their responsibility by providing the necessary financial resources and/or by the municipalities' taking over of the operational and organizational matters of the process, by being able to fulfil this obligation individually or collectively.

The extended producer responsibility policy is in line with the “polluter-pays” principle, provided that the financial responsibility for the treatment of end-of-life products is transferred from taxpayers and municipalities to producers.

Currently, about 400 such schemes are working worldwide. While extended producer responsibility systems have contributed to a significant increase in the rates of material recovery from certain waste streams, as well as in making available a reliable financing source for waste collection and recycling, the economic and environmental performances of these systems seem to be extremely isolated.

Currently, there are four categories of instruments related to extended producer responsibility, which are often used simultaneously, namely:

- a) product take-over requirements entailing the assignment of responsibility, such as to producers or retailers, for the end-of-life management of the product;
- b) economic and market-based tools providing a financial incentive for the implementation of the extended producer responsibility policy;
- c) regulations and performance standards, such as the minimum recycled content that can encourage the take-over of end-of-life products;
- d) information-based tools aiming the indirect support of the extended producer responsibility

¹ Marta-Claudia Cliza – Faculty of Law, “Nicolae Titulescu” University of Bucharest, Romania, cliza_claudia@yahoo.com.

² Laura-Cristiana Spătaru-Negură - Faculty of Law, “Nicolae Titulescu” University of Bucharest, Romania, negura_laura@yahoo.com.

³ For further details, see the information available online at <https://www.europarl.europa.eu/factsheets/ro/sheet/29/cadrul-financiar-multianual> [last accessed on: 30.10.2020].

programs by raising public awareness.

The deposit guarantee system (hereinafter abbreviated, in some places “DGS” for convenience purposes) of reusable and disposable packaging waste is one of the economic tools based on the financial instrument of the deposit applied to reusable and disposable packaging.

In order to achieve the implementation of the extended producer responsibility measures, by means of art. 7 para. (1) of the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste⁴, the Member States shall be bound to establish the extended producer responsibility scheme for all packaging, no later than December 31st, 2024: “(1) In order to meet the objectives laid down in this Directive, Member States shall take the necessary measures to ensure that systems are set up to provide for: (a) the return and/or collection of used packaging and/or packaging waste from the consumer, other end user, or from the waste stream in order to channel it to the most appropriate waste management alternatives; (b) the reuse or recovery including recycling of the packaging and/or packaging waste collected. These systems shall be open to the participation of the economic operators of the sectors concerned and to the participation of the competent public authorities. They shall also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and shall be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty”.⁵

It is obvious that the interpretation shall be made according to the provisions of the primary and secondary law of the European Union⁶.

At the national level, the applicable provisions are found in (i) Law no. 211/2011 on waste regime⁷, republished, as further amended and supplemented (hereinafter referred to as “Law no. 211/2011”), transposing Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives⁸ and in (ii) Law no. 249/2015 on the management of packaging and packaging waste⁹, as further amended and supplemented (hereinafter referred to as “Law no. 249/2015”), transposing European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste 94/62/EC¹⁰.

Within the procedure for transposing the legislative amendments introduced by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018¹¹, as well as by Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on waste and packaging waste¹², amending Directive 2008/98/EC on waste, Romania has assumed a more ambitious environmental policy¹³, in line with the objectives of the European Union to move to a circular economy, by introducing in this respect the obligation to adopt a deposit guarantee system for disposable primary packaging made of glass, plastic or metal.

Given such background, Romania has undertaken to regulate a deposit guarantee system until

⁴ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, version consolidated on 04.07.2018. The document is available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:01994L0062-20180704&from=EN> [last accessed on 30.10.2020].

⁵ Idem.

⁶ For a comprehensive presentation on the European Union, see Augustin Fuerea, *Dreptul Uniunii Europene – principii, acțiuni, libertăți*, Universul Juridic Publishing House, Bucharest, 2016, Roxana Mariana Popescu, *Introducere în dreptul Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2012, Mihaela Augustina Dumitrașcu, *Dreptul Uniunii Europene și specificitatea acestuia*, 2nd edition, revised and updated, Universul Juridic Publishing House, Bucharest, 2015, Laura-Cristiana Spătaru-Negură, *Dreptul Uniunii Europene – o nouă tipologie juridică*, Hamangiu Publishing House, Bucharest, 2016.

