



Waste management in CEE

CMS CEE German Desk



Table of contents

Introduction

Waste management in Central and Eastern Europe

5

Bosnia and Herzegovina

Waste management development

6

North Macedonia

Waste Management: current status and development possibilities

10

Poland

Implementation of the bottle return system

12

Russia

Waste reform poses challenges and opportunities for investors

14

Waste reform: administrative powers at federal, regional and local levels

Waste reform: financing issues

New approach to regulating extended producer responsibility

28

Slovakia

Information system for waste management

Extended packaging producer responsibility

Deposit System for Disposable Beverage Packaging

38

Turkey

Waste management: summary of legislation and practice

41

Doing business, Responsibly

42

About CMS



Waste management in Central and Eastern Europe

Modern consumer societies generate significant amounts of waste. The development and implementation of concepts for the treatment of this waste is a central task of infrastructure policy for them.

When, in the 1990s, the first Western European companies began to seriously grapple with issues of waste management and waste reduction, Eastern Europe passed through the state of upheaval. The socialist economic model clashed; the western model started its way to establishment, and the amount of waste promptly increased, albeit without being managed. Waste was simply dumped.

As time progressed, an awareness of the problem has arisen in the Eastern Europe as well. The need for the systematic management of waste is acknowledged everywhere, not least because of pressure from social groups who use protests to point out existing problems and failures. The possible solutions are diverse. In some cases, EU requirements are being implemented and transposed into national law; in some cases, independent concepts are being developed. Russia, for example, has launched a comprehensive and ambitious waste reform.

What all the concepts have in common is that they create a considerable need for investment. When waste is no longer simply dumped, it has to be separated, recycled, processed or destroyed. The techniques required for this often have to be purchased abroad. In many cases, the know-how for the operation of disposal concepts is not available locally either. In this respect, there are many opportunities for western companies in the industry to get involved.

CMS CEE German Desk – our group of German-speaking lawyers in Eastern Europe – has used the topic described as an opportunity to present and analyse the legal framework for waste management across countries. The result is a multifaceted picture of the possibilities of getting involved in this sector, which, however, also reveals the weak points of the various systems and thus points out risks.

This brochure is a compilation of articles on the topic of waste management in Central and Eastern Europe. It is available also in the German language. The presentation is neither encyclopaedic nor comprehensive. You can stay tuned on further waste management regulation in CEE by subscribing to our CMS Law-Now free information service at www.cms-lawnow.com. Our authors, who are all active in the field, are happy to answer any further questions you may have.

We wish you an exciting read!

Your CMS CEE German Desk



Bosnia and Herzegovina

Waste management development

This article aims to give a general overview of waste management development in Bosnia and Herzegovina, its reform in the recent past and investment opportunities that arise from the complexity of the country.

Bosnia and Herzegovina consists of two entities: Federation of BiH (FBiH) and Republika Srpska (RS). Brčko District (BD) is a third separate administrative unit under exclusive sovereignty of the state.

In Bosnia and Herzegovina, around 75% of the population is covered by a waste collection service, with coverage more or less complete in larger cities but dropping to very low levels in rural areas.

The entities play an important role in waste management development in BiH

Waste management development and implementation of the policies is the responsibility of the entities (FBiH and RS) and BD. Due to this, three institutions are responsible for developing and implementing waste management policy in Bosnia and Herzegovina:

- The Ministry of Environment and Tourism of the Federation of BiH,
- The Ministry of Physical Planning and Civil Engineering and Ecology of Republic of Srpska,
- The Department for Physical Planning and Proprietary Affairs of the Government of Brčko District.

The waste management regulation in Bosnia and Herzegovina is regulated by three main entity laws and their bylaws:

- The Law on Waste Management in the FBiH (Official Gazette FBiH 33/03, 72/09),
- The Law on Waste Management in the RS (Official Gazette RS 113/13 and 106/15),
- The Law on Waste Management in BD (Official Gazette BD 72/09, 25/04, 1/05, 19/07, 2/08 and 9/09).

The EU has recognized Bosnia and Herzegovina as a potential candidate country for accession. The obligations to be fulfilled to achieve this include, inter alia, harmonisation with (environmental) EU Directives. Therefore, the entities in Bosnia and Herzegovina (RS and FBiH) and Brčko District have adopted waste management strategies to improve and develop the waste management situation in Bosnia and Herzegovina.

The main strategic and planning documents are:

- Environmental Protection Strategy of FBiH for the period 2008 to 2018, the Waste Management Strategy of FBiH and Federal Waste Management Plan 2012 to 2017 (FBiH).

The FBiH is currently in the process of developing a new Environmental Protection Strategy for FBiH for the next planning period of 10 years and a new Federal Waste Management Plan to replace the one that expired in 2017. Also, in FBiH, the cantons

develop their own strategic documents on waste management as part of their legal obligations arising from the Law on Waste Management.

- Solid Waste Management Strategy 2017 to 2026 (RS),
- Environmental Protection Strategy for the period 2016 to 2026 (BD).

Beginning of waste management reform and the current situation

The waste management reform in Bosnia and Herzegovina started with the National Solid Waste Management Strategy in the year 2000 as part of the EU Phare Programme. The Phare Programme is one of the three pre-accession instruments financed by the European Union to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union.

The National Solid Waste Management Strategy started the regionalisation concept in Bosnia and Herzegovina, which later became part of the laws regulating waste management in the entities and BD. The regionalisation concept in Bosnia and Herzegovina prescribed that the country requires 16 sanitary landfills.

There are several active regional sanitary landfills in Bosnia and Herzegovina: Smiljevići Sarajevo; Ramići Banja Luka; Brijesnica Bijeljina; Mošćanica Zenica; Uborak Mostar; Crni vrh Zvornik; Eko-sep Živinice (still under construction) and Kurevo, Prijedor (still under construction). However, the number of non-compliant municipal landfills and illegal dumpsites is still high. Also, the country is lacking facilities to dispose of special waste categories, which usually end up at municipal landfills threatening human health and the environment. Current recycling rates are far lower than those achieved in other European countries. The high number of illegal dumpsites, low recycling rates, and number of non-compliant municipal landfills threatens the environment, climate change through pollution and human health in general.

According to the 2018 reports by the Agency of Statistics Bosnia and Herzegovina, the waste management situation is described by the following indicators:

- Estimated quantity of municipal waste generated in 2018: 1,243,973 tons, i.e. 355 kg per capita annually, or 0.97 kg per capita per day.
- In 2018, public transportation collected 920,540 tons of municipal solid waste, which is 0.7% more than the previous year.
- In the total amount of collected waste, mixed municipal waste accounts for 90.9%, separately collected waste – 4.0%, waste from gardens and

parks – 3.1%. and packaging waste – 2.0%.
— In 2018, 957,494 tons of waste was disposed at landfills, which is 0.7% more than the previous year.

1,243,973 tons
of municipal waste generated in 2018

957,494 tons
of waste was disposed at landfills

Progress and problems in the sector

The solid waste management sector in Bosnia and Herzegovina has made great strides in recent years. First, the concept of regional waste disposal has been developed in Bosnia and Herzegovina and is currently being implemented. Also, in addition to the legislation, which has been significantly improved in the recent past in both entities, certain funds have been invested in the appropriate infrastructure to establish and develop an integrated waste management system.

Despite this progress, significant problems remain in the sector:

- Prices of household services are not sufficient to cover the costs of waste collection;
- Low private sector interest because of the high financial risk due to non-payment of households to waste collection companies;
- There is no separation, recycling or treatment of waste (with some minor exceptions);
- Municipalities are responsible for implementing municipal waste management policies, but lack the funds to invest, raise public awareness and build capacity to improve waste management;
- Institutional incapacity at national and local level as well as lack of cooperation at the entity and local levels; and
- Lack of reliable data due to highly complex government structure.

Investment opportunities and future of the waste management development in Bosnia and Herzegovina

The entity strategies also address the financial aspect in the waste management system and envisages two possible sources of funding: public and private sources.



Public sources of financing according to the strategies are, in addition to the entity bodies, inter alia, loans from banks and international financial institutions (World Bank, European Development Bank, European Investment Bank, etc.).

Private sources of financing are private investments in waste collection and recycling equipment (bins, containers, vehicles, etc.), private investments in facilities for the treatment of separately collected waste for recycling or special treatments (composting plants, sorting plants, paper production plants, plastics, glass, plants for the treatment of special types of waste), private investment in equipment and facilities for transport and treatment and etc.

Bosnia and Herzegovina has certain aspirations for the future of waste management and has expressed a political commitment to join the EU. Bosnia and Herzegovina will gradually have to meet high environmental and sectoral targets and must develop more advanced initiatives related to separate collection and treatment, within the EU environmental framework.

For more information on opportunities in waste management in Bosnia and Herzegovina, please contact our expert:



Ana Terzić
Senior Associate

CMS Bosnia and Herzegovina

T +387 33 944600
E ana.terzic@cms-rrh.com



North Macedonia

Waste management: current status and development possibilities

To improve the conditions for large investments, attract foreign and domestic capital, increase competitiveness and employment, as well to protect the environment and Macedonian citizens' quality of life, it is very important to have an accurate picture of the current status of waste management and potential development possibilities.

