

Unclassified

English - Or. English

22 May 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Competition in the Circular Economy – Note by Romania

15 June 2023

This document reproduces a written contribution from Romania submitted for Item 7 of the 140th OECD Competition Committee meeting on 14-16 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/competition-in-the-circular-economy.htm>

Antonio CAPOBIANCO
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

JT03519332

Romania

Overview

1. The main objective for Romanian authorities is accelerating the process of expanding and modernizing waste management systems, with an emphasis on separate collection, prevention, reduction, reuse and recovery measures, in order to comply with the applicable directives and the transition to the circular economy.
2. Together with the efforts to update and adopt the strategic framework, it is necessary to simplify and standardize the legislative provisions on waste management.
3. The national legal framework includes all the normative acts which take into account the environment, starting from the constitutional law, where the obligation to protect the environment is established as: *“(1) The statute recognizes the right of every person to a healthy and ecologically balanced environment. (2) The state ensures the legislative framework for the exercise of this right. (3) Natural and legal persons have the duty to protect and improve the environment”*, up to the special legislation in this field.
4. The national competition authority has monitored the waste management market, including the legislative and regulatory measures taken by the Government and provided advice and expertise, using competition advocacy tools to protect and promote the functioning of the waste management market as a competitive market.

1. On the right track: more recycling, less landfill

5. The national legislation in the field of packaging and packaging waste has been amended, in order to ensure compliance with the commitments assumed by Romania towards the European Commission. These commitments are an integral part of the Recovery and Resilience Plan for Romania, in the field of green transition and waste management. On this occasion, the requirement relating to the establishment of a deposit-return system for non-reusable packaging (“DRS”) has been introduced.
6. The purpose of the DRS is to limit the impact of packaging on the environment and to reduce their final disposal by introducing new requirements that optimize sustainable management. The new system aims to achieve and even overcome the environmental objectives set at European level.
7. The deposit-return system for non-reusable packaging is highly important for the entire market, in view of ensuring the sustainable management of packaging, achieving at least the targets set at European level, preserving and improving the quality of the environment, protecting human health and ensuring the wise and efficient use of natural resources.
8. The DRS will apply to non-reusable primary packaging of glass, plastic or metal, with volumes between 0.1 liter and 3 liters, available on the national market for beer, beer mixes, alcoholic beverage mixes, cider, other fermented beverages, juices, nectars, soft drinks, mineral waters and drinking waters of all kinds, wines and spirits, with the exclusion of exported products, products sold in duty-free shops and those sold in international means of transportation.

9. The DRS will be governed by the following general principles: **(i)** the system is applied at the national level, in order to allow final consumers/users to recover their deposit regardless of the place of the initial purchase; **(ii)** the system is applied without (direct or indirect) discrimination on imports; **(iii)** the measures introduced are proportionate considering the need to improve the management of packaging and packaging waste and to achieve the targets set at European level in this field; **(iv)** the system ensures a transitional period designed to allow manufacturers and importers to prepare, with transitional provisions in place, as well as a deadline for implementation until when the system will become operational; **(v)** the system is accessible to all producers in a non-discriminatory manner.

10. The relevant actors in the deposit-return system for non-reusable packaging will have the following main obligations:

Consumers / end users of DRS packaging shall:

- pay the deposit when purchasing DRS products;
- return DRS packaging to return points, in accordance with the conditions for delivering the used DRS packaging and get back the deposit.

The **producers** of DRS products shall:

- register with the DRS manager and declare on a monthly basis the quantities of DRS products placed on the Romanian market;
- participate mandatorily to the DRS system;
- apply the deposit to the DRS products when selling them to the distributor / trader and reflect it separately on the invoice;
- pay to the DRS manager the administration fee and the deposit for all DRS products.

The **distributors** of DRS products shall:

- pay the DRS deposit to the producers and
- apply the DRS deposit separately on the invoice when selling DRS products further.

