

# The Deposit-Return System in the Current European Background

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*Nowadays, given the background of the global climate change, the issue of responsible conduct towards society and nature, must concern us all. Current trends at European level are converging towards a growing legal awareness of the obligations we all have towards nature: public authorities, states, but also citizens. The situation of abandoned waste often leads public authorities to resort to public-private partnerships in order to offer possible solutions to protect the planet, preserve and improve the quality of the environment and mitigate man-made damage. The pretext of our paper is the introduction by the Romanian executive of the deposit-return system, as a legal novelty. It was adopted in October 2021 and launched on November 30, 2023. Therefore, the purpose of this study is to learn as much as possible about the implementation of this legal mechanism in our country, which aims to increase the collection and recycling of non-reusable primary packaging. In this regard, our analysis will investigate from an interdisciplinary perspective, on the one hand, the applicable legal framework and, on the other hand, will capture European trends regarding the deposit-return system. We believe that the topic is of general interest, which makes it important not only for public authorities but also for private individuals. Using scientific research methods specific to law, we will emphasize the conclusion of the paper, namely that it is our responsibility to protect the environment in which we live and to contribute to a better quality of life through community involvement, so that we have a cleaner environment.*

**Keywords:** *deposit-return system; administrative acts; state responsibility; central public authority for environmental protection*

## Introduction

In the context of climate change, public authorities on all continents are concerned about finding solutions for abandoned waste. The World Recycling Day<sup>1</sup>, created by the International Bureau of Recycling, is celebrated at international level on 18 March 2019, aiming to raise awareness of the challenges of recycling.

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<sup>1</sup>See in this respect the public source <https://www.bir.org/news-press/bir-in-the-press/item/18-mars-jour-du-global-recycling-day>

According to Article 57 of the Romanian Constitution, “*Romanian citizens, foreign citizens and stateless persons must exercise their constitutional rights and freedoms in good faith, without violating the rights and freedoms of others*”. From this perspective, people need to realize that their actions have consequences. In today’s society, the issue of the environment we live in calls for an awareness of responsible behaviour towards nature and peers. In order to reduce pollution, increase the quality of life and limit the damage created by man, the authorities were forced to involve citizens in the administrative decision and create a legal framework involving a partnership between the state and the citizen, aiming to reduce pollution and eliminate the abandoned packaging from the streets.

Access to public services is freely available to all citizens who are urged to participate voluntarily in waste disposal. We agree with the opinion of a specialized author according to which: “*public services are unquestionably a pillar of society*”<sup>2</sup>. In fact, “*in our country, the notion of public service was laid down during the interwar period, starting from the social needs that the State satisfies, the public service being the means by which the administration carried out its activity*”<sup>3</sup>. According to the doctrine, “*perhaps more than ever mankind is faced with this reality: the imperative to identify legislative solutions for the present, but also for future generations, at the boundary between law, ethics and morals*”<sup>4</sup>. At the same time, the ethical perspective on the return of packaging can raise possible questions such as: “*Can my individual action of returning packaging contribute to the protection of the planet?*”

The pretext for our analysis starts from the fact that, in Romania, the deposit-return system for non-reusable primary packaging was launched on November 30, 2023. In this context, the purpose of this paper is to analyse this topic in order to be able to discover new information about the mechanism of operation of the deposit-return system. To that effect, we will try to answer questions such as: “*In which European country is the package deposit-return system implemented?*”, or “*What is the subject of the deposit-return system in our country?*”.

The proposed objectives of the study are the following:

1. Knowing the international benchmarks for pollution reduction;
2. Analysis of the national legislative framework on the deposit-return system for non-reusable primary packaging;
3. Assess the national literature and the comparative law;
4. Investigate the recent case-law of the Court of Justice of the European Union regarding Romania.

We believe that the proposed topic, being new for our country, is both current and important for the entire scientific community, but also for the general public who needs to get to know the legal framework applicable to the packaging

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<sup>2</sup>See Cliza (2023) at 49.

<sup>3</sup>See Negruț (2020) at 1.

<sup>4</sup>See Ștefan (2023) at 397.

deposit-return system. From this perspective, the topic has practical applicability, inviting all citizens to participate in the recycling of packaging.

