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Miha JUHART[1]

Regulation of unlawful waste deposition in the Republic of Slovenia[2]

Abstract

The Republic of Slovenia transposed its obligations outlined in Directive 2008/98 to the Environmental Protection Act through a legal order. Its first unlawful waste disposal regime was implemented in 2008. The responsibility for unlawful waste disposal is primarily placed on the polluter, while the subsidiary responsibility lies with the real estate owner. The owner of the real estate on which the waste is unlawfully disposed must arrange for proper disposal of the waste at his own expense if ordered by the inspection authority. The subsidiary responsibility of the real estate owner implies strong interference with the right to the property. To date, the Constitutional Court has not yet assessed the compatibility of this measure with the Constitution, as it has taken the view that it will not carry out an abstract assessment but will only make a decision through a constitutional appeal procedure. Despite several concerns, the regulations were maintained in the new Environmental Protection Act of 2022. In addition to the unlawful disposal of waste, this Act also regulates the legal consequences of littering; further, the Act imposes relatively high administrative fines, including on any landowner who fails to exercise his secondary responsibility. Notably, the unlawful disposal of waste is defined as a criminal offence that burdens and destroys the environment. The legal framework, in my opinion, fully meets the requirements of Article 36 of Directive 2008/98/EC.

Keywords: unlawful waste deposition, littering, property rights, polluter pay principle, Directive 2008/98

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1. Introduction

1.1. Systemic Regulation of Waste Management in the Republic of Slovenia

Through the Environmental Protection Act (*Zakon o varstvu okolja* – ZVO-2), a systemic regulation in the field of waste management, the Republic of Slovenia transposed Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives into its legal system; this was last amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.[3]

1.2. Fundamental Principles of Environmental Law

Slovenia's legal regulations for the environment are based on the following fundamental principles that also significantly impact waste management.

(a) The principle of sustainable development (Article 5 of the ZVO-2)[4] means that the state promotes the economic and social development of society, which considers the same possibilities of meeting the needs of future generations when meeting the needs of the present generation. This is reflected in the adoption of policies, strategies, programs, plans, and general legal acts. Environmental protection requirements must be included in the preparation and implementation of policies and activities in all areas of economic and social development.[5]

(b) The principle of a circular economy (Article 6 of the ZVO-2) involves striving to prevent waste, reduce environmental pollution, and preserve nature by minimising the use of substances, energy, and materials, especially natural resources, and extending the lifecycle of products, materials, and substances as long as possible.

(c) The principle of integrity (Article 7 of the ZVO-2) means that when adopting policies, strategies, programs, plans, and general legal acts, their impact on the environment must be considered in a way that contributes to achieving the goals of environmental protection. In this context, the criteria considered include human health, well-being, and quality of life; survival; protection from environmental disasters; and the health and well-being of other living organisms.

(d) The principle of participation (Article 8 of the ZVO-2) means that the adoption of policies, strategies, programs, plans, and general legal acts related to environmental protection engages those causing environmental burdens, providers of

3 | Official Gazette of the Republic of Slovenia, nos. 44/22, 18/23 and 78/23.
4 | Article 5 of the ZVO-2.
5 | For more, please see: Hopej & Malinowska 2023, 25–28, Bandy 2022, 18–73.

public environmental services, other entities engaged in environmental protection activities, and the public.[6]

(e) The principle of prevention (Article 9 of the ZVO-2) implies that the environment is minimally burdened. This principle is implemented by determining the emission limit values, environmental quality standards, best available techniques, rules of conduct, long-term recommendations, and other environmental protection measures.

(f) The precautionary principle (Article 10 of the ZVO-2) stipulates that the introduction of new technologies, production processes, and products should be allowed only when no unforeseeable harmful effects on the environment or human health can be expected, considering the state of science and technology and possible protective measures. Where there is a possibility that the environment will be irreparably destroyed or the environment's capacity to regenerate will be threatened, a lack of scientific certainty shall not be a reason for postponing an action.[7]

(g) The principle of the responsibility of the person responsible for causing a burden (Article 11 of the ZVO-2) means that such a person must implement all the measures prescribed to prevent and reduce the burden on the environment and shall be responsible for eliminating the source of excessive burden on the environment and its consequences. Pollutants are responsible for the prevention and remediation of environmental damage.[8]

(h) The principle of payment for causing a burden – the polluter pay principle (Article 12 of the ZVO-2) – means that the person responsible for causing a burden shall cover all the costs of the prescribed measures for the prevention and reduction of pollution and environmental risk, the use of the environment, and the elimination of the consequences of the environmental burden, including the costs of implementing preventive and remedial measures in the event of environmental damage.

(i) The principle of subsidiary measures (Article 13 of the ZVO-2) means that the state and municipalities shall provide for the elimination of the consequences of excessive environmental burdens and shall cover the costs of such elimination if the payment of costs cannot be imposed on the particular or identifiable persons causing the burden, if there is no legal basis for the imposition of responsibilities on the person responsible for causing a burden, or if the consequences cannot be otherwise eliminated.

(j) The principle of cooperation (Article 14 of the ZVO-2) stipulates that the state and municipalities, within their respective competences, shall promote environmental protection activities that prevent or reduce environmental burdens as well

6 | For more, please see: Stanicic 2024, 143–158.
7 | For more, please see: Olajos & Mercz 2022, 79–82.
8 | For more, please see: Hornyák & Lindl 2023, 40–41.

as activities and interventions in the environment that reduce the consumption of materials and energy and have a lesser impact on the environment.

(k) The public nature principle (Article 15 of the ZVO-2) ensures the availability of environmental data and participation of the interested public in all procedures related to environmental issues.

(l) The principle of permissibility (Article 16 of the ZVO-2) of interventions refers to interventions in an environment that must have an appropriate legal basis and must not cause excessive environmental burdens.

