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Regulatory changes in waste management following the EU's Circular
Economy Action Plan**

Abstract

This study reviews Hungary's implementation of the European Union's circular economy action plan and related waste regulations, including amendments to national law. In particular, it outlines the new waste management system, extended producer responsibility, and the binding return fee scheme. Further, this paper highlights the enormous significance of waste management from an environmental perspective and related challenges.¹

Keywords: circular economy, extended producer responsibility, binding return fee scheme, waste, concession

1. Introduction

The quantity and nature of the waste we produce pose significant challenges for all, including regulators. Consequently, waste management has long been a crucial issue for policy-makers and legislators, both in the European Union (EU) at large and within individual Member States. Notably, multiple problems occur simultaneously in waste management. For example, each type of waste requires different treatments and regulations. Further, every individual produces waste and wants to dispose of it as cheaply as possible—if not for free. At the household level, the willingness to prevent the generation of waste remains relatively low. Accordingly, waste management is one of the so-called 'wicked' problems² that are challenging to resolve.

The new action plan for the circular economy focuses on decoupling waste generation from economic growth.³ There is a longstanding belief that economic growth only involves an environmental burden early on and that a tipping point exists, after which the negative environmental impact of growth begins to diminish. However, this phenomenon has not occurred, or only partially occurred in reality.⁴ In earlier times, environmental protection was often ad hoc – only one specific problem was solved at a

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² Rittel & Webber 1973, 155–169.

³ A new Circular Economy Action Plan For a cleaner and more competitive Europe COM(2020) 98 final 14.

⁴ Virág 2019, 55–56.



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time.⁵ The lack of a holistic approach sometimes triggered other concerns. For example, when the planned reduction of one environmental load, in fact, only results in the loading of another environmental element. While this paper does not focus on economic growth, it is critical to note that the pursuit of high economic growth rates, rather than high-quality growth, does not advance the interests of future generations.

Broadly, the concept of the circular economy can be viewed as an alternative to the prevailing linear economic model. Its fundamental aim is to keep products in the economy's cycle for as long as possible, beginning with the design phase.⁶ Along these lines, circular economies increase the efficiency of natural resource management. Notably, the circular economy reflects the United Nations' Sustainable Development Goals (SDGs), especially Goal 12, which focuses on responsible consumption and production. Specifically, Target 12.5 states the following: 'By 2030, substantially reduce waste generation through prevention, reduction, recycling, and reuse'. Although waste management is only one element of the circular economy, it is both economically significant and a crucial component of the institutional structure established for environmental protection.

2. The European Union and the circular economy

The European Commission (the Commission) published its circular economy action plan⁷ in 2015. As part of its implementation, several directives,⁸ including the Waste Framework Directive,⁹ were reviewed and amended. The EU's primary objectives related to waste in the circular economy are as follows: (a) a common EU recycling target of 65% for municipal waste by 2035 (55% by 2025 and 60% by 2030); (b) a common EU recycling target for packaging waste of 70% by 2030; (c) a mandatory target for reducing landfill use for municipal waste to a maximum of 10% by 2035; (d) a ban on the landfilling of separately collected waste, requiring the separate collection of biowaste by 2023, and of household textiles and hazardous waste by 2025; (e) the introduction of economic instruments to reduce landfilling; (f) the introduction of simplified and improved definitions and harmonised calculation methods for recycling rates across the EU; (g) specific measures to promote reuse and encourage industrial symbiosis, that is, the use of by-products from one industry as raw materials in another; (h) mandatory extended producer responsibility schemes for manufacturers to encourage them to introduce more

⁵ For more information on this matter, see: Kerekes 2022, 5.

⁶ Bándi 2022, 547.

⁷ Closing the loop - An EU action plan for the Circular Economy Europe COM(2015) 614 final

⁸ Directive (EU) 2018/849 of the European Parliament and of the Council of 30 May 2018 amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment; Directive (EU) 2018/850 of the European Parliament and of the Council of 30 May 2018 amending Directive 1999/31/EC on the landfill of waste; Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste; 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.

⁹ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives.

eco-friendly products to the market and support recovery and recycling systems (e.g. for packaging, batteries/accumulators, electrical and electronic equipment, and end-of-life vehicles).

As a cornerstone of the European Green Deal, a new action plan for the circular economy was introduced. This includes a 'sustainable products policy' to support the circular design of all products based on a common methodology and principles; in particular, the plan prioritises reducing and reusing before recycling. Notably, this plan will foster new business models and set minimum requirements to prevent environmentally harmful products from being placed on the EU market. Additionally, it will strengthen extended producer responsibility.¹⁰ The plan is designed to accelerate the transformation required by the European Green Deal by building on circular economy initiatives implemented since 2015.

More specifically, the plan presents a set of interrelated initiatives to establish a strong and coherent product policy framework. The framework is expected to make sustainable products, services and business models the norm and, relatedly, transform consumption patterns to eliminate waste. This framework will be progressively rolled out and prioritise key product value chains. Further measures will be implemented to reduce waste and ensure that the EU has a well-functioning internal market for high quality secondary raw materials. Ultimately, the framework will strengthen the EU's capacity to take responsibility for its waste.¹¹

The section of the circular economy plan related to waste states that the Commission will introduce reduction targets for specific waste streams and enhance the implementation of the recently adopted requirements for extended producer responsibility schemes. These actions will serve the common objective of significantly reducing the total amount of waste and halve the amount of residual (i.e. non-recycled) municipal waste by 2030. The Commission will also propose the harmonisation of separate waste collection systems.¹²

Given that these EU action plans are linked to their implementation, the circular economy objective has also been integrated into the taxonomy regulation.¹³ Specifically, this regulation defines the 'circular economy' as an economic system in which the values of products, materials, and other resources are maintained for as long as possible by enhancing their efficiency use in production and consumption; this, in turn, reduces their environmental impact by minimising waste and the release of hazardous substances at all stages of their life cycle, including through the application of the waste hierarchy.¹⁴

As suggested above, the new circular economy action plan builds upon earlier plans and achievements. For example, the goal of the abovementioned 2018 directive

¹⁰ The European Green Deal COM(2019) 640 final 8.