⁷ The document is available online at <http://legislatie.just.ro/Public/DetaliiDocument/133184> [last accessed on 30.10.2020].

⁸ The document is available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:02008L0098-20180705&from=EN> [last accessed on 30.10.2020].

⁹ The document is available online at <http://legislatie.just.ro/Public/DetaliiDocument/172506> [last accessed on 30.10.2020].

¹⁰ The document is available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:01994L0062-20180704&from=EN> [last accessed on 30.10.2020].

¹¹ The document is available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32018L0851> [last accessed on 30.10.2020].

¹² The document is available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32018L0852> [last accessed on 30.10.2020].

¹³ Alina-Mihaela Conea, *Politicile Uniunii Europene. Curs universitar*, Universul Juridic Publishing House, Bucharest, 2019, p. 37.

January 1st, 2021, in order to streamline the collection and recycling of packaging waste, in general, as well as of disposable packaging that falls under the scope of the system, in particular.

2. General considerations on the deposit guarantee system

From the legislative point of view, the deposit guarantee system is a complex one (legal transplants¹⁴ being often used), due to the fact it must be implemented in compliance with the existent provisions on waste and packaging waste, legislative amendments being also needed in order to ensure its operation in line with the legislation in force, in order to avoid interpretations contrary to the intended purpose, but also potential operational blockages.

An important step in implementing the system was the publication of the document “*Studiu Privind Evaluarea Sistemului de Garanție, Componentă a Sistemului de Gestionare a Deșeurilor în România*”¹⁵ (“Study Regarding the Evaluation of the Guarantee System, a Component of the Waste Management System in Romania”), developed in 2020 by a group of members of the teaching staff of the Academy of Economic Studies of Bucharest, study commissioned and supported by the Circular Economy Coalition Association, the National Association of Soft Drinks, the Romanian Association for Packaging and Environment, the Brewers of Romania Association.

According to this study, the social impact that such a deposit guarantee system would have proved to be positive, the main incentive for consumers to return primary waste from disposable packaging being that of environmental protection, and, secondly, the return of the charged deposit.

A necessary tool for the operation of the system consisted in the campaigns for the information and education of the public and of the economic operators in order to raise their awareness on the environmental impact of the respective packaging waste.

The objectives that the deposit guarantee system should meet in the first years of operation must be higher than those of Directive 94/62/EC, as further amended and supplemented, as they are currently being achieved by means of the organizations for the implementation of the extended producer responsibility (OIEPR). Notwithstanding, at the time being, due to the low level of investments in separate collection infrastructure and the operation of such infrastructure, we can say that Romania is experiencing an involution of performance in separate collection from population, which leads to the failure to meet recycling targets.

According to EUROSTAT data, Romania has consistently had a 60% target fulfilment rate, which reveals an inefficient policy¹⁶ for increasing recycling level, and, in the same respect, the European Union’s goal of changing targets can be mentioned, which is enshrined in recital no. 2 of the Preamble of Directive (EU) 2018/852: “[t]he targets laid down in European Parliament and Council Directive 94/62/EC for the recovery and recycling of packaging and packaging waste should be amended by increasing the recycling of packaging waste to make them better reflect the Union’s ambition to move to a circular economy”.¹⁷

The deposit guarantee system for disposable primary packaging, provided by art. 10 para. (5) of Law no. 249/2015, represents an extended producer responsibility scheme within the meaning of item 20¹ of Appendix no. 1 to Law no. 211/2011 and which is to operate separately from and simultaneously with the other mechanisms used to implement the extended producer responsibility, which are currently available, according to the provisions of art. 16 para. (5) of Law no. 249/2015, respectively individually or by means of an organization for the implementation of the extended

¹⁴ Nicolae Popa coordinator, Elena Anghel, Cornelia Beatrice Gabriela Ene-Dinu, Laura-Cristiana Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar*, 3rd edition, revised and supplemented, C.H. Beck Publishing House, Bucharest, 2017, p. 6.

