



REPUBLIC OF ESTONIA
MINISTRY OF THE ENVIRONMENT



EUROPEAN UNION



Interreg
Estonia-Latvia
European Regional Development Fund

**Cross-border implementation of the packaging deposit system:
Problems and solutions on the example of Estonia and Latvia**

T2.3. - technical and political analyses

Tallinn 2023

This analysis has been done by Marika Lillemets, Adviser, Environmental Management Department, Ministry of the Environment of Estonia and in part of the cooperation project between the Ministry of Environment of Estonia and the Ministry of Environmental Protection and Regional Development of Latvia PACKGDEPO - „Raising awareness on packaging deposit and strategic approach to harmonize packaging deposit systems in Estonia and Latvia“ which is funded by the ERDF from Interreg Est-Lat programme 2014-2020.

As the result of the project, both the Ministry of the Environment of Estonia and the Ministry of Environmental Protection and Regional Development of Latvia acknowledge the work done by the author and conclude, based on the discussions and analysis done, that the developed strategic approach includes four possible different scenarios which require additional analysis to move forward.

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Introduction

The packaging deposit refund system (DRS) has proven its efficiency. Domestically, the Estonian system has been in use since 2005.¹ In Latvia, the system was deployed in 2022 to comply with the waste collection and handling targets set by the EU and with the wishes of people.² The Latvian system largely follows the footsteps of the Estonian system.

Mandatory deposit refund systems are very successful in reducing the amount of waste and achieving high levels of waste collection and recycling. However, more and more different types of packaging are used, and especially plastic packaging is becoming one of the greatest sources of pollution. It has also been proven at the international level that plastic pollution of the seas is becoming an increasing issue and must therefore be dealt with.³ However, a remarkable share of the potential of recycling is lost, as a deposit-bearing packaging bought in one country cannot be returned in another and packaging is therefore not collected by type. The consumers of the Baltics and the Nordic countries are also faced with this problem. Therefore, the current issue is that the consumers who have paid the deposit for beverage packaging in one country cannot claim it back in a neighbouring country. A study of the European Parliament conducted in 2011 found that the fractioning of the EU single market could be prevented by harmonising the national systems or establishing one mandatory packaging deposit refund system in the entire EU or the European Economic Area.⁴

The deposit refund system does not enable to collect all types of packaging. The packaging collected through this system is usually standardised (a certain shape, dimensions, or other agreed features). This helps to easily differentiate deposit-bearing packaging from other similar packaging and match it with the collection system. Therefore, beverage packaging is mostly collected from the population through the deposit refund system.⁵

A simplified description of the packaging deposit refund system is that upon buying packaged goods in Estonia or in Latvia, the consumer pays the deposit, which will be returned when they return the packaging to a machine, that is to the retailer. The retailer will, in turn, receive the deposit and compensation from the recovery organisation. Packaging undertakings pay a deposit to the recovery organisation for each unit of packaging sold and also pay a handling fee for the collection and handling of packaging.

The advantage of a uniform cross-border system is that the consumer can return the packaging labelled with the deposit and can have the deposit paid refunded in their home country irrespective of whether they bought the product in the same country or in the neighbouring country. For a business, it is important that their products are bought by consumers, but also

¹ Eesti Pandipakend. <https://eestipandipakend.ee/en/eesti-pandipakend-eng/> (13.03.2023).

² <https://manabalss.lv/par-iespeju-pret-atlidzibu-parstradei-nodot-dazadus-iepakojuma-veidus/show#!> (13.03.2023).

³ Laubinger, F., Brown, B., Börkey, P., Dubois, M. OECD Environment Working Papers No. 208. Deposit-refund systems and the interplay with additional mandatory extended producer responsibility policies, 19/12/2022. <https://www.oecd.org/environment/deposit-refund-systems-and-the-interplay-with-additional-mandatory-extended-producer-responsibility-policies-a80f4b26-en.htm> (13.03.2023).

⁴ European Parliament. Policy Department DG External Policies. A European refunding scheme for drinks containers. 2011. Briefing paper. Available at: [https://www.europarl.europa.eu/RegData/etudes/note/join/2011/457065/IPOL-AFET_NT\(2011\)457065_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2011/457065/IPOL-AFET_NT(2011)457065_EN.pdf) (13.03.2023).

⁵ Ministry of the Environment. Deposit refund system. <https://envir.ee/media/1137/download> (13.03.2023).

that the handling of the products marketed by them and the resulting waste would be organised reasonably, with no excessive expenses. The aim of the state is to ensure that our environment is protected, that value is created in the economy, that the systems created function, and that the legal requirements are complied with.

When considering the potential implementation of a cross-border deposit refund system in Estonia and Latvia, it is important to keep in mind that there are already packaging deposit refund systems in both countries, thus, it would be reasonable to create a common system based on the example of the solutions which are already functioning. When creating a cross-border system, attempts must be made to find opportunities for a common system which would change the existing systems as little as possible. It is also necessary to monitor the general tendencies of the packaging sector in Europe and take into consideration the pan-EU waste regulation, in addition to the specifics of domestic legal norms.

One of the recent tendencies of the EU is the desire to move towards circular economy in Europe. Several new goals have been set within this framework, including the wish to simplify the system of deposit-bearing packaging to make life easier for consumers. One of such initiatives aims to start using a common deposit marking, for example.⁶

This analysis is based on the comparison of the current situations of Estonia and Latvia and offers potential solutions which, on the one hand, would change the existing systems as little as possible, but on the other hand, would ensure achieving the goal. The purpose of a common packaging system is to ensure that deposit-bearing packaging could be returned in both countries without disproportional expenses and that the environmental goals set by the state would be met. The aim of the analysis is to identify the potential solutions for changing the current packaging deposit refund systems, including taking into consideration the need to change the legal framework and the requirements arising from EU legislation.

The analysis examines the waste-related legal order in Estonia and Latvia (primarily in the packaging sector), comparing it to the respective European Union law. Legal literature was also gathered and interpreted, also EU directives of the field, professional literature, and policy and development documents.

For practical feedback, surveys were also conducted with the important stakeholders of the Estonian, Latvian, and Finnish packaging deposit refund systems. The survey and the following virtual workshops were conducted to determine the opinions of the parties related to the packaging deposit refund systems on a daily basis on the implementation of a cross-border packaging deposit refund system primarily between Estonia and Latvia, identify the potential legal bottlenecks, and find potential solutions. The questionnaire was sent to representatives of public authorities and a recovery organisation, as well as to some packaging undertakings and representative organisations of packaging undertakings. The questionnaire was sent to nineteen parties in total, and responses were received from the representatives of twelve organisations. The results of the questionnaire are reported anonymously throughout the study.

⁶ European Commission. Proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC. Brussels, 30/11/2022 COM(2022) 677 final.

Analysis

1. EU law and packaging deposit refund systems

In the European Union, the main guidelines of the waste sector are established by Directive 2008/98/EC of the European Parliament and of the Council (the Waste Framework Directive)⁷ and by the amended versions thereof. The primary purpose of the Waste Framework Directive of 2008 is specified in clause 6 of the preamble, which states that the objective should be to minimise the negative effects of the generation and management of waste on human health and the environment. The directive of 2018⁸ amending the directive of 2008 pays attention to many more aspects, however; among other things, clause 1 of the preamble states that waste management should be transformed with a view to using materials sustainably, while improving the quality of the environment and protecting human health, ensuring prudent utilisation of natural resources, promoting the principles of the circular economy, and increasing energy efficiency. The need to increase long-term competitiveness is also highlighted. Promoting the circular economy is stressed separately in this clause, highlighting in connection with the above that additional measures on sustainable production and consumption must be taken to achieve this, focusing on the whole life cycle of products in a way that preserves resources. The same idea continues in clause 2 of the preamble, which states that improving the efficiency of resource use and ensuring that waste is valued as a resource can contribute to reducing the Union's dependence on the import of raw materials and facilitate the transition to more sustainable material management and to a circular economy model.

The above demonstrates that the Waste Framework Directive has many objectives. This may, in turn, create different understandings and opinions in the Member States on how to achieve those different objectives most efficiently. In all that, it should be kept in mind, however, that the current waste law of the European Union is tightly related to the goals of the circular economy⁹.

In December 2019, the European Commission published the European Green Deal – an action plan for achieving sustainable economy in the European Union. This includes turning the climate and environmental issues from problems into opportunities in all policy areas and organising a fair and inclusive transition for all.¹⁰ The most important goals of the action plan include more efficient use of resources and moving towards the circular economy¹¹.

⁷ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives. – OJ L 312, 22.11.2008.

⁸ Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.

⁹ Krusell, Elen. Euroopa Liidu Keskkonnaõigus – millal on toimunud jäätmete taaskasutus ja lakkamine? (EU Environmental Law – When Waste is Recovered and When it Ceases to be Waste) Master's thesis, Tallinn. 2022. P. 9.

¹⁰ European Commission. Press release. 11 December 2019. Brussels.

¹¹ Circular economy is an economic model which prioritises the sustainable use of resources and the aim of which is to separate economic growth from the use of non-renewable raw material. Ellen MacArthur Foundation. The Circular Economy in Detail. 2017. <https://archive.ellenmacarthurfoundation.org/explore/the-circular-economy-in-detail> (12.03.2023).

In March 2020, a new Circular Economy Action Plan¹² was also published within the framework of the Green Deal, which establishes more detailed guidelines for the waste sector. Those steps prove that the principle of circular economy is one of the underlying principles which influence the implementation of the European Union environmental law and the achievement of which must be supported at the national level as well. The need to address the issues of plastic waste and packaging waste has been stressed, among other goals. This means that it is important to reduce the amount of plastic waste and packaging waste and the negative impact thereof on the environment. The importance of the topic is also evident from the entry into force of the Single-Use Plastics Directive¹³, which is aimed at preventing and reducing the impact of certain plastic products on the environment, especially on the aquatic environment, and on human health, and at promoting the transition to circular economy. Clause 18 of the preamble stresses that plastic products should be manufactured taking into account their entire life span.

The steps taken by the European Union show that the issue of plastic pollution and especially plastic packaging is significant and must be addressed. However, regulations of the packaging sector are nothing new at the European Union level, as the first packaging directive¹⁴ was already adopted almost thirty years ago. Pursuant to clause 1 of the preamble of the Packaging Directive, differing national measures concerning the management of packaging and packaging waste should be harmonised. The purpose of this was, on the one hand, to prevent any impact thereof on the environment or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community. In other words, the directive clearly has two purposes which are somewhat conflicting. Each Member State may decide how exactly they will go about simultaneously achieving the two goals, because Member States can choose which measures to implement to achieve the specific goals agreed on across the EU.

A document drawn up by the European Parliament in 2011 finds that reuse and recycling schemes for beverage packaging are seen as efficient tools for reducing the environmental impact of packaging systems and for increasing their resource efficiency.¹⁵ The same was also found in an extensive study conducted in 2016¹⁶, which included a global overview of 38 different packaging deposit refund systems and concluded that the packaging deposit refund

Circular economy is based on the principle that all resources brought into circulation must be used smartly and based on the need at the maximum societal, social, and economic value. Ministry of the Environment. Environment Agency. Ringmajanduse valge raamat (White Paper on the Circular Economy). Tallinn 2022.

¹² European Commission. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A new circular economy action plan. For a cleaner and more competitive Europe COM(2020) 98 final. 11 March 2020. Brussels. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0098> (12.03.2023).

¹³ Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment. OJ L 155, 12.6.2019.

¹⁴ Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste. OJ L 365, 31.12.1994.

¹⁵ European Parliament. Policy Department DG External Policies. A European refunding scheme for drinks containers. (Reference 4).

¹⁶ CM Consulting in association with Reloop. Deposit Systems for One-Way Beverage Containers: Global Overview. 2016, p. 5.

systems are a proven tool to collect high quantities of empty beverage containers for reuse and high-quality recycling, and are vital to achieving a circular economy.

The efficiency of packaging deposit refund systems was last mentioned in an OECD work paper in 2022¹⁷, which described that the packaging deposit refund systems have turned out to be an efficient tool, primarily in the collection of beverage packaging and reducing the amount of waste. Valorisation of empty packaging with the help of deposits facilitates collection of the packaging and also ensures a higher quality of the materials for reuse or recycling.

Pursuant to Article 7 of the Packaging Directive of 1994¹⁸ (hereinafter referred to as the Packaging Directive), Member States shall take the necessary measures to ensure that systems are set up to provide for the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives, as well as the reuse or recovery, including recycling, of the packaging and/or packaging waste collected.

Thereby, the Packaging Directive¹⁹ prescribes that the Member States must take the measures necessary to ensure the collection of used packaging and/or the resulting waste from the end users or the waste stream to channel it to the most appropriate waste management, but the exact method of doing this has been left open. This means that all Member States must achieve the targets set by the directive, but the methods of achieving the targets may be chosen freely.

The Packaging Directive does not directly place the Member States under the obligation to use the principle of extended producer responsibility²⁰, but allows the Member States to use this approach at the national level. This has resulted in the extended producer responsibility system becoming one of the main instruments for dealing with packaging and the resulting waste since the 1990s.²¹

Pursuant to Article 5 of the Packaging Directive, Member States may encourage reuse systems of packaging, but are not required to do so. This, however, means that any measures taken may not place imports in a less favoured position and the aid granted from the resources of the state may not distort or threaten to distort competition, favouring certain companies or the production of certain goods. Here, we return to the two sometimes conflicting purposes of the Packaging Directive – environmental protection and the functioning of the internal market. Although the Packaging Directive is relatively specific in regard to certain topics, there is still very little clarity when it comes to the acceptability of the measures implemented to encourage reuse. The European Commission has previously found that even though national measures to promote the reuse of beverage packaging may serve environmental purposes under certain circumstances,

¹⁷ Laubinger, F., Brown, B., Börkey, P., Dubois, M. OECD Environment Working Papers No. 208 (reference 3).

¹⁸ Packaging Directive 94/62/EC, (reference 14).

¹⁹ Packaging Directive 94/62/EC, (reference 14).

²⁰ Extended producer responsibility is described in Article 8 (1) of the Waste Framework Directive, which establishes that in order to strengthen the re-use and the prevention, recycling, and other recovery of waste, Member States may take legislative or non-legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes, treats, sells, or imports products (producer of the product) has extended producer responsibility. Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities. These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable.

²¹ EUROPEN, The European Organization for Packaging and the Environment. European and National Legislation on Packaging and the Environment. March 2016, p. 14.

they may also fracture the internal market, as products must be customised to meet the needs of individual Member States.²²

Taking into consideration the lack of clarity in this issue, the European Commission published a communication in May 2009²³ on beverage packaging, packaging systems, and the free movement of goods. The aim is to explain the rules applicable to the mandatory deposit refund systems and what may and may not be done by the Member States to promote reuse, taking into consideration the developing court practice. Even though it was only an interpreting communication, a non-binding guideline adopted internally in the Commission, it has been very successful – there have been few issues concerning the reuse of beverage packaging after the document was published.²⁴

In clause 3.3 of the communication of the Commission²⁵, it is stated that to make non-refillable beverage packaging subject to a mandatory deposit and return system creates barriers to trade, given that such systems make it impossible to sell the same product in the same packaging in more than one Member State. Instead, producers or distributors may have to alter the packaging or the labelling of the imported products and have to bear additional costs connected with the organisation of the take-back system, the refunding of sums paid by way of deposit, and any balancing of those sums between distributors. In these cases, even if such systems do not actually prohibit imports of drinks in non-reusable packaging, they do require substantial modifications and investment and thereby hamper the access of imported beverages to the market.

Even though such national legal provisions may be interpreted as barriers to trade, they may be justified for the purposes of environmental protection. This was also found by the Court of Justice in point 66 of its judgment²⁶. On the other hand, in point 75 of its judgment, the court has found that in accordance with settled case-law, national measures capable of hindering intra-Community trade may be justified by overriding requirements relating to protection of the environment provided that the measures in question are proportionate to the aim pursued. In points 77 and 78, the court highlights that the existence of packaging deposit refund systems increases the amount of packaging returned and improves the collection of such packaging by type. It also helps to reduce the amount of waste generated, as well as the amount of the waste which requires disposal, which is one of the general goals of the environmental protection policy. Yet, it is also stressed²⁷ that for such rules to comply with the principle of proportionality, it must be ascertained not only whether the means which they employ are suitable for the purpose of attaining the desired objectives but also whether those means do not go beyond what is necessary for that purpose. Conclusively, the court has found²⁸ that the packaging deposit refund systems serve the purposes of the environmental policy, but are only

²² EUROOPEN, (reference 21), p. 18.

²³ Communication from the Commission — Beverage packaging, deposit systems and free movement of goods (2009/C 107/01). OJ C 107, 9.5.2009.