The general waste management policy framework has been established and determined by the Law on Waste Management ("**Waste Management Law**"), which provides the legal ground for the adoption of several bylaws and some significant main policy documents, as follows:

- Waste management strategy – To define long-term needs in the field of waste management, as well as the necessary legislative measures required to implement them;
- Waste management plan – Assesses the current situation, providing basic recommendations, activities, and investments, as well as funds and financial mechanisms in the waste management process for the next six years;
- Waste management programmes – Prepared for each year and adopted by the Ministry of Environment and Physical Planning and by the local self-government units involved in waste management; and
- Waste management programmes – Prepared for each of the three-year periods that legal entities and individuals are involved in waste management.

The current legislation on waste management is based on the concept of hierarchy in waste management. This means that ideally waste should be prevented altogether, and what cannot be prevented should be reused, recycled, or recycled as much as possible. Landfill should be used as little as possible as it is the worst option for the environment and entails a loss of resources.

The hierarchy in waste management should not be considered an easy-to-reach, quickly achievable goal, especially given the many methods of waste treatment, all of which have different environmental impacts. However, the goal of moving towards waste recovery and recycling involves a hierarchy in waste management that reduces landfill use.

Preventing the generation of waste is crucial because reduction also means reducing the need to collect and treat waste, both of which correspond to costs and environmental impact. Preventing the generation of waste involves using materials, goods, services in such a way that their production, use, reuse, recycling results in the least amount waste possible.

Perhaps the biggest challenge is establishing an appropriate waste recycling cycle. Incinerating waste to produce energy is another way avoiding landfills. Disposing of waste in landfill is the option of last resort the waste management hierarchy but is still the most common method used in our country. Landfills in our country are often improperly managed and do not meet the minimum standards in terms of environmental and

human health. It is a great challenge to meet certain standards in landfill construction and to close improperly managed and maintained sites.

In practice, the tasks and competencies in the field of waste management are divided between several institutions in the country, where there is little overlap between several government institutions or between government and municipal institutions. The preparation, adoption, and implementation of primary and secondary legislation must be carried out jointly or in cooperation with other ministries, bodies, municipalities, the product/service sector, and other stakeholders, but there seems to be some ambiguity regarding roles and competences, as well as a lack of communication and coordination.

Waste management in our country is still a problem, because the amount of waste is constantly growing, and legislation in some cases is poorly implemented.

However, as a developing country in this area, the overall general and specific strategic goals must reflect the obligations of the whole of Macedonian society regarding the significant, equally important, and closely interrelated changes in waste management, such as:

- harmonising policies and legislation in the field of waste management;
- establishing an effective institutional and organisational set-up;
- strengthening human resources capacities;
- introducing stable financial resources and appropriate economic mechanisms to ensure full cost recovery for the maintenance of the integrated waste management system;
- establishing a technically modern waste management system;
- applying efficient and cost-effective techniques for managing separated waste streams; and
- gradually closing and/or remediating existing municipal landfills and/or industrial ecological hotspots.

The main purposes of developing waste management policies are to reduce the negative impact on the environment, increase awareness of waste management, and provide conditions for balanced regional development in the field of waste management. It is possible to expect that by achieving these goals, Macedonia will create better conditions for and hence encourage and attract investments in North Macedonia in the field of waste management, investment that should result in economic growth, employment, and the application of new technologies and innovations. With this development, the potential investors could kickstart a large investment cycle in the country, not only at the state but also the local level. This could have a positive impact on the country's competitive advantage, as well as the well-being and living conditions of Macedonian citizens in general.

For more information on opportunities in waste management in North Macedonia, please contact our expert:



Marija Filipovska
Partner

CMS North Macedonia

T +389 2 3153800
E marija.filipovska@cms-rrh.com



Dusan Bosiljanov
Attorney-at-law

CMS North Macedonia

T +389 2 3153800
E dusan.bosiljanov@cms-rrh.com



Poland

Implementation of the bottle return system

In Poland, the introduction of a plastic bottle return system is more and more frequently discussed as a possible tool in order to meet requirements of the European waste law especially the ones implementing the circular economy. There is a lot of issues to be settled, among others producer responsibility or necessary infrastructure, which should be widely available for consumers.

In 2018, the European Commission amended the EU's waste directives. Recycling targets to be achieved by the Member States have been redefined. This forces the national regulations to be adjusted in order to comply with the stated aims.

Poland is obviously one of the countries obliged to implement the abovementioned regulations, also entailing the extended producer responsibility. One of the possible ways leading to the facilitation of a circular economy is to introduce a bottle return system ("BRS"). The implementation of this instrument remains a complicated process. It is necessary to define its shape, operating rules, issues related to financing and impact on the currently existing solutions. The BRS will be introduced for both plastic, metal and glass packaging.

Waste management requirements under the EU law

EU regulations impose the following obligations on Poland:

- the recycling of 65% of municipal waste by 2035;

- reducing to 10% or less the total amount of municipal waste by 2035;
- the recycling of 65% by 2025 and 70% by 2030 of all packaging waste;
- the recycling of 55% by 2030 of plastic packaging;
- the amount of collected waste single-use plastic products should be equal to 77% by 2025 and 90% by 2029 of such single-use plastic products placed on the market in a given year.

Moreover, the EU law requires the Member States to introduce extended producer responsibility mechanisms. However, the EU law enables the Member States to fulfill the requirements in their own manner, introducing the general framework only. It is up to the Member States to define the legal regulations necessary to achieve the objectives of EU law.

One of the possibilities is the introduction of the BRS. BRS's task is to encumber entities placing products on the market with a responsibility for packaging waste.

BRS in some Member States

The BRS is successfully used in many European countries to achieve successful waste collections. Each of the countries freely decides on the amount of the deposit, but the system is basically based on the same scheme. Each producer must join to the system and pay the appropriate operator administration fee. The operator, who is the entity operating the BRS, collects packaging

from stores and hands them over to recyclers, also settles fees from entrepreneurs. The products placed on the market are subject to a deposit, which is arbitrarily adjusted by countries to national conditions. The customer first has to pay the deposit fee, which is already included in the product or pays it separately for the product. The deposit is returned when the empty packaging is returned to the point of return. So far, 10 European countries have introduced a BRS, including Germany. In the coming years, the countries that plan to introduce BRS include i.a. Latvia, Romania and Slovakia.

Poland has not yet formally decided on BRS nor its shape. However, the Polish Ministry of Climate and Environment has been publicly informing about possibility to implement BRS and recently it had announced that the BRS will start operating from January 2022. There is no doubt that the current legal regulations in Poland remain insufficient and it is necessary to properly introduce the appropriate mechanisms allowing the BRS to operate. These issues should be regulated by the relevant legal acts. Crucial element is to create the function of a regulator that would be responsible, i.a. for determining fees on packaging placed on the market. The system will most probably apply to all product packaging, not only cartons or bottles. The BRS will be focused on the entities placing products on the market, who will be responsible for waste resulting from packaging and will co-finance the collection and treatment of waste generated in the municipal waste system. Moreover, an eco-modulation mechanism will be introduced – i.e. the rate of fees for producers will depend on whether the packaging is environmentally friendly – the more recyclable the product, the lower the price. Also the obligation to use recycled material for the production of bottles and separate collection of plastic drink bottles with a capacity of up to three liters will be introduced. The draft Polish regulations pertaining to the BRS should be presented soon.

Benefits

Among the numerous advantages of the BRS, such as shaping public awareness or reducing CO₂ emissions, the most important is the fact that the BRS would contribute to the transition to a circular economy. The BRS would certainly increase the number of reusable packaging produced while reducing the number of disposable packaging. Social research clearly shows that Poles are ready for changes and almost 90% of respondents would like to introduce the BRS on the market.

The coming months and the presentation of relevant bills will be decisive in shaping further changes and will be a step towards developing a circular economy. Certainly, these issues are worth monitoring as new business opportunities may arise out of them.

For more information on opportunities in waste management in Poland, please contact our expert:



Agnieszka Skorupińska
Partner

CMS Poland

T +48 22 520 8336
E agnieszka.skorupinska@cms-cmno.com



Marta Tarkowska
Attorney-at-law

CMS Poland

T +48 22 520 8467
E marta.tarkowska@cms-cmno.com



Russia

Waste reform poses challenges and opportunities for investors

Starting from 1 January 2019, Russia has been implementing a programme of “waste reform” to radically change its municipal waste-management system across the country. Many of the scheduled preparation and organisational arrangements have already been implemented or are in the pipeline.

Reform is lagging behind the declared targets, however, especially concerning the creation of necessary infrastructure.

In this situation, it is of paramount importance for Russia to adopt foreign solutions, in particular the European practice of solving such problems. In our opinion, these challenges open great opportunities for potential investors to implement projects in this field.

This article provides a general overview of ongoing Russian municipal waste management reform with more specific topics discussed in future articles. Our aim is to outline the legal and practical framework for players interested in entering the Russian waste market.

