

Implementation of the Waste Framework Directive in the EU Member States

Legal Analysis

Justice and Environment 2012

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Introduction

The use of natural resources and the generation of waste is such a general problem of our current lifestyle that there seems to be no prompt and easy solution thereto. Law is a fundamental part of the solution, guiding stakeholders and not allowing the overproduction of waste in abundance.

Association Justice and Environment has always been sensitive to the question of waste management and time to time had a different focus on issues. In 2009 we compared the "old" Waste Directive¹ with the „new" Waste Framework Directive (WFD),² while in 2011 we conducted a six-country survey on the application of the waste planning provisions of the WFD.

In 2012 we covered this area again, with a specific focus now on the practical application and implementation of the WFD. In this legal analysis we assess the main findings of our work programme of 2012 based on the practice gained by investigating national implementation measures of the EU waste policy in the Member States.

Main provisions of the Waste Framework Directive

The Waste Framework Directive (2008/98/EC) should have been transposed by MS until 12 December 2010, repealing the old Framework Directive (Directive 2006/12/EC) and incorporating and repealing the Hazardous Waste Directive (Directive 91/689/EEC) and the Waste Oil Directive (Directive 75/439/EEC).

Due to the WFD, Member States must ensure that waste is recovered or disposed of without endangering human health and the environment and that the waste amount disposed of is reduced to a minimum by kind of measures and effective tools to minimise waste generation. It sets the basic concepts and definitions related to waste management, such as definitions of waste, recycling, recovery, etc. It explains when waste ceases to be waste and becomes a secondary raw material (so called end-of-waste criteria), and how to distinguish between waste and by-products.³ Main principles of the WFD are re-use, recycling and recovery which shall be promoted and adopted whenever suitable in order to save resources and to reduce the amount of waste.

The WFD provides a detailed clarification and differentiation of the waste hierarchy, introduces definitions, such as the end-of-waste status and by-products, specifies the classification of treatment operations and changes requirements for the preparation of waste management plans.

The Directive encourages waste reduction and gives a new dimension to prevention as MS are obliged to draw up and implement waste management plans and waste prevention programmes no later than 2013.

The Directive applies the "**polluter pays principle**" and the "**extended producer responsibility**", under which the producer of a product (anyone who professionally develops, manufactures, processes, treats, sells or imports products) may be obliged not only to accept returned products and

¹ DIRECTIVE 2006/12/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2006 on waste

² Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives

³ <http://ec.europa.eu/environment/waste/framework/index.htm>

waste that remains after the products have been used, but also financial responsibility for such activities.

In addition, the Directive sets out more stringent provisions for authorisation and registration as well as new recycling targets (50% preparing for re-use and recycling of certain waste materials from households and other origins similar to households, and 70% preparing for re-use, recycling and other recovery of construction and demolition waste) which have to be achieved by 2020.

New waste hierarchy

Waste legislation and policy of the EU Member States shall apply as a priority order the following waste management hierarchy:⁴



Due to Art. 3. Point 12. of the WFD "**prevention**" means measures taken before a substance, material or product has become waste, that reduce:

- a) the quantity of waste, including through the re-use of products or the extension of the life span of products;
- b) the adverse impacts of the generated waste on the environment and human health; or
- c) the content of harmful substances in materials and products.

„**Re-use**" means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;⁵ "**treatment**" means recovery or disposal operations, including preparation prior to recovery or disposal;⁶ "**recovery**" means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations;⁷ "**preparing for re-use**" means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;⁸ "**recycling**" means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;⁹ and

⁴ Source: <http://ec.europa.eu/environment/waste/framework/index.htm>

⁵ Art. 3. Point 13.

⁶ Art. 3. Point 14.

⁷ Art. 3. Point 15.

⁸ Art. 3. Point 16.

⁹ Art. 3. Point 17.

"disposal" means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations.¹⁰

Extended producer responsibility

The principle of extended producer responsibility shifts the burden of product waste management back onto those companies that make the products becoming waste later. The principle may take the form of different obligations for producers, like to recover products, to collect waste, to establish funds or deposit schemes for recovery or recycling etc.

Due to Article 8 of the Directive, in order to strengthen the re-use and the prevention, recycling and other recovery of waste, Member States may take legislative or non-legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has extended producer responsibility.

Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities. These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable.

Member States may take appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with Articles 4 and 13 of the Directive.

Such measures may encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, that are technically durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.

