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## The legal problems related to recycling of metallic wastes<sup>2</sup>

### 1. About the problem

In today's environmental law, increasingly come into view the problem, that the companies, which properly practise their management activity, would like to achieve further economic and market advantages with the reduction of waste and quantity of raw materials for production by the collection, adequacy processing and recycling of their products' waste. However, the authorisation practise of Hungarian waste management makes their resolution more difficult, because dozens of licenses are necessary to the every consecutions of waste recovery and prior licenses are necessary to many consecutions of waste management.<sup>3</sup> This is the administrative practise, which puts the interior companies at a disadvantage. The another problem is, that the directorates with greater competence were attached in the organisation of government offices at county level by the establishment of new mid-level administration and the transfer of green authority to this system. 20 new departments were created, which make the activities of enterprises operating at national level and registered in Hungary fairly bureaucratic. In the further parts of the article, I try to present and emphasize these conclusions in the example of ModusLink Magyarország Csomagolási Kft. (in the year 2012) and example of Nespresso Hungary Kft. (in the year 2015).

### 2. The presentation of the two companies related to their waste management activity

#### 2.1. ModusLink Magyarország Csomagolási Kft.

The project initiated by ModusLink Magyarország Csomagolási Kft. would have been about the re-use of used mobile phones arrived from the European Union countries.<sup>4</sup>

According to the conception, the arrived mobile phones would have been tested and selected by the ModusLink Magyarország Csomagolási Kft. After that, the client of ModusLink Magyarország Csomagolási Kft. would have sold the suitable mobile phones for the purpose of further use in abroad. The non-suitable mobile phones would have been transported to the sender country. The testing procedure would have been about the test of used mobile phones' operability by a testing equipment. The informations contained by the used mobile phones would have been cancelled.

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<sup>3</sup> See: Csilla Csák: A "szennyező fizet" elv értelmezése és alkalmazása a hulladékgazdálkodásban In: *Miskolci Jogi Szemle: A Miskolci Egyetem Állam- és Jogtudományi Karának folyóirata* 1: pp. 16-32. (2014).

<sup>4</sup> See about this case: Csaba Horváth: A hulladékgazdálkodási törvényváltozásainak hatása egy Magyarországon jelenlévő multinacionális vállalat bővülési lehetőségeire. Thesis in Conference of Students' Research, University of Miskolc, Environmental Law Section, (30.11.2013).

In order to understand the injurant level of emission, the exposition of testing workflow process is necessary, which consists of the followings:

1. Survey test, whether the mobile phone has any aesthetic faults.
2. Remove the batteries from the mobile phone (for the purpose of testing, formatting, recharging, disposal).
3. Remove the memory and SIM card from the mobile phone (formatting, testing, picking)
4. Testing of display, speaker, joystick and keyboard.
5. Picking of suitable and non-suitable mobile phones.

During tests 98% of used mobile phones becomes re-used and 2% of used mobile phones becomes waste. The ModusLink Magyarország Csomagolási Kft. would have transported the mobile phones become waste, the SIM cards and memory cards to the sender companies or would have given to the interior waste collector for the purpose of permanent disposal.<sup>5</sup>

As an option, the idea was arisen in the beginning of the project, that unusable mobile phones with their batteries stay in the country for local use. This would have been the function of local disposal opportunities. According to the concordant responses of the asked interior electric waste collectors, the culled electronic waste, after pretreatment, would have been transported to Germany for the purpose of permanent disposal, because the appropriate technology is not available in Hungary (copper furnace).<sup>6</sup>

According to the description of workflow, there would not have been a disposal of hazardous waste in Hungary.<sup>7</sup>

In connection with this case, the most important problem was, that the classification of operable used mobile phones based on their commodity code is not single in the European Union countries.

In the most European Union countries, the value of used mobile phones is decreased, but they are qualified as a product. If the owners lose interest related to their mobile phones, they sell them at second-hand in a reduced price on the market. In some countries (France, Spain, countries of Middle-East Europe), the used mobile phones are not qualified as a waste. These mobile phones can be imported to the country totally free, with the appellation of mobile phone. These mobile phones can be tested and renewed.