²⁴ EUROOPEN, (reference 21), p. 18.

²⁵ Communication from the Commission — Beverage packaging, deposit systems and free movement of goods (2009/C 107/01). OJ C 107, 9.5.2009.

²⁶ Case C-309/02, Radlberger Getränkegesellschaft mbH & Co versus S. Spitz KG, ECLI:EU:C:2004:799, point 66.

²⁷ *Ibidem*, point 79.

²⁸ *Ibidem*, point 81.

aligned with the principle of proportionality if a sufficient transition period is left for the producers and distributors of packaging for adjusting to the requirements.

In practice, this means that Member States are allowed to introduce mandatory deposit systems if, on the basis of the individual Member State's discretion, this is considered necessary for environmental reasons, while the Member State must nevertheless observe certain requirements in order to ensure that a fair balance is struck between environmental objectives and internal market needs. The European Court of Justice has also identified several safeguards that have to be respected in relation to the design of the system.²⁹

The protective measures include a fair transition period, a fair, open, and transparent nationwide system, and the use of best practices, such as a uniform marking system to make the life of the consumer easier, exceptions from the take-back obligations for small undertakings, encouraging import and export.³⁰

The Packaging Directive was updated in 2018³¹ in compliance with the previously adopted goals of circular economy of the EU. Similarly to the updating of the Waste Framework Directive, the clauses of the preamble of the Packaging Directive of 2018 (hereinafter the updated Packaging Directive) also stress different environmental targets. Clause 1 of the preamble emphasises the importance of more efficient use of resources and of promoting the principles of circular economy. Compared to the initial Packaging Directive³², the needs to prevent the generation of waste, to improve the efficient use of resources, and to reduce the environmental impact of waste are highlighted. For this purpose, the Member States should take appropriate measures, such as deposit refund systems, etc., to facilitate an increase in the share of reusable packaging put on the market and encourage the reuse of packaging. The complemented Article 5 of the updated Packaging Directive also stresses this. Article 7 which establishes the detailed procedure of the systems of returning, collecting, and reusing packaging, has been complemented with clauses of the interpreting and non-binding communication of the European Commission of 2009, as well as based on the opinions found from several judgments of the European Court of Justice. This has reduced the number of unclear opinions of the previous Packaging Directive concerning the fulfilment of the goals and the manners of achieving this, primarily in connection with the implementation of reuse systems in the Member States.

Article 7 has been complemented with subsection 2 which prescribe that the Member States shall ensure that by 31 December 2024, extended producer responsibility schemes are established for all packaging. The schemes must be compliant with Articles 8 and 8a of the updated Waste Framework Directive³³ on extended producer responsibility. This update shows that the fact which several studies, opinions, and articles have indicated – that the different producer responsibility systems which also include packaging return systems – has been proven in time. Therefore, those Member States which have not yet implemented such systems must do so by the end of 2024 at the latest.

²⁹ Communication from the Commission (reference 23), p. 3.3.

³⁰ *Ibidem*, p. 3.3.

³¹ Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2019 amending Directive 2008/98/EC on waste OJ L 150, 14.6.2018.

³² *Ibidem* clause 4 of the preamble.

³³ Directive (EU) 2018/851 of the European Parliament and of the Council (reference 8).

Both directives, that is the updated versions of the Waste Framework Directive and the Packaging Directive of 2018, highlight that the directives implementing the environmental policy, i.e., in this case the waste policy, should be more connected and aligned. This is referred to separately in clause 3 of the preamble of the updated Packaging Directive, which establishes that the definitions in Directive 94/62/EC should be aligned, where relevant, with those of Directive 2008/98/EC of the European Parliament and of the Council which is applicable to waste in general.

The updated Waste Framework Directive includes a separate annex³⁴ with examples of the economic instruments and other measures which can be used to stimulate the application of the waste hierarchy and, one of the measures highlighted is the use of the DRSs and other measures which promote the efficient collection of used products and materials.

1.1 New EU packaging waste initiative

In the end of November 2022, the European Commission presented the new packaging rules applicable to the entire EU to combat packaging as a constantly increasing type of waste and reduce the dissatisfaction of consumers. Every European generates almost 180 kg packing waste per year.³⁵ Packaging is one of the main reasons for the use of primary materials. If nothing is done, the amount of packaging waste generated in the EU will increase by 19% and the amount of plastic packaging waste even by 46% compared to the current levels by 2030. The proposals of the Commission are the main foundations of the Circular Economy Action Plan of the European Green Deal and the goal thereof to make sustainable products the standard.³⁶

The new initiative of the European Commission (hereinafter the Commission) intends to amend Regulation (EU) 2019/1020 and Directive (EU) 2019/904³⁷ and to repeal Directive 94/62/EC.

The new proposal of the Commission³⁸ has three main goals: to prevent the generation of packaging waste, to increase high-quality recycling and reduce the need for primary natural resources, and to create a well-functioning market of recycled raw material.

In spite of the specific measures, the legislation in force has been unable to achieve the environmental and internal market goals set. The issues of the Member States with proper transposition of the Directive have led to different regulations in different Member States. This tendency appears to be continuing, taking into consideration the early warning reports. Different national rules reduce the efficiency of the environmental policy and put to risk the movement towards circular economy. The regulative failures of the Directive in force have made it clear that harmonisation is needed and that harmonised rules should be in the form of a directly applicable regulation, not a directive in the future. A regulation ensures that all the Member States fulfil their obligations at the same time and in the same manner. The same requirements

³⁴ Directive (EU) 2018/851 of the European Parliament and of the Council (reference 8).

³⁵ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Packaging_waste_statistics (12.03.2023).

³⁶ European Commission. European Green Deal: Putting an end to wasteful packaging, boosting reuse and recycling. Press release. 30 November 2022. Brussels. Available at: https://ec.europa.eu/commission/presscorner/detail/et/ip_22_7155 (12.03.2023).

³⁷ Disposable Plastic Directive (EU) 2019/904 (reference 13).

³⁸ European Commission. Proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (reference 6).

applicable to all market participants ensure the required legal certainty, reduce distortions of competition, and send clear signals to external market participants who intend to market products in the EU. This also authorises the Commission to develop the implementation measures to complement the Regulation, if necessary, to be able to quickly impose the common rules.³⁹

Ex-post evaluation of the Directive in force⁴⁰ also found that the important requirements which directly apply to packaging are poorly planned, difficult to impose, and have been implemented differently in different countries so far. The different regulative approaches used in the Member States prevent the functioning of the EU single market of packaging, packaged goods, and secondary raw material. Different countries use different requirements for labelling packaging, recyclable and reusable packaging are defined differently, and the eco-modulation for the calculation of service fees in the extended producer responsibility systems has been implemented differently. All of the above has caused uncertainty for undertakings, which is why they do not invest enough in innovative and environment-friendly packaging and refrain from taking into use novel circular economy-based business models.⁴¹

The overarching objectives of this legislative proposal are to reduce the negative environmental impacts of packaging and packaging waste while improving the functioning of the internal market. For this purpose, it is intended, among other things, to promote the recycling of packaging and harmonise the marking of packaging (Articles 11 and 12), incl. the marking for the packaging subject to the mandatory deposit refund system (the so-called deposit marking).⁴²

By 2029, the Member States must create mandatory deposit refund systems (DRSs) for single-use plastic beverage bottles and cans (Article 44), if a 90% collection rate of such packaging has not been achieved by other means. DRSs may also be deployed for glass packaging, beverage cartons, and reusable packaging on a voluntary basis. The DRSs must be compliant with the harmonised minimum requirements (Annex X). The mandatory deposit refund system marking (the deposit marking) is also harmonised. The Member States may also impose requirements more stringent than the minimum requirements, provided that it will not put to risk compliance with the Regulation.⁴³

Thus, the EU is moving towards greater harmonisation. A wider implementation of deposit-bearing packaging systems and harmonisation at the EU level are reasonable, taking into consideration the analyses conducted. However, it must be kept in mind that several countries already have well-functioning systems. In order to increase the recycling of packaging waste, but also to reduce the generation of packaging waste, it would be reasonable to follow the example of the already functioning systems (the deposit-bearing packaging system) and therefore to promote such functioning solutions and attempt to find solutions which would change the existing systems as little as possible.

³⁹ European Commission. Proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (reference 6), p. 5.

⁴⁰ European Commission (2014), Ex-post evaluation of Five Waste Stream Directives, – SWD (2014)209.

⁴¹ *Ibidem*.

⁴² European Commission. Proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (reference 6).

⁴³ *Ibidem*.

It is necessary to harmonise the DRSs at the European Union level. This will reduce the confusion of the consumers and the expenses of the producers who sell their products in the markets of different countries. A harmonised approach also facilitates the creation of cross-border deposit-bearing packaging systems, as it comes with fewer regulative and market restrictions. Well-functioning national systems must be taken into consideration when establishing the minimum criteria.⁴⁴ For example, the sizes of the packaging included in the mandatory deposit refund system (plastic bottles and cans) could be harmonised (100 ml – 3 l).

For the reused packaging system to function across Europe, a more uniform design of reused packaging is required to make the packaging more readily cross-usable for the undertakings.⁴⁵ The existing DRSs have shown that the deposit paid is an effective stimulus for the end user to return the packaging to the seller of the goods. This enables to repeatedly ensure the circulation of the packaging unit between the consumers and the packaging undertaking during the life cycle of the packaging unit. It is important for the packaging circulating in the system to be easily traceable (i.e., there must be an overview of how many packaging units are circulating in the system, how many are collected back, and how many have been removed from use). On the other hand, the collection and reuse of glass bottles is currently only economically feasible for larger producers and primarily at the domestic level. The existing reuse systems should be reviewed. It is not reasonable for each company to have its own logistics infrastructure, washing lines, etc. for reused packaging, but it would be reasonable for reused glass bottles, for example, to circulate between different companies. In order to increase cross-use between the reused glass bottle undertakings, a reused glass bottle standard must be established.

The legal basis of the proposal for a regulation on packaging and packaging waste⁴⁶ is Article 114 of the Treaty on the Functioning of the European Union. The proposal is compliant with the new approach to products used in the European Green Deal and in the Circular Economy Action Plan and covers the entire life cycle of packaging. The proposal is compliant with the legislation on the EU internal market and will create harmonised conditions for putting packaging on the market. The common internal market-based approach with no obstacles to the free movement of goods and with equal conditions for production, marketing, and waste management for the undertakings all across the EU is taken into consideration in the entire life cycle of packaging. The proposal regulates those aspects the harmonisation of which will help to prevent market distortions and obstacles to free movement of goods and leaves the detailed administrative requirements for the Member States to decide. The Member States currently have different requirements for extended producer responsibility, which are highly burdening for the undertakings that sell packaging in several Member States or in the entire EU. It is also necessary to create a common legal framework to meet the environmental goals, including to ensure the recyclability of packaging and the availability of secondary raw material, as well as equal market conditions for undertakings, including for the collection of packaging, for deposit refund systems, and for reuse systems.⁴⁷

⁴⁴ European Commission. Proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (reference 6), p. 4.

⁴⁵ *Ibidem*, p. 29

⁴⁶ *Ibidem*.

⁴⁷ *Ibidem*, p. 4

Imposing common requirements at the EU level will clearly provide added value, as it will ensure the proper functioning of the internal market and thereby equal opportunities for the economy and for the different participants in the system (e.g., packaging undertakings, recovery organisations, retailers). The requirements and targets set at the EU level ensure a consistent transition to a more sustainable system in all the Member States, while also creating a functioning internal market.⁴⁸

2. Potential bottlenecks and solutions in creating a common system

There are several aspects which can influence a cross-border DRS but based on the comparison of the DRSs of Estonia and Latvia, feedback from the different stakeholders of the system, and professional literature, this analyses the most relevant ones from the perspective of the countries examined.

2.1 Packaging undertakings subject to the packaging deposit refund system and their obligations

The packaging deposit refund system is, by nature, the expanded producer responsibility system, thus, the producers of the goods packed – the packaging undertakings – are responsible for the handling of the waste resulting from packaging.

In Estonia, pursuant to subsection 12¹ (1) of the Packaging Act⁴⁹, a packaging undertaking⁵⁰ is required to ensure the handling of packaging of packaged goods placed on the market and the waste resulting from the packaging and to bear the costs thereof. It is important to keep in mind that there are also restrictions applicable to the marketing. Pursuant to section 9¹, placing packaged goods on the market means making the goods packaged in Estonia or imported packaged goods available for distribution or use in Estonia for the first time. If goods are re-packaged, the making of re-packaged goods available in Estonia for the first time is also considered placing packaged goods on the market. This is a significant restriction, as pursuant to the regulation in force, the obligations of the packaging undertaking are only related to the packaging of the packaged goods put on the market in Estonia. Pursuant to another important complementation of the Packaging Act (subsection 12¹ (7)), a packaging undertaking whose seat is not in Estonia, but who places packaging on the market in Estonia in the course of its commercial or professional activity, irrespective of the selling technique used, must appoint an authorised representative, being a natural or legal person with residence or seat in Estonia, who performs the obligations imposed on packaging undertakings by this Act therefor. This specification is important to ensure that everyone (i.e., including foreign undertakings and online platforms) complies equally with the obligation placed on domestic undertakings by law,

⁴⁸European Commission. Proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (reference 6), p. 4

⁴⁹ Packaging Act. RT I 2004, 41, 278, amended RT I, 05.05.2021, 2.

⁵⁰ Packaging undertaking means any person who packages, imports, or sells packaged goods within their economic or professional activities (section 10 of the Packaging Act).

i.e., ensure the handling of the packaging of their packaged goods put on the market and the resulting waste and cover the related expenses.⁵¹

Pursuant to subsection 16 (1) of the Packaging Act, a packaging undertaking shall collect and recover the packaging of packaged goods placed on the market and the packaging waste resulting therefrom in such a way that the recovery targets provided in the Packaging Act are complied with, and bear the resulting costs. Yet, Estonian undertakings also produce for other markets and such packaging is exempted from the deposit refund system, pursuant to subsection 21 (4¹) of the Packaging Act, provided that the export of the packaging is proven by export customs documentation. The packaging which is exported and put on the market in another country is subject to the regulations of the respective country.

Latvia has the same system: pursuant to subsection 1 (1⁴) of the Latvian Packaging Law⁵², the deposit packer⁵³ is the service provider, product manufacturer, or distributor which places beverages on the market in Latvia in a deposit packaging. Similarly in Estonia, the packaging undertaking is responsible for the handling of the packaging of the packaged goods put on the market by them and the resulting waste and must cover the expenses thereof, i.e. pursuant to subsection 13 (1) of the Latvian Packaging Law, a packer shall be responsible for the management of such packaging waste which results from its activities.

This aspect was emphasised in the feedback from several stakeholders related to the packaging deposits: they have highlighted that if a common packaging DRS was created between Latvia and Estonia, it would have to be clarified how the responsibility is distributed, i.e. if the obligations of the marketer will remain limited to their own country or not.

The systems of the two countries are also similar in that packaging undertakings can transfer their obligations arising from the Packaging Act to producer responsibility organisations. Pursuant to subsection 12¹ (2) of the Estonian Packaging Act, a packaging undertaking may choose whether to fulfil the obligations individually or to transfer them to a recovery organisation by written contract. If a packaging undertaking transfers the obligations established by law to a recovery organisation, the recovery organisation is responsible for the performance of these obligations. This provision clearly determines the extent of the responsibility of a packaging undertaking – if the packaging undertaking has transferred the obligations laid down by subsection 12¹ (1) to a recovery organisation, the packaging undertaking is immediately no longer responsible for fulfilling their obligations.⁵⁴ In Estonia, in the case of deposit-bearing packaging, this organisation is Eesti Pandipakend (hereinafter EPP). The same also applies to Latvia: pursuant to section 18¹ of the Packaging Law, a deposit packer whose amount of beverage deposit packaging waste is 150 kilograms or more in a calendar year has an obligation to manage the beverage deposit packaging waste in the entire territory of Latvia by entering into an agreement with a deposit system operator (recovery

⁵¹ Jäätmeseaduse ja pakendiseaduse muutmise seadus. Act on Amendment of the Waste Act and the Packaging Act 190 SE. First reading. Cover letter. P. 56. <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/cf2190f4-e433-4590-8667-2ae543bcb20f> (12.03.2023).

⁵² Iepakojuma likums (Packaging Law). – Latvijas Vēstnesis, 4, 09.01.2002. Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 3, 14.02.2002. <https://likumi.lv/ta/en/en/id/57207-packaging-law> (17.04.2023).

⁵³ The deposit is the fee for one packaging unit added to the price of packaged goods. The deposit is refunded to the consumer if they return the packaging to the designated place.