¹¹ A new Circular Economy Action Plan For a cleaner and more competitive Europe COM(2020) 98 final 3.

¹² A new Circular Economy Action Plan For a cleaner and more competitive Europe COM(2020) 98 final 14-15.

¹³ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Taxonomy Regulation)

¹⁴ Taxonomy Regulation Art. 2 (9)

package (among other) is to establish a uniform system at the EU level that ensures the exploitation and utilisation of secondary raw materials in waste. In light of the amendment, the goals include reducing administrative burdens; simplifying implementation; increasing employment; reducing greenhouse gas emissions; enhancing the EU's competitiveness in waste management and recycling; and reintroducing a greater quantity of secondary raw materials back into the EU economy, thereby reducing its dependence on raw material imports.

3. The situation in Hungary

While the EU sets targets, its Member States mostly decide how to implement them. Of course, this is consistent with the choice of EU regulation. Directive-level¹⁵ regulations leave Member States to decide which methods they will use to meet EU targets. This paper explores Hungary's implementation of EU action plans and legal documents related to the circular economy.

3.1. Fundamental Law

Although not strictly related to the subject, it is essential to begin this analysis by considering the Fundamental Law of Hungary, which provides the framework on which legislation can be established and implemented, including EU law. Art P of the Fundamental Law states that the responsibility to protect and preserve the nation's common heritage for future generations lies with the State and every individual. Meanwhile, Art XX establishes the right to physical and mental health; Art XXI establishes the right to a healthy environment; Art XXII outlines Hungary's endeavour to ensure universal access to public services; and Art XXVI establishes the State's goal of employing the latest technology to make improvements in different domains, including public services.

The Constitutional Court (hereinafter: CC) has already elaborated on these articles in several decisions on constitutional expectations and questions related to their enforcement. Below are presented some decisions useful for this analysis. In Decision 16/2015. (VI.5.), the CC emphasised that *"the Fundamental Law not only preserved the protection level of the constitutional fundamental right to a healthy environment but also contains significantly broader provisions in this area compared to the previous Constitution. Thus, the Fundamental Law further developed the environmental value system and perspective of the Constitutional Court"*.¹⁶ The CC elaborated that *"According to Article P (1) of the Fundamental Law, the current generation is burdened with three main obligations: preserving the possibility of choice, preserving quality, and ensuring access. The assurance of the possibility of choice is based on the consideration that the life conditions of future generations can be best ensured if the natural heritage passed on is capable of giving future generations the freedom of choice in solving their problems, instead of the decisions in the present forcing later generations onto a constrained path. The requirement of preserving quality dictates the need*

¹⁵ In the case of packaging waste, however, a new regulation is currently being negotiated. See: COM(2022) 677 final.

¹⁶ 16/2015. (VI.5.) ABH [91]

For further analyses, see: Szilágyi 2018; Prugberger 2004, 201–221.

to strive to pass on the natural environment in at least the same condition as we received it from past generations. The requirement for ensuring access to natural resources implies that current generations can freely access available resources as long as they respect the fair interests of future generations".¹⁷ Regarding regulations affecting the nation's common heritage, the CC states, "Indeed, legislation that does not encourage frugal economical management of natural resources violates the requirement arising from Article P (1) of the Fundamental Law that the current generations can only freely use the available resources as long as they respect the fair interests of future generations as well."¹⁸

The CC also elaborated on public services and access thereto, advising, "it cannot be denied that the legislator, based on the obligations arising from Article I (1) of the Fundamental Law and particularly to ensure access to public services as stipulated in Article XXII of the Fundamental Law, may enact legislation that, given appropriate authorization, could entail a radical transformation of a public service system. It is not even excluded that in the future, this might involve intervention in long-term, fixed-term contractual relationships. However, in doing so, the legislator, along with many other obligations, must take into account the fair interests of all parties as established above."¹⁹

Regarding the polluter pays principle – a fundamental principle of environmental law that is especially significant to waste management – the CC noted, "The polluter pays principle, as articulated in Article XXI (2) of the Fundamental Law, holds prominent significance in Hungarian, international, and EU law, and is closely related to the preservation, protection, and improvement of environmental quality, protection of human health, and the careful utilisation and preservation of natural resources belonging to the nation's common heritage. Accordingly, the polluter pays principle, in relation to the right to a healthy environment and the right stipulated in Article P (1) of the Fundamental Law which in the context of adjudicating constitutional complaints, is not considered a right ensured by the Fundamental Law, as an integral part of these rights separately named in the Fundamental Law, not only prescribes an absolute content limit for legislation but also requires adjudicators in individual cases to always consider the realisation of this principle in the application of laws."²⁰ Further, during a constitutional review of the transformation of the domestic waste management system, the CC stated that "especially for the protection and assurance of the right to health as per Article XX of the Fundamental Law, and the right to a healthy environment as per Article XXI of the Fundamental Law, restrictions on property rights over waste, and consequently the right to manage waste, may be imposed in accordance with Article I (3) and Article XIII (2) of the Fundamental Law."²¹ It also highlighted that "it is the legislator's task to create a sufficiently differentiated system that simultaneously provides compensation for waste owners and takes into account the full implementation of mandatory public service, environmental protection, and public health considerations in such a way that they also comply with our regulatory obligations arising from EU legislation."^{22,23}

