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New waste management obligations

Important changes to waste management obligations can be expected.

This is because as many as three new acts aimed at adapting the existing Polish regulatory framework to EU regulations requiring Member States to reach 65 percent recycling rates for municipal waste by 2035 (the Waste Package) are currently being drafted, namely, the draft bill amending the Act on Waste and certain other acts (hereinafter: the **EPR Act), the draft bill amending the Act on Packaging and Packaging Waste and certain other acts (hereinafter: the **Packaging Act**), and a draft bill amending the Act on the obligations in the field of management of certain waste and the product fee and certain other acts (hereinafter: the **Product Fee Act**).**

Below we present the key changes to be brought about by the bills.

Product Fee Act

The draft of the Product Fee Act is to bring, inter alia, a new fee on placing on the market and making available to buyers single-use plastic products, such as beverage cups including caps or lids, and food containers, including food containers used for fast food or other meals ready for immediate consumption. The fee is to be collected and remitted by retailers (e.g. grocery stores), wholesalers and food-service entities (e.g. owners of pubs or bars) offering single-use plastic containers or products packed in single-use plastic containers.

The rate of the fee is to be set by way of a separate decree.

The fee is to be included in the product price. It is to be remitted by businesses operating commercial and food-service entities to a separate bank account of the competent Province Marshal within 15 days of the month following the quarter for which it is due. If the fee is not paid in full or in part, the competent Province Marshal will determine the amount of the fee due, and in the event of failure to implement the decision specifying the amount of the fee due, they will also set a supplementary fee amounting to 50 percent of the unpaid fee.

Importantly, the draft bill is also to impose enforcement measures on businesses not collecting the fee from purchasers of single-use plastic containers or products in single-use plastic containers. In this case, the administrative penalty is to range from PLN 500 to PLN 20,000.

The Product Fee Act is also to introduce a ban on marketing products made of oxo-degradable plastics, which are not recyclable (such as cotton bud sticks, cutlery, plates, straws, stirrers etc.). Consequently, shops or coffee places offering single-use containers will be required to provide buyers access to alternative products not made of plastic or reusable containers.

Packaging Act

The draft of the Packaging Act provides for, inter alia, separating packaging and packaging waste stream into: household and other purposes (including commerce, services, and industry) as well as a new packaging fee imposed on entities marketing packaged household products.

The rates for individual types of packaging will be established by the Minister of Climate and Environment, based on the analysis of waste management system running costs incurred by municipalities, prepared by the Institute of Environmental Protection. The rates will depend, inter alia, of the type of packaging, recycling possibilities, recycled content in plastic packaging after taking into account revenues from reuse, sales of recycled materials and missed deposits. The maximum fee for household packaging is to be set at PLN 2 per kilogram.

The payments will be made via Province Marshals to the National Fund for Environmental Protection and Water Management (NFEPWM). Moreover, reports due from entities marketing packaged products are to be extended to include sections related to the packaging fee. The reports will be then made available to the Province Marshals and NFEPWM in the BDO [Waste Management Database].

Importantly, entities introducing packaged household products to the market will be also required to pay contributions to producer responsibility organizations.

The draft bill is also to introduce an obligation to provide buyers of single-use plastic packaging with alternative packaging made of materials other than plastic or reusable packaging.

EPR Act

The EPR Act is to bring a solution referred to as the Extended Producer Responsibility. According to the draft bill, EPR encompasses a set of actions taken to ensure that producers will take financial responsibility or financial and organizational responsibility for the step of the product's life cycle when it becomes waste.

As part of the Extended Producer Responsibility systems, entities placing products on the Polish market, performing their duties independently or organizations performing duties on their behalf, will be required:

- 1) not to limit the performance of duties to cases where the collection and processing of waste brings the biggest profit;
- 2) to ensure equal access to the waste collection system in the area where they place products on the market;

- 3) to maintain financial and organizational means necessary to fulfil their duties;
- 4) to apply self-control mechanisms, especially in form of audits, in terms of managing financial resources intended for the performance of duties, data collection and reporting on products placed on the market, as well as collection and treatment of product waste;
- 5) to make publicly available information on the implementation of waste management objectives, including compliance with the principles set out in points 1-4, and in the case of organizations performing obligations on behalf of product-marketing entities, additional information about:
 - a) their ownership and member structure,
 - b) financial contributions made by marketers for each tonne of product placed on the market,
 - c) waste management entity selection procedure.

What's next?

The Product Fee Act was to enter into force already on 3 July 2021, but the related consultation process has not yet terminated.

On 21 September 2021, the EPR Act was submitted to the Lower House of the Polish Parliament for the first reading. Once passed by the Sejm, it will be submitted before the Senate.

As a rule, the proposed amendments are expected to enter into force 30 days from the date of their announcement, with minor exceptions.

In turn, the Packaging Act is to enter into force on 1 January 2023.

In anticipation of the new Acts, businesses need to develop proper implementation plans, especially in terms of a strategy related to execution of obligations resulting from extended producer responsibility.

If you would like to learn more about the issues discussed, do not hesitate to contact us.

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