

1. Waste management:

1.1. The new Act of 14 December 2012 on waste (which replaces the currently applicable act of 2001) transposes the Directive 2008/98/EC and other directives of the European Union (in whole or in part). In comparison to the previous provisions, the objective scope of the Act has been extended to cover by-products as well as substances or objects which have lost their status as waste. New definitions have been introduced, whose wording stems from the framework directive. A conceptual network and existing mechanisms for waste management have been clarified.

1.2. The new Act of 10 May 2013 on packaging management and on packaging waste transposes the Directive 94/62/EC. The aim of the new provisions is to ensure the smooth functioning of the system of packaging waste's recycling, guaranteeing that objectives set out in that Directive be achieved and that the packaging waste recycling system be tightened up.

The Act will replace the existing act on packaging and on packaging waste of 2001 and, in part, the provisions of the law on entrepreneurs' duties in the field of management of certain waste and on the product fee of 2001, incorporating them into the new Act (consolidation).

1.3. An amendment (of 2011) to the Act on maintaining cleanliness and order in communes, which introduces **a new system of communal waste management**, which is designed to ensure¹: tightening up municipal waste management system; keeping the separate collection of municipal waste "at a source"; reducing the amount of municipal waste to end up in landfills; increasing the number of modern installations for recovery, including recycling, and disposal of waste in a manner other than landfilling; the complete elimination of illegal landfills; effective monitoring of municipal waste treatment by both real property owners as well as by those engaged in waste collection from real property owners; the reduction of additional risks to environment arising from transportation of waste from places where it is created to recovery or disposal sites; division of voivodships into regions of waste management, in whose framework all activities related to the management of waste will be carried out.

The new system consists in that the communes take over real property owners' duties within the scope of the communal waste management and in moving away from the current system (consisting in real property owners' duty to sign agreements concerning collection of waste with an entity carrying out activity in this regard selected by individual owners. From 1 July 2013 liability for collection, transportation and disposal of waste will be borne by respective communes, and the owners must terminate the previous agreements upon giving notice – in order to avoid a double charge.

The new system involves the application of a number of duties on different entities (communes, entities that collect communal waste from real property owners, operators of sanitary fittings and water system, real property owners) guaranteed by a system of control and supervision, and administrative pecuniary fines.

Taking over liability for communal waste by communes means that municipalities are *inter alia* required to: (a) organize the collection of communal waste from property owners,

¹ A source cited: a justification of the draft of the amending act, published online at: www.sejm.gov.pl

(b) provide for construction, maintenance and exploitation of their own installations or of regional treatment installations of communal waste shared with other communes (a choice of an entity which will build, maintain and operate the regional waste treatment installation of communal waste shall come into being by way of a tender, under the terms and conditions set out in the Act on public and private partnership or in the Act on concessions for building works or services, a commune may do it on its own).

For taking over these liabilities, communes will charge on each real property owner a fee for management of communal waste, which is to cover operational costs of the system's functioning (costs of collection (understood as picking waste up), transportation, collection (understood as gathering waste), recovery, including recycling, as well as of disposal of waste) as well as the cost of administrative services connected therewith - the so-called garbage tax. If a commune fails to perform the duty of communal waste collection from real property owners, an owner is obliged to hand over communal waste, at the expense of the commune, to an entity receiving communal waste from real property owners, entered in a register of regulated activities.

A commune sets fees taking into account: the number of people living in a given commune, the amount of communal waste produced within the commune's territory, costs of the system's functioning, cases in which real property owners produce waste on an irregular basis / on a seasonal basis, segregation of waste.

The fee paid by real property owners to the commune is the product of: 1) the number of people living in a given real property or 2) the amount of water used in the given real property, or 3) the surface of the given residential premises. It is possible to differentiate rates depending on the area of the residential premises, the number of residents living in the given real property, collecting waste from rural or urban areas, as well as depending on the type of development.

The new regulations raise many doubts except one - each owner of a real property which is inhabited will have to pay 'the garbage fee' and its value will increase significantly in relation to the previous expenses borne by the owners arising from agreements stipulated by them with a selected (usually price-competitive) entity receiving waste.

2. Water protection:

The Act of 4 January 2013 amending the Act - Water Act and some other acts transposes the provisions of the Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for Community action in the field of marine environmental policy into the Polish legal system.