Background

During the almost 20 years that Federal Law No. 89-FZ “On Production and Consumption Waste” dated 24 June 1998¹ has been in force, landfills have remained the most common means of disposing of solid household municipal waste (“MSW”). The share of disposable (including recyclable) MSW from the total generated MSW, however, was small.

Moreover, the process of collecting, transporting and deploying MSW was poorly organised and insufficiently controlled by the state.

As a result, existing landfills have become critically overfilled, the number of unauthorised dumps has increased, and the overall situation with MSW management has deteriorated, especially in the Moscow Region and other major cities. In fact, the entire country is facing an environmental crisis.

Measures taken

In 2017 and 2018, the federal government adopted a number of organisational and legal measures aimed at resolving the situation.

As a result, at the end of 2017 Federal Law No. 503-FZ “On Amending the Federal Law “On Production and Consumption Waste” and Certain Legislative Acts of the Russian Federation” dated 31 December 2017² was adopted to initiate reform.

In 2018, pursuant to Executive Order of the Russian President No. 204 “On National Goals and Strategic Objectives of the Russian Federation through to 2024” dated 7 May 2018³, the Presidential Council for Strategic Development and Priority Projects and the Government of the Russian Federation developed an “Environment” national project introducing a federal “Comprehensive MSW Management System” for implementation by the end of 2024.

The main targets of this federal project include:

- an annual increase in the share of processed MSW from 3% (base value as of 1 September 2018) to 60% of the total generated MSW by 2024;
- an annual increase in the share of recycled MSW from 1% (base value as of 1 September 2018) to 36% of the total generated MSW by 2024; and
- the commissioning of 37.1m tons of MSW processing capacity by 2024.

Plans are in place to build 95 waste processing, recycling and neutralisation facilities, 150 MSW sorting facilities and 40 multi-purpose sorting facilities by 2025.

Main directions of the reform

The implementation of the main arrangements for the reform programme started on 1 January 2019 with the objective of arranging the MSW disposal process (including recycling) and separating the collection of waste in order to significantly reduce landfill waste.

To achieve these goals, each region (i.e. constituent entity of the Russian Federation), except for Moscow, St. Petersburg and Sevastopol where “waste reform” was postponed until 1 January 2022, is required to implement the following measures:

- prepare and approve a territorial waste (including MSW) management scheme, including the description of how waste management should be organised and conducted in each relevant constituent entity;
- select a regional operator, which will serve as the company responsible for MSW management process in the relevant region;
- approve regional MSW management tariffs for legal entities and individuals;
- build waste sorting and waste recycling facilities; and
- introduce a separate waste collection or accumulation system.

In connection with the initiation of this reform programme, powers have also been reallocated among regional and municipal authorities. For instance, administration of MSW management has been shifted from the municipal to the regional level. At the same time, municipalities have been authorised to set up and maintain MSW collection (i.e. accumulation) sites, to organise environmental education and form an environmental culture related to MSW management.

By contrast, federal authorities are responsible for prescribing the procedures for developing and approving territorial schemes of waste (including MSW) management, and for approving investment and production programmes in relation to MSW management.

Today, most regions of Russia have already approved their territorial waste management schemes, selected their regional operators and set relevant tariffs. Many regions are gradually introducing the system of separate (i.e. two-container) collection of waste. As a result, the key organisational arrangements are in a high degree of readiness.

The required regulations have been enacted at the federal level, and a federal scheme of waste (including MSW) management has been drafted. The draft is currently being finalised by experts and is being reviewed by regional authorities for approval by the end of this year.

Challenges and prospects

Despite the organisational and legal arrangements already in place, the problem of insufficient funding for the activities of regional operators remains the main obstacle in implementing “waste reform”.

It was initially intended that MSW management services would be paid through the approved tariffs, which will be charged to citizens and legal entities. In practice, the rates of such tariffs have been higher than payers had expected, resulting in regional operators regularly facing the problem of non-payment. During the current pandemic, the situation has only worsened. As a result, the Russian government has been forced to provide financial support to the most affected operators.

The lack of adequate funding also affects the investment part of the reform programme and, above all, projects for the construction of waste sorting and recycling facilities and related infrastructure projects.

In 2019, the Russian Environmental Operator was established as a special public company to coordinate the activities of regional operators and to ensure the implementation of MSW management measures. An important part of the company’s activities is financing investment projects in this area and attracting private investors.

In addition, existing projects are partially financed by federal and regional budgets. For example, seven of the planned thirteen waste recycling plants have already been built in the Moscow Region. A foreign investor in the Kaliningrad Region is implementing another project: a multi-purpose waste sorting plant and a waste landfill.

¹ http://www.consultant.ru/document/cons_doc_LAW_19109/

² <http://publication.pravo.gov.ru/Document/View/0001201712310021>

³ <http://publication.pravo.gov.ru/Document/View/0001201805070038>



In addition, the planned construction of four waste recycling plants in the Leningrad Region has been announced in connection with the approval of a territorial waste management scheme.

The current pace of construction, however, is not rapid enough to achieve the federal programme's objectives as mentioned above.

Consequently, this creates an opportunity for potential investors to implement projects in this area, especially in the creation of waste sorting and recycling plants and related infrastructure, and the supply and installation of necessary equipment.

Obviously, an investor's guaranteed returns remain an important prerequisite for investing in such projects. In this respect, involving a reliable public partner and a financing party in the project is of particular importance. We also believe that a concession agreement or a public private partnership agreement would best serve the interests of investors.

For more information on opportunities in waste management in Russia, please contact our experts:



Thomas Heidemann
Partner

CMS Russia

T +7 495 786 4049

E thomas.heidemann@cmslegal.ru



Dmitry Bogdanov
Senior Associate

CMS Russia

T +7 495 786 4021

E dmitry.bogdanov@cmslegal.ru

Waste reform in Russia: administrative powers at federal, regional and local levels

The “waste reform” process in Russia has reallocated powers for the management of municipal solid waste (“MSW”), resulting in the main powers for MSW management going to regional authorities.

Prior to the legislative amendments made as a result of “waste reform”, federal authorities were vested with powers that included, among others, setting requirements for waste disposal and landfill facilities and approving requirements for the composition and content of territorial schemes.

After the relevant amendments took effect, the federal authorities, instead of exercising the above powers, were authorised to set uniform requirements for MSW treatment, recycling, neutralisation and disposal facilities; to establish procedures for the development and approval of territorial waste management schemes and perform additional duties, such as approving a federal waste management scheme.

At the same time, the main powers for waste management have been vested in the constituent entities of the Russian Federation (i.e. the regions). These powers include establishing waste generation standards, administering MSW management; developing and approving territorial waste management schemes, etc. In addition, some competencies have been transferred from the municipal to the regional level, such as the administration of waste management.

As a result, “waste reform” is being concurrently implemented at the three levels of power: federal, regional and municipal. Competent authorities at each level are responsible for the reform’s implementation. In addition, a two-tier structure of operators has been introduced: the federal operator and regional operators. The federal operator manages I and II hazard class wastes while regional operators are in charge of III and IV hazard class wastes.

By 1 January 2019, all the Russian regions should have switched to the new system of MSW management under which regional operators are responsible for MSW collection, transportation, treatment, recycling, neutralisation and disposal on the basis of a regional programme and territorial waste management scheme.

However, as at 1 January 2020, only 78 out of 85 constituent entities of the Russian Federation had switched¹ to the new system, and three constituent entities, the federal status cities of Moscow, Saint

Petersburg and Sevastopol, have been given until 1 January 2022 to do so.

Federal level

At the federal level, “waste reform” is implemented by federal authorities, and in particular the Russian government and the Russian Ministry of Natural Resources and Environment.

The amendments have conferred the following powers on federal authorities:

- licensing collection, transportation, treatment, recycling, neutralisation and disposal of I to IV hazard class wastes;
- approving the procedure for developing and approving territorial waste management schemes;
- approving the procedure for developing and approving the federal MSW management scheme;
- approving the procedure for developing, approving and adjusting the investment and production programmes related to MSW management;
- establishing the procedure for considering disputes arising between regional authorities, federal authorities, the Russian environmental operator and the federal operator in relation to the development and adjustment of territorial waste management schemes;
- establishing the procedure for setting up, operating and upgrading the state information system for MSW accounting; and
- establishing the procedure under which the constituent entities of the Russian Federation are given for considering the recommendations of the Russian environmental operators when approving or adjusting a regional waste management programme.

I and II hazard class wastes have the most harmful impact on the environment and include mercury thermometers, arsenic salt waste, batteries, alkalis, acids and galvanic elements. In connection with this high degree of hazard, the collection, transport, treatment, recycling, neutralising and disposal of this waste have been transferred to the federal level. As a result, the above functions have been assigned to the federal operator for I and II hazard class waste management (the “**Federal Operator**”).

In addition, the Federal Operator maintains a state information system for the accounting and monitoring of I and II hazard class waste management and engages operators for this waste management under service

contracts in accordance with the federal scheme of I and II hazard class waste management.

The Russian government appoints the Federal Operator at the suggestion of the State Atomic Energy Corporation “Rosatom”. In November 2019, a federal state unitary enterprise, “Radioactive Waste Management Enterprise “RosRAO”, was appointed as the Federal Operator.

