

ANALYSIS OF PACKAGING AND PACKAGING WASTE MANAGEMENT, IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT

L. POŢINCU¹ T. FORIŞ² C. R. POŢINCU³

Abstract: *Starting from the need for a sustainable development – meeting the needs of the present times without compromising the possibility of the future generations to meet their own needs – the aspects regarding the packaging and packaging waste management are an active measure meant to protect the natural environment. In this context, this work analyses the latest legislative amendments to the law regarding packaging and packaging waste management.*

Key words: *Sustainable development, packaging management, national legislation for the protection of the natural environment.*

1. Environmental Law and Sustainable Development

Ethically (Duţu, 2007, pp. 81-92), the **environmental branch of law** is defined as the entirety of the juridical rules governing the joint patrimony of generations and individuals, i.e. the current generations must leave for the future generations a (natural) patrimony inherited in their turn from the past generations. The environmental elements must sustainably be used and administered, while preserving their features.

Thus, **sustainable development** is the development that meets the requirements of the present time, without compromising the possibility of the future generations to satisfy their own necessities. (Governmental Emergency Ordinance no. 195/2005)

The aspects regarding packaging and packaging waste management are an active measure for the protection of the natural environment. Thus, the business operators involved in these activities of pollution decrease, shall act in a sustainable manner by implementing the objectives of sustainable development.

It is important to reduce waste pollution as much as possible, in the context of the juridical protection of the natural environment – regulated within environmental law – and in the context of sustainable development. Practice and also the juridical provisions of natural environment protection consider the actual inability of completely eliminating pollution.

¹ *Transilvania* University of Braşov, laurapotincu@unitbv.ro

² *Transilvania* University of Braşov, tiberiu.foris@unitbv.ro

³ *Transilvania* University of Braşov, crispotincu@unitbv.ro

Thus, juridically, but also as a reflection of sustainable development, a minimal pollution is allowed, which can significantly be reduced by means of a responsible management of packaging and waste packaging.

The environmental branch of law intends to contribute to the protection, preservation and development of the environment. Thus, the environmental law regulates those social relations emerging in the process implying the protection, preservation and improvement of the natural features of the environment.

As for the field of sustainable management of packaging and waste packaging, we will only consider the first two features of environmental law, i.e. protection and preservation of the natural environment.

Environmental protection implies preparing and implementing a global ecological planning and management, and includes the regulations, procedures and institutions available at national and international level. Those who don't exist yet but will be born in the future, are entitled to a healthy environment, at least under the same circumstances that the current generations have enjoyed; consequently, the contemporaries account for certain behavioral obligations regarding environmental protection (Teodoroiu, 2003, pp. 3-16).

The preservation of the surrounding environment implies imitating and maintaining the natural dimensions of the environment, and maintaining the natural resources at a sustainable quality level. In this context, of preservation, the responsible management of packaging and packaging waste operates, in order to maintain the natural resources at a sustainable level. At the same time, one also considers a protection of the natural environment by eliminating a large amount of waste because every product marketed by the business operators and purchased by consumers is packed, inevitably generating waste.

Thus, it is important to sustainably produce packaging by the business operators but also to eliminate this packaging, an operation concerning both the individuals and the legal entities.

2. The Legislative Harmonization in the Field of Natural Environmental Protection. Modifications Generated by the Governmental Emergency Ordinance No. 74/2018 in the Field of Packaging and Packaging Waste Management

Governmental Emergency Ordinance no. 74 of 17 July 2018 has been adopted in order to amend and supplement Law no. 211/2011 regarding waste management, Law no. 249/2015 regarding packaging and packaging waste management, and Government Ordinance no. 196/2005 regarding the Environmental Fund. In this work we will consider the amendments made to Law no. 249/2015 regarding packaging and packaging waste management.

Governmental Emergency Ordinance no. 74/2018 has been adopted and published in the Romanian Official Gazette on 19 July 2018.

