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The new Polish deposit-refund system on plastic, glass and aluminium packaging

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15 November 2022

The new Polish deposit-refund system on plastic, glass and aluminium packaging

Agenda

- 1) Regulatory background: current obligations and planned EPR reform
- 2) General model of the planned deposit-refund scheme
- 3) Entities affected: producers, importers, distributors; scope of products covered by the scheme
- 4) Scope of the new obligation for different actors
- 5) Entry into force – surprisingly complicated intertemporal provisions
- 6) Suggestions and recommendations

**Regulatory
background**

**Current obligations of entities placing
packaged products on the market**

Current obligations

ustawa z dnia 13 czerwca 2013 r.

o gospodarce opakowaniami i odpadami opakowaniowymi

- *Placing products on the market* – any supply of a product for distribution or use in the course of a commercial activity, whether in return for payment or free of charge for the first time within the territory of a Member State; this includes:
 - import and intra-Community acquisition;
 - running a retail unit of certain retail area (500 m² / 5,000 m²) and selling products packed in the unit;
 - packing products manufactured by another entrepreneur and placing them on the market;
 - placing on the market products manufactured by another entity under one's own name or trademark.
- The trans-boundary dilemma – can a foreign entity be covered by EPR obligations?
 - general principle – the first passing of a product within the Polish territory;
 - in practice the authorities rarely question the choice of the entity responsible, as long as all the statutory obligations are correctly fulfilled.
- *de minimis* derogation – when the mass of packaging is less than 1 Mg and a respective application is filed no later than 15 March each year.

Current obligations

ustawa z dnia 13 czerwca 2013 r.
o gospodarce opakowaniami i odpadami opakowaniowymi

- Current obligations of *entities placing packaged products on the market*:
 - meeting the general (and quite liberal) criteria for packaging – such as maximum sum of the heavy metal content: lead, cadmium, mercury and hexavalent chromium;
 - being entered into the Waste Database (BDO) before starting the activity, paying the registration fees required;
 - placing the registration number on documents related to said activity (such as VAT invoices, sale and purchase agreements);
 - distributing only packaged products placed on the market by an entity who is entered in the register;
 - keeping records on the weight of packaging used in a given calendar year.

Current obligations

ustawa z dnia 13 czerwca 2013 r.
o gospodarce opakowaniami i odpadami opakowaniowymi

- Current obligations of *entities placing packaged products on the market*:
 - meeting the specified levels of recycling of waste packaging of the same type as the packaging used;
 - conducting public educational campaigns;
 - submitting an annual report on products, packaging and management of waste;
 - three aforementioned obligations may be fulfilled either independently or by concluding an agreement with a recovery organization.
- Separate rules for hazardous and composite (multi-material) packaging
- Separate obligations of retail trade units (i.a. collecting a recycling fee for plastic shopping bags)

**Regulatory
background**

**Planned Extended Producer
Responsibility reform**

Planned EPR reform – EU level

Circular Economy package

- Directive (EU) 2018/849 of the European Parliament and of the Council of 30 May 2018 amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment
- Directive (EU) 2018/850 of the European Parliament and of the Council of 30 May 2018 amending Directive 1999/31/EC on the landfill of waste
- Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste
- Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste

Planned EPR reform – EU level

Directive 2008/98/EU, Article 8a(4)

- *Member States shall take the necessary measures to ensure that the financial contributions paid by the producer of the product to comply with its extended producer responsibility obligations cover of separate collection of waste and its subsequent transport and treatment, including treatment necessary to meet the Union waste management targets, and costs necessary to meet other targets and objectives [...] taking into account the revenues from re-use, from sales of secondary raw material from its products and from unclaimed deposit fees [...].*
- *Said costs shall not exceed the costs that are necessary to provide waste management services in a cost-efficient way. Such costs shall be established in a transparent way between the actors concerned.*

Planned EPR reform – EU level

Single-Use Plastics directive

- Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment
- Set of restrictions set *to prevent and reduce the impact of certain plastic products on the environment*, including:
 - separate collection rates for beverage bottles – 77% in 2025; 90% in 2030;
 - *in order to achieve that objective, Member States may, inter alia, [...] establish deposit-refund schemes;*
 - beverage bottles from polyethylene terephthalate ('PET') in 2025 should contain at least 25 % recycled plastic, calculated as an average for all PET bottles placed on the market on the territory of that Member State; and at least 30% in 2030.