⁵⁴ Jäätmeseaduse ja pakendiseaduse muutmise seadus. Act on Amendment of the Waste Act and the Packaging Act 190 SE,(reference 51).

organisation) on participation in the system. In Latvia, this organisation is SIA Depozīta Iepakojuma Operators (hereinafter DIO)⁵⁵. This option to transfer the obligations is reasonable, as it is generally expensive for the producers to fulfil all their obligations individually. From the perspective of the public authority, for example for the purposes of supervision, it is also easier if there are fewer obligated persons.⁵⁶

The Estonian and Latvian systems are similar in this respect and no changes would have to be made concerning the obligated persons in the case of establishing a common cross-border packaging DRS. Pursuant to the legislations of both countries, the packaging undertaking is responsible for the packaging put on the market by them and for the resulting waste. As handling is not restricted, i.e. it has not been stated in which country the waste generated must be handled, the provisions of neither country rule out the possibility, in principle, of the packaging put on the market in the other country also being accepted from the people or of the waste also being handled in another country, with the costs reclaimed, if there is clear evidence of the origin of the waste and the countries have a respective agreement. For the sake of clarity, a respective clarification in the legislations of the countries would also be needed, in addition to an agreement between the two countries.

Participants in the system, primarily the recovery organisations, may always also decide voluntarily to take back the packaging put on the market in another country, which is done in Finland. On the other hand, in that case, one of the participants may change their decision at any point, i.e., the state does not have any so-called coercive mechanisms in this case. That said, the state will not have any additional obligations compared to the current situation in this case. This is, however, certainly one of the options for solving the problem of returning the packaging purchased from another country in a manner which is more convenient for the customer. If Estonia and Latvia decide that such a cross-border system is necessary and the countries wish to have their say in the establishment of the cross-border system, a respective agreement between the two countries is also required, as well as the specification of the packaging law of both countries.

Deposit-bearing packaging is subject to the principle of extended producer responsibility which means that it is an environmental policy measure which includes placing obligations on the producer after the use of the product by the consumer. In other words, this means that not only the consumer or the public authority is responsible for the handling of a product which has become waste, but that the responsibility is also partly or fully extended to the producer. The aim of the producer responsibility is to ensure that the price of a product reflects all expenses related to the use of the product – this is the implementation of the ‘polluter pays’ principle.⁵⁷ This allows concluding that the responsibility of the producer, i.e. a packaging undertaking, for the handling of the waste resulting from its products should not only be restricted to the borders of Estonia, but also extend over the borders if its products move over the borders. In order to apply this principle, however, a transnational agreement is needed.

Pursuant to the ‘polluter pays’ principle, the costs related to disturbances of the environment must be covered by the party which caused the disturbances.⁵⁸ It is common knowledge that

⁵⁵ SIA Depozīta Iepakojuma Operators (DIO). About. <https://www.depozitpunkts.lv/par-mums-en> (12.03.2023).

⁵⁶ Veinla, H., Lopman, E., Relve, K., Triipan, M. *Keskkonnaõigus. Õigusteaduse õpik* (Environmental Law. A Law Textbook). Juura publishing house. 2016, p. 307.

⁵⁷ *Ibidem*, p. 306.

⁵⁸ *Ibidem*, p. 58.

packaging waste is an increasing issue and packaging DRSs are a good option for addressing the issue.⁵⁹ In the case of the ‘polluter pays’ principle, it is important to keep in mind that legal principles often collide with other, contradicting principles.⁶⁰ Consequently, the answer to the question of who should pay is found by weighing different values, interests, and legal benefits on each specific occasion and finding an optimal balance thereof.⁶¹

The Packaging Act also treats retailers as polluters and they are thus required to organise the collection of deposit-bearing packaging if they sell such packaging.⁶² This general obligation of the persons selling packaged goods has been established in both Estonia and Latvia, but differs somewhat depending on the size of the point of sale.^{63 64} Thus, the retailers of both countries are required to take back the packaging sold by them. In the case of a common cross-border system, it must be decided whether or not the retailers of the different countries will be required to accept returned packaging from the other country and the other packaging system. As we discussed above that the ‘polluter pays’ principle means that the costs arising from disturbances to the environment must be covered by the person that caused the disturbances and that the activity of the seller of the packaging contributes to the pollution, it is reasonable that they should also help to bear the responsibility. It may be asked why such an obligation is placed on the retailer if the products were put on the market by a packaging undertaking. When explaining the ‘polluter pays’ principle, academic lawyers have found that the consumers, importers, distributors, or even the state may be the bearers of the social costs related to the pollution, in addition to the direct producer. It should also be kept in mind that as all persons contribute to creating environmental issues in the course of their lives or business operations (e.g., a store sells beverages in disposable packaging), a certain solidarity-based balancing system is also a logical option. When dividing the costs between the polluters, the burden associated with this should also be taken into consideration. If determining the contribution of each individual polluter is too burdening from the economic perspective, it is above all important to ensure that all polluters pay, in principle, even if they do not pay proportionally to their contribution.⁶⁵ The same conclusion was also reached by the Supreme Court in its judgment on waste management issues in 2009⁶⁶. Taking responsibility for the handling of deposit-bearing packaging is currently prevented by the lack of a respective agreement. If such an agreement between the countries were reached, it would not be necessary to explicitly regulate the obligation by legislation, if compliance can be ensured in other manners, for example by adding a respective obligation to the standard terms and conditions of recovery organisations.

In the case of the potential cross-border system of Estonia and Latvia, retailers should be placed under the obligation to also take back deposit-bearing packaging from the other country, primarily because they would receive compensation for taking back the packaging and

⁵⁹ European Parliament. Policy Department DG External Policies. A European refunding scheme for drinks containers. (reference 4).

⁶⁰ Veinla, H., Lopman, E., Relve, K., Triipan, M. (reference 56) p. 59.

⁶¹ *Ibidem*, p. 59.

⁶² Balcers, O., Brizga, J., Moora, H., Raal, R. Deposit Return Systems for Beverage Containers in the Baltic States. Riga: Green Liberty. 2019. p. 26. Available at: https://www.zalabriviba.lv/wp-content/uploads/LatvianDRS_research_FINAL.pdf (12.03.2023).

⁶³ Packaging Act. RT I 2004, 41, 278, section 20.

⁶⁴ Packaging Law. Latvijas Vēstnesis, 4, 09/01/2002. (reference 52).

⁶⁵ Veinla, H., Lopman, E., Relve, K., Triipan, M. (reference 56) p. 59, 60.

⁶⁶ RKHKo 18/11/2009, 3-3-1-44-09, p. 20.

packaging from the other country has been accepted before⁶⁷. This means that the situation would not be new and they would thereby only perform their role pursuant to the ‘polluter pays’ principle. Thereat, it is naturally important that the parties have concluded all the agreements required. In other words, if there is a respective agreement and a common system, retailers will be under the obligation to take back the deposit-bearing packaging brought from Latvia, assuming that other participants in the system have taken care of the required operations, such as adding proper bar codes and deposit markings, and a recovery organisation or packaging undertaking has paid to the retailer. In the opinion of the author, the latter is not a disproportionate expense, compared to other participants in the system.

Thus, if there is a common cross-border system and taking into consideration the situation analysed above, the packaging put on the market in one country can be collected in another country. It is also possible to claim a refund of the expenses by the country where the packaging was first put on the market. The mutual willingness of the two countries and the participants in the system and an agreement for solving the situation are important here. The format of the agreement can be selected together by both countries, i.e. they can stick to the voluntary basis which means that the agreements are concluded by the undertakings (primarily the recovery organisations of both countries) themselves and the situation is not regulated by the state by legislation, or an agreement is concluded on the basis of which respective amendments are also made to the legislation of both parties and the states themselves will be the parties of the agreement in this case.

When creating a common system, a situation in which the obligation to take back the packaging without the payment of the deposit is agreed on, may first be tested. This would be the easiest solution, which would call for the least amount of changes in the systems. The respondents to the survey have also highlighted this in their feedback. At first glance, it may seem unfair that the packaging undertakings and recovery organisation must pay for the handling of all of the packaging returned, even if the packaging was not put on the market in the same country. However, it should be kept in mind that Finland is also accepting Estonian packaging for free and this has not turned out to be an excessively high expense. The quality of the material collected via the packaging DRS is higher than the quality of the material collected by using collection containers. This means that the material itself is valuable and the accompanying handling costs may not be an issue when selling the material. Furthermore, taking into consideration the lack of resources in the world, secondary raw material may be expected to become more and more valuable. In addition, this may prove reasonable if the system works both ways, because – as stated above – determining the exact contributions of all polluters may not be the most rational option.

In order to achieve this situation, though, an agreement is required, either an agreement between the two countries, or one which solves the situation at the level of undertakings. At that, it is important to choose the format of the agreement from among different options. In the event of concluding a treaty which is subject to international law, the Republic of Estonia will also assume the obligations arising from the treaty, i.e., express its consent to the treaty being

⁶⁷ Competition Authority. Teade järelevalvemenetluse lõpetamisest ja OÜ-le Eesti Pandipakend soovitusel andmine konkurentsiolekorra parandamiseks (Notice on the termination of supervision proceedings and giving advice to OÜ Eesti Pandipakend for improving the competition situation). 22/09/2017 no. 5-5/2017-048. p. 2, 6 https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2017/Teade_22.09.2017_nr_017-048.pdf (12.03.2023).

binding. The analysis is conducted on the basis of the current legislation of Estonia.⁶⁸ A milder manner of agreement which is voluntary for both parties can also be chosen – a political declaration (a memorandum of understanding), which is a document that expresses political intention, but does not contain any legal provisions and is thus not a piece of legislation. Also, as mentioned above, an agreement at the level of undertakings is also possible. It is up to the two countries to agree on the format of the agreement to be concluded.

2.2 Amount of the deposit and excise

The packaging deposit refund systems of Estonia and Latvia are very similar, in principle. Pursuant to subsection 21 (1) of the Estonian Packaging Act, a deposit is assigned to a packaging for the value of one packaging which is added to the price of one sales unit. This amount is established by a regulation of the Minister of the Environment and is currently 0.10 euros.⁶⁹ The amount is the same in Latvia – the amount of the deposit per one deposit-bearing packaging unit is 0.10 euros.⁷⁰ In both cases, the amount is determined by the state.

A packaging undertaking shall ensure that the established deposit is added to the price of packaged goods during the entire sales cycle of the goods, and that the accounts are settled upon each return transaction (subsection 21 (11) of the Packaging Act). The same system is also used in Latvia, but it is not established by one specific provision, but is covered in several provisions of the regulation regulating the system of deposit-bearing packaging, which describe the functioning of the system.⁷¹

The beverage packaging collection points at stores do not usually issue money for the packaging returned. In Estonia, consumers receive money from the cash register of the store against the receipt received from the collection point. This money can also be used to pay for their purchases, with the amount on the receipt deducted from the total amount of the invoice. The receipt is also issued in the case of returning the packaging to a machine and it can be used in the same manner as the receipts received from a collection point.⁷² The Latvian system is similar, with the deposit refunded upon returning the packaging via a machine or manually to a collection point. The packaging must bear a legible deposit marking and bar code and the packaging itself must be empty and may not be significantly damaged. In the event of returning the packaging via a machine, the deposit is refunded in the form of a coupon. The receipt received can be used to pay for any of the goods purchased from the store, and some stores also exchange the receipts for cash. An important nuance is that the deposit receipts can only be used at the point of sale specified on the receipt. In the case of a packaging received manually,

⁶⁸ Ministry of Foreign Affairs. Välislepingute riigisisese menetlemise juhend (Guidelines for the internal proceeding of treaties) <https://www.vm.ee/rahvusvaheline-oigus-ja-kuberdiplomaatia/rahvuvaheline-oigus/valislepingute-riigisisese-menetlemise#mis-on-vlislepingu-slmimine> (12.03.2023).

⁶⁹ The amount of packaging deposit. RTL 2005, 37, 532.

⁷⁰ Depozīta sistēmas darbības noteikumi (Regulations Regarding the Operation of the Deposit System). – Ministru kabineta noteikumi Nr. 519. Latvijas Vēstnesis, 157, 17.08.2020. <https://likumi.lv/ta/en/en/id/316731-regulations-regarding-the-operation-of-the-deposit-system> (12.03.2023). (12.03.2023).

⁷¹ *Ibidem*.

⁷² Eesti Pandipakend. How does the deposit system work? <https://eestipandipakend.ee/en/how-does-the-deposit-system-work/> (12.02.2023).

the salesclerk of the store can refund the deposit in cash or discount the respective amount from the total amount payable for the purchases of the customer.^{73 74}

When it comes to developing a cross-border system, the equivalence of the deposits in Latvia and Estonia is important, as any differences in the amount of the deposit may give rise to fraud, i.e. the packaging bought from one country with a lower deposit may be deliberately returned in the country where the deposit is higher.⁷⁵ The feedback from the stakeholders also stressed that equal deposits in the two countries must be ensured. Different deposits would distort the system and result in additional costs for the packaging undertakings and recovery organisations. Equal deposit amounts would be the best functioning and also the simplest solution in the case of a common Estonian and Latvian DRS. However, the situation must be monitored and if the gap between the economic situations of the countries included in the common system grows too wide and it becomes clear that the population of one of the countries is less motivated to return the packaging due to the amount of the deposit, the amount of the deposit should be increased in both countries or different deposits should be used, developing a system which is reasonable and non-discriminating for the consumers and producers of both countries. If the deposit rate is too low, less packaging may be returned, i.e., less people might be motivated to return the packaging properly for this deposit amount. The deposit amount will be established on the basis of the standards of living and the tax policies in the countries. If the tax policies or standards of living differ too greatly, border trade and the flow of deposit-bearing packaging from one country to the other will increase. Even if the amount of the deposit is the same, the residents of the countries with higher standards of living may become unmotivated to return the packaging for a low deposit and the collection rate of such packaging as well as the handling rate may drop, resulting in a decline in the efficiency of the entire system.⁷⁶

If Estonia and Finland had a common packaging deposit refund system, the difference in the amounts of the deposit⁷⁷ would be one of the aspects which could hinder the functioning of the system.⁷⁸ It is also important that the neighbouring countries have similar tax policies, as large differences may also cause issues for the system. In 2015, a company was operating at a port in Finland which paid eight cents to the consumer for each can returned, then receiving ten cents for each can in Estonia. Due to the different excise duties on alcohol, the Finnish consumers bought their beverages in Estonia. The packaging could be returned for free by the consumers in Finland, but a lot of the cans with Estonian deposit marking still ended up in the places where they were not supposed to, such as in household waste.⁷⁹ This solution was convenient for the consumers, but problematic for Estonian producers. Namely, a lot of the beverages were bought from ferries, where the beverages bearing the deposit marking were actually exempted from

⁷³ DIO. Frequently asked questions. Deposit fee. <https://www.depozitapunkts.lv/en#buj-home> (12.03.2023).

⁷⁴ Packaging Law. Latvijas Vēstnesis, 4, 09/01/2002 (reference 52), subsection 18⁸ (2).

⁷⁵ Balcers, O., Brizga, J., Moora, H., Raal, R. Deposit Return Systems for Beverage Containers in the Baltic States (reference 62).

⁷⁶ Schneider, D.R., Tomić, T, Raal, R. Economic Viability of the Deposit Refund System for Beverage Packaging Waste – Identification of Economic Drivers and System Modelling. *Journal of Sustainable Development of Energy Water and Environment Systems*. 9 (3), 2021. p. 27.

⁷⁷ The amount of the deposit applied to all deposit-bearing packaging in Estonia is 10 cents; in Finland, however, the amount of the deposit may reach up to 40 cents per packaging.

⁷⁸ European Parliament. Policy Department DG External Policies. 2011. (reference 4), p. 25.

⁷⁹ Harmanen, J. Tiesitkö? Virolaisista tölkeistä saa pian rahaa Suomessa. *Iltalehti*. 23/07/2015. <https://www.iltalehti.fi/uutiset/a/2015072320075696> (12.03.2023).

excise duty.⁸⁰ The same exception still applies in Estonia (as well as in Latvia)⁸¹ – packaging undertakings do not add the deposit to the packaging exported from Estonia to another Member State or designed to be sold for consumption or to go on board of a watercraft or aircraft travelling on an international route. In spite of the exception based on which the undertakings were not required to pay the deposit for the products, the majority of the packaging of the producers was labelled the same as the packaging sold in Estonia, as this was cheaper for the producer. If this situation had lasted longer, it may have resulted in the bankruptcy of Eesti Pandipakend, as well as a huge damage to the Estonian DRS. The solution was to remove the deposit markings and the same bar codes which were used on the products put on the market in Estonia from the products sold in such stores.⁸² This helped Estonian undertakings. At this point, the packaging which has been taken to Finland can only be returned for free, which may not motivate all consumers.