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<sup>5</sup> See about the interpretation of transport rules: Csilla Csák: „Aufsicht frei” – oder der Umfang der Verpflichtung zur Leistung der Information bei den grenzüberschreitenden Verbringungen von Abfällen: A „felügyelt szabadság” – avagy az információszolgáltatási kötelezettség terjedelme a határon átnyúló hulladékszállítások esetén. In: *Journal of Agricultural and Environmental Law* 17: pp. 5-38. (2014).

<sup>6</sup> Petition No. VM31982/2012 for Ministry of Rural Development State Secretariat for Environmental Affairs (05.07.2012) (henceforward: *Petition*).

<sup>7</sup> See *Petition* loc.cit.

On the other hand, in some European countries (Italy, Germany), if somebody is not interested in his/her mobile phone, he/she needs to put them into a selective waste collection container. In these countries, the used mobile phones are qualified as a waste, which also is qualified as a hazardous waste because of the battery acid and reactive metals.<sup>8</sup> However, the client company did not want to import only from the countries, where the mobile phone are not qualified as a waste, so before production, such license applications had to be given, which were conducive to the continuity of production activity.

## **2.2. Nespresso Hungary Kft.**

The Nespresso Hungary Kft is the subsidiary of Nestlé, which deals with the production and sales of special coffee makers and coffee capsules used in the special coffee makers. The coffee capsules contain a plastic storage box, an aluminium tinfoil and roasted coffee by the company. After use, the coffee maker puts the coffee-grounds to the plastic storage box and covers the aluminium tinfoil.

The company has a special environmental protection management program. The Sustainability Program of Nespresso was started 20 years ago. In 1991, in Switzerland, 34 pieces of collection points were built up, where people could drop their used coffee capsules for the purpose of recycling. In 1993, in Germany, the customers could give their used coffee capsules via the system of 'Green Dot' (Grüner Punkt) for the same purpose like in Switzerland. In 2003, the Nespresso established the AAA Sustainable Quality Program (Quality, Sustainability, Productivity), which purpose is the cultivation and sale of the best quality coffee, keeping in mind the sustainability aspects.<sup>9</sup> In 2009, this endeavor culminated with the Ecolaboration Program of Nespresso, wherein three covenants were formulated by the company, taking into account environmental purposes.

1. 80% of coffee used is arised from the growers, who participate in the AAA Sustainable Quality Program and certified by Rainforest Alliance.
2. The establishment of a system, which increases the capacity of coffee capsules' recycling three times (75%).
3. 20% reduction of the preparing a cup of Nespresso's ecological footprint.

By 2013, the Nespresso was able to achieve all three covenants and outperform in case of one covenant. So by 2020, the Nespresso determined more stricter requirements itself: the company targeted the achievement of 100% performance in each points.

In addition, the Nespresso joined to the Aluminium Stewardship Initiative (ASI), which created by the International Union for Conservation of Nature (IUCN) in 2012. This Initiative's most important purpose is, that companies connected to aluminium industry establish a comprehensive regulation, which they can develop the environmental, social and governmental cooperation in the whole value chain highlighting the reduction of green house effect. Therefore, in case of its production, the Nespresso uses only raw materials, which are convenient for the expectations of ASI.<sup>10</sup>

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<sup>8</sup> See about the interpretation of the previous Directive on the Commerce of Electronic Waste: László Fodor: Az elektromos és elektronikai termékek hulladékainak európai szabályozási koncepciója és a magyar jog In: *Európa Fórum* 2001 (2) pp. 89-110. (2002).

<sup>10</sup> See: Réka Takács: A termékdíj és hulladékgazdálkodási törvény gyakorlati alkalmazásának problémái egy vállalat szemszögéből. Degree Thesis, University of Miskolc, Department of Labour and Agricultural Law, 2015., 12-13. p. (henceforward : Takács 2015)

The part of this program is the collection and recycling of waste, which materialized in Europe with different techniques.

In connection with the collection of used coffee capsules, the purpose of Nespresso is to create the opportunity of achievement, where Nespresso continues a business. By the end of 2014 Nespresso was able to achieve its purpose in 31 countries with 14.000 pieces of appointed collection containers. However, in some countries (in Hungary, too) the used aluminium capsules are not qualified as a packing. It means, that the collection and recycling of coffee capsules is not possible in the appointed selective waste collection containers.