When applying extended producer responsibility, Member States shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market.

The extended producer responsibility shall be applied without prejudice to the responsibility for waste management as provided for in Article 15(1) of the Directive and without prejudice to existing waste stream specific and product specific legislation.

Waste prevention programmes

Waste prevention programmes have to be established by Member States not later than 12.12.2013. This can be done by a combination of different kind of strategies, like development of clean technologies, eco-labels, environmental management systems, information, training and awareness raising and incentives, voluntary agreements, public and corporate procurement or promotion of reuse and/or repair.

Waste prevention programmes include appropriate measures to promote high quality recycling by separate collections of waste. A focus is put on paper, metal, plastic and glass and on C&D waste for which deadlines and targets are set. The programmes shall set out objectives, include a description of the existing prevention measures and evaluate the usefulness of measures. In addition Member States shall determine appropriate benchmarks in order to monitor and assess the progress of the

¹⁰ Art. 3. Point 19.

measures and may determine specific qualitative or quantitative targets and indicators for the same purpose.

Such programmes shall be integrated either into the waste management plans provided for in Article 28 of the Directive or into other environmental policy programmes, as appropriate, or shall function as separate programmes. If any such programme is integrated into the waste management plan or into other programmes, the waste prevention measures shall be clearly identified.

The waste prevention programmes shall set out the waste prevention objectives. Member States shall describe the existing prevention measures and evaluate the usefulness of the examples of measures indicated in Annex IV of the Directive (examples of waste prevention measures) or other appropriate measures.

The aim of such objectives and measures shall be to break the link between economic growth and the environmental impacts associated with the generation of waste.

Member States shall determine appropriate specific qualitative or quantitative benchmarks for waste prevention measures adopted in order to monitor and assess the progress of the measures and may determine specific qualitative or quantitative targets and indicators as well.

Waste management plans

Waste management planning is the cornerstone of any national, regional or local policy on waste management.¹¹

Due to Art. 28. of the WFD, Member States shall ensure that their competent authorities establish, in accordance with Articles 1, 4, 13 and 16, one or more waste management plans. Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.

The waste management plans shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of the Directive.

The waste management plans have mandatory and additional elements as well, both listed in the Directive in details.

The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:

- a) the type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;
- b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community legislation;
- c) an assessment of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure in accordance with Article 16, and, if necessary, the investments related thereto;

¹¹ <http://ec.europa.eu/environment/waste/plans/index.htm>

- d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;
- e) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems.

The waste management plan may contain, taking into account the geographical level and coverage of the planning area, the following:

- a) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private actors carrying out the waste management;
- b) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;
- c) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;
- d) historical contaminated waste disposal sites and measures for their rehabilitation.

Waste prevention programmes prepared by Member States under Art. 29. of the Directive shall be integrated either into the waste management plans or into other environmental policy programmes, as appropriate, or shall function as separate programmes. If any such programme is integrated into the waste management plan or into other programmes, the waste prevention measures shall be clearly identified.

Waste management plans shall conform to the waste planning requirements laid down in Article 14 of Directive 94/62/EC and the strategy for the implementation of the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.

The main administrative rules for Member States concerning waste management planning:

Waste management plans need to be evaluated at least every sixth year and revised as appropriate.¹²

- Relevant stakeholders and authorities and the general public must have an opportunity to participate in the elaboration of the plans, and have access to them once elaborated. The plans shall be placed on a publicly available website.¹³
- Member States shall inform the Commission of the waste management plans, once adopted, and of any substantial revisions to the plans.¹⁴

¹² Art. 30., point 1.

¹³ Art. 31.

¹⁴ Art. 33., point 1.

Implementation of the WFD in the Member States

Implementation of the principle of „producer responsibility” in Hungary

Regulations of the Act on Waste Management

In Hungary, waste management is regulated basically through legal provisions. The Act XLIII. of 2000 on waste management determines the legal regulatory framework of waste management. Regulations specify the technical requirements of the waste management activities, the economic incentives and sanctions to be applied, the responsibilities of producers and manipulators, the licensing and supervision tasks of the authorities etc.

The „polluter pays” principle and the principle of „producer responsibility” are basic principles of the Hungarian waste management legislations and waste management system as well.

Due to the „polluter pays” principle,¹⁵ the producer or holder of waste or the manufacturer of the product that became waste shall pay the waste treatment costs or dispose of the waste; the polluter shall be responsible for the abatement of environmental pollution caused by the waste, for the restoration of the state of the environment and the reimbursement of damages including costs of restoration.