¹⁷ 28/2017. (X.25.) ABH [33]

For an analysis of the CC decision, see: Krajnyák 2023

¹⁸ 13/2018. (IX.4.) ABH [71]

For an analysis of the CC decision, see: Olajos & Mercz 2022

¹⁹ 10/2019. (III.22.) ABH [41]

²⁰ 3162/2019. (VII.10.) ABH [18]

²¹ 5/2021. (II.9.) ABH [28]

²² 5/2021. (II.9.) ABH [35]

²³ For more works summarising the development of environmental law in the Hungarian Constitutional Court, see: Hojnyák 2021; Bándi 2020

3.2. Levels of strategies

Hungary has not presented a specific action plan for the circular economy. However, the circular economy is mentioned near the end of The Irinyi Plan, a strategy from 2016 focused on the directions of industrial innovation. The plan discusses the extension of the National Industrial Symbiosis Programme, stating that industrial symbiosis is a significant foundation for job creation, the green economy, eco-innovation, and resource efficiency. In particular, this style of symbiosis transforms production systems by making them similar to biological systems. These systems generally do not produce any waste because resource and energy efficiency is ensured by giving each material and resource its own place in the production process. These emerging systems demonstrate measurable environmental results. As we can see, this concept (The Irinyi Plan) refers to the circular economy; notably, it approaches the issue from a waste management, rather than a holistic, perspective.

At the plan level, the circular economy is mentioned in Government Decision 1037/2021. (II.5.) on the Economic Restart Action Plan, which designated it a priority area in the development of the Recovery and Resilience Facility.²⁴ Its goal is to reduce the amount of waste produced by households and the broader economy, and to enhance eco-friendly recycling using advanced technologies. Again, this approach is based on waste management.

Parliamentary Resolution 62/2022. (XII.9.) on the 5th National Environmental Protection Programme, which is valid until 2026, set the goal of shifting further toward a circular economy and presented related recommendations. In particular, the programme notes that the creation of the Circular Economy Technological Platform²⁵ can strengthen eco-innovations. The Programme's strategic goals include enhancing the circular operation of the economy, fostering a sustainable, resource-efficient circular economy (focusing on elements such as materials, water, land, arable land, energy use, design for reusability and durability, configuring material cycles as a closed-loop system, reducing transportation needs, and shortening supply chains). Further, the programme seeks to mitigate adverse environmental impacts (through strategies such as efficiently using raw materials, minimising emissions and waste generation, efficiently using energy

²⁴ The Recovery and Resilience Facility (RRF) is a temporary instrument that is the centrepiece of NextGenerationEU—the EU's plan to emerge stronger and more resilient from the current crisis. Through the Facility, the Commission raises funds by borrowing on the capital markets (issuing bonds on behalf of the EU). These are then available to its Member States, to implement ambitious reforms and investments that: 1) make their economies and societies more sustainable, resilient and prepared for the green and digital transitions, in line with the EU's priorities. 2) address the challenges identified in country-specific recommendations under the European Semester framework of economic and social policy coordination.

²⁵ The mission of the Circular Economy Technology Platform (KGTP) is to accelerate the transition to a circular economy and make Hungary a leader in circular technologies, thereby enhancing the competitiveness of the country as a whole and the companies operating in Hungary in the global arena. To achieve the above goal, the objective of KGTP is to connect and strengthen the connections between economic, academic, professional, civil, and administrative stakeholders engaged in circular economic activities and interested in the transition to a circular economy.

and water, clean energy production, and sustainable transportation) and increase the value of products and services for consumers. On the path to a circular economy, active citizen participation is also necessary, including changes in consumption patterns. Along these lines, this programme presents a more comprehensive view of the circular economy, extending well beyond waste management and better aligning with the original concept.

Government Decision 1704/2021. (X.6.) on the National Waste Management Plan also addresses issues related to the circular economy. For example, it highlights that transitioning to a circular economic model and fulfilling EU obligations are among the biggest challenges faced by the waste management system. The National Waste Management Plan details that waste management can effectively facilitate the implementation of the circular economy by encouraging participants in the waste management process to apply higher levels of the waste hierarchy—reducing consumption, preventing waste generation, and repairing and reusing end-of-life products. A medium-term strategic goal is for the Hungarian waste management sector to become a model example of the circular economy in Europe.

3.3. Legislation level

Moving beyond plans to the level of legislation, we may consider the Hungarian National Assembly's adoption of a significant amendment package²⁶ in 2021 to Act CLXXXV of 2012 on Waste (the WA). The amendment aimed, among other things, to execute the EU's 2018 directive package, which was designed to facilitate the transition to the circular economy. Accordingly, the amendment emphasises the establishment of legal foundations for the transition to the circular economy to maximise the absorption of the related EU resources by defining the rules pertaining to governmental responsibility for this transition. Thus, the amendment expands the system for selective waste collection, providing for separate collections for hazardous household waste by 2025, biowaste by 2023, and textile waste by 2025. Under this law, the recycling targets for municipal waste are set to increase to 55% by 2025, 60% by 2030, and 65% by 2035. Concurrently, this law mandates the gradual elimination of landfilling, whereby landfilling for disposal purposes, in line with the waste hierarchy, is to be considered only as a last, necessary, and unavoidable solution. Accordingly, it mandates that by 2035, the proportion of municipal waste allocated to landfills must be reduced to 10% or less of the total municipal waste generated. This law lays the foundation for the new extended producer responsibility and return fee schemes.²⁷