¹⁵ The document is available online at http://www.mmediu.ro/app/webroot/uploads/files/200311_Brosura-ASE-Buyback-PART1%20BPART2%20-%20FINAL.pdf [last accessed on 30.10.2020].

¹⁶ It would be interesting to note the crimes in the special laws on environmental protection – see Mirela Gorunescu, *Infrațiuni contra mediului înconjurător*, C.H. Beck Publishing House, Bucharest, 2011, as well as Mihai-Adrian Hotca, Mirela Gorunescu, Norel Neagu, Dominic George Pop, Alexandru Sitaru, Radu-Florin Geamănu, *Infrațiuni prevăzute în legi speciale. Comentarii și explicații*, 5th edition, C.H. Beck Publishing House, Bucharest, 2019.

¹⁷ The document is available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32018L0852> [last accessed on 30.10.2020].

producer responsibility (OIREP).

The obligation to regulate the deposit guarantee system is incumbent on the Government of Romania and is to be fulfilled, according to the provisions of Law no. 249/2015, by means of Government decision, until the deadline of January 1st, 2021, provided by the legislator by means of the amendments brought to the legislation by Government Emergency Ordinance no. 74 of July 17th, 2018 for the amendment and supplementation of Law no. 211/2011 on waste regime, of Law no. 249/2015 on the management of packaging and packaging waste and of Government Emergency Ordinance no. 196/2005 on the Environmental Fund¹⁸.

The minimum mandatory elements that the normative act regulating the deposit guarantee system will have to include, according to the provisions of art. 10 para. (6) of Law no. 249/2015, are the following:

- a) the circulation of the packaging subject to the deposit guarantee system;
- b) the definition of the collection system components;
- c) the definition of the deposit guarantee system operation;
- d) the deposit reimbursement mechanism;
- e) the value of the deposit;
- f) the system administrator;
- g) the packaging marking indicating the participation in the deposit guarantee system;
- h) the deposit guarantee system monitoring and control.

Obviously, by taking into account that the deposit guarantee system represents another economic tool of the extended producer responsibility policy implementing the “*polluter-pays*” principle, we hereby emphasize that it must be implemented by observing the existent provisions of Law no. 211/2011 and Law no. 249/2015.

3. Packaging falling under the scope of the deposit guarantee system

In terms of the packaging category, the scope of application of the deposit guarantee system, according to art. 10 para. (5) of Law no. 249/2015, concerns “disposable primary packaging made of glass, plastic or metal, with volumes between 0.1 l and 3 l inclusive, used for beer, beer mixes, alcoholic beverage mixes, cider, other fermented beverages, juices, nectars, refreshments, mineral waters and drinking waters of all types, wines and spirits”¹⁹.

According to the definition regulated in Appendix no. 1 para. (1) letter c) of Law no. 249/2015, the term of *packaging* designates “all products, regardless of their material or nature, intended for retention, protection, handling, distribution and presentation of goods, from raw materials to processed products, from the producer to the user or the consumer”²⁰. It is interesting to note that “the non-returnable item intended for the same purposes is also considered packaging”²¹.

According to the definition regulated by Appendix no. 1 para. (1) letter d) of Law no. 249/2015, the term of *primary packaging*, sale packaging, designates the “packaging manufactured and designed to fulfil the function of sale unit, for the end user or consumer, at the point of purchase”²².

The term of *disposable packaging* was not expressly defined by the legislator, however it can be inferred by *per a contrario* interpretation from the definition regulated for the reusable packaging²³, therefore *disposable packaging* means the packaging that has been manufactured,

¹⁸ The document is available online at <https://lege5.ro/Gratuit/gi4dsmbxgqyq/ordonanta-de-urgenta-nr-74-2018-pentru-modificarea-si-completarea-legii-nr-211-2011-privind-regimul-deseurilor-a-legii-nr-249-2015-privind-modalitatea-de-gestionare-a-ambalajelor-si-a-deseurilor-de-am> [last accessed on 30.10.2020].