On the basis of the principle of manufacturer's responsibility, it shall be the responsibility of the manufacturer of the product to select product and technology properties favourable from the point of view of waste management, including the selection of resources, the resistance of the product to external effects, the life cycle and possible recovery of the product, and the planning of recovery or disposal of waste originating from the production and use of the product and from the product itself, as well as contributing to the costs of the treatment.¹⁶

In order to implement the above mentioned principles, the Act describes in details the responsibilities all of those, involved in waste management.

Duties of the manufacturer¹⁷

Manufacturers shall design the product and its packaging - as provided for in a separate legal rule - and develop the product and technology in such a manner as to result in the maximum possible efficiency in the use of resources and energy, and additionally, to promote the re-use of the product and, when the product becomes waste, the environmentally sound management, recovery and disposal of such waste.

When considering the choice of raw materials and basic materials, semi-finished or finished products and packaging materials serving an identical purpose, manufacturers shall give preference to those that demand less resources and energy in the course of their production and use, that result in the generation of less waste, that result in longer lasting products and packages, are repeatedly re-usable and have a reduced impact on the environment.

Manufacturers shall inform end users of the properties of the product and its packaging which are deemed essential for the purposes of waste management, and the potential means of treatment of waste obtained if the product is spent or becomes waste.

¹⁵ Act XLIII of 2000 On Waste Management, Art. 4., Point g).

¹⁶ Act XLIII of 2000 On Waste Management, Art. 4., Point c).

¹⁷ Act XLIII of 2000 On Waste Management, Art. 6-9.

They shall display - using clearly visible means - on the product or its packaging an indication as to whether the product or its packaging is manufactured by way of a low-waste technology, whether it is durable or can be re-used, their composition from a waste management standpoint, and information as to whether it is returnable against a deposit.

The means for providing the information and the labeling requirements, including content and presentation are laid down in specific other legislation.

For products specified in other legal rules, in the rate and under the conditions specified therein, manufacturers shall, with a view to re-use, recovery or safe disposal, take back (return) with or without deposit, from dealers and end users the waste or used items originating from products marketed by them domestically.

Types of waste and used products to be taken back for re-use, recovery or disposal, the rates of return and recovery as well as the deadlines for the above are regulated by governmental decrees,¹⁸ taking into account the proposal of consulting bodies established by the manufacturers and dealers concerned.

Manufacturers may take back, with or without deposit, its used product or the waste originating from its product from the dealer or end user on the basis of his own decision as well, or may conclude a voluntary agreement with the dealers of the product to promote return.

On the basis of the principle of shared responsibility, manufacturers may fully or partly confer their duties concerning the return or the voluntary return, on conditions provided for in a separate legal rule, in the form of an agreement, to a dealer or waste operator authorised for such activity. The agreement shall be put forward to the environmental authority for approval.

Manufacturers shall take care of the waste originating from their operations as well as the waste taken back in the same way as the holder of the waste is obliged to do.

Based on an agreement, manufacturers may permit the marketing of their product on the condition that the dealer undertakes the obligation of returning the spent products with the refund of deposit. Manufacturer shall take back from the dealer the products that were given out against deposit as well as the wastes of such products, and shall refund the deposit to the dealer.

Product marketing is legally bound to the payment of deposit. Rules of the determination and application of deposits are provided for in a separate legal rule.

Duties of the dealer

Distributors shall ensure the return (from the end users) and separate collection of the products marketed (sold, repaired, serviced) by them on the basis of an agreement as well as the packaging or waste of these products, and shall deliver the above to the manufacturer or waste operator authorised for such activities.

The dealer may take back, with or without deposit, products, their packaging and waste from end users on the basis of his own decision as well provided that he ensures the treatment and recovery of waste in accordance with the relevant rules.

¹⁸ Government Decree number 264/2004. (IX. 23.) On taking back waste electric and electronic equipment; Government Decree 267/2004. (IX. 23.) on end-of life vehicles; Gov. Decree 109/2005. (VI. 23.) on taking back of batteries and accumulators.

Dealers shall take back from the end user the used product, packaging or waste for which the end user has paid a deposit and shall refund the deposit to the end user. Independently from the manufacturer, the dealer himself also may apply the deposit system to encourage return.