3.4. Fundamental concepts

Further, it is necessary to establish some fundamental concepts. In accordance with the Waste Framework Directive, the WA regulates the concept of waste through a general clause solution. 'Waste' is defined as any substance or object that the holder

²⁶ Act II of 2021 on the Amendment of Certain Laws Related to Energy and Waste Management

²⁷ Final explanatory memorandum of Act II of 2021 on the Amendment of Certain Laws Related to Energy and Waste Management.

discards or intends or is required to discard.²⁸ Waste management comprises the collection, transport, recovery, and disposal of waste, including the supervision of such operations; the actions of dealers, brokers, and broker organisations; the operation of waste management facilities and equipment; and the after-care of waste management facilities.²⁹ The WA defines several different types of waste, among which household waste is the most pertinent for our analysis. 'Household waste' comprises mixed waste and separately collected waste from households, including residential or resort properties, weekend houses, and common sections and areas; more specifically, it can be categorised into paper and cardboard, glass, metals, plastics, biowaste, wood, textiles, packaging waste, electrical and electronic equipment, waste batteries and accumulators, and bulky waste (e.g. mattresses, furniture).³⁰ Mixed waste and separately collected waste generated in places other than households (e.g. retail, administration, education, health, accommodation, and food services and activities) are similar to household waste in nature and composition.³¹ Among these two types of waste – that is, household waste and waste similar to household waste – it is important to identify the material streams subject to the EU's reduction expectations. Waste management activities should follow the waste hierarchy, with activities conducted in the following order of priority: prevention of waste production, preparing waste for reuse, recycling of waste, other recovery of waste (e.g. energy recovery), and disposal of waste.³² The primary goal is preventing a material from becoming waste. To this end, the Act articulates the following minimum requirements: (a) promote, encourage, and support sustainable production and consumption models; (b) encourage the design, manufacturing, distribution, and use of products that are resource-efficient, durable, repairable, reusable and upgradable; (c) prevent the conversion of products containing critical raw materials into waste; (d) encourage the reuse of products and the creation of systems promoting repair and reuse activities, especially in the domains of electrical and electronic equipment, textiles and furniture, and packaging and construction; (e) encourage, as appropriate and without prejudice to intellectual property rights, the availability of spare parts, instruction manuals, technical information, equipment, software, and other instruments enabling the repair and reuse of products without compromising their quality and safety; (f) reduce the generation of waste in processes related to industrial production, extraction of minerals, manufacturing, construction, and demolition, taking into account the best available techniques; (g) reduce the generation of food waste in primary production, processing and manufacturing, retail and other distribution domains, restaurants and food services, and households to reduce, in step with the SDGs, the following: (ga) per capita global food waste at the retail and consumer levels by 2030 and (gb) food losses along production and supply chains; (h) encourage food donation and other methods of redistributing food for human consumption, prioritising use for human consumption over animal feed and non-food products; (i) promote the reduction of the content of hazardous substances in materials and products; (j) reduce the generation of waste, especially waste that is not suitable for

²⁸ WA Section 2 (1) 23.

²⁹ WA Section 2 (1) 26.

³⁰ WA Section 2 (1) 21.

³¹ WA Section 2 (1) 22.

³² WA Section 7 (1)

reuse or recycling; (k) identify products that are the main sources of littering and the unlawful dumping of waste and take appropriate measures to prevent and reduce litter from such products ensuring – where implemented through market restrictions – that such restrictions are proportionate and non-discriminatory; (l) prevent and significantly reduce marine pollution; and (m) develop and support information campaigns to raise awareness about waste prevention and reduce and combat littering and the unlawful dumping of waste.³³

This section implements the EU's waste hierarchy measures and methods into national law. It is important to emphasise that such work is crucial from an environmental perspective, as focusing on preventing waste generation best serves the interests of future generations. In particular, it is notable that the WA establishes the following target objectives: (a) The quantity of municipal waste going to landfills shall be reduced to 10% of the municipal waste (by weight) produced in the year throughout the country or below 10% by 2035.³⁴ (b) The combined share of preparing for the reusing and recycling of non-hazardous construction and demolition waste—other than soil and stone—and other material recovery, including waste used as substitutes in backfilling operations, shall be increased by 31 December 2020 to 70% relative to the total volume produced at the national level.³⁵ (c) The National Prevention Programme shall contain waste prevention objectives and measures to break the link between economic growth and the environmental impacts associated with the generation of waste by 2035, as well as qualitative and quantitative benchmarks adopted in order to monitor and assess the progress of the measures.³⁶ (d) The quantity of municipal waste prepared for reusing and recycling shall be increased to at least 55% of municipal waste (by weight) produced in the year throughout the country by 31 December 2025.³⁷ (e) The quantity of municipal waste prepared for reusing and recycling shall be increased to at least 60% of municipal waste (by weight) produced in the year throughout the country by 31 December 2030.³⁸ (f) The quantity of municipal waste prepared for reusing and recycling shall be increased to at least 65% of municipal waste ((by weight) produced in the year throughout the country by 31 December 2035.³⁹

³³ WA Section 11

³⁴ WA Section 92 (2a)

³⁵ WA Section 92 (3)

³⁶ WA Section 92 (4)

³⁷ WA Section 92 (5)

³⁸ WA Section 92 (6)

³⁹ WA Section 92 (7)