(m) The principle of the ecological function of property (Article 17 of the ZVO-2) obliges all property owners to ensure the preservation and improvement of environmental quality, the conservation of natural values, and the maintenance of biodiversity when exercising their property rights.

1.3. Waste Management Principles

Comprehensive point 7 of Article 3 of the ZVO-2 is devoted to the conceptual definition of waste. Fundamentally, 'waste' is defined as any substance or object that the holder discards, intends to discard, or must discard. Waste management primarily encompasses the collection, transportation, recovery (including sorting), and disposal of waste (point 7.12 of Article 3 of the ZVO-2). The holder of waste must ensure its processing either by processing it themselves, by handing it over to a legal or natural person who, in accordance with the law, collects, processes, or disposes of waste, or by arranging waste processing through a waste trader (Article 32 (1) of the ZVO-2).

When adopting policies, strategies, plans, programs, and general legal acts that regulate the prevention of waste generation and management, the following waste hierarchy should be prioritized: (1) Prevention of waste generation, (2) Waste preparation for re-use, (3) Waste recycling, (4) Other waste processing procedures (e.g. waste energy processing), (5) Waste disposal.

1.4. The Prohibition of Waste Dumping and Littering

Unlawful waste dumping stems from the general prohibition in Article 26 of the ZVO-2. The latter stipulates that throwing away waste and leaving it in the environment, as well as the uncontrolled handling of waste, including littering, is prohibited. Waste dumping is also prohibited by special regulations. The Water Act (*Zakon o vodah* –ZV-1)[9] stipulates that it is forbidden to pour, deposit, or throw waste into water. The same applies to water and coastal lands (Article 68 of the ZV-1). Furthermore, owners of water and coastal land must ensure the disposal of

9 | Official Gazette of the Republic of Slovenia, nos. 67/02, 2/04, 41/04, 57/08, 57/12, 100/13, 40/14, 56/15, 65/20, 35/23, and 78/23.

waste and other abandoned or discarded objects and materials (Article 100 of the ZV-1). Article 5 (2) of the Road Traffic Rules Act (*Zakon o pravilih cestnega prometa* – the ZPrCP)[10] stipulates that it is forbidden to throw any type of object (cigarette butts, paper, bottles, etc.) from a vehicle.

The main causes of littering and unlawful waste dumping or leaving waste in the environment are the absence of the collection and disposal of municipal and other waste, the low-quality collection and disposal of waste, the avoidance of waste management costs, a lack of education, and low environmental awareness among individuals. In the past, the main causes of unlawful waste dumping were the irregular collection of household waste – including bulky waste and waste from construction work, renovations, and building demolition – and inadequate resident awareness and information.[11]

Unlawful waste deposition is a significant problem in Slovenia. The exact number of wild waste dump sites cannot be determined because of inadequate records; however, according to environmental organisations, the figures are very high.[12] Identifying the perpetrator of unlawful dumping is often impossible; therefore, it is also impossible to ensure proper waste management in accordance with the polluter pay principle. Consequently, Slovenia introduced a law to establish a special system of subsidiary responsibilities for landowners to ensure environmental relief. The law mandates specific actions for landowners or possessors regardless of whether their actions or omissions contribute to an unlawful situation. These measures directly affect (e.g. interfere with or impose legal restrictions on) landowners' property rights. In assessing the appropriateness of such measures, it is important to consider not only the interest in environmental protection, but also the interest in property rights as a fundamental individual economic right.

1.5. The Constitutional Regulation of Property Rights

The legal framework for addressing unlawful waste dumping and littering introduced a system of subsidiary responsibilities that mandates specific actions for landowners or possessors. Such an order of action undoubtedly interferes with the substance of property rights, a fundamental economic right of the individual that provides him with legal protection at both the international and constitutional levels.

The Constitution of the Republic of Slovenia[13] is more recent and includes the right to property under fundamental rights and freedoms. The Constitution

10 | Official Gazette of the Republic of Slovenia, nos. 156/21 and 161/21.
11 | Program 2022, 223.
12 | The NGO's website lists the number as 15,000, which is huge for a small area like Slovenia.
13 | Official Gazette of the Republic of Slovenia, nos. 33/91-I, 42/97, 66/00, 24/03, 69/04, 69/04, 69/04, 68/06, 47/13, 75/16, and 92/21.

guarantees the right to private property and inheritance (Article 33). Article 67 of the Constitution stipulates that the manner in which property is acquired and enjoyed should be established by law to ensure its economic, social, and environmental functions. When discussing the economic, social, and ecological functions of a property, we primarily refer to the duties and limitations of the owner in acquiring and enjoying the property.[14] These duties and limitations are provided for in the Constitution and detailed in the law. In this context, general interests should be considered, such as environmental protection; community interests (e.g. ensuring the efficient use of land, the possibility of expropriation); the protection of public goods, natural resources, and land; and restrictions due to neighbourly relations and the prohibition of economic activities contrary to the public interest. This understanding is essential for comprehending the social function of property. Second, an element of this social function is ensuring resources for the social functions of the state (e.g. social insurance) and financing the state. The novelty of the new Slovenian Constitution is its emphasis on the ecological functions of property.[15]

The ecological content of property encompasses nature with its substances, forces, connections, changes, and laws, serving as a basis for all living beings (e.g. animals, plants). Nature includes the biosphere and environmental elements refer to the management of nature, natural resources, and landscape protection. Soil, air, and water are the main elements. The fundamental goal is to normalize human behaviour that supports the preservation of the foundations of human life and opportunities for rest and recreation. One form of protection is to protect, nurture, and develop. The goals are also defined as: (1) keeping as many areas as possible unbuilt to protect natural resources; (2) rationally using goods, especially rare goods; (3) protecting at-risk assets (e.g. animal and plant species at risk of extinction); (4) facilitating fertile land; (5) protecting the landscape; (6) protecting vegetation, especially free-living flora and fauna; and (7) protecting water, air, peace, climate, and recreational conditions.[16] Due to their interdependence, listed goods cannot be protected in isolation. The need to comprehensively protect the environment by considering such interconnections has been increasingly expressed.