The dealer, the manufacturer and waste operator may fix in contract the methods and conditions of the collection of used products or waste. At the point of sale, and according to the provisions laid down in the separate legal rules, the dealer may take back the waste of the products sold by him. No special permit shall be required for this activity.

In the event if the manufacturer fails to comply with the requirements set in the Act on Waste Management, the distributor shall be required to do so. This provisions shall have no bearing on the claims of the distributor which are enforceable against the producer.

Joint rules applying both to manufacturers and dealers

In order to perform their duties laid down in the Act, manufacturers and dealers may establish independent recycling coordinators or contract the services of such bodies to undertake obligations from the manufacturers and dealers against payment of a fee, under conditions fixed in contract, and shall organize and coordinate the collection and recovery or disposal of waste within their scope of activity.

The recycling coordinators shall be able to undertake obligations relating to waste management subject to the environmental protection authority's authorization. The environmental protection authority shall maintain a register of authorized recycling coordinators.

Duties of the end user

Based on the Waste Management Act, it is the duty of end users to employ the organised waste gathering systems, including those that gather waste separately.

Economic operators whose activity produces waste, are exempted from this obligation if they ensure the management of that waste according to the rules applying to the holder of the waste.

In cases specified in law, the end user shall return the products that became waste to those obliged or authorised to take them back.

Duties of the producer/holder of waste

Based on the provisions of the Waste Management Act, the producer/holder of waste shall collect the waste produced in the course of his activity or which entered into his possession by any other way, and ensure the recovery or disposal of such waste.

The producer/holder shall perform his duties related to recovery or disposal

- a) himself, according provisions laid down in legal rules, by means of appropriate recovering or disposing procedures, equipment, installations, or
- b) by conferring his duties to an operator authorised and licensed for such activities, and paying the costs of the waste treatment.

Acts, governmental decrees or, in case of municipal waste, local governmental decrees may oblige the producer/holder of waste to collect the waste separated by kind, to package and label the separated waste according to its composition and forward the pre-processed waste to the economic organisation or waste operator responsible for gathering.

If in the course of the operations of the manufacturer, dealer or end user waste is generated, the performer of the operations in question shall ensure the management of the waste according to the rules applying to the producer of the waste.

The transporter of waste is responsible for the safe transportation of the consignment to the place of destination.

The new Act on environmental product charges

The environmental product charges were introduced by Act LVI of 1995. Product charges involve certain goods considered to be directly or indirectly dangerous for the environment imported to or produced in Hungary.

Act LXXXV of 2011 on the Environmental Product Charge (hereinafter: Ktdt.) entered into force on 1 January 2012 and aims to collect necessary financial sources to prevent and/or repair environmental damages as well as promotes a significant improvement of waste recovery and reuse rate.

The environmental product charge¹⁹

Regulatory background:

- Act LXXXV of 2011 on the Environmental Product Charge (hereinafter: Ktdt.)
- Government Decree 343/2011 on the implementation of Act LXXXV of 2011 on the environmental product charge (hereinafter: vhr.)
- Act XCII of 2003 on the Rules of Taxation (hereinafter: Art.)
- Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter: Ket.)

The obligation applies to the following entities:

According to the general rules set out in Article 3 (1) of the Ktdt. upon putting into circulation of products subject to the product charge or in the case of the use of such for the user's own purposes the following are obliged to pay the environmental product charge:

- a) the first distributor on the domestic market or first user for its own purposes, of the product subject to product charge,
- b) in the case of other mineral oil product manufactured in Hungary the first buyer of the first distributor on the domestic market or its user for its own purposes, or
- c) in the case of toll manufacturing the client for whom the product subject to product charge is manufactured in the framework of toll manufacturing.

Products subject to product charge:

¹⁹ For more detailed information:

[http://en.nav.gov.hu/intormation_on_customs_matters/Environmental_Product_Charge/EPC_2012.html?query=environmental product charge](http://en.nav.gov.hu/intormation_on_customs_matters/Environmental_Product_Charge/EPC_2012.html?query=environmental%20product%20charge)

The product charge must be paid for the following products:

- a) rubber tyres;
- b) means of packaging, other packaging supplies (hereinafter collectively: packaging supplies);
- c) other mineral oil products;
- d) batteries;
- e) advertisement paper;
- f) electrical and electronic equipment.

Obligation to pay product charge stems from the following:

Obligation to pay product charge arises upon putting product subject to product charge into circulation or upon its use for the user's own purposes.