Companies selling DRS products to final consumers / end-users shall:

- register with the DRS manager and participate in the DRS system;
- inform the final consumers/users about the value of the deposit for the DRS products and the mechanism for getting back the deposit;
- mention the price of the DRS product separately from the deposit of the DRS product;
- collect the deposit for each sale / supply of DRS products;
- organize return points for DRS packaging;

11. The deposit-return system for non-reusable packaging has as leading actor the DRS Manager, recently introduced¹, who aims to standardize and maintain coherence in the implementation of the DRS at national level.

¹ The provisions of this decision apply to all unusable primary packaging, introduced on the Romanian market, after September 30, 2022.

12. The DRS Manager is a Romanian legal entity, unique at national level, established in the form of a share company (RetuRO), in order to implement, manage, operate and ensure the financing of the deposit-return system. The DRS Manager has a two-tier system, with a management board and a supervisory board. In the supervisory board, there will be appointed members from government ministries and agencies.

13. The DRS Manager is formed by producer associations having a market share of at least 30% of the number of DRS packaging units placed on the Romanian market in the fiscal year prior to the submission of the documentation for accreditation. The shareholders may also include trader associations that introduce and sell DRS products on the national market. 20% of the shares will be reserved for the state. The representative producer associations may hold a maximum of 75% and the representative trader associations may hold a maximum of 25% of the remaining 80% shares.

14. The implementation of the deposit-return system relies not only on the involvement of all the companies that introduce DRS products on the national market, but also on the active involvement of the state and of the citizens. Passivity would lead to a constant bottleneck of the system, which will only be able to function through the close cooperation of all partners, in a spirit of shared responsibility.

15. Engaging in competition advocacy is especially critical for competition authorities in developing countries and economies in transition, in promoting and advocating the objectives and benefits of the competition policy, as well as recommending changes to legislative frameworks.

16. To fulfill this role, RCC has formulated proposals and recommendations to be considered before transposing the bill for the introduction of the deposit-return system for non-reusable packaging into law, in order to ensure a legal, fair and pro-competitive framework on the waste management market.

17. The Romanian Competition Council was involved in assessing if the formation of the new share company constitutes a notifiable merger under the merger regulation. Following the analysis, it emerged that the conditions for acquiring control in a fully functional joint venture are not met, in the sense of the legislative provisions on economic concentrations, both at the national and at the community level. However, in the situation where, in the future, the shareholding structure will be changed or a change will be found regarding the acquisition of control within the newly established company (including by stabilizing over time a majority of voting rights), a new detailed analysis will be required.

18. For the proper functioning of the waste management market, the principle of minimum harm brought to competition must be respected, i.e. the measures taken must be proportionate to the objective of public interest pursued, in this case, the achievement of environmental objectives.

19. Taking into account that, following the accreditation procedure, a single DRS manager will be licensed, the national competition authority recommended the Ministry of the Environment to carry out an impact assessment that would show that the establishment of a single DRS manager is the only real and efficient possibility for the deposit-return system for non-reusable packaging.

20. Granting unlimited license in time to a monopolistic company leads to blocking access on the market for other companies and implicitly, results in a significant distortion of a normal competitive environment on the market. Therefore, the national competition authority stressed the limitation of the duration of the license for the DRS manager. Following the impact assessment, it should appear that the duration of the license ensures, in a real and efficient way, the amortization of the initial investments.

21. Regarding the way of functioning of the DRS manager, starting from the need to avoid an exchange of sensitive commercial information between producers/ retailers through the DRS manager, RCC considered that it is absolutely necessary to implement a black-box data management system.
22. The competition authority also considered that it is necessary to ensure a strict delimitation between the actual activity of the DRS manager and the basic commercial activities of the producers/retailers, including the persons who are involved in the development of such activities.
23. Transparent and equidistant conditions must be ensured for all the producers who place DRS products on the market, strictly avoiding any form of discrimination (from the perspective of the administration fees or other possible taxes/tariffs / additional costs), especially regarding the producers who constitute, from a legal point of view, the DRS manager.
24. The new DRS system will start functioning in November 2023.
25. The issue of waste management must be addressed at national level by coordinating more carefully and firmly the activities undertaken by local authorities with the development of coherent policies to prioritize waste prevention, develop repair and reuse recycling, followed by major investments in separate collection and recycling systems and, last but not least, on the alignment between the logistical capacity and the responsible behavior of the citizens.