The complexity of recycling process, the rate of social cooperation and the diversity of legal regulation make the establishment of a new standardized recycling system for a company more difficult.

Currently, in connection with the collection of used coffee capsules, the General Corporated Strategy of Nespresso offers four options for the markets with regard to the legal circumstances:

1. Collection in the Nespresso Boutiques;
2. The achievement of collection with the assistance of public services and in the municipal waste collection centers;
3. Collection from houses, which requires close cooperation between the contracting partners;
4. Establishment of collection points in the retail partners's stores and package delivery points.

In the european welfare countries, where the living standard is high, there are a lot of leading examples, as the followings:

1. In Switzerland, there are more than 3.800 collection points throughout the country. Because of the unique structure of government, the only viable option was the establishment of an own design system in Switzerland. The collection of used coffee capsules is happened in stores, local and mobile collection points and from the houses. Here the 99% capacity of recycling was achieved yet.
2. In Germany, Sweden and Finland, there is a chance to the transmission of used coffee capsules in selective collection points and the placement of used capsules in metal waste collection containers for the customers in the framework of national program of Green Dot (Grüner Punkt). Because in these countries people pay great attention to environmentally conscious lifestyle and the simplicity and comfort are also important for them, so the Nespresso decided to join the nationwide recycling program, which primary purpose is the motivation of recycling. To sum up, these countries welcomed the Nespresso in their national program.
3. In France, it is a chance to the transmission of used coffee capsules not only in the stores of Nespresso, but also in the package delivery points. Furthermore, the collection from houses was managed to solve in Paris and Marseille. There are similar solutions in Benelux countries, too.<sup>11</sup>

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<sup>11</sup> Takács 2015 op. cit. 14-15. p.

In the beginning of hungarian collection program, the classification of used coffee capsules was arised as an important question. The issue of limitation was qualified as an important thing: whether only the coffee-grounds or the sum of materials (plastic storage box, aluminium tinfoil and coffee-grounds) was qualified as a waste.<sup>12</sup>

In this regard, the National Inspectorate for Environment and Nature, henceforward: Inspectorate) took commitments as follows: the disposal of used coffee capsules is happened by a special grinding procedure, wherein the aluminium and coffee-grounds are separated. The coffee-grounds is used for energetic purpose, the aluminium is recycled. According to the informations of Inspectorate's administrators, in case of the marked activity, the used coffee capsules are qualified as a waste based on the unrepealed regulations, so the rules of recycling are not applicable in this case.<sup>13</sup>

So the aluminium capsule is under the code of 15 01 04 EWC, which is the code of metal packaging waste. This multi-component sum of materials was classified according to the most dominant composition of aluminium.

After the classification of coffee capsule, the first version of collection system was elaborated. The collection was joined to the channels of sale. In case of Nespresso, the sale is realized in three channels: in the stores of Nespresso, through the customer service and in the website. The latter two types of sale are happened by home delivery or delivery to package points. Through the Pick Pack Point network, the Nespresso's currently contracted partners are the DHL Express Magyarország Kft. (henceforward: DHL) and the Sprinter Futárszolgálat Kft.

According to the corporate expectations, in the first step the opportunity of used coffee capsules collection was had to create in the stores of Nespresso. For this purpose, first of all, it was necessary to search and choose an another partner, who has the appropriate qualities in the field of collection of waste, waste transportation and waste recovery.

The Inter-Metal Recycling Kft. corresponded these requirements, because it deals with wholesale of metal waste and electronic waste management and has the appropriate license for collection of waste and license for transport within the company group. In its site, a special equipment was introduced, which is able to separate the aluminium and coffee-grounds by grinding. The coffee-grounds is used for energetic purpose, the aluminium is recycled as a metal waste.

After that, the only thing, which was had to solve is the collection of used coffee capsules from customers to the store situated in Andrásy street. According to the Act CLXXXV of 2012 on the Waste, this activity would be subject to authorisation, but there is only one exemption based on the Act CLXXXV of 2012 Section 28 (5), as the follows: *„Manufacturers and distributors may collect waste from products or product groups they have produced or placed on the market, respectively, including packaging waste originating from such products, at the place where the product in question, and its packaging, was produced or placed on the market, without waste management permit.”*

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<sup>12</sup> See about the interpretation of the definition of waste: Csilla Csák: A hulladék fogalmának értelmezése az uniós ítélkezési gyakorlat alapján. In: *Publicationes Universitatis Miskolciensis Series Juridica et Politica* 29.:(2.) pp. 423-434. (2011).