Also, in 2019 a public company, “The Russian Environmental Operator”, was established at the federal level to coordinate the activities of regional operators and ensure the implementation of MSW management measures. In particular, the Russian Environmental Operator is authorised to develop a federal waste management scheme and to review, at an expert level, territorial waste management schemes and, importantly, to attract private investors.

The Russian Environmental Operator performs the following main functions:

- participates in the activities of federal executive authorities, executive authorities of the constituent entities of the Russian Federation and local authorities to implement waste management legislation;
- enters into agreements within its competence with federal executive authorities, executive authorities of the constituent entities of the Russian Federation and local authorities;
- analyses the implementation of territorial waste management schemes in the constituent entities of the Russian Federation;
- conducts expert examinations of territorial waste management schemes and prepares recommendations to adjust these schemes;
- drafts federal and regional programmes of state support for investment projects;
- organises and provides financing for investment projects;
- provides guarantees or suretyships to private investors for the implementation of investment projects when approved by the company’s supervisory board;
- issues bonds to finance investment projects; and
- acquires, holds and disposes of shares in MSW management companies.

The Russian Environmental Operator’s activities have resulted in the expert examination² of territorial schemes of all regions of the Russian Federation, and the formation³ of “REO Radar”, a national system for monitoring each regional operator’s activities, which allows for feedback on the activities of regional operators to be left on a website or via a hotline.

Federal authorities now serve as an intermediary between regional authorities on the one hand, and the Federal

Operator and the Russian Environmental Operator on the other hand. Federal authorities also control and coordinate the actions of regional executive authorities through, first of all, the Russian Environmental Operator.

To attract investors, the Russian Environmental Operator plans to develop packaged offers for investments into the waste management industry and to issue “green bonds”. In other words, investors will have a wide choice of investment types.

As for the Federal Operator, there is also an opportunity for investment since the Federal Operator is authorised to engage I and hazard class II waste management operators under service contracts.

Regional and local levels

Regional level

As a result of the reform, the constituent entities of the Russian Federation acting through their administrations have been vested with a significant number of waste management powers, which in particular include:

- establishing waste generation standards and waste disposal limits;
- approving cap rates for MSW management;
- approving investment programmes related to MSW;
- receiving waste management reports from legal entities and individual entrepreneurs operating at III category facilities;
- approving the procedure for MSW accumulation;
- regulating regional operators’ activities; and
- developing and approving a territorial waste management scheme.

Moreover, the administration of MSW management (including collection, removal and recycling) has also been transferred from the municipal to the regional level.

As a result, most waste management powers are now vested with regional authorities.

At the level of the constituent entities of the Russian Federation, the functions of MSW collection, transportation, treatment, recycling, neutralisation and disposal have been assigned to regional operators. The status of a regional operator is assigned to a legal entity selected through a tender arranged by the administration of a constituent entity of the Russian Federation.

¹ <http://council.gov.ru/events/news/112538/>

² <https://tass.ru/nacionalnye-proekty/7087154>

³ <https://radar.reo.ru/>

Based on tender results, the executive authorities of the Russian regions enter into an agreement with the winning bidder, with the content of and procedure for entry into this agreement regulated by regional laws.

A regional operator's area of activities is determined in the territorial waste management scheme. The area of activities encompasses the entire territory of the constituent entity of the Russian Federation or a part of this territory, where the regional operator carries out its activities based on the agreement mentioned above.

The following criteria must be met to become a regional operator:

- being state registered in the Russian Federation;
- holding a valid licence for I to IV hazard class waste management;
- undergoing no liquidation proceedings, having against it no commercial court decision recognising it as insolvent or bankrupt and commencing bankruptcy proceedings;
- having no activities suspended as an administrative punishment under Russian law;
- having no outstanding liabilities for taxes, duties, late payment penalties, fines for violation of Russian tax laws or any other mandatory payments to the budgets of the Russian Federation for the past calendar year, which exceed 25% of the book value of the company's assets according to its financial statements for the most recent reporting period; and
- having a CEO, collective executive body members and chief accountant free of convictions (or expunged convictions) for any economic crimes.

To implement the provisions of "waste reform", certain obligations have been imposed on the regional operators, such as:

- accepting MSW in such volumes and in such places as set out in their MSW management agreement;
- ensuring transportation, treatment, neutralisation and disposal of accepted MSW in accordance with Russian law;
- providing consumers with information on MSW management;
- considering consumer complaints and requests; and
- taking necessary measures for the timely replacement of damaged containers.

The above obligations are provided for in a model MSW management agreement to be entered into by each regional operator with MSW owners.

Tariff-based payments for household and corporate waste disposal are the main source of financing for regional operators. However, Russian law provides for other sources of financing, such as regional and federal subsidies and the possibility to attract investment.

At the regional level, there are wide opportunities for investors to implement projects in the field of construction (e.g. building multipurpose waste sorting plants or setting up waste landfills).

Most Russian regions have already started to implement waste management reform. For example, although Moscow's transition to the new waste management system was postponed until 2022, Moscow amended⁴ legislation in July 2020 to comply with the Law on Production and Consumption Waste⁵.

In addition to introducing administrative liability for failure to comply with separate waste collection and accumulation requirements, amendments were made in part relating to the control authorities exercise over compliance with separate waste accumulation requirements. In addition to the Moscow City Department of Natural Resources and Environment, such powers have been vested⁶ in Moscow's associations of administrative and technical inspectorates.

In accordance with the announced postponement, the selection of a regional operator in Moscow was deferred until 2022. The reform suggests that, starting from 2022, there will be⁷ a uniform regional MSW operator responsible for coordinating all waste management processes.

Unlike Moscow, the Moscow Region held⁸ a tender and selected seven regional operators, which began operations in the region on 1 January 2019, each being responsible for its territorial cluster.

However, not all Russian regions have succeeded in implementing reform. This is often because of unbalanced tariffs and standards for MSW accumulation, and low collectability of payments, which could eventually lead to the bankruptcy of regional waste operators. For example, in five Russian regions (the Vologda and Chelyabinsk Regions, as well as Dagestan, Bashkiria and Chuvashia), regional operators are at risk of suspending operations due to financial difficulties, but will be able to avoid bankruptcy⁹ due to state subsidies allocated from both regional and federal budgets.

Four far eastern regions (the Jewish Autonomous Region, Transbaikalia, Kamchatka and Khabarovsk Krai) have also faced difficulties. The problems¹⁰ there are mainly due to the lack of sufficient official landfills for waste disposal and the lack of a necessary waste recycling infrastructure.

Despite the successful start of "waste reform" at the federal level and in certain Russian regions, other regions seem to be experiencing serious difficulties in implementing this reform. These regions appear unready to fulfil the main waste management powers they have been vested with.

Local level

The competence of local authorities in the field of waste management has been significantly reduced. In particular, the following previously conferred powers have been removed from the scope of their powers:

- arranging disposal and recycling of household and industrial waste;
- approving territorial planning documents (including territory cleaning schemes) for the relevant constituent entity of the Russian Federation;
- approving surcharges on tariffs charged by utility companies to ensure sources for implementing investment programmes; and
- approving investment programmes of utility companies.

Local authorities of urban settlements, urban districts and municipal districts have only been authorised to do the following: set up and maintain MSW collection or accumulation sites, determine location layouts for such places and maintain a register of MSW accumulation sites, and organise environmental education and the formation of an environmental culture related to MSW management.

The responsibility for maintaining the proper conditions of MSW accumulation sites is generally vested in the managing organisation of a residential building, in whose adjacent territory the site is located, subject to the land plot having been registered. If this is not the case, the responsibility for the MSW accumulation site is given to local authorities. Regional operators are, in turn, responsible for MSW collection, transportation, treatment, recycling, neutralisation and disposal.

Conclusion

In the course of the implementation of "waste reform", primary waste management powers have been vested in the constituent entities of the Russian Federation, which means that the regions will have more investment opportunities than they had in the past.

⁴ <https://www.mos.ru/authority/documents/doc/44251220/>

⁵ http://www.consultant.ru/document/cons_doc_LAW_19109/

⁶ <https://duma.mos.ru/ru/0/news/novosti/popravki-v-stolichnoe-zakonodatelstvo-vajnyiy-element-reformyi-v-sfere-obrascheniya-s-othodami>

⁷ <https://www.rbc.ru/business/06/08/2019/5d497209a7947263e9dc559>

⁸ <https://tbo.mosreg.ru/regionalnye-operatory>

⁹ <https://www.rbc.ru/business/17/09/2020/5f61ea029a79476135af2322>

¹⁰ <https://rg.ru/2020/01/16/reg-dfo/v-chetyreh-dalnevostochnyh-regionah-zatormozilas-musornaia-reforma.html>

That being said, federal authorities still play a role. For example, the responsibilities of the Russian Environmental Operator, which operates at the federal level, also include the implementation of investment projects.

As a result, investors who are interested in waste projects in Russia should work with authorities at both the regional and federal levels.