## Literature Review

Researchers from all over the world are concerned about the issue of reducing pollution, so we find the topic under consideration in two forms: the deposit-return schemes or the deposit-return system. In fact, we agree with the opinion of the doctrine that *“international factors cannot be neglected in the contemporary framework in which the life of every human community is closely related to the fate of humanity as a whole”*<sup>5</sup>.

According to the doctrine of administrative law, *“public administration authorities materialize their activity in several categories of legal acts”*<sup>6</sup>. The State, through its public authorities, is constantly concerned with ensuring the satisfaction of the public interest, while *“the purpose of administration is to satisfy the interests of the people”*<sup>7</sup>. In fact, *“the public interest has priority over the private interest, starting from the idea that, in the rule of law, the interests of the State are those of the community, so they must take priority over those of the individual”*<sup>8</sup>. The measures taken by the authorities to save lives, including to create legal levers to increase the quality of life by reducing waste, can also count as features of public interest<sup>9</sup>.

Regarding the practical way of using the DRS worldwide, some researchers say *“deposit-returns are used for beverage containers, lead-acid batteries, engine oil, tires, various hazardous materials, electronics a.s.o.”*<sup>10</sup>. From a statistical point of view, it seems that the deposit-return system is applied in various forms in 10 European countries: Croatia, Denmark, Estonia, Finland, the Netherlands, Iceland, Lithuania, Germany, Norway, and Sweden<sup>11</sup>. At the same time, from a historical perspective, several States implemented the DRS before 2000, namely: *“Finland (1996), Iceland (1989), Sweden (1984), Norway (1999)”*<sup>12</sup>. From recent studies on the status of implementation of the DRS in Europe, we find out the following:

*a. The scope of packaging for soft drinks:*

- *in Croatia, Denmark, Estonia, Finland, Germany, Malta, Norway, Lithuania: PET, Aluminium cans, glass bottles;*

<sup>5</sup>See Muraru, Muraru, Bărbăţeanu & Big (2020) at 2.

<sup>6</sup>See Tofan (2020) at 3.

<sup>7</sup>See Vedinaş (2023) at 26.

<sup>8</sup>See Ştefan (2023) at 33.

<sup>9</sup>About the analysis of the public interest in the environmental decision, see Manu (2021) at 18.

<sup>10</sup>See Walls (2013). <https://doi.org/10.1016/B978-0-12-375067-9.00035-8>

<sup>11</sup>See in this respect the public source <https://ecoteca.ro/sistemul-garantie-depozit-statistici-eu-ropa.html>

<sup>12</sup>See in this respect the public source <https://sensoneo.com/waste-library/deposit-return-schemes-overview-europe/>

- *in the Netherlands, Sweden: PET bottles, Aluminium cans.*
- b. *In countries with a DRS, collection rates are very high, from 65% to 95% for PET bottles.*
- c. *In countries without a DRS, collection rates are lower, ranging from 22% to 73%, with the notable exception of Belgium (85%) (...)*<sup>13</sup>.

Investigating the specialized literature, it turns out that some researchers are of the opinion that “*deposit-return systems are one of the most effective methods of collecting beverage packaging*<sup>14</sup>”. They say that “*Many systems in Europe and around the world differ in their organizational model (...) and the tasks, costs and revenues of the actors participating in each model are different*”<sup>15</sup>. Also, the literature emphasized that “*in order to mitigate the effect of glass packaging on the environment, countries have set up various collection and recycling systems that are often organized and funded through extended producer responsibility schemes*”<sup>16</sup>.

Also, a case study on Spain also reveals as follows: “*currently, the Spanish waste collection mechanism is an extended product responsibility scheme (EPRS) [...]. The EPRS is a compliance scheme for selective collection of packaging waste managed by two agencies – Ecoembes (for paper and light packaging) and Ecovidrio (for glass packaging)*<sup>17</sup>”.

We also note another study stating that: “*polyethylene terephthalate (PET) is a widely used packaging material and has a high recycling value. The deposit-return system (DRS) is considered a feasible mechanism to facilitate the high recycling value of PET*<sup>18</sup>”.