To ensure this work, the State shall establish orders and prohibitions through law that order individuals to do, allow, or refrain from doing something. These obligations apply to everyone (prohibitions of certain behaviours with dangerous substances and emissions), specific protected areas (natural parks, reserves, monuments), and certain species of plants and animals; further, strict regimes are enforced for air and water (emissions) and special regimes for forests.[17] The environment is increasingly burdened by traffic, industrial, and household emissions

14 | Ude 1994, 739.
15 | Ude 1992, 2.
16 | Šinkovec 1992, 569.
17 | Šinkovec 1992, 569.

and leisure-time population mobility; in particular, such activities have had severely negative effects on soil, water, and air – all of which are fundamental to life. It is necessary to protect plant and animal life to preserve ecological balance.[18] Therefore, related state interventions are permitted if they pass a strict proportionality test, even if they restrict fundamental rights and freedoms.[19] Notably, the fundamental constitutional definition of property freedom conflicts with the binding of property to its economic, social, and ecological functions. Weighing both interests must yield harmonisation. Specifically, such harmonisation can be realized by applying the principle of proportionality.[20]

When a legislator intervenes in the constitutionally protected rights of individuals, it becomes a subject for further examination to determine whether the intervention is constitutionally permissible. The proportionality test prohibits excessive legal intrusion into individual rights and requires a proper assessment of whether the measures specified in the law are consistent with their purpose. This measure must be justified with a goal that minimally affects the rights and interests of affected subjects.

The measures must be suitable for the achievement of the legislators' goals, necessary for their implementation according to the objective interests of citizens, and must not be out of any reasonable relationship with the social or political value of these goals.[21]

This weighting should be based on the aforementioned provisions of Article 67 of the Constitution. Thus, this provision authorises the legislator to regulate the manner of acquiring and enjoying property while considering all three functions of property. The legislature is not required to specifically define the function that the restriction intends to safeguard. All three functions must be treated in a connected and interdependent manner. Significantly, legislators can intervene in property rights. If the legislature oversteps these boundaries, it no longer defines how property may be enjoyed and intrudes on the right to private property. This boundary depends not only on the nature of the property in question, but also on the obligations the legislator has imposed on the owner within the framework of defining the manner of enjoying property.[22]

In Slovenia, property law is governed by the Law of Property Code (*Stvarnopravni zakonik*, SPZ),[23] which was adopted in 2002 and has been in force since 1 January 2003. Article 37 of the Law of Property Codes determines the concept of property and its substance. Property is the right to possess a thing, to use and enjoy it in the broadest possible way, and to dispose of it. Restrictions on use, enjoyment,

18 | Šinkovec 2001, 908–914.
19 | For more on the proportionality test, see Šturm & Avbelj 2019.
20 | Berden 2004, 187.
21 | Decision of the Constitutional Court no. U-I-77/93.
22 | Decision of the Constitutional Court no. U-I-70/04.
23 | Official Gazette of the RS, nos. 87/02, 91/13, and 23/20.

and disposal can only be determined by law, which interferes with the substance of property rights. The most comprehensive method of use is a relative term, as the owner must respect the legal restrictions on its use—even if these restrictions are contrary to their will, interests, economic needs, or the purpose for which they acquired property rights. Regarding public law restrictions, the owner has only a constitutional guarantee of the protection of the private property available to them.[24]

2. Subsidiary Responsibility for Waste Discarded into the Environment

2.1. Subsidiary Responsibility of the Land Owner Pursuant to the ZVO-1

The Republic of Slovenia has adopted special regulations in its legal order for the action of state services in cases of unlawfully disposed waste. These special measures came into effect with the 2008 amendments to the ZVO-1.[25] This concerns the new Article 157a in the ZVO-1, which stresses that the owner or possessor of land is responsible for illegally disposed waste. Special measures differentiate between lands owned by the state and local communities and lands owned by other physical and legal entities. First, the responsibility of landowners is complexly regulated if it concerns land owned by the state or local community. If municipal waste is illegally disposed on land owned by the state or municipality, the competent inspection authority orders the public waste management service provider to remove the waste. Public utility service providers must remove waste in accordance with waste management regulations. The action may be accelerated given that the owner's appeal of the decision of the competent inspection authority does not suspend execution.

The cost of implementing the measure—that is, the cost to the public utility service provider who removed the waste—must be paid by the landowner or the person who possesses the land. The rules for managing real estate owned by state and local communities provide the possibility for state or local communities to transfer the management of real estate to public law entities.[26] The transfer of real estate management is carried out by legal acts of the government or the local community's competent body. A public law entity acquires the status of a real estate

24 | Vrenčur 2016, 218.
25 | Act on Amendments to the Environmental Protection Act (ZVO-1B), Official Gazette of the RS, no. 70/08.
26 | Physical Assets of the State and Local Government Act (*Zakon o stvarnem premoženju države in samoupravnih lokalnih skupnosti* – ZSPDSLS-1), Official Gazette of the RS, nos. 11/18, 79/18 and 78/23.

manager and thereby acquires the right to use and possess real estate. The property manager is recorded in a public real estate cadastre.[27]

The inspector, by decision, not only determines the manner and other conditions for the removal of unlawfully disposed waste but also determines who must bear all the costs of execution. Article 157a (4) of the ZVO-1 provides the possibility of exercising the right to recourse. If the police or inspection authority discovers the perpetrator of the unlawfully disposed waste, the municipality or state has the right and duty to recover the costs from it, as per the previous paragraph. This provision was undoubtedly deficient, as it was entirely irrelevant to how the waste generator of the unlawfully disposed waste was determined. The right to request reimbursement of costs from the actual waste generator ultimately arises from the general legal principles of property law, which, in any case, allow a claim for the reimbursement of costs paid by the payer instead of someone else.[28] Similarly, there is no reason to limit such claims to the state or the local community. The possessor of the land, who has paid the costs, should have the same right to request reimbursement from the waste generator – if, of course, they are discovered. However, such instances of waste generator identification are rare.