¹⁹ Law no. 249/2015 is available online at <http://legislatie.just.ro/Public/DetaliuDocument/172506> [last accessed on 30.10.2020].

²⁰ Idem.

²¹ The document is available online at <http://legislatie.just.ro/Public/DetaliuDocument/172506> [last accessed on 30.10.2020].

²² Idem.

²³ The reusable packaging is the packaging that has been manufactured and placed on the market in order to achieve, within its life cycle, several cycles or rotations, being refilled or reused for the same purpose for which it has been manufactured, according to the definition found in Appendix no. 1 para. (1) letter g) of Law no. 249/2015.

designed and placed on the market in order to achieve, within its life cycle, a single cycle or rotation, without the possibility of being refilled or reused for the same purpose for which it has been manufactured.

The disposable packaging becomes *packaging waste* when the end consumer returns it in order to recover the deposit.

From the point of view of the market where DGS packaging is marketed, the deposit guarantee system contemplates the packaging *placed* or *made available* on the national market, as these terms are defined by means of Appendix no. 1 letter r) and s) of Law no. 249/2015, respectively:

r) *to place on the national market* – “to make available a product on the national market, for the first time. The legal entity with office in Romania which, according to the legislation applicable to the respective product, places a product on the national market, shall also be held liable (...) for the packaging of the product”²⁴.

s) *to make available on the national market* – “any supply of a product for distribution, consumption or use on the national market within a commercial activity, in exchange for a payment or free of charge”²⁵.

In this way, the system will manage both locally and imported product packaging, ensuring that (i) the treatment applied under the system is non-discriminatory regardless of the source of the packaging, and that (ii) the actual operation of the system does not cause unjustified barriers to trade.

The deposit guarantee system will not be applicable to exported products, sold in *duty-free* shops and to those sold in international means of transport, the reason being that such products are not sold on the national market.

The deposit guarantee system shall only be applicable in respect of packaging placed or made available on the national market after the actual implementation of the system, without affecting the stream of packaging pre-existing on the market. At the same time, even after the actual implementation of the system, a reasonable period of time will be required in order for the traders to have the opportunity to market the products remaining in stock, outside the system.

DGS packaging, by the producers' care, shall bear a distinctive symbol, highlighting their membership in the system and, at the same time, a specific barcode. The symbol shall be unique at national level for all products in DGS packaging, and the specific barcode shall provide the necessary information in order to establish the packaging affiliation to the deposit guarantee system and the producer's identity.

The provisions of art. 8 para. (3) of Directive 94/62/EC were taken over in the national legislation by means of the provisions of art. 9 para. (2) of Law no. 249/2015, which expressly provides that “the marking shall be applied directly on the packaging or on the label and shall be visible, legible, durable”²⁶.

The specific DGS symbol will have to be made available in terms of the intellectual property rights to all producers and importers the marking obligation is incumbent on.

4. The deposit guarantee system operation principles

The deposit guarantee system represents a way in which the consumer is involved in a system of voluntary return of packaging waste to a collection point. The consumer will be stimulated to develop such a conduct by the deposit, the amount of money that the consumer will pay when purchasing DGS packaging products, in addition to the value of the product, and which the consumer will be able to recover by returning DGS packaging at the places intended for this purpose.

The operation and structure of the deposit guarantee system are closely linked to the route taken by the DGS packaging products, which will be doubled by a similar route, but in the opposite direction of the deposit.

²⁴ The document is available online at <http://legislatie.just.ro/Public/DetailiiDocument/172506> [last accessed on 30.10.2020].

²⁵ Idem.

²⁶ Idem.