<sup>13</sup> The Report about the Waste Management Authorization of DHL Express Magyarország Ltd., File number: KTF: 14408/2014.

Thanks to this exemption, in 2014 the collection of used coffee capsules was started without a hitch in the stores of Nespresso. Fortunately, this is becoming more and more popular.

Because of the customers' willingness, the company decided in the same year, that it try to implement the collection of used coffee capsules from houses. The main reason of its plan, that only two Nespresso Boutique were and are operated in Hungary, both of them in Budapest. The collection of used coffee capsules from rural customers is narrowed by this situation, because they buy their coffee capsules chosen the other two sales channels.

In order to the implementation of plan, the Nespresso made contact with its contractual party (DHL), whether it would be willing to cooperate. The DHL welcomed the Nespresso's request. The enlargement of transport efficiency contains the reduction of the empty trucks' number, which is related to the collection of used coffee capsules. The collection process of DHL would have contained the following points and steps:

1. When the courier delivers the ordered package to the customer, they give the used coffee capsules to the courier.
2. In the end of the day, the courier transports the used coffee capsules to the central site of DHL.
3. In the next morning, the used coffee capsules are transported to the site of Inter-Metal Kft., where the recycling is taken place.

In theory, this is seems to be a very simple solution, however the practical implementation was not a quarter as simple as everybody had hoped. In the lack of any experience, the two companies referred to the Green Authority in order to require a commitment. As I mentioned in the part of the determination of waste's definition, the used coffee capsules were classified as a waste by the Inspectorate. Furthermore, the Inspectorate gave the following informations:

- According to the provision of the Governmental Decree no. 439/2012 (XII.29.) on the Registration and Authorisation of Waste Management Activities,<sup>14</sup> the registry of DHL in the waste broker registration and the site trading license of DHL's central site are necessary.
- The DHL carries out the mentioned activity in the possession of subcontractor site trading license and license for transport.
- The Inspectorate called the DHL's attention to the provisions of compulsory indemnity insurance including environmental pollution.
- According to the provisions of the Governmental Decree no. 57/2013. (II.27.) on the Production and Service Activities based on the Notification of Site License and Site Establishment; and the Rules of Site Authorisation and Notification,<sup>15</sup> the waste transportation to the site is under site license, which which is issued by the competent regional government.
- The site license need to be submitted with the application to the Inspectorate.
- If the National Tax and Customs Administration classifies the planned waste management activity as an activity under metal trading license, a site license will be not necessary, instead a metal trading license will be necessary according to the Act CXL of 2013 on Metal Trading.

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<sup>14</sup> Governmental Decree no. 439/2012 (XII.29.) on the Registration and Authorisation of Waste Management Activities.

<sup>15</sup> Governmental Decree no. 57/2013. (II.27.) on the Production and Service Activities based on the Notification of Site License and Site Establishment; and the Rules of Site Authorisation and Notification.

The high number and the complexity of licenses made the implementation of activities difficult, because of the followings:

- The DHL cooperates 10 subcontractors.
- The DHL has not got an own site.
- The owners of the sites are in the opposite position related to the waste management activity.
- So far, the transport activity of subcontractors was not required a site license. In case of the transportation of hazardous waste, a site license is necessary for it.
- In connection with the collected waste, all participants involved in the transportation process (customer, supplier, processor) arise obligation of data service, furthermore the supplier arises obligation of discretion and registration, too.

### 3. The arising legal problems and the possible solutions

#### 3.1. *ModusLink Magyarország Csomagolási Kft.*

In case of the ModusLink Magyarország Csomagolási Kft., the most problem was the classification of the company's activity. In 2012, according to the previous Act<sup>16</sup> on Waste Management,<sup>17</sup> the testing, disassembly, recharge, packaging are not classified as a waste processing and waste recovery<sup>18</sup> activity.