Planned EPR reform – national level

Extended Producer Responsibility act

- *Projekt ustawy o zmianie ustawy o gospodarce opakowaniami i odpadami opakowaniowymi oraz niektórych innych ustaw (UC 81)*
 - first draft published on 5 September 2021, no new documents since then;
 - March 2022: press comments from the government officials on necessity to avoid measures that may result in inflation increase; *further steps depend on the political decision*;
 - declared entry into force: 1 January 2023;
 - general aim: ensuring that the producers do finance the management of packaging waste.
- Clear separation between *non-household packaging* system (similar to the *status quo*, with a set remuneration for *recovery organizations*) and *household* packaging system (+ an extra fee)
- Fee rates should promote ecomodulation
- Obligation to label the packaging with an indication of the proper selective collection of waste

Planned EPR reform – national level

Single-Use Plastics act

- *Projekt ustawy o zmianie ustawy o obowiązkach przedsiębiorców w zakresie gospodarowania niektórymi odpadami oraz o opłacie produktowej oraz niektórych innych ustaw (UC 73)*
 - first draft published on 1 April 2021;
 - final stage of governmental legislative works;
 - planned entry into force: 14 days from the promulgation date;
 - most obligations apply from 1 January 2023.
- Based on the provisions of the SUP Directive
- The bill divides single-use plastic products (in particular: food packaging) into several groups, which, depending on their classification, are subject to: market restrictions / labelling obligations / *product fee* / *catering fee* / obligation to finance educational campaigns

Planned EPR reform – national level

Deposit-Refund Scheme act

- *Projekt ustawy o zmianie ustawy o gospodarce opakowaniami i odpadami opakowaniowymi oraz ustawy o odpadach (UC 98)*
 - first draft published on 31 January 2022;
 - most recent draft published in October 2022;
 - final stage of governmental legislative works;
 - planned entry into force: early 2023 – 2025 (to be elaborated).

Deposit-refund scheme

How will it work?

How will it work?

Main European models

- Scandinavian (most popular in the EU) – one central operator, controlled (usually) by trade organizations
 - Croat variation – one central operator, controlled by the public administration
- **German** – multiple competitive operators with one coordinating body
 - **Polish variation** – multiple competitive operators with no (?) coordinating body

How will it work?

Operators

- Each operator should:
 - cover the (whole?) national territory;
 - ensure universal and equal access for end users;
 - ensure universal and equal access for entities placing packed beverages on the market, for retailers and wholesalers;
 - not require presenting a receipt while returning the empty packaging / packaging waste.
- An operator does not have to cover all three types of packaging in his system
- An operator should meet a set of formal requirements, including not-for-profit activity
- An operator must file a detailed application to the Ministry of the Climate and the Environment and obtain a permit.

How will it work?

General overview

- Each *entity placing packed beverages on the market* concludes an agreement with an operator and pays his remuneration
- End user brings an empty bottle to a shop and gets a deposit return
- Bottles are collected from the shop by an operator (or his local contractor)
- Operator covers the operational costs (?)
- Empty glass bottles are legally owned by the *entities*; other waste is legally owned by the operator himself
- Profits from the waste management are used to finance the system
- Operator meets the required collection rates – or pays 50% of the product fee (the other 50% is paid by the *entity*)

Deposit-refund scheme

Who will be affected – and how?

Who will be affected?

Producers and importers

- Entities placing packed beverages on the market – i.e. entrepreneurs **placing** on the market packed beverages that use one of the packaging types listed in the annex 1a:
 - single-use **plastic** bottles with a capacity up to 3 litres
including their caps and lids but not glass or metal beverage containers that have caps and lids made from plastic;
 - aluminium cans with a capacity up to 1 litre;
 - **reusable** glass bottles with a capacity up to 1,5 litres.
- *A beverage is a liquid intended for **direct consumption**, without a need for further processing; in particular: water, juice, nectar, **milk**, **yoghurt** or other drinking milk products, alcoholic beverage*
 - derogations for pharmaceutical and medical products and liquid food for special medical purposes, as defined in specific provisions.
- Derogation for *direct placing* (beverages reusable glass, exchanged in the purchase process)

Who will be affected?