One of the solutions used in the case of different deposit amounts could be refunding the deposit to the consumer upon returning a deposit-bearing packaging in another country in the amount which they paid when they purchased the product. This means that if the consumer paid 10 cents for packaging purchased in Estonia at the time of purchase, the consumer will still be refunded the deposit in the amount paid upon purchasing the packaging, i.e. ten cents, upon returning the packaging in Finland, even though the amount normally paid for this type of packaging in Finland is 20 cents. Such a system would require country-based identification of the packaging and mutual agreements between the countries, but may be considered in the case of a potential mutual system of Estonia and Finland, for example.

The extent of the border trade between Latvia and Estonia has also been problematic, including due to the different alcohol excise fees⁸³, which resulted in an extensive flow of Latvian packaging into Estonia. The packaging originating from Latvia caused the same problem that was experienced in the border trade between Finland and Estonia. The packaging was not differentiated based on the products having been sold in Estonia or outside of Estonia, which means that the packaging of all alcoholic beverages was marked with the deposit marking and bar code of Eesti Pandipakend. Therefore, by returning exported packaging to the machines, it was possible to be refunded for the packaging for which the packaging undertakings had not paid to Eesti Pandipakend. Due to the different excise fees of Estonia and Latvia and the growth of the border trade, the deposit marking system was changed in 2016 and Eesti Pandipakend changed its standard terms and conditions so that the packaging marked with domestic bar codes may no longer be put on the market outside of Estonia.⁸⁴ After these changes, the consumers were no longer able to return the packaging purchased in Latvia and the packaging very likely ended up in household waste or in the packaging collection containers. These examples

⁸⁰ Packaging Act. RT I 2004, 41, 278. clause 21 (4¹) 2).

⁸¹ Packaging Law. Latvijas Vēstnesis, 4, 09/01/2002. Subsection 18⁵ (reference 52).

⁸² Rudi, H. Finns eye Estonian empty cans cash. *Postimees*. 21/08/2015 <https://news.postimees.ee/3301975/finns-eye-estonian-empty-cans-cash> (12.03.2023).

⁸³ Estonian Institute of Economic Research. Alcohol market, consumption, and harms in Estonia. *Annal of 2019*. P 20 <https://www.ki.ee/publikatsioonid/valmis/> (12.03.2023).

⁸⁴ Competition Authority. Teade järelevalvemenetluse lõpetamisest ja OÜ-le Eesti Pandipakend soovitusel andmine konkurentsiolekorra parandamiseks (Notice on the termination of supervision proceedings and giving advice to OÜ Eesti Pandipakend for improving the competition situation). 22/09/2017 no. 5-5/2017-048. p. 2. https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2017/Teade_22.09.2017_nr_017-048.pdf (12.03.2023).

illustrate how different economic situations as well as tax policies may influence the packaging DRS system.

While the excise duty on alcohol is one of the aspects the amount of which must be monitored in the case of a common packaging deposit refund system, the excise on packaging has not posed any issues so far, primarily due to the fact that the packaging undertakings putting deposit-bearing packaging on the market have never actually been required to pay the excise. Packaging undertakings are exempted from the excise fee in Latvia if they have concluded an agreement with the recovery organisation⁸⁵, which is DIO in Latvia. In Estonia, deposit-bearing packaging is exempted from the tax, provided that certain conditions are met. The most important of the excise exemptions listed in section 8 of the Packaging Excise Duty Act is the exemption for packaging in the case of which the required recovery percentage is complied with (subsection 8 (1)). This tax exemption reveals the environmental protection nature of the packaging excise. A packaging undertaking may conclude a written agreement to transfer its obligation to collect and reuse packaging waste and keep the records of packaging waste to the recovery organisation pursuant to the requirements specified in subsection 16 (1) and in sections 24 and 36 of the Packaging Act. In this case, the obligations of the packaging undertaking are limited to submitting a monthly report on the amount of packaging to the recovery organisations and to the payment of the handling fee based on an invoice.⁸⁶

Thus, in the case of a common system, it would be reasonable to keep the amount of the deposit at the same level in countries with similar economic situations, such as Estonia and Latvia, and high enough to ensure that the consumer is motivated to return the packaging. The amount of the deposit motivates⁸⁷ the consumers to participate in the system and ensures a higher return rate.

For this purpose, an agreement between the two countries is required, which is reviewed regularly depending on the economic situations of the countries. The amount of the deposit must remain for the state to determine, as this ensures increased clarity of the system and reduces the potential influences of different parties in deciding the amount of the deposit.

Similar tax policies of the countries are also important and may have an impact in the field of deposit-bearing packaging, such as the excise duties on alcohol or packaging. In the case of a common system, it would be reasonable to ensure similar levels of taxation with respect to the aforementioned taxes.

2.3 Products covered by the deposit

In Estonia, deposits are applied to reusable glass and plastic packaging and (section 21 of the Packaging Act) single-use glass, plastic, and metal packaging of beer, alcoholic beverages with low ethanol content, cider, perry, and soft drinks. The deposit may voluntarily also be applied to the single-use and reusable packaging of strong alcoholic beverages, low-alcohol beverages, and syrups. Similar types of packaging are covered by the deposit system in Latvia – carbonised

⁸⁵ Subsection 8¹ (1). Natural Resources Tax Law. Latvijas Vēstnesis, 209, 29/12/2005. Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 2, 26/01/2006. <https://likumi.lv/ta/en/en/id/124707-natural-resources-tax-law> (12.003.2023).

⁸⁶ Lehis, L. Eesti maksuseaduste kommentaarid (Comments to the Estonian tax laws). 2017. pp. 425–426.

⁸⁷ Laubinger, F., Brown, B., Börkey, P., Dubois, M. OECD Environment Working Papers No. 208, (reference 3), p. 16.

and still non-alcoholic beverages (such as mineral water, potable water, lemonades, energy drinks, ice tea, juices, nectars), beers and other fermented products with the alcoholic strength of up to 6% (such as cider, alcoholic cocktails with an ABV from 0.5% to 6%), except the single-use and reusable glass, plastic, and metal packaging of beer, wine, sparkling wine, and fruit wine.⁸⁸ As of 2023, the ABV of some beverages was increased to 15%.⁸⁹ The author believes that it would be reasonable to apply the deposit to similar beverages and packaging in the case of a common cross-border system to avoid confusing the consumers. For this purpose, Estonia and Latvia should reach an agreement and make amendments to the respective legislation. The differences do not, however, prevent the implementation of a cross-border system. The sizes of the deposit-bearing packaging – which are exactly the same in Estonia and Latvia – are more important^{90 91} as the packaging is largely returned at retail outlets via packaging machines which have been configured to accept certain types of packaging.

The above shows that Estonia and Latvia are in a good position when it comes to developing a common cross-border system of deposit-bearing products and packaging materials and there is no need for large-scale harmonisation. On the other hand, from the perspective of the consumer, a uniform approach is important to avoid any confusion or frustration which may have a negative impact on the DRS. This means that there could still be a common system for Estonia and Latvia even if the deposit-bearing products of the countries were different, but it would not be reasonable from the perspective of the consumer. A uniform approach when it comes to the deposit-bearing products was also mentioned in the feedback provided in the survey. If the countries wish to have a uniform system, the respective changes should be made in the legislation of both countries. A uniform approach is also supported by a new initiative of the European Union⁹², which includes a requirement of the Member States establishing DRSs which would at least cover single-use packaging (plastic and metal packaging). DRSs may also be deployed for glass packaging, beverage cartons, and reusable packaging on a voluntary basis. The DRSs must be compliant with the harmonised minimum requirements (Annex X). In the case of reusable packaging, it is more difficult to create a cross-border system. If such a system was established, reusable packaging should be approached as single-use packaging which is not subject to the requirement of returning to the producer, as this could be accompanied by unreasonable transport costs. From the perspective of environmental targets, it would be reasonable to standardise reusable packaging so that it would not matter which company has produced the packaging. This would make it easier to include the packaging in a cross-border system. The feedback of the survey also highlights that it would not be reasonable to include reusable packaging in the current form and with the current system and they should be left out of the cross-border system, as using reusable packaging as single-use packaging would not be cost-efficient or support the environmental targets. The percentage of reusable packaging in the

⁸⁸ Regulation No. 519. (reference 70)

⁸⁹ Grozījumi Ministru kabineta 2020. gada 11. augusta noteikumos Nr. 519 ‘Depozīta sistēmas darbības noteikumi’. Ministru kabineta noteikumi Nr. 589. <https://likumi.lv/ta/id/335724-grozijumi-ministru-kabineta-2020-gada-11-augusta-noteikumos-nr-519-depozita-sistemas-darbibas-noteikumi-> (12.03.2023).

⁹⁰ Packaging Act. RT I 2004, 41, 278, section 21.

⁹¹ Regulation No. 519. (reference 70).

⁹² European Commission. Proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (reference 6).

deposit-bearing packaging system is higher in Latvia compared to Estonia, therefore it would be unfortunate if this type of packaging was left out of the cross-border system.

2.4 Marking

Pursuant to subsection 23 (1) of the Estonian Packaging Act, a packaging undertaking who places packaged goods on the market equips the packaging with a deposit marking. A packaging undertaking who has transferred its obligations to a recovery organisation equips the packaging or label with a bar code registered in the recovery organisation in addition to the deposit marking. The sale of goods in packaging which lacks the required markings is prohibited (subsection 5). The Latvian system is the same, in principle. Pursuant to the Latvian Packaging Law (section 18³), the deposit packer is responsible for the placement of a special sign on a deposit packaging or label upon the application of a DRS. The Cabinet determines the sample of the special sign of the deposit-bearing packaging and the conditions for the use thereof. The regulation adopted under the Latvian Packaging Law (clause 4) states that a packaging undertaking equips the packaging of a product with a bar code or QR code and register the packaging. Specific terms and conditions are established by the recovery organisation – the DIO in Latvia.⁹³

Thus, the packaging undertakings in both countries must mark their packaged goods with a national or international bar code, as well as with the deposit marking, and register the product in the system. Those packaged goods which are only put on the market in Estonia are marked with a national bar code and the deposit marking (the marking of Eesti Pandipakend). Upon registering a deposit-bearing product, the packaging undertaking states in the online environment of Eesti Pandipakend in a format which can be reproduced in writing whether the bar code of an article of packaging is a national or international bar code, that is whether the packaging compliant with the article of packaging registered are only put on the market in Estonia or also outside of Estonia.⁹⁴ Those packaged goods which are put on the market in Estonia and abroad are marked with international bar codes. There are exceptions in both countries, for example, the packaging with Estonian bar codes may be put on the market outside of Estonia in exceptional cases, but only with the permission of Eesti Pandipakend.⁹⁵

The same bar code system has also been established in Latvia.⁹⁶ In the case of a common cross-border packaging DRS, it is important that the packaging put on the market in Estonia and Latvia could be returned in both countries. From the perspective of the consumer, it is important that they would be able to reclaim the deposit paid upon purchasing the product, while for the recovery organisation, it is important that they are compensated for the deposits refunded to the consumer and that the packaging undertakings also compensate to them for all the expenses specified by the legislation. Deposit-bearing packaging can currently only be returned in both

⁹³ Regulation No. 519 (reference 71).

⁹⁴ Eesti Pandipakend. Contract for organising the collection and reuse of packaging and packaging waste – standard terms. Packaging company contract. Valid from 1 February 2022. Clauses 4.2.4 and 5.3.4. <https://eestipandipakend.ee/wp-content/uploads/2021/11/220201-PE-leping-tuupingimused.pdf> (12.03.2023).

⁹⁵ *Ibidem*, clause 5.3.7

⁹⁶ DIO. Deposit packaging management agreement, clause 1.17–1.19.

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.depozitapunkts.lv%2Fuploads%2Fcatalogue-product-files%2Ffiles%2F0_Contract_Producers_PackagingManagement_DIO_19102022_LV_ENG.docx&wdOrigin=BROWSELINK (12.03.2023).

countries and the deposit paid for the packaging is refunded if the packaging is marked with the national bar code of the country where it is returned or an international bar code which is registered in the register of the country where packaging is returned.⁹⁷ This means that a deposit-bearing packaging bought in Latvia cannot be returned in Estonia for a refund, as the fee for the handling of the packaging was paid in Latvia, unless the packaging in question happens to be equipped with a bar code registered in the Estonian system. Such products are usually marked with the code of the country where the product was put on the market; in rare cases, they are also marked with an international bar code. Both the Estonian and Latvian recovery organisations allow the producers to use international bar codes. If a product is marked with an international bar code, it is currently not possible to determine which country the product in question was put on the market in. However, if the international bar code is marked on the product based on an agreement with an Estonian or Latvian recovery organisation and registered in the national registers and includes the deposit markings of both countries, the packaging can be returned and the consumer can claim a refund of the deposit paid.

The system is currently confusing for the consumer. An Estonian consumer who buys a beverage of an Estonian packaging undertaking in Latvia which is marked with the Estonian deposit marking in addition to the Latvian deposit marking and wants to return the packaging in Estonia may not be able to do so in most cases if the packaging has a bar code which has not been registered in the Estonian system. This may be frustrating for the consumer and they may decide not to return packaging purchased from another country next time. Whether or not the consumer can return a package for a refund of the deposit paid may also influence their purchasing decisions. Some consumers prefer to buy the products which have the deposit marking and in the case of which they know that the deposit will be refunded or have the respective experience. The system is based on the principle that as the obligations of the packaging undertakings depend on which country their products are first put on the market; the packages can also be returned for a refund in the country where the product was purchased. The packaging which cannot be returned will, in the best case, end up in a public collection network / container network for packaging without the deposit marking or, in the worst case, are thrown away with domestic waste or to the environment. The packaging undertakings which have subscribed to the public packaging collection network, the local municipality or the state, and indirectly also the consumer will ultimately pay for the handling thereof. Such packaging often becomes a lost resource and the confusion concerning the deposit-bearing packaging may have a negative impact on the entire system. It is therefore important for the system to be clear. The good thing is that in some cases, the consumer can return the packaging purchased from other countries, such as from Latvia or Finland, for free. At least some Prisma stores in Estonia accept such packaging.⁹⁸

The author of this study believes that in the case of a common system, it would be important to minimise confusion for the consumer and enable the consumer to return all deposit-bearing products irrespective of where they were bought. It is also important to take into consideration the environment-related directions of Estonia and the rest of the world in the case of developing

⁹⁷ Eesti Pandipakend. Contract for organising the collection and reuse of packaging and packaging waste – standard terms (reference 94).

⁹⁸ *Postimees*. Tarbija24. Lõpuks ometi: üks pood võtab vastu pandimärkideta Lätist ostetud purke ja plastpudeleid. (Finally: one store is accepting the beverage cans and plastic bottles bought in Latvia which do not bear deposit markings) 8.04.2019. <https://tarbija.postimees.ee/6564091/lopuks-ometi-uks-pood-votab-vastu-pandimarkideta-latist-ostetud-purke-ja-plastpudeleid> (12.03.2023).

a common system and thus, the common system would help to increase the efficiency of returning deposit-bearing packaging from the perspective of the consumer. In light of the initiative of the new EU Packaging Regulation⁹⁹, it is obvious that harmonisation is aimed for, especially with respect to the marking. A common deposit marking would make life easier for the consumer and the undertakings would no longer need to use different markings in different countries. When it comes to complying with environmental targets, it should be kept in mind, however, that it is important to take into consideration the systems introduced in both countries and achieve the goals by making as little changes as possible in the case of a common DRS of Estonia and Latvia. The implementation of a cross-border DRS of Estonia and Latvia in the format in which the consumer can return the packaging purchased from either of the countries for a refund of the deposit paid would still result in certain additional costs for the packaging undertakings and recovery organisations.

The easiest way for implementing a cross-border system of Latvia and Estonia which only aims to ensure that Estonian and Latvian consumers will get a refund for the deposit paid upon the return of deposit-bearing packaging irrespective of which country the packaging was purchased from would be to start issuing packaging with international bar codes and the deposit markings of both countries in both of the countries and make sure that the bar codes are registered in the IT systems of the packaging machines of both countries. In order to prevent excessive costs, registration in the systems of both of the countries should be simplified. Competition-sensitive information should be protected, however. Further analysis is required for creating such a system, though.

There would be no need for clearing, i.e. all the packaging purchased from one country and taken to the neighbouring country by the consumer would be accepted in the country of final destination, the consumer would receive a refund for the deposit, but the packaging undertakings of the country of the final destination would pay the deposit and for the handling of the packaging from their own pockets through the recovery organisation, as the packaging which has travelled across the border was paid for in the country where it was put on the market, not where it is collected and handled. To a certain extent, such a system is already used in Estonia¹⁰⁰ and there have been no issues with the current volumes. Income from the sale of the material also helps to cover the expenses.