For more information on opportunities in waste management in Russia, please contact our experts:



Thomas Heidemann
Partner

CMS Russia

T +7 495 786 4049

E thomas.heidemann@cmslegal.ru



Dmitry Bogdanov
Senior Associate

CMS Russia

T +7 495 786 4021

E dmitry.bogdanov@cmslegal.ru

Waste reform in Russia: financing issues

One of the main objectives of “waste reform” in Russia that began in 2019 is the creation of sufficient production capacities for the processing and disposal of municipal solid (i.e. household) waste (MSW).

In addition to organisational and administrative measures, the achievement of this objective largely depends on the financial support of the reform programme.

This article covers the existing sources and forms of project financing, as well as additional newly announced support measures.

This material continues the series of our articles on the waste reform (which you can access below).

Main sources of waste-reform financing

According to various estimates, at the start of the reform programme the share of processed MSW was 3% of the total generated MSW. The rest of the waste remained unprocessed and was removed to landfills for disposal. In the course of the reform programme, it is hoped that the amount of processed MSW will increase to 60% by 2024.

Another target of waste reform is to commission MSW-processing facilities with a capacity of 37.1m tons by 2024.

According to the public company “Russian Environmental Operator”, which was established in 2019 specifically for the purpose of coordinating and ensuring the implementation of waste-reform measures, creating the necessary infrastructure for MSW management will require an investment of more than RUB 400bn (EUR 4.4bn).

According to the report¹ of the Minister of Natural Resources and Ecology, in 2019 Russia constructed 55 MSW processing facilities with a capacity of 6.4m tons per year in its 33 regions. The total investment amounted to RUB 28bn (EUR 311m).

There are several components of financial support for implementing reform and achieving the above goals:

- public investment at the federal and regional levels;
- the payment of tariffs by individuals and legal entities;
- the levy of environmental fees on producers and importers of goods under the existing extended product liability (EPL) scheme;

- private investments, including various forms of public-private partnerships.

Despite the availability of several possible sources of financing, overall there is insufficient financing available at the current stage of reform, and this fact jeopardises the ability to achieve the waste-reform programme’s stated objectives.

For example, a sharp increase in tariffs early in the reform process resulted in a decrease in their collectability. According to² the Russian Environmental Operator, by spring 2020 the total amount overdue to regional operators across the country reached RUB 50bn (EUR 555.5m). In fact, the actual proceeds from tariffs only cover part of the current operating expenses of the operators. It is obvious that in such a situation investment in new production facilities is out of the question.

The EPL system is also inefficient. The total amount of funds collected for Russia’s EPL system in 2018-2019 did not exceed RUB 3bn (EUR 33.3m) although the target was RUB 30bn (EUR 333.3m). This amount is also insufficient to implement the necessary projects.

The federal budget remains the main source of financing for MSW processing and disposal-infrastructure projects. However, the federal budget cannot fully finance reform. On the contrary, it has been proposed to actively seek private investors and gradually decrease the state’s participation. Moreover, the investments included in the federal budget for 2019-2020 either remain unutilised or are being channelled to support regional operators during the pandemic.

As a result, seeking private investment to create MSW processing disposal facilities and possibly thereafter eco technology parks is a growing priority. Another important issue is investment in waste-incineration plants.

Existing forms of financing

Federal level

As mentioned above, it is currently envisaged that waste reform will be financed mainly through federal subsidies provided from the federal budget in the form of asset contributions by the Russian Federation to the Russian Environmental Operator.

Furthermore, the Russian Environmental Operator is financing projects in the following ways:

- participation in investor charter capital;
- issuance, acquisition and disposal of bonds;
- provision of guarantees and sureties on loans, borrowings and other obligations for investors;
- participation in concession agreements, public-private or municipal-private partnership agreements.

An eligible investor must meet the following criteria:

- the investor will have no outstanding obligations to pay taxes, duties, insurance premiums, penalties, fines, interest and other mandatory payments;
- the investor will have no outstanding obligations to repay federal subsidies, return budgetary investments or other overdue debts to the federal budget;
- the investor is not in the process of reorganisation, liquidation, bankruptcy;
- the investor does not receive funds from the federal budget for waste processing and disposal purposes under other statutory regulations.

The financing is efficient if the ratio between the attracted private investments (including investor funds and borrowed funds) and the subsidy reaches at least RUB 2.46 (EUR 0.03) to RUB 1 (EUR 0.01) respectively.

However, as noted in a report by the Accounting Chamber of the Russian Federation, there is little demand among investors for the above forms of project financing by the Russian Environmental Operator.

Currently, there is no information about any investments by the Russian Environmental Operator in MSW management projects. Plans announced in mid-July 2020 to invest RUB 2.5bn (EUR 27.7m) in three waste sorting projects in the Moscow Region were never implemented.

At the same time, to attract investors, the Russian Environmental Operator plans to develop packaged offers for investments into the waste-management industry and to issue “green bonds”.

There are other measures to support investors at the federal level (i.e. keeping the environmental impact fee rate at the 2018 level, VAT exemptions for regional operators, allowing the use of MSW disposal facilities commissioned before 1 January 2019 and having no documentation required under applicable laws). None of these measures, however, are sufficiently effective. For example, keeping the environmental impact fee rate at the same level cannot compensate investors for the high costs of infrastructure development, and VAT exemption for regional operators does not allow them to account for payments made for the goods, works and services of their suppliers and subcontractors.

Regional level

Some regions of the Russian Federation have adopted

regional waste management programmes, including MSW management, which provide for support measures, such as investment programmes by regional operators for MSW management. For example, the Kemerovo Region and the Republic of Kalmykia have approved such investment programmes to support relevant regional operators.

It is obvious, however, that this type of support for investment activities cannot be regarded as universal or efficient since it is aimed at specific market participants (i.e. regional operators), and the amount of support depends largely on the financial condition and well-being of the region at that period of time.

Private investment

Against the background of the general inefficiency of state financing for projects, interest in the industry has been shown by fully or partially state-owned entities (e.g. the Russian Direct Investment Fund, Sberbank, Rosatom, VEB.RF).

An example is an agreement between the Russian Direct Investment Fund, Sberbank and a foreign investor on an investment in the construction of a waste sorting and disposal complex in the Kaliningrad Region through the acquisition of shares in a relevant company that entered into a 25-year concession agreement with the regional government.

Another example is the investment company “RT-Invest”, which is already constructing five waste-incineration plants in the Moscow Region and Kazan with a total value of over RUB 150bn (EUR 1.6bn), and agreed in May 2020 with Rosatom and a syndicate of banks in which VEB.RF participates to construct 25 more plants of this type across the country. This new project is valued at RUB 600bn (EUR 6.7bn), including RUB 200bn (EUR 2.2bn) to be provided by VEB.RF.

According to³ the Ministry of Natural Resources and Ecology, as many as 72 concession agreements totalling RUB 51bn (EUR 566.7m) have been concluded. The authority forecasts that ten more agreements worth RUB 10bn (EUR 111.1m) will be signed by the end of 2020.

Clearly, due to the low efficiency of existing state-support measures, investment projects for MSW management are mainly being implemented through banks, state corporations and investment funds as co-investors.

New support measures

In September 2020, the Russian government announced the expansion of the Russian Environmental Operator’s powers to finance MSW treatment and recycling projects. The Russian Ministry of Finance and the Russian Ministry of



Natural Resources and Ecology together with the Russian Environmental Operator have been instructed to develop support measures for investment projects in this field.

The proposed new support measures vest the Russian Environmental Operator with the following additional powers:

- acquisition of bonds with a rate of 50% of the Bank of Russia's key rate and provision of loans to investors;
- compensation of costs incurred for infrastructure construction and reconstruction as well as for financial leasing of the main technological equipment, and partial compensation for the interest rate on infrastructure-development loans;
- granting subsidies to hard-to-reach and sparsely populated territories to create MSW treatment facilities.

In addition, draft amendments to tax laws have been published, which propose giving the following tax incentives to regional operators for MSW management:

- as of 2021, introducing a zero VAT rate on regional operator services provided to citizens (as noted above, the existing VAT exemption is inefficient);
- exempting them from corporate profits tax on the transfer of their selected recyclable materials (this should also reduce the cost and increase the competitive advantage of products made of recyclable materials);
- exempting waste collection vehicles from transport tax (currently the cost of MSW transportation accounts for up to 70% of operators' costs);
- setting a zero property tax rate for MSW treatment and recycling facilities and reduced social security contributions for five years after commissioning.

The market participants take a favourable view of the proposed new support measures, noting that MSW management tariffs should also be worked out since income and a return on investment will be mainly derived from such tariffs.

Conclusion

One of the key problems in implementing waste reform is underfunding, both from the state and due to the insufficient number of private investors.

¹ <https://rg.ru/2020/10/19/musornaia-reforma-prineset-v-etom-godu-34-mlrd-rublej-nalogov.html>

² <https://www.vedomosti.ru/economics/articles/2020/09/22/840840-trudom-pererabativaemie>

³ <https://rg.ru/2020/10/19/musornaia-reforma-prineset-v-etom-godu-34-mlrd-rublej-nalogov.html>

In regard to state support, one can point out the problems of administering the allocated funds and non-coordination between spending units against the background of a lack of a consistent approach to the selection of priority projects for this support.

