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SELECTED ASPECTS IN THE FIELD OF WASTE MANAGEMENT IN THE LIGHT OF THE RECENT POLISH ACT ON WASTE

1. Introduction

The adaptation of Polish legislation to EU legislation is a requirement of the process of Poland joining the EU. Procedures, regulations and rules must be introduced into the national legislation system to create a coherent whole – the *acquis communautaire*. This term principally covers tractates, directives, decrees and decisions (so called primary and secondary legislation). This includes the rules, assumptions, policies and goals set by the EU. Rulings and interpretations of the justice tribunal are important, as well as international agreements signed by the European Commission and declarations and resolutions of the Board of Ministers. The member states and countries aspiring to join the EU must keep both the letter and the spirit of EU legislation.

If there are no national acts, rules or procedures in a particular field, or they are not in accord with EU legislation, the first stage of the alignment with EU legislation must be the so called transposition of legislation. This is based on the passing or changing of national administrative acts, rules and procedures enabling their adaptation to the requirements of EU directives and policies. Each country should have adopted the entire *acquis communautaire* in its national administrative and legislative systems before joining the EU. One such act of law is the recent Polish Act on Waste.

2. Experience of the European Union in the Field of Creating Coherent Strategies

The activities of the EU in the domain of environmental protection for more than 25 years have enabled it to set up a catalogue of rules, which create a coherent concept of environment protection legislation. These rules were initially treated as a type of declaration of intent. However, in a short period of time they became policy guidelines in the domain of environmental protection. Article 174, Paragraph 2 of the Tractate on the European Community formulates the basic concepts of EU policy in the field of environmental protection:

- ensuring high quality environmental protection, which takes into account the needs of each region,
- the principles of prevention and foresight,
- "the polluter pays" principle,
- the elimination of pollution at source (the principle of eliminating damage).

Such principles were previously unknown in Polish legislation in the sense that they did not take a normative form. Postulates for developing a catalogue of basic principles in the field of environmental protection legislation had appeared for some time, but these postulates were not reflected in legislation.

The fundamental source of environmental protection legislation in the EU is secondary legislation. Directives are the prevalent form of EU legislation in the field of environmental legislation. They oblige the member states to fully incorporate the requirements of such legislation into their national legal and administrative systems. However, they give a certain amount of freedom in the choice of the means of realising these obligations. Directives often permit governments to introduce stronger regulations with respect to activities harmful to the environment.

Directives often require the introduction of specified legal institutions into national legislation. This is most often related to permits (licences) for carrying out various types of activity. Such requirements may be met by making use of the well known and generally used institution of administrative acts. Such an institution should, however, be applied in accordance with the principles of the entire system of environmental protection, ensuring the coherence of decisions made with respect to different components of the environment.

Documents, which do not have a direct part in setting legislative norms, but are used as guidelines in setting out plans of action and in such a way influence legislative policy, play an important role in the EU. Such programs in the field of environmental protection may be of a general nature

setting out a framework of priorities in the field of environmental protection. Other such programs may be of a more specific nature, e.g. programs regarding waste management.

In order to co-ordinate the policies of the individual member states with the goals of the EU, the first program was introduced as early as 1972. In total 5 different programs have been written. The first program (covering the years from 1973 to 1975) concentrated on limiting pollution by the introduction of standards taking into account the principle of prevention. The program stressed the meaning of sustained development. The period from 1976 to 1981 brought new proposals, widening the horizons of environmental protection to various sectors of the economy at all the stages of activity such as: planning, realisation, exploitation. Stress was made on the reduction of pollution. The third program (1981–1986) recognised natural resources as a motor of economic development and recommended taking the depletion of these resources into account when exploiting them. The fourth program (1987–1992) introduced the idea of international inspectorates, overseeing the implementation of EU guidelines and legislation in all areas related to the environment. The question was raised of public access to information regarding the state of the environment and threats to the environment. The European Agency for Environmental Protection and the European Network of Environmental Supervision and Information were set up in 1990.