However, an internal legislative document must also be analysed in relation to the legislation adopted at the European Union level.

2.1. The European Union Law and the need to harmonize the legislative acts adopted at the European Union level

The community law has been defined (Lefter, 2003, p. 48) as the entirety of the juridical norms applicable in the community juridical order.

According to our view (Poțincu, 2018 pp. 7-9), this definition can also be “conveyed” to the European Union law.

Thus, the European Union law is the entirety of the juridical norms applicable in the juridical order of the European Union.

The European Union law is a harmonization of the numerous branches of national law (Mureșan, 2008, pp. 9-11) – such as natural environmental protection aspects within environmental law or consumer protection aspects within consumption law) or employee protection aspects within labour law and social security law (Ținca, 2003, p. 5) – and the European Union law. However, the European Union rights of law do not cover all the juridical regulation fields specific to a national law system. There are fields where the European Union law doesn't have the vocation to assert before the national juridical rules. Such a field is, for instance, the criminal law field.

Thus, the European Union law is the entirety of juridical rules governing the organization and operation of the European Union institutions, as well as the rules applicable to the fields regarding the economic activity – the European single market, customs union, competition, etc. – provided by the fundamental treaties of the European Union (Lefter, 2003, p. 81).

At the time the European Union was established, it was required (Borchardt, 2017, pp. 102-103) for the juridical legislative acts system of the Union to be conceived again.

The first decision aimed at the forms that these juridical legislative acts would take and their effects. The necessity considered the fact that the institutions should be able to effectively align the numerous economic, social and natural environmental protection conditions from the member states. It was also important that this be effectively made, without depending on the good will of the member states, so that the best living conditions would be created for all European Union citizens.

The second decision considered the reality according to which the European Union institutions could not intervene into the national juridical systems of the EU member states more than it was necessary.

The European Union legislative system is based on the principle according to which the same measure must be applied in all European Union member states, even when it comes to details. In order to achieve that, the national measures had to be replaced by legislative acts adopted at the European Union level, and if this was not necessary, one had to properly consider the national juridical order available in each European Union member state.

Thus, they have established a series of juridical instruments (legislative acts) that allowed the European Union institutions to influence, at different levels, the national juridical systems of the European Union member states.

The most drastic measure was replacing the national juridical norms by juridical norms adopted at the European Union level.

Certain dispositions (juridical norms included in legislative acts) of the European Union allow the EU institutions to only act indirectly on the juridical orders of the European Union member states.

2.2. The directive, juridical instrument used at the European Union level

The directive is the most important legislative instrument, besides regulations. In the juridical analysis to be performed in this work, we will consider the harmonization of the environmental law legislation, more precisely the one aiming at managing the packaging and packaging waste.

Thus, one will highlight the way the provisions regarding the management of packaging and packaging waste, available at the European Union level – under the form of the directive – are to be found at national level in Romania, an EU member state, and which is the form of the Romanian juridical instruments achieving the harmonization of the European Union provisions.

The target of the directive, in general, is the reconciliation of the two targets of providing the required evenness of the European Union law and complying with the diversity of national traditions and structures of the Union member states.

The main purpose of the directive is not unifying the laws but it is only pursued in the case of regulations. (Borchardt, 2017, pp. 106-109)

The purpose pursued by this legislative instrument within the reach of the European Union, by means of the directive, is their harmonisation.

The directive is one of the main means used at the European Union level for the construction of the internal European market.

The directives have a mandatory force for each member state, including Romania, to which it is addressed regarding the result to attain. However, the directives leave the Romanian national authorities (in the case of the analysis within this work) the possibility (competence) to choose the forms and means of implementing these directives. In the case of packaging and packaging waste management, Romania has chosen the law adopted by the Romanian Parliament and the Government Emergency Ordinance as a regulatory juridical instrument for harmonising the European Union provisions.