Private investors are, in their turn, deterred by the fact that income generation and return on investments are unguaranteed due to a restricted ability to raise the existing tariffs.

However, MSW treatment and recycling projects are still in high demand: the primary demand being for the creation of waste sorting and recycling plants and related infrastructure as well as the supply and installation of necessary equipment.

In this connection, it is of particular importance to involve a reliable public partner and a financing party in projects. Among other things, these projects would be based on appropriate concession agreements or public-private or municipal-private partnership agreements, the terms of which, on the one hand, would allow for sustainable financing of projects and, on the other hand, would guarantee a certain level of profitability.

For more information on opportunities in waste management in Russia, please contact our experts:



Thomas Heidemann
Partner

CMS Russia

T +7 495 786 4049

E thomas.heidemann@cmslegal.ru



Dmitry Bogdanov
Senior Associate

CMS Russia

T +7 495 786 4021

E dmitry.bogdanov@cmslegal.ru

New approach to regulating extended producer responsibility in Russia

At the end of 2020, the Russian government's administration approved a concept for improving the notion of extended producer responsibility (the "Concept").

The Concept could already have a short-term effect on the producers and importers of goods and packaging (the "Producers") operating in Russia, depending on when the laws required for the Concept's implementation are adopted.

Background

Extended Producer responsibility ("EPR") refers to a waste management regulation mechanism that creates an obligation among Producers to ensure that the recycling of used goods and packaging is conducted in accordance with approved standards.

In Russia, the EPR mechanism was introduced in 2015. It was envisaged that Producers either organise their own facilities to recycle waste from the use of goods and packaging, or conclude appropriate agreements with specialised recycling companies, either directly or with the involvement of associations created by them. Producers must confirm compliance with these obligations through annual reports on the implementation of recycling standards. If recycling requirements are not met, Producers must make a special payment (i.e. the environmental fee) to the budget at the approved rates.

However, in practice, the EPR mechanism that was introduced in Russia did not work as planned. For the five years it has been in place, there has been no significant increase in the number of waste recycling facilities and no increase in recycling capacity, and reported volumes often did not correspond to the real ones. Together with the lack of proper administration and control (which the Concept openly acknowledges) and low collection of environmental fees, this prompted the government to revise its existing approach to the regulation of EPR.

Main provisions of the Concept

The Concept is designed to solve the above problems.

In particular, the Concept proposes the following primary measures to improve the EPR mechanism:

- create a special information system and registers to

- monitor and control activities that ensure waste is recycled;
- make it impossible for Producers to fulfil their obligation to recycle waste by involving associations to this end when these do not have recycling facilities;
- gradually increase (by at least 10% per year) the recycling rate for all types of goods, except for packaging which should be fully recycled from 1 January 2022;
- revise environmental fee rates from 1 January 2022, taking into account the specifics of waste recycling;
- calculate the environmental fee based on a double recycling rate in order to encourage Producers to implement recycling rates with their own resources; and
- create various measures to stimulate the recycling of waste from the use of goods and packaging (e.g. state support measures, preferences in public procurement, cancellation of personal income tax when selling waste).



The first stage in the implementation of the Concept is to develop an appropriate regulatory legal framework. In January 2021, a draft federal law¹ was introduced to the State Duma, which is aimed at requiring Producers to recycle 100% of packaging waste. In the near future, we can expect the introduction and consideration of other bills to implement the provisions of the Concept.

Comments

The new approach to EPR regulation found in the Concept will undoubtedly have a significant impact on all Producers operating in Russia.

¹ <https://sozd.duma.gov.ru/bill/1096229-7>

For example, the transition to full recycling of packaging waste announced for 1 January 2022 – if not revised during the current year – is likely to lead to an increase in environmental fee payments. This is because, in the current situation, compliance with this recycling requirement seems difficult to achieve.

Producers should assess and choose the most preferable means for recycling waste from the use of goods and packaging. They should decide whether to:

- create their own capacities;
- conclude an agreement with a recycling company; or
- pay the environmental fee.

For more information on opportunities in waste management in Russia, please contact our experts:



Thomas Heidemann
Partner

CMS Russia

T +7 495 786 4049

E thomas.heidemann@cmslegal.ru

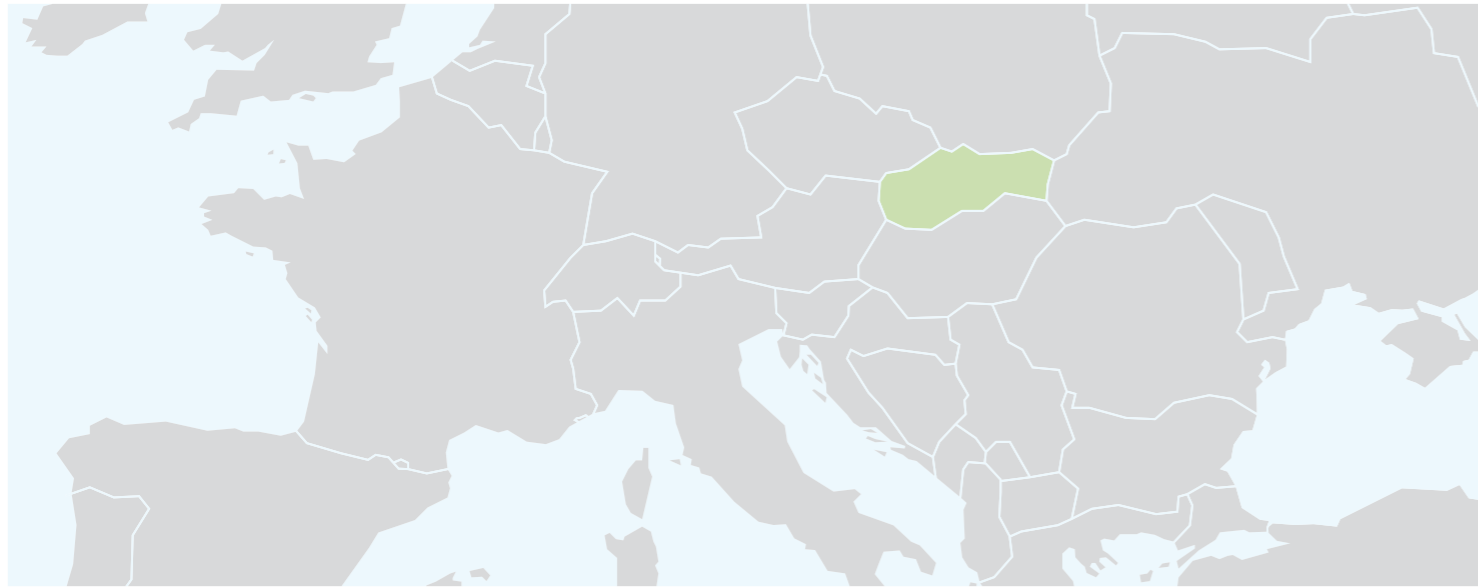


Dmitry Bogdanov
Senior Associate

CMS Russia

T +7 495 786 4021

E dmitry.bogdanov@cmslegal.ru



Slovakia

Information system for waste management

In January 2020, new Slovak waste legislation introduced an electronic information system for waste management.

The Waste Management Information System is a central information system established by the Slovak Ministry of Environment. It is intended to enable effective electronic communication between the individual obligated persons and the state administrative authorities. At the same time, it unifies and replaces existing information systems.

A major innovation is the obligation to record waste electronically via the information system regularly (monthly). This is done by submitting a waste report that records the generation and management of waste.

The main purpose of the information system is to monitor the entire waste management process - from generation to disposal or eventual recovery. In addition, the system also fulfils the obligations arising from special waste legislation or from the Slovak Republic's international obligations of in this area. The aim of the electronic information system is to simplify and modernise the system for recording, reporting and obtaining permits.

Although the waste management information system has been enacted into law by the recent amendment to the Waste Act (Act No. 79/2015 on Waste and Amendments to Certain Acts) of 1 January 2020, it is still not fully operational.

Commissioning the information system for waste management

Several Slovak IT companies alerted the Slovakian Ministry of Environment that the information system is not yet ready for launch. The launch of the information system was subsequently postponed by another amendment to the Waste Act, which came into force on 14 October 2020.

The information system was originally supposed to be fully operational from 1 January 2021. Due to the pandemic and the need to fix some technical problems, the deadlines for the individual services to be provided via the information system were again postponed. The information system will now be commissioned in several phases:

1 Phase – Entry in the waste registers

From 1 January 2021, applications for entry in the waste registers can be submitted electronically via the information system. These include, for example, applications for entry in the register of producers of specific waste, the register of waste collection facilities, and the register of waste recovery facilities.

2 Phase – July 2021 – Waste decisions

From 1 July 2021, applications for the issuance of a decision as well as for the extension of a decision or applications for the amendment of a decision under the Waste Act can be submitted electronically via the information system.

Until 1 July 2021, the above submissions can be made via the website

 www.slovensko.sk

in accordance with the applicable legislation.

3 Phase – January 2022 – regular electronic recording of waste

The third and final phase is planned for January 2022. From 1 January 2022, the waste management information system should be fully operational. It should then be possible to comply with all recording and reporting obligations via the waste management information system. This means that even the regular (monthly) recording of waste will only be carried out via the information system from 1 January 2022.