Such a system would be the most vulnerable, though, as it would largely depend on the tax policies of the two countries and on the volumes of border trade. In the case of larger differences in the tax policies, the system will no longer work, which was demonstrated by the situation between Estonia and Latvia a few years ago. Due to the differences between the amounts of the excise fees in Estonia and Latvia and in increase in the border trade, a lot of packaging was returned, which the packaging undertakings did not pay for to Eesti Pandipakend, i.e. excessive returning of packaging occurred.¹⁰¹ As long as the border trade is more or less balanced, which

⁹⁹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC.

¹⁰⁰ *Postimees*. Tarbija24. Lõpuks ometi: (Finally:) ...(reference 99).

¹⁰¹ Competition Authority. Teade järelevalvemenetluse lõpetamisest ja OÜ-le Eesti Pandipakend soovitusel andmine konkurentsiolekorra parandamiseks (Notice on the termination of supervision proceedings and giving advice to OÜ Eesti Pandipakend for improving the competition situation). 22/09/2017 no. 5-5/2017-048. p. 2. https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2017/Teade_22.09.2017_nr_017-048.pdf (12.03.2023).

means that there is no significant one-way traffic, the system may function, as even though Latvia must pay for the handling and refund the deposits paid for the packaging put on the market in Estonia, for example, Estonia must also pay for the handling of the packaging put on the market in Latvia and refund the deposits paid, if such packaging has moved across the border.

In the case of an international bar code with no compensation mechanism applied, it would be more beneficial for the undertaking if the consumer was able to return the packaging free of charge, i.e., the consumer would not have the deposit paid refunded upon returning the packaging bought from the other country. This option would be less beneficial for the consumer, as they have already paid the deposit. It may be assumed that such amounts would not be high for one private consumer, while the savings of an undertaking would be much more significant. However, such a free-of-charge option would not be appropriate from the perspective of the concept of a DRS. International bar codes are used to facilitate simultaneous putting on the market of one product in several countries. In this case, the packaging in question should also be taken back through the DRS in all of the countries where it was put on the market, as the producer/packaging undertaking added a deposit to the product when it was put on the market and it is therefore important to refund this amount to the consumer.

The system might be more functional if the packaging put on the market were only marked with a deposit marking and the bar codes of both countries in which it is put on the market, which would be registered separately in both countries. This would enable the differentiation of such packaging in the neighbouring country. The deposit would be refunded to the consumer for the packaging marked in this manner in both of the countries. As the packaging would be clearly distinguishable by the bar codes, the amount of packaging which has crossed the border from the neighbouring country would be clear and the expenses on the collection and handling of such packaging, as well as the deposits refunded, could be claimed from the country which put the packaging on the market. The system between Estonia and Latvia should be mutual. The handling costs would be divided more fairly in this case. On the other hand, marking the packaging for each country would bring additional expenses for the producer.

As a third option, the simultaneous use of two systems could be considered, where some of the products could be equipped with international bar codes if the packaging undertaking has decided that it is important to spend less on the labelling of the initial product. The handling expenses and deposits refunded would not be compensated in the case of the products marked in this way which have moved across the border. This option would be beneficial for the producers that produce for several markets, for example to all Baltic states. Other products would have national bar codes and such packaging would be included in the clearing system if the product has crossed the border with the consumer.

As there is no specific data on the packaging which has crossed the border and taking into consideration the somewhat limited knowledge on the exact dimensions of the cross-border flow of packaging, it may be reasonable to consider the option of the free return of cross-border packaging before deciding in favour of a specific option, but especially before considering and implementing a compensation mechanism. In principle, the current situation would continue – the deposit would only be refunded to the consumer in the country where the product was put on the market or bought and no deposit would be refunded for the products which have travelled across the border. It may even be possible to implement this option without an agreement

between the two countries; an agreement between the recovery organisations of Latvia and Estonia may suffice. A downside of this option is that the state would not be able to control the parties in this case if the latter decided to amend, cancel, etc. the agreement for some reason.

Feedback from the parties also shows that the less changes in the systems of the two countries are planned, the more support the system will likely find. If such a system works and the exact amounts crossing the border become clear, it can be decided which option to consider, for example whether it would be reasonable to implement a compensation mechanism. In general, the feedback revealed that some of the respondents were not readily prepared to support a common system and thought that they would wait and see what would happen. Other Estonian and Latvian respondents were more supportive of a common system, but highlighted the need to change the current systems as little as possible or only create a voluntary system.

Keeping in mind the EU trends when it comes to marking¹⁰², it would be reasonable for both countries to have the same deposit marking in the case of a common system, irrespective of which bar code is added to the packaging. A common marking would reduce the confusion of the consumers and would also be cost-efficient, as the undertakings would not be required to use different deposit markings for the two countries. Which of the systems to choose depends of which goals are prioritised, as well as the extent of the expenditure for each of the parties. When it comes to the expenditure, it would be reasonable to carry out an in-depth analysis in the future. A further IT and technical analysis of the capability to accept the deposit-bearing packaging of the other country would also be required.

Even if a common cross-border system of Latvia and Estonia is implemented, there will always be packaging which has been put on the market outside of those two countries. The consumer should have the opportunity to return such packaging for free. This would come with a certain cost for the packaging undertakings, but the income from the sale of the material should largely cover the handling costs.¹⁰³

2.5 Registration and information system, incl. submission of information

In Estonia, a packaging producer, an importer or exporter of empty packaging, a packaging undertaking who places packaged goods on the market, a person who exports packaged goods, and a packaging waste handler are obliged to keep consistent records on the mass of packaging material by the types of packaging and packaging material specified in the Estonian Packaging Act, including separately in a certain manner concerning packaging provided in the Packaging Excise Duty Act (subsection 24 (1) of the Packaging Act). As regards to other information, it is important that the following verified data by the types of packaging and packaging material must be submitted for the purpose of entry in the packaging register (subsections 24 (4)–(6)), plus the mass of reusable packaging, the mass of packaging of the goods placed on the market, data on the recovery of packaging waste. The packaging waste handlers who will finally handle the packaging waste collected must also submit their data for registration in the packaging register just like those packaging undertakings which have not transferred their obligations and the recovery organisation (subsection 24 (7)). The data about the previous calendar year must

¹⁰² European Commission. Proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (reference 6), Article 44(1), Article 4(5), and Article 11(1).

¹⁰³ Laubinger, F., Brown, B., Börkey, P., Dubois, M. OECD Environment Working Papers No. 208 (reference 3).

be submitted at least once a year by 31 March. The documents and data on the packaging must be retained at least seven years.¹⁰⁴

Thus, all the data collected must be submitted to the packaging register, which is established and managed by the state (section 25 of the Packaging Act). Latvia also requires the registration of all the packaging placed on the market and the state establishes the procedure for the registration of deposit-bearing packaging (section 18¹⁹ of the Latvian Packaging Law). Pursuant to the Latvian Packaging Law, the State Environmental Service of Latvia establishes and maintains a database based on the information on packaging submitted by the packaging undertakings and the amounts of packaging and draws up information about the amounts of goods and packaging placed on the market and the amounts of packaging waste handled, thereby ensuring quality control of the packaging waste and an efficient system of traceability.¹⁰⁵ This demonstrates that the Estonian and Latvian systems are similar, in principle. In both countries, the packaging undertakings and recovery organisations must collect and submit the related data to the state and the state will determine which data must be submitted to the register. Those packaging undertakings which have transferred their obligations must still submit the data on the amounts put on the market by them, that is a so-called sales report to the recovery organisation.^{106 107}

In addition to the regular reporting which involves submitting data to the packaging register, the Estonian packaging undertakings and recovery organisations must also organise their financial management and auditing of the data submitted to the packaging register pursuant to section 24¹ of the Packaging Act. The auditing may only be performed by a senior auditor for the purposes of the Auditors Activities Act. As of 2021, the auditing involves the data submitted to the packaging register as well as the auditing of the financial management of the packaging undertakings and the recovery organisations. There was a change in the threshold for auditing. In the future, packaging reports must be audited if the amount of packaging put on the market exceeds 20 tonnes per year.¹⁰⁸

The Latvian system is the same, in principle. Pursuant to section 52 of the Latvian regulation on the regulation of the deposit-bearing packaging system¹⁰⁹, the recovery organisation must submit annual audited reports of the previous year to the state pursuant to Annex 8 to the regulation. An opinion of the auditor on the compliance of the information included in the report with the requirements of the legislation regulating registration and handling of packaging must be enclosed to the report.

Thus, relatively detailed information is submitted by packaging undertakings to recovery organisations on which packaged goods the packaging undertakings have put on the market in the period observed and which packaged goods they intend to place in the market in the near

¹⁰⁴Ministry of the Environment. To packaging undertakings. <https://envir.ee/pakendiettevojale#aruandekohustus>

¹⁰⁵ Packaging Law. Latvijas Vēstnesis, 4, 09/01/2002. Subsection 3¹ (reference 52).

¹⁰⁶ Eesti Pandipakend. Handbook. Version 1.4. https://eestipandipakend.ee/wp-content/uploads/2022/04/EPP_Kasiraamat.pdf (12.03.2023).

¹⁰⁷ DIO. Handbook for producers. 03/01/2022, p. 18.

¹⁰⁸Ministry of the Environment. To packaging undertakings. <https://envir.ee/pakendiettevojale#aruandekohustus> [12.03.2023](https://envir.ee/pakendiettevojale#aruandekohustus)).

¹⁰⁹ Regulation No. 519. (reference 70).

future.¹¹⁰ The respective reports are submitted to Eesti Pandipakend every month¹¹¹ and they include the amounts of packaged goods by articles of packaging. Latvia also has the same system.¹¹² This information is competitively sensitive. This is one of the aspects which was highlighted by the stakeholders in the feedback provided in the survey. This means that the chance of competition-sensitive information being disclosed to unauthorised parties is one of the aspects which may prevent the establishment of a common system. If the recovery organisations only exchange information on the amounts of the packaging waste handled across the border, there should be no conflicts from the perspective of competition. This information would not allow the recovery organisation of the other country to draw conclusions on the amounts of certain types of products put on the market in the neighbouring country. The situation should be even simpler if the easiest opinion is chosen, in the case of which the consumer will be able to return the packaging purchased in the other country in both of the countries, which is already possible in certain rare cases today. In this case, there would be no compensation or exchange of competition-sensitive data. Likewise, there would also be no need to fear the disclosure of competition-sensitive data to unauthorised parties in the case of the system in which only packaging with international bar codes is put on the market in both countries. The consumers would have the deposits paid refunded in this case, but the expenses would not be compensated and neither of the countries would be required to disclose the information on the packaging put on the market or taken back in the country.

If Estonia and Latvia used the clearing system for their common DRS, it would be easier for the recovery organisations if they were aware of the amounts of packaged goods placed in the market in both countries, as the rates of the fee are established based on this information. This is not possible, however, as this information is competitively sensitive. In order to protect competition-sensitive information and avoid making the system too complicated, it would be reasonable to proceed from the expenses made in the clearing system. This means that the recovery organisations of both the countries would pay based the handling expenses made. This approach may be somewhat unusual, but as those expenses form a relatively small share of the total expenses, it should be manageable for the recovery organisations. The situation would also be balanced by the fact that if an undertaking is required to compensate for the handling expenses of the packaging put on the market by them which have been handled in the other country based on an invoice, they can also claim compensation for the handling expenses of the packaging from the other country.

The current system can be used within the framework of a common system of returning deposit-bearing packaging in both countries, but some changes must be made in the data submitted to the register, if necessary, depending on whether or not there will be a clearing system between the neighbouring countries for the compensation of the expenses on deposit-bearing packaging. In other cases, if the deposit-bearing packaging can be returned for free in the other country or if there is no compensation of expenses, the data submission systems of both of the countries could remain unchanged. In the case of a compensation system, it is important to highlight a change concerning the data submitted on the amounts handled. This means that the amount of

¹¹⁰ Eesti Pandipakend. Contract for organising the collection and reuse of packaging and packaging waste – standard terms. Clause 5.2.3 (reference 94).

¹¹¹ *Ibidem*, Clause 7.2.1.

¹¹² DIO. Handbook for producers, p. 6. [file:///sise.envir.ee/Kasutajad\\$/KeM/48406112221/Downloads/6_Handbook-for-Producers_DIO_DI_03012022-2_1%20\(1\).pdf](file:///sise.envir.ee/Kasutajad$/KeM/48406112221/Downloads/6_Handbook-for-Producers_DIO_DI_03012022-2_1%20(1).pdf) (12.02.2023).

the packaging handled in the other country should now be reflected in the reporting of the country of origin of the marketer of the packaging. This data could be mutually taken into consideration in the calculation of the recovery targets of both of the countries which have subscribed to the system. This approach is necessary, as if a handling fee is charged for the packaging handled in the neighbouring country, it is only logical that the country should also benefit from this. The benefit arises from the fact that the original marketer of the packaging can include the data of the handling of the packaging in the other country in their reporting system, which improves their compliance with the recovery targets. Information must also reach the packaging undertakings and the state through the recovery organisations of the countries. Further decisions must be made on whether such handling data will be added to the amounts recovered in the country of the marketer or if the amounts handled in the other country will be deducted from the amounts put on the market. Depending on which approach is chosen, the provisions on the packaging information system must be complemented in the legislation of both of the countries, incl. concerning the data submitted by the recovery organisation, as well as the data submitted to the packaging register. This data is also required for auditing. As the additional data has an impact on the recovery targets, it should also be considered whether or not the Packaging Excise Duty Act requires amendment. The need to register more data in the packaging register may also give rise to the need to develop the packaging register system.

2.6 Fees payable to the recovery organisation, retailers and packaging waste handler

Pursuant to the ‘polluter pays’ principle, the party placing the packing on the market must pay for the collection and handling of deposit-bearing packaging and the resulting waste. If the marketer has transferred this obligation to the recovery organisation, they must also pay to the recovery organisation for all related costs. This is also established by the legislation of both of the countries. If the packaging undertaking has transferred their obligations, then pursuant to clause 17⁴ (1) 4) of the Estonian Packaging Act¹¹³, the function of a recovery organisation is to ensure collection of charges on equal terms from the packaging undertakings who have transferred their obligations pursuant to subsection 12¹ (2) of the Estonian Packaging Act and offering services to them based on the mass of packaging waste of packaged goods placed on the market by the packaging undertakings and the service charges rates disclosed by the recovery organisation. The law also includes provisions on the calculation of the amount of the service charge (subsection 12¹ (4) and clause 17⁴ (1) 4¹) of the Packaging Act). Pursuant to the law, the packaging undertaking is required to bear at least the costs of handling packaging and packaging waste which arise from: (1) separate collection of packaging and packaging waste and subsequent transport and treatment, including treatment necessary to meet the targets established, taking into account the revenues from reuse, from sales of secondary raw material from its products, and from unclaimed deposit fees, and (2) information activities, collection and submission of data (subsection 12¹ (4)). This system also includes the recovery organisation paying compensation to the retailers for the collection of the packaging. Furthermore, the Estonian Packaging Act (subsection 12¹ (5)) prescribes that the costs must not exceed the costs that are necessary to provide waste handling services in a cost-efficient way. Such costs shall be established in a transparent way between the actors concerned. The Estonian law also requires (clause 17⁴ (1) 5)) that the waste handling service must be bought on the basis of competition, proceeding from the principles of sustainable use of resources, transparency and verifiability of procurement and equal treatment of tenderers, and providing proof of recovery

¹¹³ Packaging Act. RT I 2004, 41, 278, amended RT I, 05.05.2021, 2.

through the service provider selected on the basis of competition. The same principles also apply in the Latvian system. Pursuant to section 18⁷ of the Latvian Packaging Law, a deposit packer shall pay a deposit system participation fee to a deposit system operator which is used for ensuring of the activity of the operator. The law also defines the method for determining the amount of the participation fee, as well as the data and documents which must be submitted for the calculation of the fee and the procedure for the submission thereof which is established by the state. Furthermore, the Latvian law (section 18¹¹) prescribes that A deposit system operator shall pay a deposit packaging management fee to a deposit packaging seller, the procedures for payment shall be determined by the Cabinet. The Finnish system is similar to the ones of Estonia and Latvia. Namely, the Finnish deposit-bearing packaging recovery organisation (PALPA) receives a fee from the packaging undertakings to cover the costs of the collection, handling, and transportation of the packaging and administration of the system. PALPA is a non-profit organisation and the amount of the fee payable by the packaging undertaking therefore depends on the operating expenditure of the organisation.¹¹⁴ The Estonian and Latvian recovery organisations are also not profit-earning undertakings.