Interestingly, Article 157a (5) of the ZVO-1 prescribes the same method of action for privately owned land. Even if waste is unlawfully disposed of on privately owned land, a competent inspection authority can order its removal in a manner that ensures proper waste management at the expense of the landowner or possessor. Evidently, the law targets a person who exercises authority over property (the direct possessor), primarily referring to the lessee of the property or a person who holds a personal servitude of usufruct on the property. Although not specifically stated in the law, there is no doubt that an individual owner is also granted the right to demand reimbursement of all costs from the waste generator, should they be identified.

The method of action against an individual proceeds as follows: Based on the findings of the land inspection, the owner or possessor was instructed to thoroughly and completely clean the land of all discarded, left, and deposited items, substances, and waste within a suitable period from the delivery of the decision. Once an irregularity is rectified, the owner or possessor is obliged to inform the inspection authority in writing. If the owner or possessor fails to fulfil the imposed obligations within a specified period, removal at the expense of the plaintiff shall be employed as a coercive measure to rectify the irregularity.

Criminal sanctions were established in an unsystematic manner. The law and subordinate bylaws adopted under it (Decree on Waste[29]) naturally prohibit waste deposition in the natural environment. For an individual who holds waste

27 | Juhart, Tratnik & Vrenčur 2023, 144.
28 | This is determined by Article 197 of the Code of Obligations (*Obligacijski zakonik* – OZ), Official Gazette of the Republic of Slovenia, no. 97/07. For more detail, see also Polajnar Pavčnik 2003, 57.
29 | Official Gazette of the Republic of Slovenia, nos. 37/15, 69/15, 129/20, 44/22 and 77/22.

and has left it in the environment, thrown it away, or handled it in an uncontrolled manner, the law stipulates a fine ranging from EUR 100 to EUR 300.[30] Clearly, the waste holder can only be penalised if he has been detected. If waste is unlawfully disposed of on land owned by a private legal entity, such as a forest, and the owner fails to ensure the removal of waste from the land, the inspection authority shall order and ensure appropriate waste management. When the inspection authority determines the method of enforcement for an inspection measure with forced waste removal, the financial penalty for an individual ranges from EUR 2,000 to EUR 10,000.[31] This raises the question of the proportionality of the prescribed fines for natural waste. If an individual dumps garbage in a forest and is caught, they face a fine ranging from EUR 100 to EUR 300; however, the forest owner, who issued an inspection measure with enforcement, can be penalised with a fine at least 20 times higher.[32]

The law also specifically regulates the position of the Republic of Slovenia regarding the costs of the inspection procedure and the fines imposed on the landowner owing to urgent action involving forced waste removal. In the Republic of Slovenia, there is a statutory law on the real estate of the person against whom the inspection procedure was initiated. This applies not only to the land where the waste is deposited, but also to all properties owned by such a person.

The system of measures that mandates landowners to assume, or at least deposit, the costs of dealing with unlawfully deposited waste has understandably elicited a variety of responses. While environmental, civil, and nongovernmental organisations have shown enthusiasm, experts have voiced several significant concerns regarding regulation. Setting aside criticisms related to the unclear demarcation of the competencies of inspection services – stemming from the poor organisation of the state administration – most of these concerns pertain to the issue of proportionality of interference in private property.

Experts first pointed out a significant systemic shift that transfers responsibility for unlawfully deposited waste from the waste generator to the landowner or possessor. This shift is inconsistent with the fundamental rules and principles of national and international legal systems. This conflicts with the principles of legal certainty, legal coherence, and proportionality, as the substantive provisions that would obligate the landowner to remove others' waste are not among the duties imposed by the law.[33] While it may be reasonably justifiable to impose obligations regarding the handling of unlawfully deposited waste on the state and local communities, this represents substantial interference with the ownership rights of individuals. The obligation of the state and local communities can be understood as a concretisation of the general principle of subsidiary action, as outlined in

30 | Article 61 (3) of the Decree on Waste in relation to Article 61 (1)(4) of the Decree on Waste.
31 | Article 157b of the ZVO-1.
32 | Weber 2019, 17.
33 | Knez 2013, 3.

Article 11 of the ZVO-1. The principle of subsidiary action is one in which the state is responsible for remedying the consequences of excessive environmental burden and covering the costs of this remedy when these cannot be attributed to specific or identifiable perpetrators, when there is no legal basis to impose the obligation on the polluter, or when the consequences cannot be otherwise remedied.[34] The municipality has the same duty because of the excessive environmental burden caused by the management of municipal waste.

As mentioned above, the Constitution of the Republic of Slovenia explicitly allows for the restriction of property rights to achieve the public interest in the field of environmental protection. However, even when property rights are restricted to achieve environmental protection goals, it is necessary to consider the general principles of the rule of law, particularly proportionality. Although it is legally permissible to expect a certain degree of due diligence from the owner and possessor of land and positive action in the interest of the ecological and other functions of the property, in the opinion of experts, the provision of Article 157a (5) of the ZVO-1 represents an excessive burden for landowners or possessors of certain land types.[35] This applies particularly to landowners and possessors of larger or more remotely located forest lands who, in accordance with the regulations governing forest management, are obliged to ensure public access to everyone and generally should not fence them to allow the free movement of animals. It is very difficult for owners or possessors of forestland to monitor their land. Further, they lack effective measures to prevent illegal activities by third parties. Perpetrators of unlawful waste deposition simply find more accessible and unmonitored lands to dispose of their waste. For owners of such lands, the law imposes a heavy burden in the interest of environmental protection. It remains unclear whether this burden is acceptable.