Because of the aforementioned reason, the classification of the activity caused the biggest problem for the competent administrative authorities.<sup>19</sup>

They chose the simplest solution: they denied the administrative procedure because of something. In the inspectorate whose competence is limited to Budapest, the case was transferred to the competent (according to the place of activity) Middle Tisza Inspectorate for Environmental Protection, Natural Protection and Water Management.

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<sup>16</sup> See about the affair between the previous Act on Waste Management and the Constitution: László Fodor: Az Alaptörvény esete a szennyező hulladékokkal és az európai jog. In: *Magyar Jog* 59:(11) pp. 641-652. (2012); furthermore see about the regulation of the Act on Waste Management: László Fodor: Hulladékszabályozás Magyarországon, a főbb kodifikációs tennivalók nemzetközi kitekintés tükrében. In: Sándor Szilágyi (edit.): *Ünnepi tanulmányok Prugberger Tamás professzor 60. születésnapjára*. 487. p. Miskolc: Novotni Alapítvány, 1997. pp. 111-128.

<sup>17</sup> See Act XLIII of 2000 Section 17.

<sup>18</sup> See Schedule no. 4 to Act XLIII of 2000: The following activities shall be considered as waste recovery: R1 Use as a fuel or other means to generate energy, R2 Solvent reclamation, regeneration, R3 Recycling, reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes), R4 Recycling, reclamation of metals and metal compounds, R5 Recycling, reclamation of other inorganic materials, R6 Regeneration of acids or bases, R7 Recovery of components used for pollution abatement, R8 Recovery of components from catalysts, R9 Oil re-refining or other reuses of oil, R10 Land treatment resulting in benefit to agriculture or ecological improvement, R 11 Use of wastes obtained from any of the operations numbered R1 to R10, R12 Exchange of wastes for submission to any of the operations numbered R1 to R11, R13 Storage of wastes pending any of the operations numbered R1 to R12 (excluding temporary storage and collection, on the site where it is produced).

<sup>19</sup> See the critical analysis of the previous Act on Waste Management: Gyula Bándi: A hulladékgazdálkodás szabályozási anomáliái. In: Orsolya Litkey-Juhász, Gábor Trombitás (edit.): *A települési hulladékgazdálkodás válsága: "A válság vesztesei - a paragrafusok fogságában" projekt: az alapvető jogok biztosának kiadványa a 2012. június 1-jén az Alapvető Jogok Biztosának Hivatalában rendezett konferenciáról*. 181 p. Place and Date of Conference: Budapest, Magyarország, 01.06.2012, Budapest, Office of the Commissioner for Fundamental Rights, 2012. pp. 129-142. (ISBN:978-963-89682-0-3).

The inspectorate whose competence is limited to Szolnok retransferred the case to the Inspectorate because its lack of competence based on the crossborder hazardous waste involved in the activity.

The Inspectorate suggested to the company to ask the commitment of the competent Ministry.<sup>20</sup> The competent State Secretariat for Environmental Affairs dealt with the issue in merit. According to its opinion, the testing activity declared by the company is not classified as neither waste recovery, nor waste treatment. The activity could have been classified as a waste recovery activity based on the Act XLIII. of 2000 on Waste Management, but according to the new act (Act CLXXXV of 2012 on the Waste), the import of hazardous waste is forbidden, so the authorisation of the activity is not supported by the Ministry.<sup>21</sup>

By the end of August 2012, the opinion of Ministry was eased related to this issue. In the course of the consultation with the competent State Secretary, the manager of the company could outline, that the final product loses its nature of waste as a result of the activity. He developed his opinion along four arguments, which are the following:

1. the substance or object is commonly used for specific purposes;
2. a market or demand exists for such a substance or object;
3. the substance or object fulfills the technical requirements for the specific purposes and meets the existing legislation and standards applicable;
4. the use of the substance or object will not lead to overall adverse environmental or human health impacts.<sup>22</sup>

As a result of discussions, the following viewpoint was emerged: if the export of mobile phones and equipments, which are unsuitable for further distribution is ensured by the technology (activity), the Ministry will consider giving the licenses of planned project. The Ministry asked the company related to the submitting of the license's application to wait the year 2013, when the new act will enter into force.<sup>23</sup>

Before the implementation of the project and the removal of legal problems, some economic problems were arised. A rival romanian-based company undertook the starting of activity within 2 months, so they won the business in their romanian site.