The new regulation will take into account the route taken by the DGS packaging products within the commercial cycle and will ensure the traceability of the DGS packaging between all the actors involved, respectively:

- a) producers/importers placing/making available on the national market DGS packaging products;
- b) if the case may be, suppliers purchasing products in wholesale DGS packaging in order to distribute them to retailers, in the course of their business;
- c) the retailers that will retail DGS packaging products;
- d) the end consumers who will purchase DGS packaging products from the retailers and will subsequently return the packaging to the return points;
- e) the deposit guarantee system administrator, the entity set up for the purpose of managing DGS packaging waste, so as to keep an accurate record of all collected DGS packaging, of the deposits paid in connection with DGS packaging and to ensure their collection and recycling.

The flow of the DGS packaging product placed or made available on the national market shall be accompanied by the payment of the deposit as follows:

- a) the producers/importers, at the time they place/make available on the national market DGS packaging products, shall pay to the DGS administrator the deposit for each of the DGS packaging units placed on the market;
- b) the suppliers or retailers purchasing DGS packaging products from the producers shall pay to the latter, separately from the price of the products, the deposit related to them;
- c) the final consumers who will purchase from retailers DGS packaging products shall pay to the latter, separately from the price of the products, the deposit related to them;
- d) when end consumers return DGS packaging at the return points organized at retailers' level, the latter shall pay to end consumers the value of the deposit they paid when purchasing the product;
- e) the retailers that returned deposits to end consumers, shall request the reimbursement of the total value of the deposits returned from the DGS administrator;
- f) the DGS administrator shall reimburse to retailers the total value of the deposits returned to end consumers and shall collect from retailers DGS packaging returned by end consumers, to count, centralize and finally, recycle them.

At the same time, two other essential components of the system consist of the administration fee and the management fee.

The administration fee is the amount that each producer/importer of DGS packaging products will have to pay to the DGS administrator and which aims to cover the costs required for the implementation and operation of the deposit guarantee system and the system administrator; this fee shall be incumbent on the producers as a reflection of the “polluter pays” principle.

Basically, the administration fee will have to cover the difference between, on the one hand, the total cost required for the operation of the system and, on the other hand, the income generated by the DGS administrator in the course of its activity, mainly consisting of the deposits unclaimed by the consumers and the amounts charged in exchange for the alienation of the DGS packaging waste collected under the system, by the recyclers.

The management fee is the amount of money that the DGS administrator will pay to every retailer which organizes DGS packaging return points where the end consumers will return DGS packaging and will be refunded the deposit they paid when purchasing the product. The scope of the management fee will be to cover in full the costs borne by the retailers in direct connection with the fulfilment of the obligations on DGS packaging take-over and storage.

Due to the fact that the deposit guarantee system is an extended producer responsibility scheme, the fact that the financial responsibility for the operation of the system lies exclusively with the producers/importers should be taken into account when establishing the value of the administration fee and management fee.

Therefore, the implementation and operation of the system should not represent an onerous financial burden for retailers, and the system will have to be designed and operated so that the costs

incurred by the retailers in order to comply with the obligations for the system operation are indirectly borne by the producers, by means of the DGS administrator.

5. The deposit for DGS packaging products

Unlike the Slovakian legislation, which provides that the persons interested in establishing the administrator must submit to the Ministry of the Environment even the “*method for determining the amount of the deposit*” [art. 6 para. (3) letter b) of Law of September 11th, 2019 on the system for the return of the deposits retained for disposable beverage containers and on amendments to certain laws²⁷ adopted by the National Council of the Republic of Slovakia), but also the Estonian legislation which provides a minimum level of the deposit of EUR 0.03, the exact value being established subsequently, by Ministerial Order [art. 21 paras. (5)-(6) of the Packaging Act²⁸], in Romania, the value of the deposit shall be established only by Government decision, under the impossibility of being established by the decision of the DGS administrator or of being subsequently modified by it.

Art. 10 para. (6) letter e) of Law no. 249/2015 expressly provides that *the value of the deposit* shall be established by the Government decision by which the deposit guarantee system will be implemented²⁹.

Therefore, the Romanian legislator did not leave at the discretion of the economic operators the possibility to establish the initial amount or the subsequent amount of the deposit, but has chosen its regulation by normative act, respectively by means of the Government decision by which the deposit guarantee system will be implemented.