Knez thoroughly criticised a system that holds landowners or possessors subsidiarily responsible for unlawfully deposited waste.[36] He initially observed that such a regulation contradicts the broadly accepted principle of environmental law, which assigns responsibility for environmental damage to polluters. Therefore, this special arrangement is inconsistent with the objectives of Directive 2008/98. He also stated that this represented a disproportionate infringement on the property rights of the landowner, which is a fundamental human right. The executive and judicial branches of the government are bound to respect international and EU rules. Knez argued that the provisions of Article 157a of the ZVO-1, particularly those stating that the costs of managing unlawfully deposited waste should fall upon the landowner or possessor, contradict both Article 1 of the First Protocol of the European Convention on Human Rights (ECHR) and the established principle of

34 | Vrbica 2020, 2.
35 | Pucelj Vidović in the ZVO-1 Commentary, Article 157a.
36 | Knez 2013, 6.

polluter responsibility, as outlined in Directive 2008/98/EC on waste.[37] He further expressed the opinion that there is no foundation in the Constitution of the Republic of Slovenia for the regulation of the landowner's subsidiary responsibility, and that the principles of legal certainty (rule of law), legal coherence, and proportionality are not upheld.[38]

It is interesting to note that the case law was significantly more favourable towards the regulation of special measures due to unlawful waste deposition. Courts have frequently expressed support for the subsidiary responsibility of the landowner or possessor. In one case, the competent inspection authority, based on Article 157a of the ZVO-1, imposed payment costs on the land possessor for dealing with unlawfully dumped waste. The land in question was owned by the Republic of Slovenia and managed by the Farmland and Forest Fund of the Republic of Slovenia, which had possession of the land.[39] Since waste was unlawfully dumped on land, the competent inspection authority ordered that it be removed and integrated into the waste management system at the expense of the Fund The Fund filed a judicial remedy (lawsuit) against the Administrative Court's decision. In the lawsuit, the Fund argued that measures under Article 157a of the ZVO-1 should be interpreted in accordance with the purpose of the entire law, which clearly states that the consequences of unlawful actions should be borne by the perpetrator. This law primarily represents the principle that polluters should cover the cost of environmental damage; in particular, this principle is primarily applied to waste. The institution of subsidiary responsibility is justifiable only if it is based on the finding that the perpetrator cannot be identified. The Fund argued that the inspection authority had incompletely investigated the facts, as it failed to do everything necessary to identify the perpetrator who had unlawfully dumped waste on the property in its possession. The inspection authority, in its decision, failed to explain why the perpetrator could not be identified and what measures it had taken to locate them. The court upheld the inspection authority's decision, deciding that the fund was obliged to bear the costs of waste removal and management. In doing so, the court stressed the following:

From this provision (Article 157a (3) of the ZVO-1), the legislator's intention is clearly to have the cost of removing unlawfully dumped waste borne by whoever exercises possession of the relevant land, whether it is the landowner or someone else. Since the possessor has actual control over the object, meaning the ability to influence, use, enjoy, and dispose of it, only they have the possibility of preventing unlawful waste deposition. Therefore, the regulation that the costs of removing unlawfully deposited waste are borne by the possessor, as only they had the

37 | Ibid.
38 | Ibid.
39 | This is a fund established by a special law. The Fund manages all agricultural land and forests owned by the Republic of Slovenia.

opportunity to prevent unlawful waste deposition and did not do so, is logical and sensible.[40]

The court confirmed this position in several similar cases.[41] An interesting legal question has arisen regarding one of the most recent decisions. In this case, the person who was the waste generator could be identified; however, the perpetrator was found to be insolvent. The Court did not conclusively answer the question of whether the subsidiary responsibility of the landowner or possessor would apply to such a case; however, it showed an inclination towards such a solution, as evidenced below:

The first-instance authority was aware before issuing the contested decision of circumstances indicating that the waste generator could be identified. Regardless of the fact that the lawsuit should have been granted for this reason alone, the court adds for the case that in the repeated procedure, it will not be possible to impose payment of costs on the perpetrator, that the administrative body must, in such a case, more thoroughly investigate the position of the plaintiff in relation to the property on which the waste was deposited.[42]

However, there are very few cases in which the court has ruled on matters in which the measure of removal and payment of costs was imposed on an individual. In some cases, the court merely repeated that the individual's responsibility as the owner or possessor of the land was a subsidiary.[43] However, the implications cannot be ascertained because of the small number of such cases. This could mean that unlawful waste dumps are mainly located on land owned by the state and local communities. This could also mean that inspection authorities are more lenient towards individual owners or possessors. Alternatively, due to the threat of enforced measures, individuals may take care of their own removal. However, studies to this effect have not yet been conducted.

The institution of the subsidiary responsibility of the landowner or possessor for unlawfully dumped waste represents a strong interference with the individual's property rights; therefore, it is not surprising that a procedure for the review of constitutionality was initiated. The petition for a review of constitutionality was initiated by a landowner who was ordered by the inspection authority to remove unlawfully dumped waste from her land. In her petition, she proposed that the Constitutional Court evaluate whether the regulation constitutes disproportionate interference with an individual's property rights. The Constitutional Court dismissed the petition on procedural grounds. During its dismissal, the court stated:

40 | Judgement of the Administrative Court of the Republic of Slovenia no. I U 582/2011 of 5 January 2012.