The Rio Conference was another influence on the operations of the EU. This was apparent in the fifth program (1993–2000). The principle of sustained development became the major goal of ecological policy in the EU, as well as the whole world. In accordance with this principle, it is not enough to simply carry out activities aimed at the elimination of pollution and waste, but it is necessary to stop pollution and waste at source. For the first time the list of the groups directly addressed by such a program, as well as the list of groups realising this program, was widened to businesses, consumers, non-government agencies, together with other groups. Legal and economic regulations are used as instruments in the implementation of the fifth program. Voluntary agreements between industry and government administration are a preferred means of solving ecological problems. Such agreements are to define reductions in environmental pollution in various branches of industry (they are widely applied in Denmark, where they have been a great success). The fifth program placed great stress on the principle of increasing the responsibility of producers. In accordance with this principle, a producer is responsible for the effect his products have on the environment. This responsibility covers the choice of raw materials and

production techniques, as well as the exploitation and final destination of the product. Such responsibility covers legal, economic and factual responsibility of the producer for the influence of his products on the environment. The main subject of interest according to this principle is thus not just the means of production, but the product as a whole. An example of the increased responsibility of the producer is that the producer has to accept the return of a good after its exploitation.

3. Public Administration Tasks in the Light of the Act

In accordance with the regulations appearing in the new Act on Waste, organs of public administration will be obliged to set out waste management plans, which will be part of their program of environmental protection and sustained development. These plans should take the following into account:

- prevention of waste creation,
- safe treatment of waste, taking into account communal and hazardous waste,
- limiting the amount of waste stored at dumps,
- as well as, and this is particularly important, the need to create and maintain an integrated network of installations capable of dealing with the national requirements for the neutralisation of waste.

These plans should define, amongst other things: the type, amount and source of waste, methods of dealing with them, segregation and selected collecting of waste, including hazardous domestic waste. These plans should also include activities aimed at reducing the amount of communal biodegradable waste and waste stored at dumps, together with considering the location of installations dealing with the neutralisation of waste. The creation of such a network of installations demands co-operation and co-ordination, both between organs of public administration at various levels and between administration and business. Continuous education of the local population, public administration employees, together with owners and managers of public and private enterprises will play an important role in achieving successful waste management.

4. Basic terms and definitions introduced in the new Act on Waste

In order to define the range of the act, it is important to define concepts such as "creator" or "possessor" of waste.

"A creator of waste" is anybody, who generates waste (that is to say the primary creator), as well as anybody involved in the initial treatment or mixing of waste, or any other operation which changes the nature or contents of waste. Hence, this concept is not simply limited to the actor who in fact produces the waste, it is wider. Waste treatment is also defined as creation of waste.

"A possessor" of waste, on the other hand, is a producer of waste or a physical or legal entity in possession of waste.

It is important to stress here the difference between these two concepts, taking obvious practical considerations into account. Waste does not in general stay in the possession of its producer. This is reflected in the obligations placed on both categories of actor.

"Waste collection" encompasses its collection, segregation or mixing in preparation for transportation. On the other hand "neutralisation" and "recovery" (utilisation) are not defined, but rather described by listing various operations falling into these two categories. "Neutralisation" is, amongst other things: storing in dumps, burning, as well as biological, physical and chemical treatment of waste. "Recovery" includes the regeneration of solvents, recycling of metal and other secondary materials.

Defining the main goals of the operations carried in a waste management system plays a large role in the construction and implementation of such a system. The following are examples of such operations: prevention of waste creation, reducing the amount of waste and its harmful effects, as well as recovery and utilisation.

Prevention of waste creation, or reducing the amount of waste and its harmful effects can be carried out by, among other things: developing clean technologies, appropriate projection and production of products, developing appropriate techniques for the neutralisation of hazardous substances contained in waste assigned for recovery. The recovery of materials from waste should be carried out by recycling, re-utilisation (including using waste as a source of energy), regeneration, or any other processes aimed at recovering materials.