Other specialists have analysed consumer perceptions about the deposit-return system (DRS) initiative in Greece. According to the authors: “*(...) the local authorities who have understood that waste management is a public good should play the critical role of supporter and facilitator of the DRS paradigm (...). Strong support is needed to change the current recycling practices in Greece, and reimbursable recycling can be a solution to this challenge because it motivates consumers and can lead to an increase in recycling rates for food packaging!*”<sup>19</sup>.

On another continent, another study proposes a feasibility study of building a DRS to encourage the recycling of 0.5 l PET water bottles in the waste disposal system in the United Arab Emirates. The paper emphasizes that: “*(...) the use of glass in the United Arab Emirates (UAE) can reach up to 250 l of water per person annually. Because of the unavailability of a powerful system, these water*

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<sup>13</sup>See in this respect the public source <https://www.unesda.eu/deposit-refund-systems/>

<sup>14</sup>See Calabrese, Costa, Ghiron, Menichini, Miscoli & Tiburzi (2021). <https://www.science-direct.com/science/article/abs/pii/S0959652620356468>

<sup>15</sup>*Ibid.*

<sup>16</sup>See Agnusdei, Gnoni & Sgarbossa (2022) at 1.

<sup>17</sup>See Roca, Ayuso, Bala & Fullana i Palmer (2022). <https://doi.org/10.1016/j.scitotenv.2021.150640>

<sup>18</sup>See Zhou, Liu, Feng, Chang & Liu (2023). <https://doi.org/10.1016/j.wasman.2023.10.018>

<sup>19</sup>See Konstantoglou, Fotiadis, Folinias, Falaras & Rothios (2023). <https://doi.org/10.3390/su15129429>

*bottles are often thrown into landfills<sup>20</sup>*”. At the same time, other authors believe that: *“individual behaviour is essential for the uptake of circular economy solutions<sup>21</sup>”*.

Also, the literature has analysed the limits of the deposit system, which would be the following:

- *the initial increase in the shelf price of the product whose package is covered by the deposit system;*
- *increase in the costs of producers and traders of products whose packaging is covered by the deposit system;*
- *the deposit system does not cover most of the packaging types available on the market;*
- *the change in consumer behaviour, influenced by the initial increase in shelf prices for products whose packaging is covered by the deposit system<sup>22</sup>.*

## **Research Methods**

In the architecture of this paper, the presented information was organized in a logical sequence, combining in a personal manner the national plan with the international law. The analysis took into account, besides the national doctrine, the research found in some specialised articles in English that presented the subject matter of returning packaging. A number of databases have been used in this regard, such as: Google Scholar, Science Direct, Springer Link. In fact, the research of the doctrine was a necessary step that revealed how much the scientific community was concerned about the deposit-return system, allowing us to conceive a workplan and a biography.

The law-specific research methods used in the paper were truly useful as they allowed an interdisciplinary approach to the topic, starting from the administrative law. For example, the historical method helped to understand the context in which the deposit-return system was adopted in Romania. The logical method supported our understanding of how the legal norm acts on a practical level, imposing or allowing certain human behaviours, whereas the computer-based method reduced the distance, thus facilitating our access to online sources both in terms of legislation and in terms of doctrine or case-law, such sources being mentioned in the Bibliography.

At the same time, in order to fulfil the intended purpose of the paper, the analysis of the international legislation was taken into account and, at the end of the paper, the recent case law of the Court of Justice of the European Union against Romania was presented, which gives once more actuality and practical importance to the subject.

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<sup>20</sup>See Jadayil & Aqil (2023). <https://doi.org/10.3390/recycling8050076>

<sup>21</sup>See Kremel (2023) at 16.

<sup>22</sup>See Teodor, Bran, Ignat, Marin, Strat & Trică (2020) at 8.

## **The International Legal Framework on Pollution Reduction – A Few Landmarks**

This section presents the legal framework applicable to pollution reduction from an international perspective, without developing the EU policies in this area. At the same time, “*the external action of the EU includes various policies and mechanisms*”<sup>23</sup>.”