The recovery organisation organises and coordinates the functioning (logistics, agreements between the parties, etc.) and funding (collection of management fees, management of the cash/deposit flows, payment to the parties, auditing, etc.) of the deposit system. Usually, the recovery organisation concludes agreements with the retailers for clearing the expenses which are related to taking back the packaging and with the packaging waste handlers for the transportation and recycling of the packaging collected. The organisation also communicates with the authorities, collects packaging information from the undertakings, and submits the required data. Furthermore, the recovery organisation keeps the population informed of the functioning of the collection system and coordinates its activity with the local municipality.¹¹⁵ This is how the systems work in Estonia and Latvia. This means that the recovery organisations (Eesti Pandipakend, DIO, and PALPA in Finland) are nationwide non-profit organisations whose income which they require for operating is based on their actual expenditure and who are not aimed at earning profits. Any potential profits generated must be reinvested into the activity of the recovery organisation and the profit may not be distributed between the members or shareholders (clause 17⁴ (1) 9) of the Estonian Packaging Act and section 18¹² of the Latvian Packaging Law). The above allows to conclude that the principles of calculating the operating expenditure of the recovery organisations are similar, but the expenditure itself may differ due to the somewhat different economic situations of the countries. Therefore, the fees charged by the Estonian and Latvian recovery organisations from the undertakings may also differ.

In the case of establishing a common cross-border deposit-bearing packaging system of Latvia and Estonia in which the country where the packaging was originally put on the market is invoiced for the handling of the packaging put on the market in the other country, it would be reasonable to draw up the invoices based on the prices of the country where the packaging is collected and handled. It is important to determine the amount of the expenses transparently between the stakeholders in the case of a cross-border system. This means that if the parties intend to create a cross-border system in which the handling expenses and deposits refunded

¹¹⁴ Ettliger, S. Deposit Refund System (and Packaging Tax) in Finland. Eunomia. Institute for European Environmental Policy. <https://ieep.eu/wp-content/uploads/2022/12/FI-Deposit-Refund-Scheme-final.pdf> (12.03.2023).

¹¹⁵Ministry of the Environment. The DRS. (reference 5).

for the packaging which have moved to the other country are reclaimed from the neighbouring country that has subscribed to the system, the amount of the handling fee which is reclaimed must be calculated in a transparent and public manner and may not be discriminating, i.e. the handling expenses of the packaging put on the market in the same country and those brought from another country must be calculated based on the same grounds to prevent conflicts with the free market principles.

Currently, Estonia and Latvia have systems in which the material of the packaging collected belongs to the recovery organisations. The income of the recovery organisations largely consists of three large parts – the income from selling the material, deposits which are not refunded, and the handling fees paid by the packaging undertakings. The main sources of income are the same in Estonia, Finland¹¹⁶, and Latvia.¹¹⁷

In the case of a cross-border packaging DRS between Latvia and Estonia, the deposit costs are already shared, which must remain the same in the common system. The income from selling the material and the amount of the handling fee depend on the economic situation of the country and on the availability of handling opportunities, as well as on the market price of the material. It would be complicated to harmonise all these expenses to ensure the functioning of the system and such harmonisation may prove to be unfair to one or the another of the countries. This could be organised on a voluntary basis, i.e. by the stakeholders of both countries, especially the recovery organisations agreeing on the same unit price which the clearing would be based on. It would be more reasonable and easier, however, to reclaim the expenditure based on the actual expenditure. This approach would also be more transparent and the undertakings within one country would be treated fairly. In this case, it would not be necessary to find one appropriate price level which would be acceptable for both countries. The calculation of a price acceptable for both and agreeing on such a price may also prolong the entire process and would also need to be regularly reviewed and updated if the economic or other situations in the participating countries have changed. Proceeding from the actual costs of both countries which also apply to the handling of the packaging put on the market in this country may inevitably result in a situation in which it is more expensive to handle the same packaging in one of the countries; however, the costs would always be known and could be calculated in a transparent and clear manner. Such an approach that is based on the actual expenditure should involve the fees charged from the packaging undertakings, as well as the fee payable to the retailers.

This means that it would be most reasonable to proceed from the actual expenses in the case of a common cross-border packaging DRS of Estonia and Latvia. The exact rates of the handling fee should be agreed on by the recovery organisations and packaging undertakings and it is not necessary to specify them in the legislation, but the state will establish the principles and, in the Latvian case, also the methods¹¹⁸ for calculating the fees, i.e. the formation principle of the fee. If a clearing system is used, it would be reasonable to clearly specify the principles for calculating the amount of the compensation in the legislation.

¹¹⁶ Reloop. Global deposit book 2022. An Overview of Deposit Return Systems for Single-Use Beverage Containers. P. 27. https://www.reloopplatform.org/wp-content/uploads/2022/11/RELOOP_Global_Deposit_Book_11I2022_P1.pdf (12.03.2023).

¹¹⁷ DIO. Financial information. <https://depozitpunkts.lv/aboutus-en> (12.03.2023).

¹¹⁸ Packaging Law. Latvijas Vēstnesis, 4, 09/01/2002. Subsection 18.⁷ (reference 50).

2.7 Supervision and responsibility

Pursuant to section 17 of the Estonian Packaging Act, a recovery organisation shall hold an activity licence. The law prescribes several requirements which must be complied with to be issued the activity licence (sections 17² and 17³). The Packaging Act also establishes the obligations of a recovery organisation (section 17⁴).¹¹⁹ If the requirements are complied with, the activity licence is issued by the minister responsible for the area. The activity licence is issued for an unspecified term by the Ministry of the Environment. In the case of certain violations, an activity licence may also be revoked or suspended.¹²⁰ There is a similar system in Latvia: pursuant to the Latvian Packaging Law (section 18¹³), A person which is applying for the right to become a deposit system operator shall submit a respective application with the required documents to the State Environmental Service.¹²¹ If all documents are compliant, a decision is made by the state and, based on the decision, an agreement is concluded for seven years for ensuring the functioning of the packaging DRS all across Latvia (section 18¹⁵). The agreement also lays down the obligations of the recovery organisation and the grounds for terminating the agreement. The requirements for the agreement are specified in the regulation on the deposit refund system¹²².

The Estonian Packaging Act (section 181) also specifies that packaging undertakings and recovery organisations must implement a self-checking system. This requirement was added to the act by the amendment of 2021. The aim of the self-checking system is to ensure that the packaging undertaking and the recovery organisation keep the records of the products put on the market and the waste collected and handled, i.e., have persistent internal records of the packaging and the resulting waste. Furthermore, the records must include elements of the financial management of the packaging undertaking and the recovery organisation (expenses on the waste handling related to the packaging, etc.). In accordance with Article 8a (3) d) of the Waste Framework Directive, to support the self-checking system, the funding of the obligations established by subsection 121 (1) of the Estonian Packaging Act, the accuracy of the calculation of the service fee charged from the packaging undertakings and the data submitted to the packaging register pursuant to clause 174 (1) 42 of the Packaging Act, and the accuracy of the data collected and submitted pursuant to Regulation 1013/2006/EC of the European Parliament and of the Council on shipments of waste (OJ L 190, 12.7.2006, pp. 1–98) are audited. This is not a new requirement, as the packaging undertakings and recovery organisations were already required to have the respective data before. This is merely referring to the existing internal record-keeping as a self-checking system. The entities with the Eco-Management and Audit Scheme (EMAS) are exempted from implementing the self-checking system. Subsection 181 (3) also includes a basic requirement that the data of the self-checking system must be documented and updated at least once every 12 months.¹²³ The Latvian law does not directly establish such a self-checking system, but the law actually includes all the respective requirements – the same things are required, even though they are not referred to as such. Both the Latvian Packaging Law¹²⁴ and the regulation regulating the system of deposit-bearing

¹¹⁹ Packaging Act. RT I 2004, 41, 278, amended RT I, 05.05.2021, 2

¹²⁰ Eesti.ee state portal. Activity licence of a recovery organisation. <https://www.eesti.ee/en/licences-and-notice-of-economic-activity/environment/activity-licence-of-a-recovery-organisation> (12.03.2023).

¹²¹ Packaging Law. Latvijas Vēstnesis, 4, 09/01/2002. (reference 52).

¹²² Regulation No. 519. (reference 70).

¹²³ Act on Amendment of the Waste Act and the Packaging Act 190 SE. First reading. Cover letter. P. 59. <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/cf2190f4-e433-4590-8667-2ae543bcb20f> (12.03.2023).

¹²⁴ Packaging Law. Latvijas Vēstnesis, 4, 09/01/2002. (reference 52).

packaging¹²⁵ include the respective requirements. In order to ensure clarity, it would be good to include the self-checking requirement as a separate provision, however.

Pursuant to section 26 of the Estonian Packaging Act, state supervision over compliance with the law is exercised by the Environmental Board, the Consumer Protection and Technical Regulatory Authority, the Tax and Customs Board, the Agriculture and Food Board, and rural municipality and city governments. Pursuant to section 21 of the Latvian Packaging Law¹²⁶, state supervision in Latvia is exercised by the State Environmental Service, which inspects the compliance of the operations of the packaging producers, packers, packaging undertakings, and deposit-bearing packaging undertakings with the requirements established by this piece of legislation. The same section also establishes that the operations of the recovery organisations are supervised by the Ministry of Environmental Protection and Regional Development of the Republic of Latvia. In Latvia, the misdemeanours specified in the Packaging Law are processed by the State Environmental Service.¹²⁷ In Estonia, such violations are either processed by the Environmental Board or other bodies specified in the law, depending on the nature of the misdemeanour.¹²⁸

The state must create the legal mechanisms for the protection of the environment. For this purpose, the state will first establish the rules of environmentally friendly behaviour. Just like in any other field of the law, in addition to regulating the use of the environment by legislation, the state must also ensure that the laws adopted are complied with. In order to ensure compliance and for the protection of legal benefits, the public authorities must be prepared to check that the rules are complied with, as well as for coercion, if necessary, as there is always those who do not wish to follow the rules.¹²⁹

The Estonian and Latvian laws both specify the supervisory bodies, what may and must be inspected, as well as the obligations and the consequences of violations.

If a respective agreement was concluded and depending on the solution chosen, it would not be necessary to amend the current legislation from the perspective of supervision for a common cross-border packaging DRS of Estonia and Latvia. If all the amendments required with respect to the data submitted to the packaging register have been made in the legislation of both countries based on the solution chosen, including amendments concerning the submission of the packaging data, the supervision must include verifying the compliance of the data, as well as compliance with the requirements established by the national law of the country. Supervision would be conducted within each specific country included in the common system and no changes would need to be made in the system. A common system would also be a good solution from the perspective of the workload of supervision, as the need for carrying out checks on the border would decrease, as there is currently a four-kilo limit applicable to importing deposit-bearing packaging to Estonia¹³⁰. It would no longer be necessary to check whether someone is bringing large amounts of deposit-bearing packaging to Estonia from the other country, which has happened before.

¹²⁵ Regulation No. 519. (reference 70).

¹²⁶ Packaging Law. Latvijas Vēstnesis, 4, 09/01/2002. (reference 52).

¹²⁷ *Ibidem*, Section 33 .

¹²⁸ Packaging Act. RT I 2004, 41, 278, amended RT I, 05/05/2021, 2, section 23.

¹²⁹ Veinla, H., Lopman, E., Relve, K., Triipan, M. (reference 56) p. 230.

¹³⁰ Waste Act. RT I 2004, 9, 52; subsection 115 (3).

Summary

The issues described above reflect the most important aspects of a common packaging deposit refund system of Estonia and Latvia. It has been identified that the most important aspects which must be taken into consideration in developing a cross-border packaging DRS of Estonia and Latvia are the following: the obligations of the packaging undertaking in the collection of packaging, deposit value and the products covered, the issues concerning the labelling of the packaging, tax issues, issues concerning different fees, as well as issues related to competition-sensitive information, the submission of information and registration, and supervision.

Other aspects may also come up in the course of creating a common system which must be analysed further, for example, a further economic and technical analysis of the selected solution. However, it may be stated based on the above that it is important to consider different options together with all affected parties when creating a common packaging DRS for Estonia and Latvia.

The analysis also revealed that the most reasonable option for a common system would be based on the marking of the packaging. The first option is to continue to put the packaging on the market the same way as currently (with international as well as national bar codes used) and agree (an agreement between recovery organisations) that both countries accept the packaging of the other country from the consumers free of charge and both countries also pay for the handling themselves. In this case, no agreement between the countries or changes in the legislation would be required. Another option is to use an international bar code or international and national bar codes together on all products and also enable the consumers to return the packaging in both countries (the bar code is recognisable in both countries upon returning the packaging) either for free or refunding the deposit, with each country again covering the costs of handling. The third option would be to mark the packaging so that it would be clear in both countries in which country the packaging was placed on the market (national bar code) and reclaim the handling costs from the neighbouring country where the packaging was put on the market via a compensation mechanism. All of the options call for an agreement between the countries, but the first and second option would require minimum changes in the legislation. In the case of the first option, no agreement between the countries would potentially be required – an agreement between recovery organisations may suffice. The third option calls for somewhat more extensive changes, such as establishing the obligation to accept the packaging marketed in the other country, supplements to reporting, equal deposit values and product coverage, common deposit markings, using national bar codes, and changes in the calculation of the fee and registration.

If the second option was chosen, i.e., if no compensation mechanism was implemented, these changes would be required: an agreement between the countries and changes in the legislation concerning the obligation of the packaging undertaking and the recovery organisation to accept the packaging marketed in the other country, as well as changes in labelling. In the case of the first option, it would also be possible to carry on without making any changes and agree on taking back the packaging at the level of the undertakings. In this case, the state would not interfere, but would also not be able to put pressure on the undertakings to accept the packaging from the other country if the agreement between the undertaking should not function, for some reason. When it comes to the deposit, an agreement between the countries to keep the deposit at the same level in both countries would be required. If the packaging can be returned for free,

Deposit value is not that important. In order to prevent the confusion of the consumer concerning which products are covered by the deposit, it would be reasonable to cover the same products and types of packaging with the deposit in both countries, which would require changes in legislation. However, the packaging may also be different – it would not prevent the functioning of the system. In regard to the labelling, respective amendments should be made to the legislation in the case of carrying on with the current system or switching to using international bar codes. This means that the legislation should specify in which cases the deposit is refunded and in which cases it is not, for example in the case of the packaging marked in a country other than Estonia or Latvia. In the case of the first and second option, no changes would be required in terms of registration and supervision; the system of fees may also remain unchanged, in principle, although in the case of the latter, the option to include the component of the handling fees of the packaging which have arrived from across the border may be specified with respect to the component of calculating the fee, in the interests of clarity.

If the third option described – a compensation mechanism – is used, more changes in the legislation are required, compared to the two other options. Similarly to the other options, an agreement between the countries would first be required, as well as changes concerning the obligation of the packaging undertakings and recovery organisations to accept the packaging marketed in the other country. It would be reasonable to use the same deposit value and product coverage, i.e., to harmonise the value and coverage and make amendments to the legislation. When it comes to labelling, a change is required if the parties decide to use the same deposit marking in both countries. No changes are required as regards to the bar codes, as the legislation only specifies that packaging must be equipped with registered bar codes. The respective changes must be made in the standard terms of the recovery organisations. In regard to the calculation of the fees and registration, amendments to the legislation are required compared to the first and second options if the compensation mechanism is chosen; no changes are required in the supervision.

The analysis showed that a common system would help to achieve the targets of circular economy, primarily by fighting the increasingly expanding issue of packaging and plastic waste and by reducing waste generation and increasing the collection of packaging waste as a high-quality raw material. Above all, though, a common Estonian and Latvian packaging deposit refund system would provide a considerably more convenient system for the consumers, as the consumers would not have to be concerned, and make sure where their packaging was purchased from, but would be able to take it to a collection point at least for free or even against a refund of the deposit paid upon purchasing the product.

A negative side that must be taken into consideration when creating a common system are the potential expenses for the undertakings which potentially could be transferred to the consumers. Thus, even though the analysis highlighted different options for how the system could function so that the consumer could return their packaging in both countries, it would certainly be a good idea to think about which option would be reasonable for all parties before implementation. It would be reasonable to start harmonising the system gradually, first considering the free return of deposit-bearing packaging to prevent excessive costs for the undertakings, while also collecting specific data about the amounts of packaging moving across the border.