Putting into circulation is the first domestic transfer of the ownership of the product subject to product charge free of charge or for consideration, including transfer as part or component of another product as well as transfer of packaging supplies as part of packaging.

Use for the user's own purposes is the following, involving the product subject to product charge, including cases where it is present as a part or component of another product, or in the case of packaging supplies, as part of packaging:

- a) use for satisfying the obligor's own or its employee's private needs;
- b) use for the following the following, as specified in the act on accounting
 - basic research,
 - applied research,
 - research and development,
 - investment,
 - renewal, refurbishment,
 - maintenance;
- c) destruction, deformation, consumption;
- d) any other use not listed in a)-c) not resulting in the creation of own-produced inventories as specified in the Accounting Act;
- e) in the case of packaging produced abroad, the removal of the packaging from the product qualifies as the use of the packaging supply for the user's own purposes;
- f) in the case of the termination of the obligor without legal successor keeping ownership of product subject to product charge for which the product charge has not been paid, if the obligor
 - in the case of liquidation on the cut-off date of the liquidation closure balance sheet,
 - in the case of winding up (final settlement), on the cut-off date of the report closing the winding up procedure or
 - in the case of the discontinuation of the obligor without liquidation or final settlement of accounts at the time of discontinuation
- g) a deficit in the amount of the product subject to product charge exceeding 0.5 % of the mass of the product subject to product charge;
- h) destruction of the product subject to product charge, apart from destruction by some unavoidable external cause.

Obligation to pay product charge does not stem from the following:

- a) Placing in VAT tax warehouse, sale within the tax warehouse.
- b) Sale of product not in free trade according to the customs regulations.
- c) Sale of products subject to product charge abroad.
- d) In the case of natural persons the use of product subject to product charge by the user's own purposes, in a quantity not exceeding the amount required for satisfying personal needs.
- e) If a natural person puts products into circulation in the framework of any other than economic activities.

The basis and rate of the product charge:

The basis of the product charge is the mass of the product subject to product charge in kilograms with two digits to the right of the decimal point.

Product charges cover several financial elements, like the amount spent for waste management and development, and the sum paid for preventive measures and the amount sustained for compensate pollution.

The rate of the product charge is as follows:

- a) as a general rule, the result of the multiplication of the amount released (put into circulation or used for the user's own purposes etc.) in the reporting period by the charge rates set out in Annex 2 to the Ktdt;
- b) in the case of those opting for individual waste treatment it can be fixed depending on the individual waste treatment performance as detailed in Annex 3 to the Ktdt;
- c) in the case of those releasing small quantities of packaging, opting for flat rate payment it is HUF 12,000 a year;
- d) in the case of an agricultural producer opting for flat rate payment, if:
 - he starts his operations during the year under review it is HUF 5,000 a year,
 - he did not start the operation in the year under review and his net sales revenue does not exceed HUF 10 million, it is HUF 2,000 a year,
 - he did not start the operation in the year under review and his net sales revenue does not exceed HUF 50 million, it is HUF 7,000 a year.

The National Waste Management Agency²⁰

The National Waste Management Agency (NWMA) is a limited liability company whose main tasks are:

- to take part in the prevention of environmental pollution and waste generation,
- to organise and manage the waste collection and recovery of the waste products which fall under product fee regulation
- to assist the development of the relationship between human and environmental systems.

Organizations that coordinated recycling efforts so far, are replaced by the single state-owned NWMA. The NWMA will use the product charges paid to comply with the taxpayers' waste management obligations through services ordered centrally from waste management service providers.

²⁰ Source: <http://www.szelektivinfo.hu/en/>

NWMA is a nonprofit organization, which was established by Law LXXXV of 2011 on Environmental Product Fee. NWMA accomplishes its tasks, which are required by the legislation, within the framework of the following public benefit activities:

- collection and utilisation of the waste of the products which fall under the product fee regulation,
- implementation of the National Collection and Utilisation Plan (hereinafter: NCUP),
- monitor and analysis of the waste management process,
- support the development of the products which fall under the product fee obligation,
- contribution to environmental education,
- control the activities of its contractual partners , tenders and service orders in the product fee obliged waste management,
- according to the Product Fee Law §37 (2), spend at least 7% of the product fee revenue on environmental education,
- develop the waste management of products which fall under the product fee obligation.