3.5. Waste management

In Hungary, the organisation and execution of waste management is a public service.⁴⁰ The State has outsourced this responsibility through a concession framework by way of public tender,⁴¹ granting the right to exercise public waste management functions at the national level in a single procedure to only one concessionaire under a concession contract awarded for a specific duration.⁴² The geographical base for waste management concession rights covers the entire territory of the country.⁴³ The right granted under the concession contract may not be delegated to other parties; however, the concession company (the concessionaire) shall be entitled to involve a concessionary or another subcontractor.⁴⁴ Integrated public waste management services⁴⁵ and integrated waste management services to institutions⁴⁶ shall be construed services of general economic interest. The right to serve as the concessionaire for waste management involves the obligation to provide integrated public waste management services and integrated waste management services to institutions. The contract also includes guidelines for the delegation of the concessionaire.⁴⁷

Regarding waste covered by integrated public waste management services and integrated waste management services to institutions, the responsibilities of organisations implementing extended producer responsibility obligations on the producer's behalf shall be fulfilled by the concessionaire, including specific waste management operations, such as the acceptance, collection, transport, and preconditioning of waste; the delivery of waste for treatment at predetermined retrieval and recycling targets; and the related processes of communication, financial coordination and settlement, and reporting.⁴⁸

⁴⁰ WA Section 2 (1) 27b.

⁴¹ WA Section 53/B (5)

⁴² WA Section 53/A (1)

⁴³ WA Section 53/B (4)

⁴⁴ WA Section 53/A (2)

⁴⁵ WA Section 2 26c. specifies that: *"integrated public waste management service' shall mean a binding integrated waste management service covering the reception, collection, transport, preconditioning and trading of the mixed municipal waste and separately collected waste of property users, including their delivery for treatment – excluding the separately collected waste comprising part of waste similar to household waste where the property user is an economic operator – and the bulky waste of natural person property user within the framework of collection of over-sized waste, covering also the maintenance and operation of waste management facilities required for integrated public waste management services."*

⁴⁶ WA Section 2 (1) 26b. states that *"integrated waste management services to institutions' shall mean a binding integrated waste management service covering the reception, collection, transport, preconditioning and trading of the municipal waste of property users outside the scope of integrated public waste management services, including their delivery for treatment, the waste from products falling within the scope of the extended producer responsibility scheme defined by the Government Decree on the Detailed Provisions Relating to the Extended Producer Responsibility Scheme, products within the binding return fee system and their waste, the maintenance and operation of waste management facilities, and the functions of bodies and organisations implementing the extended producer responsibility obligations defined in Subsection (4) of Section 53/A on behalf of producers of products established under the extended producer responsibility schemes set up for that purpose, and the operation of the binding return fee system."*

⁴⁷ WA Section 53/A (4a)

⁴⁸ WA Section 53/A (4)

Concession-bound waste management activities shall be subject to a concession fee (paid to the State) or another form of compensation.⁴⁹ The components of the remuneration due to the concessionaire shall include public service fees, the fees chargeable for integrated waste management services to institutions, and the proceeds from the sale of waste allocated to the concessionaire.⁵⁰ For 35 years, MOL Nyrt. has held this contract, managing approximately e.g. 4–5 million tons of waste per year. To perform this work, MOL Nyrt. founded a new waste management company, MOHU. The new waste management system started on 1 July 2023.

3.6. Extended producer responsibility

According to the definition in the WA, an extended producer responsibility scheme comprises a set of measures taken to ensure that product producers bear financial and/or organisational responsibility for the management of the waste stage of a product's life cycle.⁵¹ Accordingly, the WA includes the principle of extended producer responsibility; specifically, this principle establishes that the manufacturer is responsible for selecting the technology most suitable for a certain product from the point of view of prevention and waste management; choosing raw materials; the resilience of the product to external effects; the product's life cycle; whether the product will be recycled or recovered; developing a path for the product's recovery and disposal; operating a take-back scheme for the acceptance and collection of returned products and the waste that remains after those products have been used; and the financial aspects of such activities.⁵²

Extended producer responsibility schemes define the roles and responsibilities of all relevant actors involved, including producers of products on the domestic market, organisations implementing extended producer responsibility obligations on their behalf, private or public waste operators, local authorities, reuse operators, and social economy enterprises. In line with the waste hierarchy, producers shall set national targets to realise the prescribed objectives. They shall set up and operate a reporting system to gather data on the products placed on the internal market by producers subject to extended producer responsibility and data on the collection and treatment of different types of waste. They shall ensure equal treatment for producers of products regardless of their origin or size, without placing a disproportionate regulatory burden on producers of small quantities of products, including small and medium-sized enterprises. Further, they shall ensure that waste holders are informed of waste prevention measures, centres for reuse and preparing for reuse, take-back and collection systems, and the prevention of littering to create appropriate incentives (prescribed by law) that encourage waste holders to assume responsibility for organising their waste based on separate collection systems; notably, many of these incentives are economic.⁵³

To comply with the obligations of extended producer responsibility, producers must make payments based on the following: (a) payments that, *inter alia*, cover the

⁴⁹ WA Section 53/F (1)

⁵⁰ WA Section 53/E (2)

⁵¹ WA Section 2 (1) 36b.