The deposit shall be charged for each unit of product in DGS packaging and its amount shall be set so as to determine end consumers to voluntarily return DGS packaging in order to recover their deposit, but at the same time, it should not be so high as to cause significant changes in consumer purchasing conduct compared to that up to the date of implementation of the system.

From the accounting point of view, the economic operators of DGS packaging products shall highlight distinctly the value of the deposit and the price of the product. Furthermore, the total value of the deposits repaid to end users at the time they return the disposable packaging shall be highlighted. Given the extent of the implementation of the deposit-return system, as well as the lack of certain regulations in this respect, in order to ensure the coherence of the system from the financial and accounting point of view, it is required to regulate, by means of an Order of the Minister of Public Finance, the methodology for keeping the accounting records of the amounts collected as deposit for the disposable packaging subject to the payment of a deposit.

In what concerns reusable packaging, by means of the provisions of art. 13 para. (1) letter c) of Law no. 249/2015, the Romanian legislator expressly provided that the return of the deposit is conditioned by the submission of the tax receipt, in order to establish that the product was purchased from the respective point of sale.

Notwithstanding, the Government decision regulating the DGS could consider solutions such as those provided by the Estonian legislation, where the reimbursement of the deposit from the distributor to the end consumer is conditioned by the return of a “reasonable quantity” of packaging, in order to protect against abuses the distributors that do not have the logistical and economic capacity to manage a large quantity of returned packaging waste.

In what concerns the right of end consumers to recover their deposit when returning the disposable packaging, it should not be absolute, as it can give rise to abuses, to the detriment of the functionality of the deposit guarantee system. For this reason, we consider that it would be necessary to regulate the situations where packaging distributors can refuse disposable packaging taking over.

The provisions established by the legislator on the situations of refusal of the reimbursement

²⁷ The document is available online at <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2019&num=115> [last accessed on 30.10.2020].

²⁸ The document is available online at https://www.riigiteataja.ee/en/compare_original/524102014004 [last accessed on 30.10.2020].

²⁹ The document is available online at <http://legislatie.just.ro/Public/DetaliiDocument/172506> [last accessed on 30.10.2020].

of the deposit represent an instrument required in order to avoid system fraud situations and the contamination of the other collected packaging, situations which would lead to the impossibility of recycling and, implicitly, to the inefficiency of the deposit guarantee system.

Furthermore, the implementation of the system will require legislative changes in the tax field with reference to the tax treatment of the deposit and of the other income earned by the DGS administrator, so that these amounts do not claim any tax burden for the actors involved in the operation of the system.

6. Public entities with supervisory and sanctioning role within the DGS

The efficiency of the implementation and operation of the system also depends on the active mechanisms that the state has at its disposal to correct and sanction any deviation occurred within the system, so that the DGS regulation must include the appropriate mechanisms to achieve this goal.

The competence to find and to sanction these deeds shall belong, in a complementary manner, to the Romanian National Environmental Guard, the Environmental Fund Administration, as well as to the National Authority for Consumer Protection, depending on the nature of the contraventions found. In addition, the role of supervisory body of the DGS administrator could revert to the Commission for the supervision of the extended producer responsibility regulated by art. 12 para. (9) of Law no. 211/2011.

The Romanian National Environmental Guard³⁰ (GNM) is a public institution and works as a specialized body of the central public administration, subordinated to the Ministry of the Environment, Water and Forests, having legal personality and being financed in full from the state budget. GNM is a specialized inspection and control body which can take measures to sanction and suspend the activity of the economic operators, as a consequence of the pollution and deterioration of the environment or for the failure to fulfil the conditions established by the regulation acts. GNM shall be held liable to ensure professional, uniform and integrated implementation of the Government policy on the application of the national legislation harmonized with the community one, in the field of the environmental protection.