Based on the communications of the Government, the main reason to establish NWMA was basically to operate the Hungarian selective waste collection, treatment and utilization in a transparent way which is based on uniform criteria. The required conditions were mostly provided for the accomplishment of the basic tasks determined in the Product Fee Law, however, the development of the organization as well as the necessary infrastructure is in progress. NWMA has already reached its presently most important professional objective as continued the public selective waste collection – which required financial support - without any obstacle by the contracts with public service providers. In the country it is expected to sign the contract with 120 public service providers for their services. The signature of the public procurement contracts with the industrial waste collectors is in progress.

NWMA's main task and objective is to establish an organised selective waste collection system in Hungary for the public and private sector with the help of a predictable, persistent and efficient collection, utilization and processing technique. This is based on the fact, that the NWMA receives state support for this year (16.5 billion Ft) for the promotion of selective waste management. The registration and the administration of the companies that are obliged to pay product fee are regulated by the National Tax and Customs Administration.

From 2012 NWMA has the executive right to coordinate and control the selective waste management in Hungary.

NWMA creates new basics in the national selective waste management system, which is based on the confirmation of the intellectuality and specification of the new Product fee legislation. One of the NWMA's goals is – compared to previous years - to have higher proportion and amount of the selective waste collected by public provider services. As part of implementation this target NWMA gives financial support to public provider services thereby contributing to fulfill the national and EU expectations. Consequently the system of selective waste collection, which is not economical in many cases, is compensated by the existing contracts.

Besides this NWMA promotes selective waste collection among the population and supports the activities which enhances environmental awareness and positively contribute to the environmental education of the public and industry sectors. Consequently a relevant improvement can be observed regarding to the amount and proportion of the selectively collected and transported waste.

According to the predicted assumptions of the public service providers this year NWMA estimates 80.000 tons of publicly collected selective waste which means 20-25% increase compared to the previous years. For this purpose 2.5 billion Ft financial support was allocated in 2012.

12.5 billion Ft resources are available for the industrial selective waste collection and utilization which is ensured by public procurement procedure.

In the drafting phase of the new legislation there has been number of concerns from the side of waste management industry and environmental organizations.²¹

Those concerns pointed out, that Hungary is lacking an effective National Waste Management Plan and a Waste Management Act fully in line with the EU WFD, the law is not in line with the manufacturers' liability principle, which form the basis in EU regulations related to waste management and the law establishes in effect a tax system which does not incentivize obliged companies to increase their environmental performance.

Answering a written question in the European Parliament in this regard the Commission explained,²² that Article 8, paragraph 1 of the WFD promotes the uptake of extended producer responsibility in Member States in order to strengthen the re-use and the prevention, recycling and other recovery of waste. In doing so, Member States may take legislative or non-legislative measures. According to this, the adoption of the new Hungarian measures seems to be in line with this provision according to the Commission.

According to Article 8 paragraph 3 however, the new Hungarian measure should take into account the **technical feasibility and economic viability** and the **overall environmental, human health and social impacts** respecting the need to ensure the proper functioning of the internal market.

²¹ <http://www.endseurope.com/docs/110803a.pdf>

²² <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-006342&language=PL>

Conclusions

The debate relating to the new Hungarian waste management legislation and the reasoning of the Commission highlights, how controversial certain measures can be, approached from different perspectives of the parties concerned.

The original aim of the polluter pays principle would be to stimulate a policy of pollution abatement by encouraging polluters to reduce their emissions instead paying charges. In the same time, the principle aims at correcting market failures as well: the costs of pollution need to be reflected in the price of services and products and be borne by the polluters and not the society at large.

In the same time, the practical enforcement of the principle would create an incentive for producers to place on the market environmentally friendly products.

Implementation and enforcement of the EU waste related legislation would be much effective, if those principles of environmental protection like the polluter pays principle or the producer pays principle would more prevailed in daily practice of Member States as well.

The Court of Justice of the European Communities have an extended case law²³ on the implementation of the polluter pays principle, even in the territory of waste management.

Due to the European legislation the polluter will be the final holder of waste. It is possible to devolve liability to other actors based on the polluter pays principle, however according to the Court of Justice of the European Communities, this requires contribution to the risk of the pollution occurred.

In our point of view, by considering the development of the European policy on waste, a more detailed guidance for Member States on the proper application of the principle would be needed to enhance the appropriate application of this principle. Further development of the EU waste policy shall concentrate on those measures which aim to prevent pollution (e.g. by the proper enforcement of the polluter pays principle) rather than concentrating on ex-post measures.

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²³ C-254/08; C-188/07; C-365/97 etc.