The analysis also revealed that the Estonian and Latvian DRSs are quite similar. The extent of the changes required differs depending on the option chosen. A few concepts for the functioning

of a new common system were suggested on the basis of the analysis. Before making specific decisions, it would be reasonable to order an in-depth analysis for the implementation of the solution chosen. This means that upon choosing a common system, it would be necessary to analyse specifically which of the solutions suggested would be the most feasible one from the perspective of the accompanying expenses, as well as the amendments to the legislation required, environmental protection targets, and convenience for the consumers. It would also be reasonable to determine the amount of the packaging moving across the border before establishing a common system, as this would help to analyse specific solutions. The current legal framework must be amended depending on which solution both countries wish to agree on. Here, it is important to keep in mind that creating a cross-border system is voluntary, therefore, it would be reasonable to think about whether to conclude an agreement between the countries or if perhaps an agreement between the recovery organisations of both countries would suffice.

When considering the specific steps required for creating a common system, a working group of the representatives of the stakeholders from the two countries should first be formed, which would then choose between the options suggested and decide whether to proceed on a voluntary basis (an agreement between the recovery organisations or a memorandum of understanding between the countries) or conclude an international treaty between the two countries. The difference lies in the legal consequences. Next, it must be decided based on the selection made whether and which legislation should be changed in both countries and how much time would be required for this. The peculiarities of the two countries and a transition time for adjusting must be taken into consideration. On the basis of the results of the survey, a specific economic and technical analysis should be conducted before choosing a specific solution (e.g., a study into the possibilities for using QR codes, a feasibility analysis of different systems, etc.).

The trends of the European Union show that the harmonisation of the system would help to increase the efficiency of the system and the initiatives of the EU fully facilitate further harmonisation between the countries, for example when it comes to the labelling of deposit-bearing packaging. Further decisions must be made on whether Estonia and Latvia wish to create a common packaging DRS or wait which tendencies come from the European Union in this field in the future. Irrespective of how Estonia and Latvia wish to proceed, this analysis gives to the parties a clearer overview of the current situation, potential obstacles and solutions, and this knowledge can be used in the potential discussions of the matter in the EU.

Annex 1

Questionnaire in English



Interreg
Estonia-Latvia
European Regional Development Fund

Raising awareness on packaging deposit and strategic approach to harmonize packaging deposit systems in Estonia and Latvia

Elaboration of political and technical analyses

The questionnaire is designed to better understand the role of the parties involved in the packaging deposit return system and their views on the functioning of the system. We would like to include in answering the questionnaire officials involved in the legislative and supervisory aspects of packaging in three countries (i.e. Estonia, Latvia and Finland), as well as deposit packaging companies from different countries (e.g. Estonia, Latvia, Finland), and umbrella organizations of deposit packaging manufacturers (e.g. Soft Drink Manufacturers Association, Alcohol Producers and Importers Association, etc.).

The legal analysis of the cross-border implementation of the packaging deposit return system is solved within the project “Raising awareness on packaging deposit and strategic approach to harmonize packaging deposit systems in Estonia and Latvia” (financed from Interreg Estonia-Latvia program 2014-2020):

<https://estlat.eu/en/estlat-results/packgdepo.html>; <https://ringmajandus.envir.ee/et/packgdepo>.

As part of the project, we are analysing the possibility of a common system, and therefore your input is important so that the thoughts and proposals of all parties involved in the system become clear and can be considered in the future.

Questions are directed to all respondents please answer the questions to the extent of your competence.

Please send your answers to Marika Lillemets (marika.lillemets@envir.ee) by 29th of December of 2022 at the latest.

Thank you in advance for your cooperation.

Questions

1. Packaging deposit refund systems or DRS (Deposit Return System) system are implemented differently in European countries (different implementation schemes from country to country, e.g. voluntary or mandatory etc).
 - 1.1. Would a harmonized approach from the European Union (EU) be needed (e.g. more specific guidelines in EU legislation or should all DRS systems comply with the minimum general requirements) for a more effective implementation of the DRS system in countries? Please explain.

- 1.2** Whether a harmonized approach would facilitate the creation of cross-border systems? Please explain.
- 2.1.** Which type (single-use/reusable, also e.g. plastic, metal and glass) packaging should be covered by the cross-border DRS system? Please explain.
- 2.2.** Should the same system apply to single-use and reusable packaging? Why?
- 3.** DRS systems in Estonia, Latvia and Finland are somewhat different.
- 3.1.** How should the cross-border DRS system be implemented in Estonia and Finland? Please explain.
- 3.1.1.** ...or in Estonia and Latvia? Please explain.
- 3.2.** Should one choose a particular country's system and extend it to other or should you choose/create an assembly of different systems, i.e. find one suitable and functioning system that would work in the same way in both countries, or use a so-called cross-country clearing system, i.e. a system operating on uniform bases/rules, where both country has its own internal organization, but common rules are agreed upon for a cross-border system. Please explain?
- 4.** Are there problems in the responsibility of different parties in ensuring the functioning of the current DRS system in ...
- 4.1.** ...Estonia and Finland, which could be an obstacle to the implementation of the cross-border system? Please give reasons.
- 4.2.** ...Estonia and Latvia, which could be an obstacle to the implementation of the cross-border system? Please give reasons.
- 5.** **5.1.** What role should each country play in cross-border system? Please explain.
- 5.2.** Is greater state intervention necessary in the case of a cross-border system (than in today's systems)?
- 5.3.** If so, what should that role entail? Please explain.
- 6.** **6.1.** How should cross-border issues/topics be handled to ensure that producers (who release packages to the markets of different countries) from countries connected to the cross-border system are not at a competitive disadvantage compared to domestic producers? Please explain.
- 6.2.** How to resolve the return of packages purchased from different countries across borders? Please explain.
- 6.3.** How should the corresponding regulation be stipulated/ solved? Please explain.
- 6.4.** Should retailers from different countries be obliged to take back packaging from another country and another packaging system? Why?
- 7.** **7.1.** If a cross-border DRS system is implemented, how should costs be covered (such as a deposit, handling costs and other costs)?
- a. How should these costs be determined?
- 8.** If the current legal system doesn't allow the implementation of a cross-border DRS system in
- 8.1.** ... Estonia and Finland, what are the bottlenecks and what are the proposals for changing the legal framework?
- 8.2.** ... Estonia and Latvia, what are the bottlenecks and what are the proposals for changing the legal framework?

- 9.** What are the possible benefits of the harmonized cross-border DRS system?
Please explain.
- 10.** What obstacles do you see to have ...
- 10.1.**...EE and FI harmonized DRS system? Please explain.
- 10.2.**...EE and LV harmonized DRS system? Please explain.
- 11. 11.1.** Does a unified cross-border system also need a unified management and control function, for example joint producer responsibility organization/common council/etc.? Please explain.
- 11.2.** Do the respective producer responsibility organizations in Estonia and Finland have to have a single body (DRS operator) that would coordinate the work of all national systems and also carry out unified supervision, and that also cross-border?
- 11.3.** Do the respective recycling organizations in Estonia and Latvia have to have a single body (DRS operator) that would coordinate the work of all national systems and also carry out unified supervision, and that also cross-border?
- 12.** Packaging undertakings must submit a report to the producer responsibility organization (recovery organization) regarding its packaging placed on the market. How to transmit this information across borders in such a way that competitive information is not disclosed to third parties?
- 13.** In addition to the questions that have been presented here, would you like to add something important from your side?
- 14.** Information about the respondent
- 14.1.** Organisation
- 14.2.** Role/position
- 14.3.** Country

Annex 2

Survey on the packaging deposit refund system and the results thereof

The survey was conducted within the framework of a project of the Estonian Ministry of the Environment and the Latvian Ministry of Environmental Protection and Regional Development which was aimed at identifying the possibilities for a wider and cross-border implementation of a deposit-bearing packaging system. The project was funded from the Interreg Estonia-Latvia 2014–2020 cross-border cooperation programme of Estonia and Latvia.¹³¹ The survey was developed based on the theoretical background and discussions with representatives of public authorities of this field.

The aim of the survey was to receive feedback on various different aspects of the potential implementation of a cross-border packaging deposit refund system (DRS), such as on the aspects which currently prevent the implementation of a cross-border system and which should be focused on, as well as potential positive aspects and suggestions for changes. The survey and the following virtual workshops were conducted to identify the opinions of the parties who are involved in the packaging deposit refund systems on a daily basis on the implementation of a cross-border packaging deposit refund system primarily between Estonia and Latvia, but also between Finland and Estonia. Another aim was to determine the potential legal bottlenecks and find potential solutions.

The survey was sent to stakeholders associated with the packaging deposit refund systems in Estonia, Latvia, and Finland to receive practical feedback from the individuals who deal with this issue on a daily basis. The survey was conducted in the period of 19–29 December 2022. The questionnaire was sent to representatives of public authorities and a recovery organisation, as well as to some packaging undertakings and representative organisations of packaging undertakings. The questionnaire was sent to nineteen parties in total and twelve responses were received. The results of the questionnaire are used anonymously throughout the study.

On 6 and 9 January 2023, virtual workshops were organised, which introduced the topic of the project and the initial results of the survey more extensively and discussed the results in a free format. The survey and the later discussions were conducted in English. The questionnaire itself is provided in Annex 1 to the study.

Results of the survey¹³²

The questionnaire included fourteen open-ended questions with explanations. There was one question about the respondent (i.e. their organisation, position, country) and thirteen questions which concerned the DRS, incl. twelve questions on the packaging deposit refund system and an additional question for the respondent to express their ideas in a free format.

The responses also included general feedback to the implementation of a cross-border system, with no answer given to the specific question. There were two such responses. In some

¹³¹ PACKGDEPO – Raising awareness on packaging deposit and strategic approach to harmonize packaging deposit systems in Estonia and Latvia. Ministry of the Environment. Available at: <https://ringmajandus.envir.ee/et/packgdepo> (12.03.2023).

¹³² Annex 2 of this work (p. 42 et seq.).

questionnaires, there were some unanswered questions. Due to the low number of respondents, this study does not specify which responses were given by countries.

In the first questions, the respondents were asked **if a harmonized approach from the European Union (EU) would be needed for a more effective implementation of DRSs in the Member States, in their opinion**. A specifying question asked whether a harmonized approach would facilitate the creation of cross-border systems. The majority of the respondents (7) tended to believe that more harmonization at the EU level would provide clearer instructions and a more similar approach across the Member States, but found that the harmonization should not be too detailed and the Member States should be left some freedom to make decisions. Six respondents agreed that more harmonization at the EU level could help to implement common cross-border systems, while seven did not. Those who answered in favour found that harmonization at the EU level would also support the implementation of cross-border systems. Those opposed to more harmonization believed that harmonization at the EU level may not be beneficial, as developing a common system calls for the harmonization of many details and may result in excessive expenditure. In the case of both questions, there were also those who did not express a clear opinion.

The second question¹³³ asked the respondents **which type (e.g. single-use/reusable) of packaging should be covered by the cross-border DRS and whether the same system should apply to single-use and reusable packaging**. Six of the respondents found that both the single-use and reusable packaging should be covered and some specified that glass, plastic, and metal packaging should all be covered. There were more doubters in regard to whether there should be one system for reusable and single-use packaging. In addition to those who were opposed to a cross-border system in general (4), there were those among the general supporters who thought that there should be a separate system for reusable packaging (3), as the long-distance transport thereof would be too expensive and this system should operate locally or at the national level.

The third question¹³⁴ asked **which cross-border packaging DRS should be implemented if Estonia and Latvia, Estonia and Finland, or all three countries had a common system**. The systems of the three countries are currently somewhat different. It was also asked if the system of a specific country should be expanded to all participants of the cross-border system or if a new system suitable for all participants should be developed. Several respondents answered both questions together, incl. describing what a cross-border packaging DRS should be like, in general. One of the respondents also highlighted that the cross-border system should be mandatory, but no others mentioned this aspect. Six respondents mentioned that the cross-border system should be based on a so-called clearing system, i.e. a system based on agreed rules in which the countries have their own internal arrangements. This solution would be the least burdensome for the different countries and would not call for changing the systems which are already functioning well. In addition, four respondents mentioned that the system selected should be acceptable for all. No one thought that the system of one of the countries should be expanded to others. In the case of this question, four of the respondents again believed that no common system was required. One of the reasons given was that the cross-border flow of packaging was not high, which is why the issue was minor and the few benefits would not

¹³³ Annex 2 of this work (p. 42 et seq.).

¹³⁴ *Ibidem*.

outweigh the difficulties accompanying the development of a common system or the expenses thereof. However, one of the respondents mentioned that a common packaging DRS of Estonia and Latvia would mean that both countries would still have their own systems, the operations of which would be coordinated at the cross-border level. This would call for common regulations and coordination.

In the fourth question¹³⁵, the respondents were asked **if there were problems in the responsibility of different parties in ensuring the functioning of the current DRS in Estonia, Latvia, or Finland which could be an obstacle to the implementation of the cross-border system**. In the case of this question, the respondents tended to highlight the general aspects preventing the implementation of the cross-border system, not the specific obstacles related to the obligations of the different parties. The answers given by the respondents highlighted the obligation to collect and handle packaging, which is currently related to the country in which the products are marketed. A lot of opinions were expressed on this issue.

Those two respondents who did not respond to the survey, but only expressed their opinions in general, also referred to several reasons why it would not be reasonable to implement a common system, as well as the main issues which prevent the implementation of the system and require attention. One of them stressed the difference of the different fees and the need to harmonize or compensate those fees in the case of a common system, as well as the differences in the deposit values. The other respondent mentioned several aspects which were also highlighted as bottlenecks by other respondents. Five of the respondents did not respond to this question, with one of them specifying that they were not familiar with the systems of the neighbouring countries.

The remaining responses clearly highlighted similar problems, with the majority believing that the differences in the deposit rates may turn out to be an issue (four respondents). It was found that the same deposit rate was important in the implementation of a common system and that it was difficult to agree on the same rate due to the different economic levels of the countries, as a rate that is too low would discourage collection, while an excessively high rate may result in fraud. Three of the respondents found that incompatibility of the data, differences in the IT systems, and data collection may turn out to be issues.

As a solution, it was suggested that the recovery organisations participating in the system should request the same information and the common mechanisms should be used for information exchange. It is also important to consider to which extent such competition- and market-sensitive data can be exchanged between countries. The different excise rates, the differences in the obligations of the recovery organisations, and the differences concerning the deposit-bearing beverage packaging were also mentioned. As a solution, it was found that the common system would call for the harmonization of the product categories and packaging articles. It was also suggested that as the deposit refund system operators/recovery organisations are private entities, conflicts may arise between the objectives of the owners of the system and the general objectives of the system. The differences between the jurisdictions, the issues of supervision, and the concerns about the different standards for the processing of packaging waste applicable in the different countries were also mentioned. The differences in the background systems were highlighted on two occasions, such as the different handling fees and other fees included in the

¹³⁵ Annex 2 of this work (p. 42 et seq.).

system, and it was found that those aspects should be harmonized or compensated in the case of a common system, not forgetting the fees payable to the retailers. A harmonized regulation and coordination and the development of a common mechanism for settling accounts were suggested as potential solutions. It was also highlighted that the obligations of the packaging undertakings of each of the countries are currently related to the products marketed in the same country, which means that the handling of the waste resulting from packaging is bound to the products marketed in the same country by legislation. The respondents found that this aspect should also be specified in the case of a cross-border system.

The fifth question¹³⁶ asked **what role each country should play in the implementation of a cross-border system and if greater state intervention would be necessary in the case of a cross-border system**. Furthermore, it was asked that if greater state intervention was required, what should that role entail. Even though the questions were asked as different sub-items, several respondents responded to them together – they expanded under the latter question on what the role of the state in a common cross-border packaging DRS should entail. Seven of the respondents did not respond to that question. Two of them did not respond to the question at all and one substantiated their answer by stating that they were against the development of a common system.

Only two of the respondents highlighted that they believed that the state should have more control in the case of a common system compared to the current national systems and that it should entail the harmonization of the legislation and comprehensive management of the functioning of the system, e.g. fair distribution of the responsibility and obligations, keeping in mind the capability of all parties. Other respondents who did not specify the extent of the role of the state mentioned in general that the role should entail ensuring the quality of the data and the functioning of the system via efficient supervision. It was also found that there should be an agreement on the distribution of the obligations between the countries. Furthermore, it was suggested that the role of the state should be limited to establishing common rules and the state should only intervene in the event of a risk of tax fraud or if the objectives of reuse/recycling require checking. The state should also ensure the independent auditing of the system. The respondents also believed that the state should support the system through investments and one of the respondents found that it was difficult to determine the role of the state in the case of a common cross-border system.