⁵² WA Section 3 (1) b)

⁵³ WA Section 30/A (1)

following costs for products the producer puts on the internal market: (aa) costs of the separate collection of waste and its subsequent transport and treatment, including treatment necessary to meet waste management targets in light of revenues from reuse, sales of secondary raw material from products, and unclaimed deposit fees, (ab) costs of providing adequate information to waste holders, and (ac) costs of data gathering and reporting, (b) in the case of collective responsibility obligations, payments shall be modulated for individual products or groups of similar products based on their durability, reparability, reusability, and recyclability and the presence of hazardous substances – this strategy reflects a life-cycle approach and aligns with the requirements set by relevant EU legislation and, where available, harmonised criteria to ensure the smooth functioning of the internal market; and (c) shall not exceed the costs necessary to provide waste management services in a cost-efficient way (such costs shall be established transparently between the concerned actors).⁵⁴

The extended producer responsibility scheme encompasses the so-called circular products⁵⁵ and their waste. These include packaging under the jurisdiction of the packaging government decree,⁵⁶ certain single-use and other plastic products, electrical and electronic equipment, batteries and accumulators, vehicles, tyres, specific types of paper, cooking oil and fat, textile products, and certain wooden furniture. The producer of these products typically fulfils their extended producer responsibility obligations through the concessionaire.⁵⁷ The concessionaire, within the framework of collective fulfilment, handles the reception, collection, transportation, pre-treatment, trading, and delivery for the treatment of waste generated from circular products; maintains and operates the waste management facilities necessary for these activities; handles the accounting and, relatedly, manages the finances related to the operation of the extended producer responsibility scheme; operates the reporting system, and fulfils the obligation to provide data and publications. It also carries out communication tasks related to the operation of the extended producer responsibility scheme and operates an internal, independently audited self-inspection system.⁵⁸ The concessionaire ensures that the collection systems for the waste of circular products throughout Hungary meet the legally specified level of accessibility.⁵⁹

Prior to submitting a registration application, the producer must provide the necessary data through the electronic platform operated by the concessionaire and, from the date of commencement of the obligation to pay the extended producer responsibility fee, pay the fee to the concessionaire in accordance with the rules set out in the EPR Gov. Dec. The producer should then comply with regular and requested data provision obligations as determined by law, related to the national waste management authority's

⁵⁴ WA Section 30/A (3)

⁵⁵ Government Decree 80 of 2023. (III.14.) (EPR Gov. Dec.) on the detailed regulations for the operation of the extended producer responsibility scheme Section 1.

⁵⁶ Government Decree 442 of 2012. (XII.29.) on packaging and waste management activities related to packaging waste.

⁵⁷ EPR Gov. Dec. Section 3 (1)

⁵⁸ EPR Gov. Dec. Section 3 (2)

⁵⁹ EPR Gov. Dec. Section 4 (1)

tasks or those of the concessionaire, and cooperate with the concessionaire.⁶⁰ The obligation to pay the extended producer responsibility fee arises as soon as the producer places the circular product on the market.⁶¹ As part of its extended responsibility, the producer also contributes financially to the concessionaire's organisational tasks.⁶² Notably, the EPR Gov. Dec. situates cases that do not involve market entry, such as the use of circular products by natural persons for personal purposes, as separate from economic activities.⁶³

The EPR Gov. Dec. allows for deviations from the prescribed collective implementation led by the concessionaire and permits individual implementation only in a few cases.⁶⁴ Individual implementation is defined as the producer taking over the waste generated from the product belonging to the specific circular product stream (at their own or an affiliated company's premises or jointly with the retail unit selling the circular product) at the point of sale and taking care of its recovery and disposal.⁶⁵ To ensure the conditions for individual implementation, the producer enters into a subcontracting agreement with the concessionaire.⁶⁶ The obligation of extended producer responsibility can be contractually transferred, in which case the transferee is considered the producer for the fulfilment of the specified obligations.⁶⁷ To ensure regular dialogue, national consultative bodies for each product stream serve as forums for extended producer responsibility and councils for extended producer responsibility fees.⁶⁸ These are consultative bodies of the minister, which do not have independent decision-making authority.⁶⁹

3.7. Return fee scheme

The binding return fee scheme came into effect in Hungary on 1 January 2024. Notably, the scheme is designed to help Hungary achieve the EU targets. In essence, return fee schemes require the consumer to pay a certain amount upon purchasing a product (typically related to packaging materials), which is refunded upon the product's return – put differently, they essentially require a quasi-deposit. To this end, the State should set up and operate a binding return fee scheme for specified products for reuse and establish a nationwide, single, integrated waste management system for the waste generated by those products. The concessionaire shall operate the binding return fee scheme, including related communication, financial coordination and settlement, and the reporting system.⁷⁰ Returns shall be accepted by the concessionaire in a uniform manner through a reverse vending machine operated by the concessionaire or manually with the

⁶⁰ EPR Gov. Dec. Section 6

⁶¹ EPR Gov. Dec. Section 16 (1)

⁶² EPR Gov. Dec. Section 15

⁶³ EPR Gov. Dec. Section 16 (4) c)

⁶⁴ EPR Gov. Dec. Section 7

⁶⁵ EPR Gov. Dec. Section 8 (1)

⁶⁶ EPR Gov. Dec. Section 8 (2)

⁶⁷ EPR Gov. Dec. Section 13 (1)-(2)

⁶⁸ EPR Gov. Dec. Section 30

⁶⁹ EPR Gov. Dec. Section 33 (1)

⁷⁰ WA Section 32/B (1) (effective: January 1, 2024.)

assistance of a distributor.⁷¹ Waste collected within the binding return fee scheme shall become the property of the concessionaire.⁷² A return fee scheme can also apply to products not covered by the binding return fee scheme.

