



**Best in class  
deposit systems**

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# How DRS fits *legally* into Europe's Single Market?

Rechtsanwalt und Fachanwalt für Verwaltungsrecht

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# Do we have a problem?

Plastic bottles and cans without deposit are among the most littered items in marine ecosystems and landscapes



## ***Why focus on beverage packaging?***

- Beverage packaging (PET, metal, glass) has a high material value
- High value creation potential due to bottle-to-bottle recycling
- Boosts recycling industry and creates jobs



## *Why focus on beverage packaging?*

New collection targets set out in EU Single Use Plastics Directive need to be reached

### **Separate collection target for single-use plastic bottles (Article 9)**

- Separate collection of 77 % from 2025
- Separate collection of 90 % from 2029

### **Recycling of PET bottles (Article 6 para. 4a)**

- From 2025, bottles made of PET must have a recycled content of at least 25 %

**These goals can only be achieved with deposit systems**

Legal disputes in the years between 2002 and 2004 regarding the admissibility of the German one-way deposit system. As well as the major German trade companies, it was mainly foreign beverage manufacturers who complained. They saw this as indirect discrimination, as German manufacturers, who mainly use returnable bottles, were favoured.

Prior to the ECJ ruling of 14th December 2004, there was still controversy as to whether the Member States were at all entitled to introduce systems for the re-use of packaging, such as deposit systems:

Although the ECJ confirmed that the deposit system may constitute indirect discrimination, it is ***justified on environmental grounds***.

9th May 2009:

Communication from the Commission on 9 May 2009 regarding “Beverage packaging, deposit systems and free movement of goods” (Gorka-Paper):

*"According to the Court of Justice, a deposit and return system may increase the proportion of empty packaging returned, and at the same time lead to a more targeted sorting of packaging waste. Moreover, it may help prevent littering, as it gives consumers an incentive to return empty packaging. Finally, insofar as those national provisions encourage the producers or distributors concerned to have recourse to reusable packaging, they contribute towards a general reduction in the amount of waste disposed of, which is a general goal in environmental policy."*

With Directive 2018/852 of 30 May 2018, deposit systems are now also highlighted in a special way in the secondary legislation of the European Union.

Recital 4: Measures (to improve resource efficiency) may include deposit schemes and other incentives.

Art. 5: Deposit systems are explicitly mentioned as measures to ensure the re-use of packaging:

*Article 5*

*reutilisation*

*1. In accordance with the waste hierarchy laid down in Article 4 of Directive 2008/98/EC, Member States shall take the following measures to increase the proportion of reusable packaging placed on the market and of promote environmentally sound reuse systems for packaging in accordance with the Treaty, without compromising food hygiene or consumer safety. These measures may include, inter alia, the following:*

- (a) deposit systems,*
- (b) ...*

- There may be no discrimination against products subject to a deposit except if this differentiation is based on ***objective criteria***.
- In principle, ***the material*** for the containers subject to a deposit is the starting point, ***not the contents***.
- Regular ***evaluations*** must examine the effectiveness of the measure.
- It must be ensured that a ***clearing system exists*** to compensate for excess deposits at the time the deposit scheme comes into force, and that all companies concerned can participate.
- A ***transitional period*** of at least ***1 year*** must be provided for.
- The difference between disposable one-way packaging and reusable packaging should be ***clearly marked***.

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