Directives do not replace the laws of the European Union member states but impose to them the obligation to adapt their national law to the European Union dispositions/provisions. This aspect shall also be pursued in the case of the juridical analysis performed below.

Directives are addressed to the European Union member states. This means that obligations can be imposed to the member states. Thus, the addressability of the directives is limited. However, in practice, the European Union member states, including Romania, shall transpose the European provisions included in directives.

Directives are adopted in order to promote the harmonisation or coordinate the national legislations. They tend to restrict, in certain fields, including the natural environment protection, the authority of the member states, in the field of juridical regulation by establishing certain obligations, restrictions or interdictions to them.

As mentioned before, the directive only has a limited regulatory force. (Fuerea, 2003, pp. 110-116) The obligation that it sets as a task to the member states only extends over the "result to be attained". "The result to be attained" regarding which the directive is mandatory, leads to the amendment of the national legislations of the European Union member states or the adoption of legal provisions in the fields which are its subject.

The implementation forms and methods are up to the member states. In certain cases, the member states, including Romania, may impose sanctions, such as granting compensations, which must not be purely symbolic, but must be related to the suffered damage. The member states may, within their freedom limits granted by the Fundamental Treaties of the European Union, choose the best forms and methods, in order to provide the effectiveness of the directives. In the relevant situations, one must take all required action in order to guarantee the implementation efficiency of the European Union law. (Borchardt, 2017, pp. 106-109)

Thus, both the law adopted by the Romanian Parliament and the emergency ordinance adopted by the Romanian Government are juridical instruments transposing the provisions of the directive adopted at the European Union level.

However, simple administrative practices, amendable by their nature, adopted by the national authorities that are not granted the adequate publicity, cannot be considered a proper fulfilment of the obligation in charge of the member states.

2.3. Packaging and packaging waste management, a sign of sustainable development, in the Romanian and European Union law

The directive of the European Parliament and Council no. 62 of 20 December 1994 regarding packaging and packaging waste stipulates: *waste reduction is essential for the sustainable growth.*

The directive of the European Parliament and Council 94/62/CEE regulates all types of marketed packaging and all packaging waste.

The regulation subject of the Directive of the European Parliament and Council 94/62/CEE includes all the packaging marketed within the European Union and all packaging waste, whether used by or stemming from industry, trade, offices, stores, services, household or any other field, irrespective of the used material.

The priority of the European Union consists in: preventing the generation of packaging waste. This priority is supplemented by the following additional fundamental principles: re-use of packaging, recycling and other forms of recovering packaging waste and consequently reducing the final elimination of such waste.

Until a scientific and technological progress regarding certain processes implying recovery, re-use and recycling is achieved, one must also consider the impact on the environment. In this respect, it is required to establish in the European member states certain systems guaranteeing the return of the used packaging and/or packaging waste.

The evaluations of the life cycles should be completed as soon as possible in order to justify a clear hierarchy between reusable, recyclable and recoverable packaging.

According to the provisions of the directive, the European Union member states can encourage the packaging reuse systems, which can ecologically be reused. They

encourage, if the case may be, regarding the production of packaging and other products, the use of materials stemming from recycled packaging waste.

In order to establish the systems, the member states must take the required action in order to provide: the return and/or collection of the used and/or packaging and/or the packaging waste from the consumer, another end user or from the waste flow, in order to direct them towards the best waste management alternative, as well as the reuse or recovery, including the recycling or packaging and/or collected packaging waste.

The European Union member states cannot prevent the marketing from their territory of the packaging that complies with the dispositions of the European Union, while this aspect is in fact a limitation of the packaging and packaging waste management field for the member states. (The Directive of the European Parliament and Council 94/62/CE, art. 5-7, 14, 18)

The legislative provisions of the Directive of the European Parliament and Council 94/62/CE are transposed internally, in Romania, by **Law no. 249 of 28 October 2015 regarding packaging and packaging waste management**.