Further details of the waste collection and reporting process are regulated by a recent amendment to the Ordinance of the Ministry of Environment of the Slovak Republic, which entered into force on 15 November 2020. The annex to the ordinance also contains the required model forms.

The year 2021 therefore brings only one **new obligation** – registration in the waste registers via the waste management information system.

Advantages of the central information system for waste management

The waste management information system will offer the following benefits:

- an online register of all companies active in waste management (waste producers, waste holders, waste processors, collection centres, etc.), which provides the public with, among other things, comprehensive information on waste processing capacities and transfer options for individual types of waste;
- a significant acceleration in the processing of data about the material flow of waste and an upgrading of the data collected for international reporting as well as for waste management planning;
- a simplification of data reporting for all waste managers who currently have to report data in paper form;
- electronic services provided by the state administrative authorities in the field of waste management; this includes conducting surveys, issuing various permits and approvals, issuing opinions and related activities.

The information system also brings with it some surprises and disadvantages

We predict that the information system for waste

management will also bring new challenges. For this reason, we take a critical view of the statement by the Slovak Ministry of the Environment that this platform will make life easier for companies.

Monthly instead of annual reports

Currently, waste reporting is carried out annually in the form of a waste summary report. According to the new waste legislation, waste must now be reported every month. This regular waste reporting is the most discussed change in connection with introducing the waste management information system.

Structured forms and automated processing of waste reports

The regular monthly waste reports are created using structured forms that are automatically checked. Thus, submissions with, e.g., invalid waste codes will be automatically rejected. The previous paper reporting was not processed automatically; so, reports containing, for example, typing errors were not automatically rejected.

Obligations also affect companies that are not directly active in waste management

From 1 January 2022, any company producing specific waste (e.g. producers of electrical appliances, batteries and accumulators, packaging, vehicles, tyres) will have to submit regular monthly waste reports. This means that even the smallest waste producers who are not active in the waste management sector will have to comply with these obligations.

What risks does the waste management information system pose for companies?

Automatic balance control

Inspections verify that the data in a waste transfer report matches the data in a waste reception report; this means that waste must be recorded consistently at both companies (receiving and transferring).

Responsibility for waste disposal

Waste may only be handed over to companies that have the appropriate waste disposal permit. The waste transferor is responsible for transferring the waste at the time of transfer.

Waste acceptance overruns

The company accepting the waste must not exceed the maximum waste acceptance quantity authorised to it. This is checked by automated inspections.



Automation by means of the waste management information system also includes the processing of incorrectly – or erroneously – submitted waste reports – i.e. waste reports with incorrect data. This means that the system automatically reports incorrect waste reports together with automatically generated documents to the Slovak Environmental Inspectorate. Based on these automatically generated documents, fines are imposed for breaches of obligations.

Businesses need to prepare in a timely and appropriate manner

Businesses must prepare in a timely and appropriate manner to meet the obligations arising from the new waste legislation. The market offers various software solutions dedicated to waste records that can be used to record both operational and legal waste records in compliance with the law.

For more information on opportunities in waste management in Slovakia, please contact our expert:



Natália Jánošková
Associate

CMS Slovakia

T +421 911 179 036

E natalia.janoskova@cms-rrh.com

Extended packaging producer responsibility in Slovakia

You may be a packaging producer without knowing it, even though you do not produce any packaging at all.

Although the term “packaging producer” seems to refer exclusively to companies that produce packaging, this is not the case. According to Slovak waste legislation, some companies that do not produce packaging themselves are still categorised as packaging producers. All that is necessary to be classed as such is that the company handles packaging in a certain way. This makes it subject to the so-called extended packaging producer responsibility and the associated obligations.

Why am I a packaging producer if I don't make packaging?

The Slovak Waste Act defines a packaging producer as an enterprise which:

- i) uses packaging to package products and then markets them under its own brand (e.g. a dairy that produces yoghurt and packages it in containers under its own name);
- ii) commissions a third party to package its products and then places the products on the Slovak market under its own company brand (e.g., a supermarket that carries yoghurt produced in a dairy, but has it packaged under its own name);
- iii) otherwise places or transports packaged goods in the Slovak market or has them transported by a third party across the Slovak state border to put them in circulation or distribute them in the Slovak Republic (e.g., a company that imports the packaged goods, raw materials or components from abroad in order to sell them in Slovakia);
- iv) as a trader, provides packaging to the final consumers to immediately package the goods for a fee or free of charge (e.g. a company operating a grocery shop and offering packaging to final consumers to package products);
- v) as a trader, uses packaging to package portions of goods (e.g. a delicatessen);
- vi) produces or imports empty packaging that is sold directly to end consumers.

If a company handles packaging in any of the above ways, it is considered a packaging producer and subject to the rules of extended responsibility.



Although it may not seem so at first glance, online shops, for example, that pack goods in a box or plastic bag before sending them by post or courier are also packaging producers. This also applies to fast food restaurants that wrap their food in a paper package for customers, textile sellers that wrap goods in plastic bags for customers, and companies that offer pizza delivery services or import any packaged goods from abroad.

What do we mean by packaging?

Packaging is a product made of any material, used for the protection, handling, delivery and presentation of goods, capable of packaging everything from raw materials to finished products, and passed on from the manufacturer to a user or consumer.

What is extended packaging producer responsibility?

Packaging producers are subject to the so-called extended producer responsibility. This is a set of obligations relating to packaging at all stages of its life cycle. The purpose of extended responsibility is to reduce packaging waste and to promote reuse, recycling, and other recovery methods.

The extended packaging producer responsibility does not lie only in collecting and recycling packaging waste. Packaging producers must also comply with requirements concerning the composition and properties of packaging. In addition, they have several administrative obligations and must bear all costs (with exceptions determined by law) for collecting, transporting, preparing for re-use, recovering, recycling, treating, and separately disposing of the packaging waste collected.

Some of the obligations of packaging producers

The essential packaging manufacturer obligations include, for example:

- registering in the Packaging Producer Register; complying with the rules on the material composition of the packaging, its construction, and its labelling in accordance with the specific legal requirements;
- keeping packaging records, reporting them to the Slovak Ministry of Environment and keeping the reported data; and
- fulfilling the information obligations towards the end users of the packaging.

For a company to be able to circulate packaging – or packaged goods – in Slovakia, it must be registered in the Packaging Producer Register. A company registering in the Register must prove that it can fulfil the obligations related to the collection, transport, recovery and recycling of packaging waste.

The Slovak Waste Act permits packaging producers to fulfil the waste obligations either individually (provided that the conditions set by law are met) or collectively. Individually fulfilling obligations entails a packaging producer ensuring packaging waste is collected and processed, including preparing it for reuse and recycling. Collective fulfilment of the waste obligations is based on a contractual relationship with a producer responsibility organisation. This organisation takes responsibility for fulfilling the obligations; the packaging producers bears all related costs.

Companies should verify their suppliers

When a packaging distributor receives packaged goods from a supplier (packaging producer) that is not registered in the Packaging Producer Register, the packaging producer's obligations in relation to that packaging and its waste are transferred to the distributor. For example, if a company that is not a packaging producer buys goods (e.g. food, electronic goods, or textiles) from a supplier to sell them to consumers, it must check whether its supplier is registered in the Packaging Producer Register. If the supplier is not registered, the company must fulfil all the packaging producer obligations itself.

Obligations of foreign packaging producer

Foreign companies are also subject to the extended packaging producer responsibility.

A packaging producer who does not have a registered office or place of business in the Slovak Republic (for

example, an online shop operating abroad) must fulfil its obligations in relation to packaging and packaging waste through an authorised person who has a registered office or place of business in the Slovak Republic. A foreign packaging producer is not entitled to place packaged goods on the Slovak market without being registered in the Slovak packaging producer register. The authorised representative is responsible for fulfilling all the foreign packaging producer's obligations and acts in his or her own name in this respect. In the event of breaches of obligations, he or she is liable to sanctions.

Who is the packaging producer when goods are delivered across a border?

There may be ambiguities about who must fulfil the waste obligations in the case of a cross-border supply of goods, i.e., which link in the distribution chain is the packaging producer.

In such a case, it must be determined which company from the distribution chain brings the packaged goods to the Slovak market. If the packaged goods are put into circulation in Slovakia by a foreign supplier, the latter must fulfil the packaging producer obligations under the Slovak Waste Act. If a Slovak company brings these packaged goods onto the Slovak market after they have been delivered from abroad, it must fulfil these obligations itself.

In such an international relationship, it is necessary to clarify who puts the packaged goods into circulation and who must assume responsibility for the related waste obligations. Ideally, this is thoroughly spelled out directly in a contract for the supply of goods.