As resulting from the provisions of art. 13 of Government Decision no. 1005/2012 on the organization and operation of the Romanian National Environmental Guard³¹, as further amended and supplemented, the duties of the institution concern the application of the Government policy in what concerns the prevention, finding and sanctioning of the violation of the legal provisions on environmental protection, including of the failure to fulfil the regulations provided by the specific laws in the field of industrial pollution control and risk management, hazardous substances and preparations, biodiversity and protected natural areas, the environmental fund and other areas provided by the specific legislation in force.

The Environmental Fund Administration³² (AFM) operates as a specialized body of the central public authority, under the coordination of the Ministry of the Environment, Water and Forests, having legal personality. AFM is the main institution ensuring financial support for the fulfilment of the environmental protection projects and programs, established according to European principles “*polluter-pays*” and “*producer responsibility*”. Given that the main duties of the AFM, as resulting from the provisions of art. 3 of Government Emergency Ordinance no. 196/2005 on the Environmental Fund³³, as further amended and supplemented, are limited especially to the draw up of the income and expenditure budget by supervising the establishment and management of the Environmental Fund, it will exercise a specialized control in order to ensure the fulfillment by the economic operators registered with the deposit guarantee system of the economic and financial obligations, such as: the failure of the economic operators to fulfill the obligation of keeping separate

³⁰ See <https://www.gnm.ro/> [last accessed on 30.10.2020].

³¹ The document is available online at <http://legislatie.just.ro/Public/DetaliuDocument/142351> [last accessed on 30.10.2020].

³² See www.afm.ro [last accessed on 30.10.2020].

³³ The document is available online at <http://legislatie.just.ro/Public/DetaliuDocument/67529> [last accessed on 30.10.2020].

account records; the violation of the packaging producers in what concerns the obligations of covering all the costs of the Administrator caused by the implementation and operation of the deposit-return system, as well as the expenses on the transportation, recovery, recycling and disposal of the disposable primary packaging waste subject to a deposit.

As resulting from the provisions of art. 16 of Government Emergency Ordinance no. 196/2005, the finding of potential contraventions and the application of sanctions shall be performed both by the specialized personnel within the Environmental Fund Administration, and by the specialized personnel or authorized personnel of the Romanian National Environmental Guard, depending on the type of the contravention.

The National Authority for Consumer Protection³⁴ (ANPC) is a public institution and operates as a specialized body of the central public administration, subordinated to the Government and under the coordination of the Ministry of Economy, Energy and Business Environment, having legal personality.

The authority coordinates and fulfils Government strategy and policy in the field of consumer protection, acts to prevent and fight against practices that harm life, health, security, and economic interests of consumers.

The deposit guarantee system shall establish certain obligations incumbent on the economic operators whereby certain consumers' rights are not damaged, i.e.: the distributors' obligation to indicate separately the amount of the deposit on the price label of the packaged product; the distributors' obligation to collect disposable packaging from end consumers and to reimburse them the related deposit.

The violation of these obligations shall be deemed contravention and shall be sanctioned as such. ANPC shall control the compliance of the legal provisions on consumer protection, security of products and services, as well as on the protection of legitimate interests of the consumers, by carrying out controls at the producers and retailers of DGS packaging products.

The Commission for the supervision of the extended producer responsibility³⁵ could represent the supervisory body of the DGS administrator, as its scope is to supervise the implementation of the obligations on the extended producer responsibility.

According to Order no. 64/2019 of the Minister of the Environment for the approval of the specific structure and of the regulation on the operation of the Commission for the supervision of the extended producer responsibility³⁶, the Supervisory Commission supervises the organizations which implement the extended producer responsibility in a given waste stream. However, based on the Latin principle *a majori ad minus* (which translates to "who can do more, can do less")³⁷, if the Supervisory Commission can have control duties in a certain waste stream where there are several organizations, the possibility of supervision where there is only one organization, respectively the DGS administrator, would be all the more justified.

This interpretation would not be in contradiction with the provisions of Law no. 211/2011 which aims to set up a supervisory body for all the organizations, and such powers could be expressly assigned to the Supervisory Commission by means of a Government decision or a subsequent ministerial order.