41 | Judgments of the Administrative Court of the Republic of Slovenia nos. I U 113/2013 of 10 December 2013, I U 1247/2015 of 23 August 2016 and I U 2010/2018-8 of 7 January 2020.

42 | Judgment of the Administrative Court of the Republic of Slovenia no. I U 723/2019-41 of 27 May 2021.

43 | Judgments of the Administrative Court of the Republic of Slovenia nos. I U 600/2012 of 25 September 2013 and I U 457/2018-7 of 23 May 2019.

Contested regulations did not have a direct effect. In such cases, a petition can only be filed after exhausting legal remedies against the individual act issued based on the contested regulation, concurrently with a constitutional complaint, under the conditions of Articles 50 and 60 of the ZUstS [the Constitutional Court Act].[44] This position of the Constitutional Court is explained in more detail in the decision of Constitutional Court No. U-I-275/07 of 22 November 2007. For the reasons stated in the cited decision, the petitioner does not yet demonstrate legal interest in reviewing the constitutionality of the contested legal provision.[45]

Surprisingly, none of the individuals who issued a decision on waste removal used all the regular legal remedies and subsequently filed a constitutional complaint; that is, they did not meet the conditions for the Constitutional Court to substantively decide on the compatibility of the institute with the Constitution. In my opinion, the institution of subsidiary responsibility of the landowner or possessor for unlawfully dumped waste is inconsistent with the Constitution, as it excessively and disproportionately interferes with the individual's property rights. The responsibility for unlawfully dumped waste must primarily be borne by the waste generator, pursuant to the general principles of environmental protection law, and there can be no deviation from this solution. When the perpetrator of unlawful waste deposition remains unidentified, securing an effective method for removing waste from the natural environment is unquestionably in the public interest. However, the realisation of this public interest should not be imposed on individuals; instead, it is the responsibility of those who bear public duties. The subsidiary responsibility of the landowner or possessor can be acceptable if it concerns an owner or possessor who is a public law entity. This arrangement ensures that the financial burden of maintaining proper waste management is distributed among public law entities funded by state or local community budgets. Given this premise, the aspect of subsidiary responsibility regulation that imposes subsidiary responsibility on the landowner or possessor when the land is owned by the State or a local community could be considered acceptable. However, this distribution of the financial burden could also be problematic from the perspectives of public finances and transparency of budgetary funding. There is no reason to impose the burden of subsidiary responsibility for unlawfully dumped waste on individual landowners or possessors. In such cases, subsidiary responsibility specifically refers to responsibility for the unlawful actions of another person. Such responsibility could perhaps be justified if there was any connection between the waste generator and the landowner.

Knez cites Austrian law and the 2002 *Abfallwirtschaftsgesetz* as examples of appropriate subsidiary responsibility regulations. This law, in paragraph 74,

44 | The Constitutional Court Act, Official Gazette of the Republic of Slovenia, nos. 64/07, 109/12, 23/20, and 92/21.

45 | Decision of the Constitutional Court of the Republic of Slovenia no. U-I-228/08-4 of 6 November 2008.

establishes the landowner's subsidiary responsibility, but only in cases where they agree to waste deposition on their land or have omitted measures that could have prevented it. Such a limitation is permissible and in accordance with the Directive, as it places responsibility on the landowner (as well as the generator of unlawful waste) if the landowner agrees to the dumping of waste. Additionally, it is also permissible to impose reasonable and proportionate measures on the landowner to prevent unlawful waste. This permissibility arises from the positive duty of environmental protection, which implies not just abstaining from certain interventions, but also specifying active actions.[46] In my view, the mere general possibility of restricting property rights to fulfil their ecological function does not justify the measure of subsidiary responsibility.

Unlawful waste deposition is carried out entirely at random and is completely independent of the landowner's actions and how they exercise their property rights. The only connection between unlawfully dumped waste and land is the action of the perpetrator, who chose a specific piece of land for their unlawful behaviour. This action would have been carried out by the waste generator regardless of who owned the land on which the waste was dumped. In my opinion, assuming the burden of responsibility solely on this basis constitutes a disproportionate measure that the individual should not be obliged to bear for the realisation of the public interest and the welfare of the entire community. This is particularly pertinent given that the likelihood of a recourse claim is negligible because the condition for subsidiary responsibility is predicated on the fact that the waste generator cannot be identified prior to issuing the measure. The likelihood of identifying a waste generator at a later stage is even smaller. There is no justification for imposing such a burden on an individual; instead, it should be distributed equally across the entire community.

2.2. Subsidiary Responsibility of the Land Owner Pursuant to the ZVO-2

The specific provision for subsidiary responsibility for unlawfully dumped waste was maintained in the new the ZVO-2, which is governed by Article 248. Although there have been some modifications to the regulations, the core solutions have been retained, as have most concerns regarding such solutions.

The first novelty in the regulation and systematisation of subsidiary responsibility is its terminology. The new legal text no longer speaks of waste that has been 'disposed', but rather of waste that has been thrown away or left in the environment. The term 'landfilling' is now used to refer to landfill sites, which are facilities for the removal of waste by disposal or on the ground.[47] The use of the term 'landfilling' is associated with the lawful way of handling waste; hence, a different term is used

46 | Knez 2013, 5.
47 | Point 7.22 of Article 3 of the ZVO-2.

for unlawful practices. Another systemic novelty of this regulation is the introduction of a special legal arrangement that regulates the legal consequences of littering (see below). Pursuant to Article 248 (8) of the ZVO-2, the principle of subsidiary responsibility does not apply to waste disposed of in the environment through littering. Nevertheless, the regulation still distinguishes between lands owned by the state and local communities and those owned by private individuals.