Law no. 249/2015 regulates the packaging and packaging waste management, in order to prevent or diminish the impact on the natural environment. Thus, the regulation subject of this legislative act aims at: all marketed packaging, irrespective of the material used for their manufacture and their manner of use in the economic, commercial activities, in households or any other activities, as well as all packaging waste, irrespective of their generation manner. (Law no. 249/2015, art. 2)

The Romanian legislative act stipulates the fact that they only allow the placing on the market of the packaging complying with the essential requirements provided by the law, while the Romanian law, such as the provisions of the European Union, as an aspect of the harmonization of the European Union provisions, forbids the obstruction of placing on the market the packaging complying with the essential requirements provided by the law.

The business operators generating reusable packaging are obliged to take the required action, so that it would comply with multiple reuses. Moreover, the business operators manufacturing products wrapped in reusable packaging are obliged to take the required action in order to provide an optimal number of use cycles, while it is possible to apply the storage system. Also, the business operators marketing products wrapped in reusable packaging are obliged to inform the consumers on the storage system and on the collection system of the reusable packaging in order to provide multiple reuses.

The business operators manufacturing products wrapped in reusable packaging are legally obliged to mark or print on the packaging or on the label the words "reusable packaging".

The packaging and packaging waste management must be organized in such a way that it would not create barriers in the way of commerce.

Further on, the Romanian legislative act sets (Law no. 249/2015, art. 8-13, 16-20) the obligations of the public institutions, associations, foundations, business operators and natural persons that own packaging waste.

An interesting provision (Law no. 249/2015, art. 24) in the packaging waste field is the obligation to give priority to the products obtained from recycled materials, in the case

of purchasing products made of paper, cardboard and plastics from public funds. (Poțincu, 2018 pp. 245-253)

It is interesting to analyse, in the context of sustainable development, the most important amendments of **Government Emergency Ordinance no. 74 of 17 July 2018, for the amendment and completion of Law no. 249/2015 regarding packaging and packaging waste management**. Further on, we will highlight and analyse the most important recent amendments.

Thus, in art. 9 of Law no. 249/2015, they included the compulsoriness to comply with Decision 97/129/CE establishing the identification system for packaging materials.

Art. 10 of Law no. 249/2015 is completely amended by Government Emergency Ordinance no. 74/2018. In align. 1 of this article, they mention the circulation of reusable packaging among business operators, which is performed by means of exchange. In case the beneficiaries do not have the amount of packaging required for performing the exchange, they are obliged to pay a pecuniary guarantee in exchange for the received packaging.

According to align. 2 of art. 10, the value of the previously provided pecuniary guarantee, in the case of the reusable primary packaging used for products intended for human consumption, is 0.5 Ron/packaging, starting 31 March 2019. It is also important to remember that the value of the pecuniary guarantee may be updated at the proposal of the representatives of the relevant economic sectors, depending on the evolution of the packaging price and the inflation rate. This update is performed according to the provisions of align. 3 of art. 10 by the central public authority for environmental protection.

Align. 4 of art. 10 establishes the obligations of the business operators that place on the Romanian market products packed in reusable packaging. Thus, they are obliged to mark or print on the primary packaging or the label of the product meant for consumers the words "reusable packaging", as well as the obligation to organize the collection of the reusable packaging in order to obtain a return percentage of minimum 90%, starting 2019.

In align. 5 of art. 10, it is established to adopt a new decision of the Romanian Government that would set a guarantee-return system to be applied for the non-reusable primary packaging made of glass, plastic or metal, with volumes between 0.1 l and 3 l included, used in order to make available on the Romanian market, beer, beer mixes, alcoholic drink mixes, cider, other fermented drinks, juices, nectars, soft drinks, mineral waters and drinking waters of any type. The date until which this regulatory juridical instrument must be adopted is set to be 1 January 2021.