The rules pertaining to the return fee scheme are found in Government Decree 450 of 2023. (X.4.)⁷³ (hereinafter referred to as the DRS Gov. Dec.) on the determination and application of the return fee, as well as the detailed rules for the distribution of products subject to the return fee. Products subject to the binding return fee scheme (with the exception of specified milk-based products⁷⁴) include consumer products and products (both non-reusable and reusable) related to the direct packaging of ready-to-consume or concentrate beverage products made of plastic, metal, or glass, in bottle or can form, and with a capacity between 0.1 and 3 litres (excluding packaging for beverage products placed on the market by low-emission producers).⁷⁵ A voluntary return fee product is a specified product or form of product packaging that is: not included in the above category; manufactured or placed on the market by the producer; and voluntarily marked as 'returnable'.⁷⁶

For non-reusable products subject to the binding return fee, a return fee of 50 forints per item will be paid. However, the return fee per item for reusable products subject to the binding return fee will be determined by the producer.⁷⁷ Packaged beverage products subject to the binding return fee can be placed on the market or sold at a purchase price that includes the 50 forint return fee specified in the DRS Gov. Dec., provided that the packaging is not transferred to the consumer along with the beverage product at the point of sale.⁷⁸ The amount of the return fee must be indicated separately from the product price on the invoice or receipt.⁷⁹

As a general rule, the obligation for the producer to pay the return fee arises upon the first domestic placement on the market of non-reusable products subject to the binding return fee.⁸⁰ The producer pays the concessionaire the monthly return fee for non-reusable products subject to the binding return fee and placed on the market during the current month by the last day of the next month.⁸¹ The return fee per item for products under the voluntary return fee scheme is determined by the producer.⁸² The producer must notify the distributor of any changes in the return fee for reusable products under the binding return fee scheme or for products under the voluntary return

⁷¹ WA Section 32/B (3) (effective: January 1, 2024.)

⁷² WA Section 32/B (2) (effective: January 1, 2024.)

⁷³ For the preparation of this study, I used the version of the DRS Gov. Dec. available on January 1, 2024.

⁷⁴ See DRS Gov. Dec. Section 2 (1) g)

⁷⁵ DRS Gov. Dec. Section 2 (1) e)

⁷⁶ DRS Gov. Dec. Section 2 (1) f)

⁷⁷ DRS Gov. Dec. Section 3 (1)

⁷⁸ DRS Gov. Dec. Section 3 (4)

⁷⁹ DRS Gov. Dec. Section 5

⁸⁰ DRS Gov. Dec. Section 3 (2)

⁸¹ DRS Gov. Dec. Section 3 (3)

⁸² DRS Gov. Dec. Section 4 (1)

fee scheme, providing the date of the change, at least 30 days before the change takes effect.⁸³

The producer must initiate the registration of the product subject to the binding return fee on the electronic platform provided by the concessionaire at least 45 days before the product is introduced to the market.⁸⁴ The product must have an appropriate label indicating the binding return, in accordance with Appendix 1 of the DRS Gov. Dec. The producer sends samples of the product to be registered to the concessionaire, who then checks whether they conform to the parameters provided during registration and verifies the readability of the packaging label using a reverse vending machine. The concessionaire can deny registration if the product label does not comply with the criteria outlined in Appendix 1 of the DRS Gov. Dec.⁸⁵ The concessionaire determines and publishes the detailed requirements for registration on its website.⁸⁶ If the producer fails to meet the registration obligations or if the concessionaire denies registration, the product cannot be placed on the market.⁸⁷

The producer buys back the reusable product subject to the binding return fee from the distributor and the consumer for reuse and gives them back the return fee they originally paid. If the producer ceases the production of the reusable product subject to the binding return fee, they must buy it back from the distributor and consumer at least four months after its production has ceased.⁸⁸ After placing the reusable product subject to the binding return fee on the market, the producer pays the concessionaire a connection and service fee. In the case of non-reusable products subject to the binding return fee, the producer pays the concessionaire connection, service, and return fees.⁸⁹

The producer can agree with the distributor to classify a product or packaging, not subject to the binding return fee scheme, as a voluntarily returnable product in order to encourage its return to a specified location. In this case, the producer ensures that the 'returnable' label is placed on the voluntarily returnable product in a visible, permanent, and legible manner.⁹⁰ For voluntarily returnable products for which the consumer has paid a return fee, the producer buys back the product from the distributor and the consumer and gives them back the return fee they originally paid.⁹¹

The distributor ensures the redemption of products subject to the binding return fee. To ensure the redemption of non-reusable products subject to the binding return fee from the consumer, the distributor enters into a contract with the concessionaire, and manages the redemption of non-reusable products, subject to the binding return fee according to this contract, ensuring that the process follows the agreement made with the producer.⁹²

⁸³ DRS Gov. Dec. Section 3 (5); DRS Gov. Dec. Section 4 (2)

⁸⁴ DRS Gov. Dec. Section 6 (1)

⁸⁵ DRS Gov. Dec. Section 6 (2)

⁸⁶ DRS Gov. Dec. Section 6 (3)

⁸⁷ DRS Gov. Dec. Section 6 (4)

⁸⁸ DRS Gov. Dec. Section 8

⁸⁹ DRS Gov. Dec. Section 9

⁹⁰ DRS Gov. Dec. Section 10 (1)–(2)

⁹¹ DRS Gov. Dec. Section 10 (3)

⁹² DRS Gov. Dec. Section 11

When redeeming a product subject to the binding return fee, the operated reverse vending machine may directly refund the return fee; alternatively, the distributor may refund the return fee to the person redeeming the product or its waste or, upon the consumer's request, provide them with the refund amount in the form of a credit toward the purchase of a new product.⁹³

The distributor ensures the redemption of products subject to the binding return fee from the consumer during opening hours at the redemption location. In stores selling food with a sales area larger than 400 m², a reverse vending machine is mandatory for the redemption of non-reusable products subject to the binding return fee. In addition, manual reception must be used in case the reverse vending machine malfunctions.⁹⁴ Based on the agreement with the producer, the distributor takes back products with voluntary return fees with the same characteristics and purpose as the products it distributes against a voluntary return fee. The distributor ensures the continuous redemption of voluntary return fee products from the consumer in the same manner and throughout opening hours at the distributor's site or a designated location. Distributors with a store with a floor area of at least 200 m² can provide redemptions for products with voluntarily return fees at their sites.⁹⁵