In connection with this case, the lesson to be drawn is the following: the Act on Waste Management and its implementing decrees on electronic wastes still not determine the punctual activities related to waste management, that's why the legal and natural persons dealing with this activity and the licensing authority may mix the definitions, positions and on the other hand it is difficult to separate, which licenses are necessary in the different situations. Let's see the existing legislation related to it.

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<sup>20</sup> Ministry of Rural Development (in 2012).

<sup>21</sup> Resolution of the Ministry of Rural Development no. Kfv 354/1/2012 (01.08.2012).

<sup>22</sup> Act CLXXXV of 2012 on Waste, Section 9-11.

<sup>23</sup> See: The Summary of the Ministry of Rural Development about the Negotiation with ModusLink Magyarország Csomagolási Kft. (04.09.2012).



According to the Act CLXXXV of 2012 on the Waste, the followings are qualified as waste management:<sup>24</sup>

1. collection of waste,
2. transport of waste,
3. disposal of waste,
4. the supervision of such operations,
5. actions taken as a dealer<sup>25</sup> or broker,<sup>26</sup> or as a broker organization,<sup>27</sup>
6. the operation of waste management facilities and equipment,
7. the after-care of waste management facilities.

According to the Chapter III of the Act, the aforementioned list is not the same with waste management activities, which are the following:

1. collection of waste,
2. activities of dealers and brokers, transport of waste,
3. recovery of waste,
4. disposal of waste,
5. import, export and transit shipment of waste.

If we get a nearer view of the provisions of Act CLXXXV of 2012 on the Waste, we can see, that the distinction, demarcation and use as a not synonymous term of the 2 definitions are not clear, however according to the list, the waste management activity determines less activities, so this could be a problem during the legal interpretation. As an example, the Act CLXXXV of 2012 Section 6 (1)-(3) determine the methods of doing waste management activities,<sup>28</sup> furthermore the Section 6 (4) defines, that the use and distribution of technologies, equipment, means and materials used for waste management may be legally bound to authorization, assessment of suitability for use, reference or qualification. Waste management activities may be carried out upon obtaining a waste management permit issued by the environmental protection authority, or upon registration.<sup>29</sup>

Waste treatment: This is operated as a concept, which contains the collection, the transportation, the pre-processing, the storage, the recovery and the disposal of waste, too. Unless otherwise provided for by law, government decree or ministerial decree, waste treatment activity may be carried out with a permit of environmental protection authority. The manager of waste shall keep records laid down in other regulation and supply data orderly for the authority.

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<sup>24</sup> Act CLXXXV of 2012 Section 2 (1).

<sup>25</sup> Dealer shall mean any economic operator who buys waste in its own name and on its own behalf, or in the name and on behalf of others, and subsequently sells such waste, including such dealers who do not take physical possession of the waste.

<sup>26</sup> Broker shall mean any economic operator - excluding private entrepreneurs and sole proprietorships - arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste.

<sup>27</sup> Broker organization shall mean a broker operating in the form of a nonprofit business association - not including the organization established for brokering deals for the recovery of waste products subject to product charges provided for in the Act on Environmental Protection Product Charges, and for coordinating the collection of waste destined for recovery - arranging the recovery or disposal of waste upon registration.

<sup>28</sup> Waste management shall be carried out without endangering human health, without harming the environment and, in particular, without risk to any environmental media, without causing a nuisance through noise or odors (in excess of the limits), and without adversely affecting the countryside or natural or cultural places of special interest.

<sup>29</sup> Csilla Csák: A hulladékgazdálkodási költségek viselésének fedezeti rendszere. In: *Journal of Agricultural and Environmental Law*, ISSN 1788-6171, 2014. 16. sz., 62-75. p. 66. p.

Collection of waste: In order to the waste is sufficient for further treatment, the separate collection of waste is necessary, which might be happened in onsite of waste facility or outside of waste facility. In onsite of waste facility, the producer or holder of waste shall do the collection of waste without an environmental license. In case of the collection in outside of waste facility, the manager of waste collects the waste from the producer or holder of waste in order to transport it to the collection facility. „*A waste operator, in possession of a permit issued by the authority, may establish and operate a gathering place as an independent site or as an in-plant gathering place where waste is stored until transportation prior to recovery or disposal, or it is eventually pre-processed, or processed for further treatment and recovery.*”<sup>30</sup> Other regulation might order the obligation of keeping records and data disclosure in this cases, too.