The sixth question¹³⁷ asked the opinions of the respondents on **how to ensure that the producers from different countries connected to the cross-border system were not at a competitive disadvantage compared to domestic producers**. Thereat, how to resolve the return of packages purchased from different countries, i.e. how to establish the respective regulation and whether the retailers of different countries should be under the obligation to accept the packaging from other countries and other packaging systems. In the case of the sixth question, some respondents only provided one accumulated answer (1) or only responded to some of the questions. Three respondents did not respond to any of the questions under the sixth question and two simply provided general feedback. The remaining respondents responded to the sub-items of the sixth question. In the responses, it was highlighted that the producer responsibility organisations (PROs) or, in the case of packaging, the recovery organisations

¹³⁶ Annex 2 of this work (p. 42 et seq.).

¹³⁷ *Ibidem*.

should protect the rights of their members/clients and the organisations should be able to solve the issues between themselves. It was found that the states should only get involved in the case of disputes. Four of the respondents highlighted that the legislation of the countries which is related to the system should be amended and the amendments should not prevent the development of a cross-border packaging deposit refund system. When developing the rules, it is important to focus on the general goal of the packaging DRS. In one of the cases, the respondent believed that it would be impossible to prevent an unfavourable competition situation, as the situation of the undertakings marketing the products in one country were anyway in a different position compared to the producers marketing products in several countries (such as different fees for the registration of a product).

When it comes to the issue of returning packaging, one of the respondents found that as long as it was not mandatory to accept the packaging of another country, they would not be interested in addressing the issue. The responses also highlighted that it would be important to find a functioning method for differentiating the packaging of different countries and that the modern packaging machines are capable of differentiating the packaging of different countries, if necessary. One respondent thought that there would be no obstacles to the cross-border movement of packaging other than the differences in the excise rates. One respondent also found that a uniform deposit value was important, and one found that the packaging should be taken back to the country where it was bought. Three of the respondents found that retailers should take back the packaging purchased in another country, and one thought that they should accept the packaging, if compensation is paid to the retailers. One of the respondents thought that the packaging bought from another country should be taken back, but it should be done by some other party, not the retailer. One of the respondents, however, specifically stressed that retailers should not be placed under the obligation to accept packaging from another country and system. They justified this opinion by stating that the machines of another country may not be able to recognise the packaging from another country and additional storage facilities for storing the packaging may be required if different packaging flows are added. It was also found that returning the packaging to the country of purchase would damage the environment.

The seventh question¹³⁸ asked the respondents to assess **how the costs (the deposit, handling costs, etc.) should be covered if a cross-border DRS is implemented, and how the costs should be determined**. Three of the respondents did not respond to that question. Some of the respondents again provided one summarising answer. The issue of the costs was also covered by those two respondents who did not specifically respond to the questions.

Generally, it was found that in the case of a common system, the amounts of the handling fees paid to the recovery organisations and other fees should either be harmonized or the differences should be compensated/set off for the participants in the packaging system. The respondents also found that as the types and amounts of the expenses may differ in different countries, there should be agreements/common rules between the countries (or recovery organisations) which define those cost elements in detail and the costs should be distributed proportionally or a system for the settling of accounts should be created for the countries. It was also highlighted that the costs should be based on actual costs. One respondent found that the expenses should largely be covered by the manufacturers, while another believed that the costs should be

¹³⁸ Annex 2 of this work (p. 42 et seq.).

covered through the recovery organisation, taking into consideration all the operations required for the functioning of the systems. One respondent also highlighted the need to conduct an in-depth economic and technical analysis. Two of the respondents stated that even though they could not provide detailed answers to the question, they believed that the fees should depend on the system of the specific country and which costs the parties agree to cover. It was also added that as the extent of the cross-border movement of the packaging is not exactly known, the related costs should either first be covered by studies, estimated, or left out of the system. One of the respondents thought, however, that as deposit-bearing packaging was subject to an excise exemption, this was sufficient for covering the costs of the different parties.

The eighth question¹³⁹ asked **what the bottlenecks were of the current legal systems in Estonia, Latvia, and Finland from the perspective of the implementation of a cross-border packaging DRS and asked the respondents to provide proposals for changing the legal framework**. One of the respondents finds that the lack of a common cross-border system may be due to the narrow business interest and that it would be in conflict with the initial idea of the Packaging Directive. The opinions of the other respondents are less stinging. Several of the respondents (5) find that an overview of the logic of the functioning of the packaging DRSs of Estonia, Latvia, and Finland would first be required, incl. how the systems are legally regulated in these countries. Thereat, one of the respondents has advised to conduct an in-depth analysis to determine all differences between the systems and the nuances of the regulating frameworks. Two of the aforementioned five respondents have also found that it would be important to determine the amount of packaging moving across borders. It was highlighted that it would be necessary to identify a specific issue to be solved, as well as its economic and environmental benefits. A few of the respondents have specifically mentioned that it would be important to change the current legal frameworks in those countries which intend to implement the cross-border system, and one found that the current system would not enable to implement a cross-border system. Two of those who stated clearly that they did not support a cross-border system (3) have specified the aspects which should be taken into consideration in the event of deciding in favour of implementing such a system. Conclusively, it may be stated that the majority of the respondents found that legal or technical changes should be made in the current systems to implement a common system.

In the ninth question¹⁴⁰, the respondents were asked to highlight **the possible benefits of the harmonized cross-border DRS**. In three cases, no benefits arising from the implementation of a cross-border system were mentioned. Six of the respondents highlighted that the greatest beneficiary would be the consumer, who would be able to hand over the deposit-bearing packaging bought in another country and, in the best case, would also have the deposit refunded. The benefit of the more extensive collection and recycling of packaging to fulfilling environmental objectives and to the environmental condition in general was also mentioned. Three of the respondents highlighted the lower costs for the producer/packaging undertaking which arise from the opportunity to market products with the same labels in several markets. The benefits to the single market were also mentioned. Furthermore, respondents found that the packaging purchased from another country could be theoretically already returned now, if international bar codes are used or if the packaging is equipped with the deposit markings of several different countries. One of the respondents could not highlight any benefits of a cross-

¹³⁹ Annex 2 of this work (p. 42 et seq.).

¹⁴⁰ *Ibidem*.

border system, but found that a pan-European system would be gratifying and ensure a fairer system.

In the tenth question¹⁴¹, the respondents were asked **what obstacles they saw to the development of a common cross-border system**. This question overlaps largely with the fourth question, therefore one of the respondents referred to their response to the fourth question and some provided the same reasons which they had listed under Question 4. Four of the respondents did not respond to the question. The suggestions of the two respondents who gave general feedback are provided under Question 4. As in the responses to the fourth question, the respondents here also stress the need for an in-depth technical and economic analysis before implementing such a system. They have also highlighted that the systems of different countries may have different purposes, which they did not specify. One respondent referred to corruption as a potential issue, and one stated that the current system did not allow accepting packaging from other countries. It was also highlighted that if the common cross-border system will be voluntary, there will certainly be subscribers, but this may above all make the system more confusing for the consumer. Problems were also mentioned, such as how to prove that the packaging waste which has moved to another country has been recycled and whether or not the amounts are accurate and verifiable. As in the responses to the fourth question, the respondents also highlighted here the confidentiality issues related to the data and the differences in the fees and the marking of the products.

The eleventh question¹⁴² asked **whether a common cross-border system would also need a unified management and control function**, such as a common recovery organisation (producer responsibility organisation), a common council, etc. It was also asked further whether the Estonian, Latvian, and Finnish recovery organisations should have a common body which would coordinate the work of all national systems and also carry out unified supervision. In the case of this question, several of the respondents provided one comprehensive answer or only responded to the first question. No one single dominating opinion could be observed. A few of the respondents found that the systems of each country should be studied more thoroughly before finding a reasonable solution, such as by conducting a technical and economic analysis. According to the most common opinion (four respondents), mutual cooperation would be required, including unified supervision and management, as well as transparent but controlled information exchange.

The twelfth question¹⁴³ asked the opinion of the respondents on **how to ensure the responsible transmission of the information included in the reports of the packaging undertakings to the recovery organisation across borders in such a way that competitive information is not disclosed to third parties in the case of a cross-border system**. Three of the respondents did not respond to this question. In general, the respondents found that all parties should carefully consider what information to share in the case of a cross-border system, i.e. only the information required for the functioning of the system should be shared. Three of the respondents highlighted that the issue could be solved with the help of IT developments, and one thought that there could be a unified system. Two of the respondents found that more stringent rules of information exchange should be established in the case of a common system – stricter solutions and procedures to ensure the confidentiality of the data. It was also suggested

¹⁴¹ Annex 2 of this work (p. 42 et seq.).

¹⁴² *Ibidem*

¹⁴³ *Ibidem*.

that the operators should have a mutual agreement to prevent the disclosure of information to third parties.

In general, the respondents believed that the data submitted by the packaging undertakings were vulnerable to competition and that this issue should certainly be paid attention to in the case of developing a common system, keeping in mind that recovery organisations are required to collect information. Therefore, common operational mechanisms should be applied in the collection and exchange of information and it must be considered to what extent such competition- and market-sensitive information can be exchanged between different countries and how such information exchange would take place to ensure the confidentiality of the information exchanged.

The thirteenth question was an added question which gave the respondents an opportunity to **highlight other important issues related to the topic in question**. Two of the respondents did not use the opportunity to add their own thoughts. The two respondents who did not respond to the questions specifically also discussed their concerns in general (covered under Question 4). The aspects highlighted under this question partly match those referred to above, but it appears that the respondents were able to discuss the most important aspect of the topic for them here. Two of the respondents stressed that an economic and technical analysis would certainly be required before developing a common cross-border system, and that the analysis should also include a feasibility assessment, for example. It was also mentioned that clear and measurable benefits to the environment, the consumer, and the business should be highlighted in the case of implementing a common system. One of the respondents stressed that they did not support a common system. In one case, the respondent highlighted that the system should serve the interests of the society and the environment, and one respondent mentioned that it was important to find a way for implementing a common system which would ensure the reliability of the data and maximum compatibility. One respondent also believed that in the case of a common system, the local government should be responsible for the functioning of the deposit refund system, and that no responsibilities should be established for the retailers. The respondents also thought that the same types of packaging which are covered by the current DRS should also be covered by the future system, with more attention paid to reusable packaging. A suggestion to address the entire field of packaging in addition to the deposit-bearing packaging was also made here, finding that it was important to develop an electronic supervision system and extend it all over Europe. The need for a more detailed definition of the cross-border flow of deposit-bearing packaging was also mentioned.

Annex 3

Overview of scenarios

	CONTINUING WITH TODAY'S MARKINGS	CONTINUING WITH INTERNATIONAL BARCODE	CONTINUING WITH INTERNATIONAL AND NATIONAL BARCODE	CONTINUING WITH THE NATIONAL BARCODE	
DEPOSIT AND LABEL-BASED SCENARIOS	1	2	3	4	COMMENTS
OPERATION					
Complexity of execution for parties	-	-/+	+	+	For the packaging company, the cost increases with labelling Sc 2 and Sc 4.
National barcode used	+	-	+	+	For the packaging company, the cost increases with labelling Sc 2 and Sc 4.
International barcode used	+	+	+	-	For the packaging company, the cost increases with labelling Sc 2 and Sc 4.
Acceptance of packages from another country (foreign national code)	+	-	-/+	+	Increases the cost of PROs (Sc 1 and Sc 2) and partially increases with Sc 3
FEES					
Return of deposit consumer for foreign packages	-	+	+	+	Increases the cost for both, the PRO and the packaging company (Sc 2 and Sc 3)
Cost of handling foreign packages in the country of return	+	+	-/+	-	Changing labels raises costs that are not asked back from abroad. The handling fee increases for the 1st(little), 2nd (more) and 3rd (partially) and 4th do not have to - on the PRO.
Interstate compensation system in place	-	-	-/+	+	On the PRO, costs are reduced; The packaging company has little increase in cost; Time commitment increases on PRO with more data
REGULATION					
Agreements between Producer Responsibility Organisations	-/+	-	-	-	-
Interstate agreements	-/+	+	+	+	additional work for the state with each of the following scenarios more

	CONTINUING WITH TODAY'S MARKINGS	CONTINUING WITH INTERNATIONAL BARCODE	CONTINUING WITH INTERNATIONAL AND NATIONAL BARCODE	CONTINUING WITH THE NATIONAL BARCODE	
DEPOSIT AND LABEL-BASED SCENARIOS	1	2	3	4	COMMENTS
Legislative changes needed:	-	-/+	+	+	additional work for the state with each of the following scenarios more
- obligations of packaging companies	-	+	+	+	additional work for the state with each of the following scenarios more
- labeling	-	+	-	+	additional work for the state (Sc 2nd and Sc 4th)
- fee calculation	-	-	-/+	+	additional work for the state (Sc 3rd and Sc 4th)
- payment of the deposit	-	+	+	+	additional work for the state with each of the following scenarios more
- products covered	-	-/+	-/+	-/+	optional to states, not required for the system to function
- registration	-	+	-	+	there will be more work for the state and PRO with each scenario
- surveillance	-	-	-	-	data is added to the state (Sc 3rd and Sc 4th)
- reporting	-/+	-	-/+	+	the state will have more work on reporting (Sc 3rd and Sc 4th)
IMPACT ON THE OBJECTIVE					
The consumer benefits (getting back the paid deposit and conveniently)	-	+	+	+	For the consumer, the amount of packages covered by the deposit increases with each scenario
Packaging companies (ensure successful handling of products and reasonable costs)	-	-/+	(-/+)/+	+	The cost to the packaging company arises from the need to put a new label (Sc 2nd and 4th). Revenues are generated when the packaging company receives a refund of handling costs and a deposit (Sc. 4)
Producer responsibility organisation (gets handling fees from another country)	-	-	-/+	+	More expensive for PRO is Sc 1 and even more Sc 2.
The state (value is created, the system works and the requirements are met)	-	-/+	(-/+)/+	+	Getting closer to the goal of recycling with each of the following scenarios
- possibility to track the interstate movement of packages	-	-	-/+	+	For Sc 2, the state does not receive additional information, for Sc 3 it receives partially, for Sc 4 the most

	CONTINUING WITH TODAY'S MARKINGS	CONTINUING WITH INTERNATIONAL BARCODE	CONTINUING WITH INTERNATIONAL AND NATIONAL BARCODE	CONTINUING WITH THE NATIONAL BARCODE	
DEPOSIT AND LABEL-BASED SCENARIOS	1	2	3	4	COMMENTS
- export (entry barrier removed)	-	+	-	+	The market for the packaging company: Sc 2nd gets easier, Sc 3rd stays the same, Sc 4th gets more complicated.
- environment (pollution is reduced)	-/+	+	+	+	improved situation (Sc '2nd-4th)
- the functioning of the system (cross-border returning works)	-/+	+	+	+	From Sc 2, the amount of data can remain the same, 3rd partially larger and 4th most
SYSTEM CAUSES CHANGES REGARDING					
Reporting	-/+	+	+	+	PRO has an increase in the amount of data, more and more reporting for each option, and more control by the state for the 3rd and 4th. The packaging company will be able to meet the recycling targets better, but the amount of data will increase.
Obligations of Producer Responsibility Organisation when collecting packaging	-/+	+	+	+	In each scenario, the responsibilities of the PRO increase: the most cost for Sc 2 and reporting for Sc 3 and Sc 4
Obligations of Packaging companies when labeling	-	+	-	+	Costs for the packaging company increase for Sc 2 and Sc 4
The value of the deposit	-	+	+	+	Sc 2. increases costs for PRO, indirectly they are covered by the packaging company
Foreign products covered by a deposit	-	+	+	+	Sc 3. increases costs for PRO, indirectly they are covered by the packaging company
Deposit label	-	+	-	+	State deposit mark for Sc 4, either both LV- EE or new common for Sc 2, costs for the packaging company
Barcode	-	+	-	+	The packaging company bears the costs for Sc 2 and Sc 4
Taxes	-/+	+	-/+	-	For Sc 2, the biggest impact is on tax changes
Different fees	-/+	+	-/+	+	Revenue (handling fee) highest for PRO! Sc 2nd, Sc 3rd and Sc 4th these revenues decrease and increase the cost of maintaining the compensation system

	CONTINUING WITH TODAY'S MARKINGS	CONTINUING WITH INTERNATIONAL BARCODE	CONTINUING WITH INTERNATIONAL AND NATIONAL BARCODE	CONTINUING WITH THE NATIONAL BARCODE	
DEPOSIT AND LABEL-BASED SCENARIOS	1	2	3	4	COMMENTS
Connection with competition sensitive information	-	-	-	-	In the case of Sc 2nd-4th, additional information is added to the PRO's, none of the screenplays are competitively competitive
Registrations	-	+	-	+	For Sc 2 and Sc 4, costs for packaging companies and time spent on PRO's increase.
Surveillance (amount of data)	-/+	-	-/+	+	The volume of data control increases for the state, the amount of data submission increases for the PRO
Legend:					
no change in that element compared today	-				
optional or partly change in that element	-/+				
change in that element	+				