In align. 6, they establish the minimal provisions which should be included by the previously mentioned Government Decision. Thus, this new instrument which is intended to be adopted in Romania, shall have to include at least:

- 1) the circulation manner of the packaging which is the subject of the guarantee-return system,
- 2) the definition of the components of the collection system,
- 3) the definition of the operation manner of the guarantee-return system,
- 4) the guarantee reimbursement mechanism,

- 5) the value of the guarantee,
- 6) the administrator of the system,
- 7) the marking of the packaging indicating its inclusion in the guarantee-return system,
- 8) the monitoring and control of the guarantee-return system.

The provisions of the old art. 11 of Law no. 249/2015 are much more elaborated within the new art. 10, by means of the new align. 4 established by Government Emergency Ordinance no. 74/2018.

The new art. 11 establishes that, starting 1 January 2020, the business operators placing on the national market packed products should have the obligation to achieve an average annual percentage of the reusable packaging stemming from the used packaging, upon placing their products (including the packaging taken for renting) on the market, higher than the average percentage achieved between 2018-2019 and at least 5%. Also, by means of this alignment, the obligation according to which this percentage should increase by 5% annually is extended until 2025 inclusively.

Align. 1 of art. 13 is significantly completed by Government Emergency Ordinance no. 74/2018. Thus, they provide the new obligation of the business operators marketing retail products packed in primary reusable packaging to inform the consumers on the value of the pecuniary guarantee and on the system used for collecting the respective packaging. The other obligations also previously established by Law no. 249/2015, are supplemented by the consumer's obligation to bring and give the business operators the (reusable) packaging in a proper state in order to be reused. If this condition is met, the business operators have, in their turn, the following obligations: to receive in exchange the reusable packaging of the marketed products, and return, at the consumer's request, based on the cash register receipt, the value of the pecuniary guarantee.

The new align. 2 of art. 16, amended by Governmental Emergency Ordinance no. 74/2018, establishes that the registration of the business operators operating in this field is made by submitting the first statement regarding the obligations that must be met by these with the Environment Fund.

At letter a) of align. 4 of art. 16 of Government Emergency Ordinance no. 74/2018, they mention a new time frame of liability called "the manufacturer's extended liability" for the packaging placed on the Romanian market, for every type of material and type of packaging, primary, secondary, as well as for transportation.

At align. 8 of the same article, they present the clear conditions that can lead to the authorisation of a business operator "that implements the obligations regarding the manufacturer's extended liability". Thus, this business operator must:

- 1) present the form of joint-stock company,
- 2) make sure that all their shares are registered shares,
- 3) make sure that their shareholders are only business operators performing, on a professional basis, activities regarding the collection and capitalisation from consumers/end users of the packaging/packaging wastes,
- 4) make sure that the amount of packaging placed on the market by the shareholders in the year before the one when the authorisation is requested, be at least 10,000 tons,

- 5) constitute a guarantee amounting to two million Ron in favour of the Environment Fund Administration, in the form of a cash deposit or a bank letter of guarantee or another guaranteeing instrument issued by a banking institution, valid for the entire authorisation period.

Interesting is the new provision regarding consumer protection, included in align. 12 of art. 16, that very clearly states an aspect otherwise provided by other legislative acts adopted in Romania, but also adopted at the European Union level in the consumption law. Thus, it is forbidden to condition, under any form, the legal rights of the consumers regarding the guarantee of the purchased product, by the keeping of the packaging.

The new align. 3 of art. 17 clearly establishes the fact that it is forbidden to consider the packaging waste generated in another state, which is imported in order to capitalise/recycle it, as packaging waste managed for meeting the objectives provided by Law no. 249/2015. Also, Government Emergency no. 74/2018 inserts a new align. 2 at art. 20 that establishes obligations in charge of the business operators marketing towards end users' products packed in selling structures having an average and large area. Thus, they are obliged to:

- 1) offer the consumer the possibility to choose, upon purchase, products packed both in reusable and single-use packaging;
- 2) provide for consumers the possibility of ridding themselves of packaging upon buying the products, without asking for payment;
- 3) organise, within the selling structure or in close proximity of it, collection places where the pecuniary guarantee is returned for the primary reusable packaging.