Waste transportation: Waste transportation shall be carried out without risk to the environmental protection, otherwise the transporter shall provide for the removal of waste and the restoration of site to its the original condition. „*Economic organisations may carry out waste transportation activities permanently and commercially only under conditions specified in the separate legal rule, and only with a permit issued by the environmental authority.*”<sup>31</sup>

Waste recovery: The recovery operations are contained by the Schedule no. 3 to Act CLXXXV of 2012, which are the following:<sup>32</sup>

- Recycling: re-use of the waste material in the production and service,
- Regeneration: The detachment and transformation of some recyclable waste component,
- Energy recovery: recovering energy from waste.

This waste recovery activity is carried out only by conditions determined in different regulations and license of environmental authority.

Disposal of waste: An installation for disposal of waste may be established only by conditions determined in different regulations and license of environmental authority. The Schedule no. 2 to Act CLXXXV of 2012 exhaustively lists the waste disposal activities, for example deposit into landfill, thermic disposal of waste, different chemical, biological or material procedures.<sup>33</sup>

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<sup>30</sup> István Gellérthegeyi: Az engedély szerepe a környezetvédelemben, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2009, 109. p. ( hereinformard: Gellérthegeyi 2009).

<sup>31</sup> Gellérthegeyi 2009, 109. p.

<sup>32</sup> Gellérthegeyi 2009, 110. p.

<sup>33</sup> See about the relation between these definitions and the definition of waste: Gyula Bándi: A hulladék fogalma egy aktuális jogesetben. In: *Európai Jog: Az Európai Jogakadémia folyóirata* 2:(3) pp. 38-40. (2002).

### 3.2. Nespresso Hungary Kft.

The aforementioned system of concepts shows, that in the Nespresso case, it is also difficult to distinguish the issue, how to carry out the activities in accordance with the regulations, when the coordinated chain of transporters would be necessary, but the total quantity of used material is less than 1 tonne per year. The processing fees of site licences related to the collection of waste and the administration of data disclosure's obligation cost more, than the total fee of retransportation. For the purpose of the administration costs' reduction, the following solutions were come into view:

- The DHL sales its products in its central sites from Nespresso coffee machines. That's why, the DHL is classified as a point-of-sale, where the recycle of products is possible without site license. This solution is legally relevant, however if the green authority begins to examine the proportion of sold and recycled products, it will be realised immediately, that the sale was created because of the authorisation evasion. So the rate of waste management penalty would be higher, than the saving because of the authorisation.
- The second solution would be the involving of metal traders had a site license and situated near to the DHL and the resale to the waste processor (Inter-Metal Kft.) with the help of the metal traders. It is legally achievable, however the metal trader involved in the business by a contract does not carry out substantive economic activity, but they would charge high costs for invoicing.
- The third solution would be the direct delivery to the site of Inter-Metal Kft. by the suppliers. Of course this is only possible in the Budapest area. Those suppliers who have this route may also be stressful, the DHL provides a larger transport vehicle and after the transfer, the DHL will transport the metallic waste to the site of Inter-Metal Kft.
- Although the sites will not be affected by the aforementioned solution, the problem is with this solution, that the punctual transport and the place of transfer are not untraceable. The DHL may not be able to solve the transfer on public area with an appropriate consignment letter.

The hungarian waste management law based on the transportation of basically huge quantity and unselected wastes can not give a correct solution to the problems of Nespresso. The quantity is the mortgage of solution. Companies, which practise small quantity and high cost transportations should be removed from within the scope of the Act, and in order to promote recycling, the complete authorisation chain should be obligated in case of only the processing company. The obligation of data service should lie with only the Nespresso as a customer, which is interested in the re-use of the product. The inspection and monitoring of the further participant should be contained in the customer's responsibilities, and the company should be liable for these activities according to the rules of diligence based on civil law.<sup>34</sup>

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<sup>34</sup> See about the simplification of authorisation system: László Fodor: A német engedélyezési rendszer egyszerűsítése a környezetvédelmi követelmények tükrében. In: *Magyar Jog* 2005:(9) pp. 557-566. (2005).