In the regulatory framework for waste dumped on lands owned by the state or local communities, a new element is the variation in measures depending on the intensity of waste deposition. The law distinguishes between milder (Article 248 (1) of the ZVO-2) and more severe (Article 248 (2) of the ZVO-2) cases of unlawfully dumped waste. Milder intensity was considered when communal waste or smaller quantities of construction waste were dumped or left on land. Communal waste includes mixed waste and separately collected household waste—such as paper and cardboard, glass, metals, plastics, biological waste, wood, textiles, packaging, electrical and electronic equipment, batteries and accumulators, and bulky waste (e.g. mattresses and furniture)—as well as mixed waste and separately collected waste from other sources.[48] Construction waste and waste resulting from the demolition of structures are categorised as waste generated during construction activities in accordance with the regulations governing construction.[49] All other cases of waste dumped or left in the environment are more serious.

The measures under Article 248 of the ZVO-2 are defined as subsidiary mechanisms if the person who dumped or left waste in the environment cannot be identified or does not exist. These measures were imposed by a competent inspection authority. If the violation is mild, then the competent inspection authority orders the owner to ensure the removal of waste, which must be done in accordance with the regulations governing waste management. An appeal does not suspend the execution of the inspection authority's decision. In cases of more serious violations, the competent inspection authority orders the entity performing the public service to collect certain types of municipal waste in the area in which the land is located to ensure their removal. In this case, too, an appeal against the decision does not suspend its execution. In both cases, the landowner is responsible for the cost of waste removal. The state bears the costs if the waste is on the land plot owned by state and the local community bears the costs if the waste is on its land. Under the new regulation, unlike its predecessor, the role of the possessor as the responsible party, who would step in for the owner if the possessor was actively using the land, was omitted. However, the new regulation still upholds the right to recourse in cases where the police or inspection authorities identify the perpetrators of dumped or abandoned waste. This right of recourse encompasses the

48 | Point 7.4 of Article 3 of the ZVO-2.
49 | Point 7.5 of Article 3 of the ZVO-2.

full payment made by the state or local community, including all interest charges and costs.

Despite serious concerns, the new law retains an individual's subsidiary responsibility. Unfortunately, these changes have entrenched further ambiguities, and new uncertainties are expected to arise. The law now only specifies that if waste is dumped or left on land under private ownership, the cost of waste removal shall be borne by the person exercising possession. However, the Slovenian legal system does not explicitly define private ownership. The Constitution of the Republic of Slovenia uses this term in Article 33 to establish the right to private property as a fundamental right. This emphasis was justified at the time of the Constitution's adoption in 1991, when Slovenia transitioned from socialism to a market economy. An emphasis on private ownership was necessary because the system no longer wanted to protect socialist social property as a fundamental right. Since the transformation of socialist property, the legal system has uniformly regulated property rights, and there is no basis for distinguishing between public and private ownership. Therefore, the ZVO-2 can only be interpreted to mean that the term 'private land ownership' refers to all land owned by any entity other than the state or municipality.

Under the new regulations, the person with subsidiary responsibility is no longer the landowner in the context of private ownership, but rather its possessor – land ownership can only be based on property law. The Slovenian property law system establishes the objective concept of possession, modelled after the German Civil Code[50]; specifically, 'possession' is defined as actual control over an object, and the possessor is anyone who exercises control. The legal basis, right to possession, or any other element of will has no significance in this regard. This type of possession is called 'direct possession' (Article 24 (1) of the Law of Property Code, *Stvarnopravni zakonik*, SPZ). Legal regulations for possession also define 'indirect possession'. A person also has possession if they have actual control over a thing through someone else who has direct possession under any type of legal title (Article 24 (2) of the SPZ). However, indirect possession requires an existing legal relationship between direct and indirect possessors. This legal relationship can be a contract (for examle lease agreement), a right (e.g. a personal easement), or another suitable legal basis. According to the aforementioned regulations, the landowner is almost always the possessor. If the owner exercised actual control, then there is only a single possessor. However, if the landowner transfers the use and possession of the land to someone else, then a direct possessor has the land in their actual control and a landowner – the indirect possessor – exercises possession through the direct possessor. Both possess the status of possessors according to property law regulations.

50 | Juhart, Tratnik & Vrenčur 2023, 98.

It is not clear to whom Article 248 (6) of the ZVO-2 refers. It is most likely that the measure is directed against the direct possessor, who exercises control over the land and can execute the decision to order the removal of waste from the land. However, one could also argue that inspections can act against the landowner, who is an indirect possessor. In particular, if the owner derives economic benefits from a legal relationship with the possessor, it would be justified for them to bear the risks associated with property rights on the land. Thus, a lessee of land who has no connection to dumped waste would bear a double burden. They would have to pay rent to the owner and cover all costs associated with the unlawfully dumped waste. The relationship between the owner and lessee can also be assessed through the content of the lease agreement and the question of whether the dumped waste constitutes a defect in the leased item for which the lessor is responsible. The ambiguous and inadequately contemplated regulation of the ZVO-2 has given rise to numerous legal challenges that practitioners must confront. If inspection authorities increasingly issue decisions to the possessors of land owned by private individuals, then the highlighted legal issues are also likely to come to the forefront.

The designation of the possessor as the responsible party creates ambiguities, especially when multiple persons are associated with the land. This is often the case with forestland, which is subject to inheritance and co-ownership relationships. Meanwhile, common ownership has been established less frequently. However, direct possession does not necessarily correspond to an ideal co-ownership share. Typically, only some co-owners directly possess land, while others do so indirectly. In these situations, it is an open question to whom the inspection decision should be issued and how costs should be distributed among these actors (e.g. equally or based on the nature of their legal relationships with the land). If the obligation is joint and multiple, what is the nature of the recourse relationship among joint debtors? Again, this gives rise to more questions than answers.