Government Emergency Ordinance no. 74/2018 also includes a new align. 4 at art. 20 that establishes obligations in charge of the business operators that own used packaging and/or packaging waste stemming from commerce and industry. Thus, they have the following obligations:

- 1) to return the used packaging to providers or business operators designated by them according to the contractual provisions;
- 2) to make available the secondary packaging waste and the packaging waste for transportation towards collectors designated by the organisations operating in the field,
- 3) to provide their recycling, and in case they cannot be recycled, their capitalisation by other methods, by means of contracts signed with business operators authorized to perform the respective operations.

Art. 26, in its new form given by Government Emergency Ordinance no. 74/2018, updates the value of fines and relates them to the new organisation of the text of Law no. 249/2015 further to the previously presented amendments.

3. Conclusions

The analysis performed in this scientific work finds its applicability in Romania's efforts to protect the natural environment also by transposing the provisions of The Directive of the European Union and Council no. 62 of 20 December 1994 regarding packaging and packaging waste.

In this context, a special importance is held by the latest amendments to Law no. 249/2015 regarding the packaging and waste packaging management by means of Government Emergency Ordinance no. 74 of 17 July 2018, amendments which have been analysed in this work.

In the context of sustainable development, the business operators involved in these activities intended to reduce pollution by packaging and waste packaging management, act in a sustainable manner by implementing objectives of sustainable development.

We consider that it is very important to reduce as much as possible the pollution caused by waste, and in this respect, recent legislative amendments, performed at national level in Romania, bring about a series of consistent plusses in the sense of performing an effective management of packaging and packaging waste on the Romanian territory.

References

- Borchardt, K.-D. (2017). *ABC-ul dreptului Uniunii Europene [ABC of European Union Law]*. Luxemburg: Publications Office of the European Union.
- Duţu, M. (2007). *Dreptul mediului [Environmental Law]*. Bucharest: C.H. Beck.
- Fuerea, A. (2003). *Drept comunitar european. Partea generală [European Community Law. General Part]*. Bucharest: All Beck.
- Mureşan, L. (2008). *Drept comunitar. Protecţie juridică şi responsabilitate socială. [Community Law. Legal protection and social responsibility]*. Braşov. Transylvania University of Braşov Publishing House.
- Poţincu, L., Poţincu, C. R. (2018). *Dreptul Uniunii Europene aplicat în România. Aspecte de natură juridică şi economică specifice Europei de Sud-Est. [European Union Law applied in Romania. Aspects of legal and economic nature specific to Southeast Europe]*. Braşov. Transylvania University of Braşov Publishing House.
- Teodoroiu, S. M. (2003). *Răspunderea civilă pentru dauna ecologică [Civil liability for environmental damage]*. Bucharest: Lumina Lex.
- Ținca, O. (2003). *Drept social comunitar [Community Social law]*. Bucharest: Lumina Lex.
- *** Directive of the European Parliament and Council no. 62 of 20 December 1994 regarding packaging and packaging waste, published in the Official Journal of the European Union, series L 365 of 31 December 1994.
- *** Government Emergency Ordinance no. 195 of 22 December 2005 regarding environmental protection, published in the Romanian Official Gazette no. 1196 of 30 December 2005.
- *** Government Emergency Ordinance no. 74 of 17 July 2018 for the amendment and completion of Law no. 211/2011 regarding the waste regime, of Law no. 249/2015 regarding packaging and packaging waste management, and Government Emergency Ordinance no. 196/2005 regarding the Environment Fund, published in the Romanian Official Gazette no. 630 of 19 July 2018.
- *** Law no. 249 of 28 October 2015 regarding packaging and packaging waste, published in the Romanian Official Gazette no. 809 of 30 October 2015.