3. Nature / hunting:

The Act of 13 July 2012 amending the Nature Conservation Act, and some other acts carries out a further transposition of the Birds and the Habitats Directive in view of the complaints against Poland to the Court of Justice of the European Union (CJEU) and the CJEU's judgments in Cases C-46/11 and C-192/11; the national legislation *inter alia* expanded the list of reasons allowing for derogations from protection of species in relation to those set out in Article 9 of the Birds Directive and Article 16 of the Habitats Directive.

4. Feed:

The Act of 13 July 2012 amending the act on animal feed, which extends the date of entry into force of the prohibition of manufacturing, placing on the market or using genetically

modified feed and genetically modified organisms for feed use for purposes of animal nutrition from 1 January 2013 to 1 January 2017, which is to allow a thorough analysis of the results of research carried out by the Polish research institutes on the safety of such feed and is associated with bringing a complaint against Poland to the CJEU for breach of the regulation (EC) No 1829/2003 on genetically modified food and feed.

5. Case law

5.1. *EIA – and alternatives - II SA / Bk 788/12 – a judgment of the Voivodship Administrative Court in Białystok (25.04.2013)*

In the Court's opinion a duty to describe in a report on the environmental impact of a venture reasonable variants for implementation of the project, which would be alternative in relation to the applicant's proposal is a manifestation of the necessary consideration of the public interest, and of arguments of both the applicant and persons whose rights will be directly affected by the venture.

Given the absence of the required variants of the venture, the appeal body is not able to determine decision on environmental factors for the implementation of the proposed venture for the benefit of the investor.

5.2. *The Environmental impact assessment at the stage of investment legalization - II SA / Kr 1173/12 - Joined the Administrative Court in Kraków on 13.11.2012.*²

In the present case, an investor performed an investment consisting in the expansion of the ski station of the chair lift, artificial snowmaking system and lighting which belongs - under the law - to projects which could to have significant effects on environment.

The investor did not have a required building permit nor a required decision on environmental conditions, within whose framework an environmental impact assessment was to be carried out.

The dispute concerned *inter alia* a possibility of carrying out proceedings to issue a decision on the environmental conditions and an impact environmental assessment within their framework at the stage of legalization proceedings, and thus in a situation where one does not have to deal with an envisaged venture but with an already completed one.

According to the Court, adopting a position that the completion of an investment makes pointless the proceedings to issue a decision on the environmental conditions of approval for a particular investment and carrying out environmental impact assessment and therefore excluding the possibility of legalizing the completed ventures which is likely to have significant effects on environment, regardless of whether a venture completed in such a manner violates requirements within the scope of environmental protection or not, would result in unequal treatment of investors. This is for the fact that it would mean that implementing - without a building permit - an investment not covered by the duty to carry out a prior assessment of a venture's impact on environment or an assessment of the venture's impact on the Natura 2000 site - the investor could have legalized it, and carrying out, without

² This case, including others, was presented in the report which was prepared for the Bolzano Institute who coordinate project on: "*Integrated management of biological and landscape diversity for sustainable regional development and ecological connectivity in the Carpathians*".

a building permit, an investment that required such a prior assessment - the investor could have not legalized it, regardless of the impact such an already-completed investment could have had on the environment.

One may not - according to the Court - accept such an interpretation which would allow the legalization of ventures likely to have significant effects on the environment without the need to obtain a decision on environmental conditions and possibly without an environmental impact assessment prior to obtaining a "legalization decision".

Therefore, the court hearing the matter fully approved a position as to the possibility of carrying out an assessment of a venture's impact on environment or an assessment of the venture's impact on the Natura 2000 site for the venture, which had already been completed. According to the Court, the purpose of the Building Law Act's provisions concerning legalization of "illegal constructions" in the first place was not to "punish" investors, but above all to enable them to keep the already completed investments, if such investments did not violate the rules of substantive law and therefore above all if they did not violate the provisions of local plans (decisions on building conditions), technical conditions and provisions within the scope of protection of the environment. At the same time the Court rejected the view that the environmental impact assessment of an already completed venture would have resulted in a non-compliance with the provisions and objectives of the Directive 2011/92/UE. According to the Court, the Directive 2011/92/UE imposing an obligation to assess the impact of certain projects on the environment before they are granted an investment permission does not mean that performing such an assessment is always excluded after the completion of the investment, and in particular in the procedure of legalization of an already completed investment.

The court also noted that in general the vast majority of judicial decisions supported the view of the possibility to issue a decision on the environmental conditions after the completion of an investment.