Producers and importers – the scope of obligations

- Meeting the collection rates (within the deposit-refund scheme):
 - 2025 – 77%
 - 2026 – 81%
 - 2027 – 84%
 - 2028 – 87%
 - 2029 – 90%
 - rates are based on mass of packaging of products placed on the market **on the same year**;
 - failure to meet the collection rates (or to conclude the agreement with an operator) results in obligation to pay a product fee.
- Concluding a written agreement with an authorised operator (for each type of packaging):
 - the agreement must indicate financial contribution to the system and dates of payment;
 - the agreement should be archived for the 5 years following its termination.

Who will be affected?

Producers and importers – the scope of obligations

- The contracted operator should be indicated in the *entity's* Waste Database entry
- The contracted operator is responsible for filing the annual reports for his clients
- Providing the contracted operator with the necessary data, in particular with data on mass of the packaging placed on the market in the calendar year
- Labeling the packaging with a visible square including the word KAUCJA and the deposit rate (as presented in annex to the bill):
 - any other labeling requirements – such as QR codes?

Who will be affected?

Distributors

- Entrepreneurs running a retail or wholesale trade unit, in which the end-users are offered packed beverages covered by a deposit-refund scheme, of a sales area of:
 - up to 200 m² – are obliged to at least collect the deposit;
 - more than 200 m² – are obliged to at least collect and return the deposit, as well as collect empty packaging and waste packaging.
- Restaurants?
- Do the packagings have to be collected in the *trade unit* itself?
- What does *returning the deposit* mean?

Who will be affected?

Distributors – the scope of obligations

- Concluding an agreement with any interested operator (this goes both ways) on:
 - rules for *settling* the deposit;
 - rules for collecting and passing packaging and waste packaging – if such are collected;
 - the agreement should be archived for the 5 years following its termination.
- Keeping a record (if applies) on:
 - a number of deposit products bought and sold;
 - a number of packaging and waste packaging returned by end users;
 - amount of deposit collected, returned and not-returned;
 - the records should be archived for the 5 following years.

Who will be affected?

Distributors – the scope of obligations

- Placing a visible information on conditions and procedure of returning empty packaging and waste packaging and the possibility to get the deposit refund
- Obtaining a collection permit? – no (*unprofessional collector*)
- Reporting the mass of collected waste to the municipality – maybe (?)

**Deposit-refund
scheme**

Other unknowns

Other unknowns

at least the obvious ones

- Deposit rates
 - set by the Ministry, no higher than 2 PLN
- Product fee rates
 - set by the Ministry, no higher than 25 PLN per each missing kg
- VAT for unreturned deposits?
 - Ministry declares derogation
- Deposit payment – whole supply chain or just the last transaction?
 - probably to be decided by each operator

Deposit-refund scheme

What is the timeline?

What is the timeline?

It's complicated

- Adoption of the law – unknown
 - our guess: no later than spring 2023
- Entry into force – one month after the promulgation date
- First collection rates – 2025
- Packaging used for placing beverages on the market directly before the date of joining a deposit-return system can be used up to their consumption, return or exhaust of supplies; deposit for such packagings is not collected
- Annual reports to be filed for the first year of system's operation

Deposit-refund scheme

Suggestions and recommendations

Suggestions and recommendations

Noteworthy issues – importers and producers

- Verifying the possibility to avoid the status of *entity placing packed beverages on the market*
- Key decision – choosing the right operator:
 - lowest price vs. highest chance to meet the collection rates;
 - guaranteed access to the raw materials?
 - labelling requirements?
 - civil responsibility for the other 50% of the product fee?
 - *universal and equal access.*
- Setting the optimal date of joining a deposit-return system
 - restocking the storehouses before concluding an agreement?
 - collection rates are referred to the packaging placed on the market in the same year.

Suggestions and recommendations

Noteworthy issues – retailers and wholesalers

- Sales area up to 200 m² – voluntary access may be worth considering
- Negotiating contract terms with the operators:
 - both parties are obliged to enter the contract with each other under a threat of administrative fine;
 - the law does not specify the terms of such contract;
 - *universal and equal access*.
- Setting the reporting obligations with a contracted operator.

Thank you for your attention



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