The first legal instrument that we would like to mention is *the directive “the polluter pays”*<sup>24</sup>, adopted in 2004, which was the basis for many subsequent normative acts. As already mentioned, “*the European Commission communicated in December 2019 the European Green Deal*”<sup>25</sup>, *adopting the European Climate Law in 2020*<sup>26</sup>”. In fact, according to the doctrine, “*Regulations have general applicability*”<sup>27</sup>”.

As far as the climatic neutrality is concerned, the objective of the Regulation is: “*By 2050 at the latest, a Union-wide balance between greenhouse gas emissions and removals shall be ensured, which is regulated in the Union law, so as to achieve zero net emissions by that date (...)*” [Article 2(1)].

Another document that drew our attention is the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (COM) 2020/98 final – “*A new Circular Economy Action Plan: For a cleaner and more competitive Europe*”<sup>28</sup>. According to him, it is noted that: “*despite the efforts made at the EU and national level, the amount of waste generated does not decrease. The annual amount of waste generated by all economic sectors in the EU amounts to 2.5 billion tons, equivalent to 5 tons per capita per year, with each citizen producing, on average, almost half a ton of municipal waste*” (para. 4.1.)

Having regard to Regulation (EU) 2021/1.119 establishing a framework for achieving climate neutrality, our country has implemented the European legislation through the Government Decision No. 1.215/2023 approving *Romania’s long-term strategy for reducing greenhouse gas emissions – neutral Romania in 2050 (LTS)*<sup>29</sup>. According to the Substantiation Note of the normative act, “*three scenarios have been developed and analysed within the LTS: the Reference scenario (REF), the Middle scenario (MEDIUM) and the Neutral*

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<sup>23</sup>See Conea (2019) at 10.

<sup>24</sup>Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, published in Official Journal of the European Union L 143/30.4.2004.

<sup>25</sup>See in this respect the public source at <https://eur-lex.europa.eu/legal-content/RO/TXT/?Uri=CELEX:52019DC0640>.

<sup>26</sup>Regulation (EU) 2021/1.119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No. 401/2009 and (EU) 2018/1999, published in Official Journal of the European Union L343/1 of 9.07.2021 *apud* Ștefan (2023) at 574.

<sup>27</sup>See Fuerea (2010) at 141.

<sup>28</sup>See in this respect the public source at <https://eur-lex.europa.eu/legal-content/RO/TXT/?qid=1583933814386&uri=COM%3A2020%3A98%3AFIN>

<sup>29</sup>Published in the Official Gazette no.1103 of 7 December 2023.

*Romania scenario (NEUTRAL RO). The NEUTRAL RO scenario aims to achieve Romania's climate neutrality in 2050, by reducing net emissions by 99% compared to their level in 1990<sup>30</sup>”.*

### **Implementation of the Deposit-return System for Non-usable Primary Packaging in Romania**

This section chronologically nominates the normative acts that laid the foundation for the legal framework required for the functioning of the DRS in Romania, in accordance with the international provisions mentioned in the previous section.

The first document we mention is Law no. 249/2015 on the management of packaging and packaging waste<sup>31</sup>. According to Article 10 (5) of this law: *“until the 1<sup>st</sup> of January 2021, based on the assessment of economic, social and environmental efficiency, as well as of the impact on small and medium-sized enterprises, by means of a Government decision, a deposit-return system is established to be applied for non-usable primary packaging made of glass, plastic or metal, with volumes ranging from 0.1 l to 3 l inclusively, used to make available on the national market: beer, beer mixes, alcoholic beverage mixes, cider, etc. other fermented beverages, juices, nectars, soft drinks, mineral waters and drinking waters of any kind, wines and spirits”*. Also, the law imposed on the Ministry of Environment, Waters and Forests, as the central public authority for environmental protection, to initiate and develop draft normative acts in the field of packaging and packaging waste, including for harmonisation with the European Union legislation. Moreover, *“the legal norm requires acceptance of and compliance with the prescribed conduct”<sup>32</sup>*.

In applying this law, Government Decision no. 1074/2021 *on establishing the deposit-return system for non-usable primary packaging<sup>33</sup>* was adopted. We consider this legal instrument to be one of the most important administrative acts adopted in relation to the subject under consideration. After reading it, it appears that its scope is to establish the legal framework for the implementation throughout Romania of the deposit-return system (DRS), applicable for non-reusable primary packaging provided for in Article 10 (5) of Law no. 249/2015 on the management of packaging and packaging waste.