Furthermore, according to the provisions of art. 8a para. (5) of Directive 2008/98/EC³⁸, a Member State can organize several supervisory bodies of the organizations which implement the extended producer responsibility.

Therefore, at the time being, legislative changes could be operated to establish in a clear and

³⁴ See www.anpc.ro [last accessed on 30.10.2020].

³⁵ See <http://www.mmediu.ro/categorie/comisia-de-supraveghere/196> [last accessed on 30.10.2020].

³⁶ The document is available online at <https://lege5.ro/Gratuit/gmzdcnztgiza/ordinul-nr-64-2019-pentru-aprobarea-structurii-specifice-si-a-regulamentului-de-functionare-a-comisiei-de-supraveghere-a-raspunderii-extinse-a-producatorilor> [last accessed on 30.10.2020].

³⁷ See Nicolae Popa (coord.), Elena Anghel, Cornelia Beatrice Gabriela Ene-Dinu, Laura-Cristiana Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar*, 3rd edition, revised and supplemented, C.H. Beck Publishing House, Bucharest, 2017, p. 205.

³⁸ The document is available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:02008L0098-20180705&from=EN> [last accessed on 30.10.2020].

unambiguous way the supervisory duties exercised by the Supervisory Commission within the DGS.

7. Final considerations

Given that the change from a waste management system to another entails thorough preparations from all the parties involved, but also that this stage is critical especially for the economic operators, the transition to the new system should take place without interruptions and without jeopardizing the capacity of the economic agents to participate in the new system, as soon as it becomes functional³⁹.

The process of implementing the deposit guarantee system requires a sufficiently long transition period, so that the characteristics of the system to become applicable and efficient, the production lines and the distribution chains to be adapted, and the end consumers to be informed on the operation of the system.

Therefore, given that, at national level, the current efficiency of the extended producer responsibility system is reduced, we consider that, before the entry into operation of the deposit guarantee system, it is necessary to provide to the economic operators a transition period of at least one year as of the regulation by the Government decision of the system implementation, in order for them to be able to adapt and to subsequently support the efficient operation of the deposit guarantee system.

The deposit guarantee system presents the premises of being the most efficient tool to reduce both waste generation and the exploitation of raw materials, and the guarantee of a clean and healthy environment can only be achieved through concerted actions of public authorities and economic operators.

Therefore, in order to implement a system that represents a viable solution, it is necessary to adopt measures that will make citizens, producers, distributors and other economic actors on the market more responsible.

The deposit guarantee system will operate only on the basis of the existence of the obligation of the producers or importers placing on the Romanian market packaging, which are classified as part of the guarantee system, to enter into a contractual relationship with the deposit guarantee system operator.

We hereby underline that the producers and importers understand the need to implement this system and are working to develop a solution for the implementation of this system, by bearing the initial investment of the project and estimating that it will be paid off in the first 3-4 years of operation of the system. In this respect, a private sector initiative is also the set-up of alliances between Romanian producers (i.e., the Beverage Producers Alliance which brings together producers of beer and soft drinks from Romania).

In achieving this goal, this study aims to represent the starting point in the implementation of the deposit guarantee system on the territory of Romania and to contribute to the development of a coherent normative framework, in line with the regulations adopted within the European Union.

We cannot help wondering if Romania is ready to successfully implement the deposit guarantee system, given the fact that we are in the midst of the pandemic. It is obvious that the deposit guarantee system will give rise to questions all over the world, this solution having its supporters, but also its opponents. Only time will show us whether the solutions conceived and implemented by the Romanian authorities were the correct and necessary ones for Romania in 2021, by being able then to discuss the legality and morality of their activity⁴⁰.

³⁹ See in this respect, Communication from the Commission no. C 107/2009 – Beverage packaging, deposit systems and free movement of goods, document available online at <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=OJ:C:2009:107:FULL&from=NL> [last accessed on 30.10.2020].

⁴⁰ See Elena-Emilia Stefan, *Legalitate și moralitate în activitatea autorităților publice*, “Revista de Drept Public” no. 4/2017, pp. 95-105.

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