The act also prohibits the dumping and throwing away of waste in places not assigned for such a purpose and uncontrolled neutralisation of waste.

The act introduces an obligation on public administration to carry out a waste management plan, build up a network of organisations neutralising waste and inspect the operations of organisations covered by the act.

The fulfilling of the obligation on the relevant organs of public administration to carry out a waste management plan should be based on preparing a plan defining: the type, amount and source of waste

assigned for recovery or neutralisation; general technical requirements regarding these operations and any other necessary regulations regarding specific types of waste and the location of installations dealing with its neutralisation.

Such plans encompass private and public entities entitled to carry out waste management, estimating the costs of operations involved in the recovery of neutralisation of waste and implementing operations aimed at rationalising the collection, segregation and treatment of waste.

There exists an obligation of building an integrated network of organisations carrying out the neutralisation of waste using the application of the best technology available at a reasonable cost. Such a network should enable the neutralisation of waste close to the source of the waste, using the most appropriate methods and technology for that type of waste, ensuring protection of the environment and human health.

5. Permits for carrying out waste management

The most important demand in the system of permits for waste management is an obligation to carry out the recovery and neutralisation of waste in accordance with the act. A possessor of waste can fulfil this requirement by his own actions, or delegating these responsibilities to a specialised organisation.

The act contains fairly comprehensive decisions regarding such a system. Organisations carrying out operations in the field of recovery, collection, transport or neutralisation of waste, or intermediaries in this field are obliged to possess a permit. Permits should specify the following: the type and amount of waste, technical and safety requirements, location of waste treatment and methods used.

Permits may be issued for a limited period, with the possibility of extension. The granting of a permit may be subject to various conditions. Permits are not to be granted, if the proposed methods for the neutralisation of waste do not satisfy environmental regulations. It is possible to exempt certain organisations from the obligation of obtaining a permit, for example: an organisation neutralising its own waste at source, organisations carrying out recycling, organisations professionally involved in the collection and/or transport of waste, or preparing waste for recovery or neutralisation on behalf of another firm. However, such organisations must be registered by the relevant authorities and be subject to regular inspection by these authorities.

6. The registering of waste

Another obligation is the registering of waste. Each organisation involved in the neutralisation or recovery of waste is obliged to register the waste treated. This obligation covers the amount, type, source, destination (where relevant), collection dates, transportation methods and methods of recovery and neutralisation. This information should be accessible on demand to the appropriate authorities.

According to the principle of "the polluter pays", the producer of the waste should pay for its neutralisation. However, this principle includes both the present and the previous owner, as well as the producer of the product which became waste after its exploitation. It is important to underline this broad definition of the actors obliged to pay the costs of the neutralisation of waste, especially since this a new trend in the understanding of this concept. The polluter pays principle is, of course, one of the primary principles of modern environmental protection.

7. Other Important Aspects

The act also defines the principles of storing biodegradable waste at dumps. The proportion of organic waste should decline (the guidelines state to below 20% by 2016). This reduction should be achieved by recycling, composting and the production of bio-gas and other forms of utilisation, instead of storing such waste. Only treated waste may be stored, apart from inert waste, which cannot be treated. Hazardous waste can only be stored at dumps intended for such waste. Other dumps may store only communal waste. Hazardous waste fulfilling given criteria (chemically inert waste) cannot be stored at dumps intended for non-hazardous biodegradable waste. Inert waste can only be stored at dumps intended for such waste.

8. Summary and Final Comments

The passing of the new act on waste should be understood as a great step forward in the realisation of environmental protection in Poland. The effectiveness of its implementation depends on the applications of various concepts, together with reorganisation, as well as financial sources. In our opinion, in order to achieve noticeable effects in a short period of time, it is necessary to carry out a more intensive and effective system of educating society at a local level, together with the application of legal and economic instruments, as well as carrying out other operations mentioned in this article.

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