The consumer is entitled to a refund of the return fee paid to the distributor for the purchase of a return fee product, provided the product is returned at the redemption location. According to the DRS Gov. Dec, redemptions can only be received for products subject to the binding return fee if the products are returned with an undamaged, readable, and identifying label. Meanwhile, redemptions can only be received for products subject to voluntary return fees if the products are suitable for return as specified by the producer and returned with a recognisable and identifying label.⁹⁶

Regarding products subject to the binding return fee, the concessionaire: (a) acquires, installs, maintains, and, when necessary, renews and upgrades the reverse vending machines for waste reception; (b) ensures the reception, transportation, pre-treatment, and transfer of waste for recovery; (c) maintains and operates waste management facilities; and (d) ensures the proper functioning of reverse vending machines that accept reusable packaging.⁹⁷

The concessionaire is also responsible for establishing a nationwide network of redemption locations for the redemption of products subject to the binding return fee, offering both reverse vending machines and manual return options. To ensure the redemption of non-reusable products subject to the binding return fee, the concessionaire: (a) provides reverse vending machines for distributors in every food retail store with a sales area larger than 400 m² and (b) enables the distributor to establish a redemption location in every settlement with a population greater than 1,000 or, in the absence of this, provides an alternative redemption location if a redemption location is not established based on point a).⁹⁸

⁹³ DRS Gov. Dec. Section 12

⁹⁴ DRS Gov. Dec. Section 13

⁹⁵ DRS Gov. Dec. Section 16 (1)–(2)

⁹⁶ DRS Gov. Dec. Section 18

⁹⁷ DRS Gov. Dec. Section 20

⁹⁸ DRS Gov. Dec. Section 21 (1)–(3)

Notably, the concessionaire publishes the requirements for the condition of non-reusable products subject to the binding return fee at the time of redemption on its website.⁹⁹ The concessionaire pays the consumer the return fee for the non-reusable products subject to the binding return fee. The concessionaire fulfils this obligation either by directly repaying the consumer the return fee via reverse vending machines or by paying the redemption location operator the return fee that it paid out to the consumer.¹⁰⁰

Further, the concessionaire also: (a) confirms information for consumers and waste holders regarding measures for the prevention of waste generation, return options and solutions, and the prevention of littering; (b) raises awareness and conducts educational activities to strengthen the responsibility of consumers and waste holders to increase the rate of redemption of products subject to the binding return fee; (c) informs consumers about the locations of redemption sites; (d) ensures that the public is aware of the connection and service fees paid by producers based on the quantity of products placed on the market as well as how products subject to the binding return fee are selected; and (e) may not disclose information classified as business secrets or data related to the sales volumes at the producer and product level; accordingly, data should only be made public if they cannot be used to draw conclusions about the producer's business secrets.¹⁰¹

The producer's obligation to pay connection and service fees arises when it introduces products subject to the binding return fee to the market. The producer's obligation to pay the connection fee continues until the end of the fifth year following the national introduction of the binding return fee scheme.¹⁰² As with the EPR system, the national bodies of the Binding Return Fee Scheme Forum and the Binding Return Fee Scheme Fee Council are responsible for ensuring regular dialogue on the return fee scheme.¹⁰³ Producers are not required to pay extended responsibility fees for products subject to the binding return fee for which there is an obligation to pay fees according to the decree on the determination and application of the return fee or the detailed rules for the distribution of products subject to the return fee.¹⁰⁴

4. Conclusions

Hungary is continuing to implement EU action plans through national law and related regulations. The national legislator has chosen a very specific solution by introducing the concession system outlined above. This system entrusts a single entity with, among other things, the operation of both the extended producer responsibility scheme and the binding return fee scheme. Although producers and distributors have little or no influence over the system's operation, they bear its costs. Meanwhile, the concessionaire possesses powers that can prevent a product from being placed on the

⁹⁹ DRS Gov. Dec. Section 22 (1)

¹⁰⁰ DRS Gov. Dec. Section 24 (1)–(2)

¹⁰¹ DRS Gov. Dec. Section 28

¹⁰² DRS Gov. Dec. Section 29

¹⁰³ DRS Gov. Dec. Section 34

¹⁰⁴ EPR Gov. Dec. Section 15 (the provision of the EPR Gov. Dec. came into effect on 1 January 2024).

market, such as when it refuses to register a binding return fee product in the binding return fee system. This grants quasi-governmental authority to a private economic company. Conceivably, this private company could also assume a quasi-authoritative role; however, this would raise significant questions and ultimately affect the right to a fair procedure.

Without question, encouraging consumers toward more economical resource use and reducing waste are very important tasks. Therefore, the binding return fee scheme is a welcome development. Hopefully, the binding return fee will prove to be an adequate incentive despite its relatively low monetary value. Nevertheless, there is a great deal of work left to normalise conscious consumption and responsible waste management.

As suggested above, it is important to emphasise that transforming our current linear economic system while implementing EU objectives and legislation is also related to Articles P, XX, and XXI of the Fundamental Law, as it affects the living conditions of both present and future generations across many domains. In particular, this work will involve reducing the burden on future generations and preserving their opportunities and chances of accessing natural resources while improving the living conditions of our own generation by preventing – or at least reducing – the generation of waste and appropriately recovering waste materials.

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