Breaches of duty and sanctions

Fines for non-compliance with packaging producer obligations can be quite high. For example, if a packaging producer markets packaged goods but is not registered in the Packaging Producer Register, a fine of up to EUR 120,000 can be imposed. A fine of the same amount can be imposed on a foreign company that must comply with the waste obligations but has not appointed an authorised representative for the purpose.



failure to register in the Packaging Producer Register leads to a fine of up to EUR 120,000



Conclusion

In order to avoid complications and possible sanctions, it should always be clearly determined who the packaging producer is, who in the distribution chain must fulfil the waste obligations, and whether the supplier is registered in the Packaging Producer Register. At the same time, it is necessary to clarify all issues of compliance concerning waste obligations directly in the contract for the supply of goods – this also removes doubts about who must take responsibility for these waste obligations.

For more information on opportunities in waste management in Slovakia, please contact our expert:



Natália Jánošková
Associate

CMS Slovakia

T +421 911 179 036

E natalia.janoskova@cms-rrh.com

Deposit System for Disposable Beverage Packaging in Slovakia

It's time to contact the backup system administrator to enter into a so-called performance contract.

As of 1 January 2022, a deposit system for disposable beverage packaging will be introduced in Slovakia. Some disposable beverage packaging manufacturers and distributors will therefore have new obligations.

On 1 December 2019, Act No. 302/2019 Coll. on the deposit for non-refillable beverage containers (the "Deposit System Act") partially entered into force. So far, only the provisions on establishing the deposit system are effective. Provisions on materially introducing the deposit system come into force on 1 January 2022.

Which Disposable Beverage Containers are Subject to the Deposit?

The deposit system will apply to single-use beverage containers placed on the market in the Slovak Republic. The following single-use beverage containers will be subject to the new deposit system rules:

- plastic packaging (bottles) with a filling volume between 0.1 and 3 liters; and
- metal packaging (cans) with a filling volume of between 0.1 and 3 liters.

Administrator of the Deposit System

In December 2020, the Slovak Ministry of Environment appointed a deposit system administrator to coordinate the functioning and financing of the system.

Prior to implementing the deposit system, the deposit system administrator will enter into a performance contract with single-use beverage packaging manufacturers and distributors. The Deposit System Act regulates which single-use beverage packaging distributors are required to enter into performance contracts with the deposit system administrator (*i.e.*, not every such distributor has to enter into a contract). Disposable beverage packaging distributors who do not have this obligation can voluntarily register with the deposit system (see below).

Obligations of Single-Use Beverage Packaging Manufacturers and Distributors

The deposit system entails new obligations for single-use beverage packaging producers and distributors.

Each non-refillable beverage packaging manufacturer and distributor must, in principle, add the deposit to the beverage packaging and retain the deposit amount determined by the administrator. Further, they should keep separate accounting records of the price of the goods (sales price) and the amount of the deposit, as well as of the beverage packaging. This recorded data must then be reported to the administrator. In addition, each single-use beverage packaging producer must register the beverage containers with the administrator and reimburse the administrator for the deposit and costs associated with participation in the deposit system.

Single-use beverage packaging distributors selling beverages subject to the deposit system on a sales area of at least 300 square meters have additional obligations. For example, they must register with the administrator as a packaging collection point, collect packaging waste at their premises or within 150 meters of their premises, and repay the deposit to end users when they return the pledged beverage packaging. However, distributors who sell beverages in addition to their main products (e.g., drugstores) are not subject to these obligations. Such distributors and distributors with a smaller sales area can, however, voluntarily join the deposit system.

The obligations arising from the deposit system also apply to foreign companies that place beverages in non-refillable packaging on the Slovak market or transport them – or have them transported – across the state border of the Slovak Republic in order to place the beverages on the market or distribute them in the Slovak Republic. These foreign companies have the same obligations as Slovak companies if they place beverage products on the Slovak market.

Related Costs

Disposable beverage packaging manufacturers and distributors face new costs, including the following:

Labelling Beverage Packaging

Since only properly labelled beverage packaging can be registered with the deposit system administrator and placed on the market, single-use beverage packaging manufacturers must adapt production to the new legal requirements.

Construction Changes

Disposable beverage packaging distributors must provide a special place for beverage packaging to be collected in accordance with hygiene requirements as well as occupational health and safety requirements. Conversion work will be necessary in many business premises, which represents an additional financial burden.

Collecting Machines and Their Maintenance

The obligations of single-use beverage packaging distributors do not end with securing a place for packaging collection. Another burden will be purchasing and maintaining collection machines.

Further Administrative Work

In addition, single-use beverage packaging distributors will also face new administrative costs related to the new registration and record-keeping requirements.

As mentioned in the introduction, the new obligations will come into force on January 1, 2022. The Deposit System Act sets forth a range of fines for violations of individual obligations, with amounts depending on the specific violation. We therefore recommend preparing for these obligations in good time.

We will be happy to assist you in concluding a performance contract as well as to answer any further questions.

For more information on opportunities in waste management in Slovakia, please contact our expert:



Natália Jánošková
Associate

CMS Slovakia

T +421 911 179 036

E natalia.janoskova@cms-rrh.com



Turkey

Waste management: summary of legislation and practice

Legislation

Turkish legislation and policy in the field of waste management has been prepared in line with the country's harmonization process with the European Union. In this context, on the basis of the Environmental Law No. 2872, several regulations have been adapted to regulate different categories of waste such as municipal waste, excavated soil, construction and demolition waste, medical waste, hazardous waste, packaging waste, spent batteries and accumulators, waste vegetable oils, waste electrical and electronic equipment, waste oils and end-of-life vehicles, etc. The Waste Management Regulation, which sets the framework for waste management in Turkey, has been implemented taking into account Directive 2008/98/EC on waste (Waste Framework Directive).

Turkey is also party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

Practice

Waste management has been identified as a top priority by the Ministry of Environment and Urbanization ("Ministry"). In this context, the Ministry published the "National Action Plan for Waste Management 2023" in 2016, which analyses the current waste management situation for the 81 provinces of Turkey and sets out the country's waste management objectives. The Turkish

Ministry of Environment and Urbanisation also has a website dedicated to waste management:

 www.zerowaste.gov.tr

Waste management is a constantly growing area. According to the report "Municipal Waste Management in Turkey" published by the Ministry in 2016, the number of landfills in Turkey increased from 15 in 2003 to 82 in 2016. In addition, the number of licensed recycling and recovery facilities has skyrocketed over the last decade. In 2003 there were 46 recycling and recovery facilities for different types of recyclable waste; the number of authorised facilities rose to 1226 by 2015.

According to the National Waste Management Plan and the 2016 Action Plan, 61.07% of municipal waste is disposed of in sanitary landfills and 28.25% in municipal landfills. 11% of municipal waste (including packaging waste) was reported as recycled, composted or otherwise disposed of.

The 2023 National Action Plan for Waste Management provides for the disposal of 35% of waste through recycling and 65% through regular storage by 2023.

Next Steps

Although Turkey has adopted its waste management legislation as part of the harmonisation process with the European Union and waste management is considered

a priority by the Ministry, the country still needs to achieve some important goals to have a sound and sustainable waste management system. In this context, financial support should be provided to municipalities, which shoulder the main burden of implementing waste management policy, and the implementation of the 2023 National Waste Management Action Plan should be regularly monitored by the Ministry.

For more information on opportunities in waste management in Turkey, please contact our expert:



Döne Yalçın
Managing Partner

CMS Turkey

T +90 212 4014260
E doene.yalcin@cms-rrh.com

Doing business, Responsibly

The future of our world depends on the choices and actions of all of us. At CMS, we embrace our corporate social responsibility and are creating a culture of sustainability across our organisation. This means doing business responsibly as well as giving back to the communities we work and live in and leveraging our talent to do so.

As a signatory of the UN Global Compact, we are developing an overarching environmental, social and governance programme. Being part of this coordinated effort to ensure justice for all, reduce poverty and promote well-being is an integral part of doing business responsibly and we are committed to meet sustainability goals in four areas: human rights, labour, environment and anti-corruption.

Additionally, our people across CMS support UN Sustainable Development Goals with various initiatives and pro bono work. As a firm, we support Médecins Sans Frontières, also known as Doctors Without Borders, in their mission to provide medical assistance to people affected by conflict, epidemics, disasters or exclusion from healthcare. In addition to this global commitment, our local offices also support charitable initiatives in their areas.

WE SUPPORT



About CMS

Staff *Lawyers* *Partners*

> 8,000 **> 4,800** **> 1,100**

49 NEW PARTNERS IN 2019, TAKING THE TOTAL TO OVER 1,100

Operating in *Across*

71 cities | **43** countries

EUR 1.426bn
turnover for 2019

19 PRACTICE AND SECTOR GROUPS WORKING ACROSS OFFICES

- » **#1 CEE, DACH, Germany** (*Mergermarket*)
- » **#1 Germany, UK** (*Thomson Reuters*)
- » **Top rankings in 2019 M&A League Tables** (*by deal count*)
 - #1 by Bloomberg in Europe, Germany and UK
 - #1 by Mergermarket in CEE, DACH and Germany
 - #1 by Thomson Reuters in Benelux and Germany
- » **#1 Europe, Germany, UK** (*Bloomberg*)



CMS Law-Now™

Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.
[cms-lawnow.com](https://www.cms-lawnow.com)

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Beirut, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Moscow, Munich, Muscat, Nairobi, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

[cms.law](https://www.cms.law)