Conceptually speaking, according to Government Decision no. 1074/2021, the deposit-return system is *“a way by which the economic operators referred to in Article 16(1) of Law no. 249/2015 [...] Hereinafter referred to as producers, fulfil their responsibility for taking over, transporting and recycling DRS*

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<sup>30</sup>See in this respect the public source at <https://gov.ro/ro/guvernul/procesul-legislativ/note-de-fundamentare/nota-de-fundamentare-hg-nr-1215-29-11-2023&page=8>

<sup>31</sup>Published in the Official Gazette no. 809 din 30 octombrie 2015, as further amended and supplemented.

<sup>32</sup>See Hegheş (2022) at 153.

<sup>33</sup>Published in the Official Gazette no. 1120 din 21 noiembrie 2021, as further amended and supplemented.

packaging under the terms of this decision” [Article 1(2)]. As the legislator states: “as of November 30, 2023, the DRS, unique at national level, is mandatory for all producers and traders [...], applying both to products produced on national territory and to imported products [...]”. [Article 10(1)].

The administrator of the deposit-return system is RetuRO Sistem Garanție Returnare S.A., a company that was established by representative associations of beverage producers and traders in order to manage the DRS<sup>34</sup>, appointed by the Government Decision no. 1059/2022<sup>35</sup>. According to Government Decision no. 1059/2022, the manager of the DRS - S.C. RetuRO Sistem Garanție Returnare S.A., is a Romanian legal entity, unique at national level, that implements, manages, operates and ensures the financing of the DRS.

Regarding the mechanism of operation of the DRS, the normative act requires collecting a *deposit of RON 0.5* for all types of DRS packaging. According to Article 12(5): “starting from the date of entry into operation of the DRS, the amount of the deposit is RON 0.5 for all types of DRS packaging: non-reusable primary packaging of glass, plastic or metal, with volumes ranging from 0.1 l to 3 l, inclusively, in which beer, beer mixes, alcoholic beverage mixes, cider, fermented beverages, juices, nectars, soft drinks, mineral waters and drinking waters of any kind, wines and spirits are made available on the national market”. The deposit is “the amount paid by the consumer or end-user at the time of purchase of a product in DRS packaging”, according to Article 12(1).

It is interesting that the normative act provides in Article 13(1) that: “at the return points, traders are obligated to accept the returned DRS packaging, regardless of where the packaged product was purchased and without making the acceptance of the packaging conditional on producing the tax receipt”.

Please note that not all packaging on the market benefits from the return of the deposit, but only those that have a *specific marking*, as detailed in the normative act in Article 24: “the symbol indicating the product’s affiliation to the deposit-return system is unique at national level for all DRS packaging and will be affixed directly to the packaging, product label or supplementary label”. In short, the specific DRS marking is composed of a representative symbol and a national barcode (EAN), in accordance with the specifications provided by the DRS administrator, which indicates the product’s affiliation to the deposit-return system. According to Article 24(6), the legislator prohibits that, “starting from the date of entry into operation of the DRS, products packed in DRS packaging that do not bear the marking indicating their belonging to the deposit-return system, be introduced or made available on the national market [...]”.

On November 30, 2023, when the Deposit-Return System was officially launched in Romania, the Minister of Environment stated: “The Deposit-Return System we are launching today [...] is the second largest in Europe, after that of Germany [...]. For year 2024, it aims a target of 65%, for year 2025 - a target of

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<sup>34</sup>Public information, online: <https://returosgr.ro/>

<sup>35</sup>Published in the Official Gazette no. 841 din 26 august 2022.



80%, and starting with year 2026, our hope [...] it is that this system will generate a collection rate of over 90%”<sup>36</sup>.

### **Case Law of the Court of Justice of the European Union – Case Study of Romania**

The Court of Justice of the European Union has imposed financial penalties on Romania for failing to close unauthorised landfills<sup>37</sup>. We take this opportunity to stress the particular importance we must attach to meeting our international commitments in terms of reducing pollution.

According to the press release of December 14, 2023: “Romania has failed to close another 31 unauthorized exploitation sites and obliges Romania to pay a lump sum of EUR 1.5 million and a periodic penalty payments of EUR 600 per landfill and per day of delay”<sup>38</sup>. According to public information, in 2018, Romania violated its obligation to stop landfilling waste and to close 68 landfills whose operation was not authorized. Because Romania did not comply with the 2018 ruling, in 2022, the CJEU introduced a new infringement action for Romania’s failure to fulfil its obligations. The Court holds that: “the incomplete implementation of the 2018 Decision results in an important risk of pollution and serious consequences for human health, in particular through the release of harmful chemical substances into soil, air and water [...]”<sup>39</sup>.

Previously, in 2018<sup>40</sup>, the Court found that: “Romania failed to comply with the obligation to close 68 landfills as soon as possible, such landfills having failed to receive the authorization to continue operating”. In fact, the Court of Justice, for the first time, established the principle of the Member States’ liability for infringements of the European Union law in *the Francovich judgment* of 1991<sup>41</sup>”.

### **Conclusions**

The subject matter of reducing pollution is one of the most current topics on the international agenda of states. In the present study, the interdisciplinary perspective has led us to identify many pieces of information that helped us achieve the research goal set. From this point of view, some conclusions of the work can be drawn.

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<sup>36</sup>See in this respect the public source at <https://www.digi24.ro/stiri/actualitate/social/ministrul-mediului-sistemul-de-garantie-returnare-va-ajuta-la-colectarea-a-pestes-90-din-ambalaje-2598889>

<sup>37</sup>Decision of the Court dated 14 December 2023, Commission/Romania, Case C 109/22, ECLI:EU:C:2023:991

<sup>38</sup>*Idem.*

<sup>39</sup>*Idem.*

<sup>40</sup>Decision of the Court dated 18 October 2018, Commission/Romania, Case C 301/17, ECLI:EU:C:2018:846

<sup>41</sup>See Popescu (2011) at 214.

Our first conclusion drawn from the research carried out is that the deposit-return system for non-reusable primary packaging – DRS was implemented in Romania as a result of the existence, at European level, of some normative acts establishing the legal framework for achieving climate neutrality. With regard to these legal instruments, Romania has committed to fighting abandoned waste and increasing the recycling rate. However, in our opinion, the administrative act by which the DRS was implemented in Romania, Government Decision no. 1074/2001 was based not only on the harmonisation of the national legislation with the European one, but also on a social need: reducing pollution.

Also, according to the statistical studies carried out, it appears that our country, together with other European countries, has implemented the packaging deposit-return system, but each system has its own specificity: Germany, Finland, Denmark, etc. In this context, we agree with the position of the doctrine which states that “*human cohabitation increasingly feels the need for security, clarity and order in the relations within it*”<sup>42</sup>.

Then, the analysis of the legal framework revealed that the value of the deposit in the national system is RON 0.5 for all types of DRS packaging, while the object of the system concerns “*non-usable primary packaging made of glass, plastic or metal, with volumes ranging from 0.1 l to 3 l inclusively, used to make available on the national market: beer, beer mixes, alcoholic beverage mixes, cider, etc. other fermented beverages, juices, nectars, soft drinks, mineral waters and drinking waters of any kind, wines and spirits.*”

Literature analysis has helped us form an idea of the deposit-return system that exists in other countries. We believe that the research carried out can reinforce existing knowledge with new knowledge, as it has provided a panoramic view of the state of knowledge of the subject under analysis on several continents. At the same time, the presentation of the recent evolution of the case-law of the Court of Justice of the European Union against Romania, which condemned our country for failing to close unauthorised landfills, once again underlines the call for general responsibility, both of individuals and of states.

As the final conclusion of our study, since the DRS is its first year of operation, we are optimistic about its effectiveness in Romania and we appeal to everyone’s conscience to seriously reflect on their own behaviour towards the environment and participate in the system. As the DRS has been launched quite recently compared to the date of the present study, the national doctrine is not very developed yet, so we are drawing future research lines on the work of international bodies involved in the issue of pollution reduction.

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<sup>42</sup>See Popa (2008) at 63.

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