A regulation stipulating that the responsible party is the possessor of the land rather than the owner is likely to pose considerable challenges to competent inspection authorities in their decision-making processes. Information about the landowner is entered into the land register under the principle of publicity of property rights (Article 11 of the SPZ).[51] However, the possession of land arises from the exercise of actual control over the property, which is difficult to ascertain—especially when land is not intended for dwelling or cultivation. The landowner can transfer possession to the possessor through various legal transactions, most of which are not registered in the land register; therefore, the inspector does not have a reliable source of knowledge they can use to determine the responsible party. It can be expected that the inspection will proceed based on the assumption that the

51 | It is presumed that the owner of the immovable property is the person listed in the land register.

property owner is also its possessor, thus risking an appellate argument that the decision was issued against the wrong person.

An even greater flaw in the new regulation on individuals' subsidiary responsibilities is the absence of specific rules in the legal provision regarding the procedure for issuing an inspection decision. Therefore, the general rules on inspection measures from Article 247 of the ZVO-2 apply. This means that the inspection authority first issues an order for the removal of irregularities and sets a deadline for doing so (point 1 of Article 247 (1) of the ZVO-2). An individual against whom the decision is issued can appeal, as Article 248 of the ZVO-2 no longer stipulates that the appeal does not suspend the execution of the decision, as determined for decisions issued against the state or local community. If a decision is confirmed and the individual does not comply with its content, forced execution of the decision may occur (Article 249 of the ZVO-2). This implies that the inspection orders the removal of waste and the provision of appropriate management by the entity collecting certain types of municipal waste in the area in which the land is located; notably, this is done at the expense of the land possessor (Article 248 (6) of the ZVO-2).

The general rules of the ZVO-2 on inspection measures also stipulate that the issued inspection authority's decision is effective against the singular and universal legal successors of the inspection obligor. A universal legal successor is any person who acquires ownership or other rights over the land on which the removal measure must be carried out, based on which they can exercise possession (Article 247 (14) of the ZVO-2).

If the possessor fails to pay the costs of the inspection procedure, it can lead to the enforced recovery of all the costs of the inspection procedure and waste removal, along with all accrued interest. In the case of delay-in-payment, the default interest accrues from the due date. However, how the data should be collected has not been clearly defined. In particular, the law does not clarify the legal nature of the claim of the person who performed waste removal instead of the possessor. This could be a statutory claim under the general rules of property law relationships between individuals, which would mean that the creditor must demand payment through a lawsuit in regular proceedings if the debtor fails to pay. These costs could be temporarily covered by the inspection authority, thus having the legal nature of inspection procedure costs, and could later be collected according to the rules applicable to the collection of public obligations under tax procedure rules. The creditor's position on such a claim (i.e. the state or local community depending on which inspection authority issued the decision) is also secured by a statutory lien on the real estate (mortgage) of the person against whom the inspection procedure was initiated and the inspection measure ordered (Article 250 of the ZVO-2). The lien arises on all debtors' properties, not just on those where the measure was pronounced. The statutory line is a problematic measure in terms of the system of property and mortgage law. General mortgage rules to ensure the equal position of creditors are based on the principle of ranking, which is determined by the time of

entry into the land register. A mortgage based on law is not registered in the land register and can completely change the order of creditors' repayments, as indicated in the land register. This significantly affects mortgage transaction predictability. Therefore, property law theory strongly opposes statutory mortgages or states that it is acceptable only when the emergence of a statutory mortgage can be linked to a legal status registered in the land register.[52]

The possessor who pays the cost of waste removal can demand reimbursement of all costs from the waste generator if they become known (Article 248 (6) of the ZVO-2). This is a derivation of the general rule on the possibility of demanding the reimbursement of what was paid due to the fulfilment of someone else's legal obligation (Article 197 of the Code of Obligations, *Obligacijski zakonik* – the OZ). There is no doubt that the possessor can demand both the reimbursement of their own costs incurred in removing dumped waste and the costs they had to pay based on the inspection authority's decision.

As no special statute of limitations is stipulated, there is no doubt that the general statute of limitations for five years under Article 364 of the OZ applies. However, it remains necessary to determine when the period begins. More specifically, the period can run from the date of the cost payment or the date the possessor and payer learn about the person who dumped the waste. Along with the possibility of demanding reimbursement, the law stipulates that the possessor should not bear the costs if the waste generator is discovered later. Again, it is not clear what this means if these costs cannot be collected from the waste generator because they are insolvent or have ceased to exist. In this case, the possessor may claim reimbursement from the state because a decision was issued against them but the conditions were not met because the person who dumped the waste was known. The myriad questions raised indicate that the legislator primarily focused on the measure itself but did not thoroughly consider the consequences of its implementation.

2.3. Littering

The specific arrangement for littering was incorporated into Slovenian law with the enactment of the ZVO-2, as a result of the implementation of Directive 2018/851. Littering refers to the pollution of land and water environments through the disposal of individual smaller pieces of waste into public and private areas where free access or movement of the population is allowed or into surface waters (sea, rivers, and lakes); additionally, littering can result from improper waste processing methods (Point 9.6 of Article 3 of the ZVO-2). Therefore, littering includes the disposal of waste (e.g. cans, bottles, cigarette butts) from a vehicle on or off the

52 | Tratnik 2016, 799.

road or in other public areas, as previously regulated by Article 5 of the Road Traffic Rules Act (see above).

It is important to stress that 'dumping' should not be equated with either 'landfilling' or 'littering'. While landfilling is a method of waste disposal, the act of dumping waste and leaving it in the environment is invariably a deliberate action by an individual seeking to dispose of a significant amount of waste, with the primary motivation for such behaviour typically being to avoid waste management costs. Littering, unlike waste dumping, can be intentional, unintentional, direct, or indirect and can occur in all environments. The littering of an area is not always a direct consequence of someone dumping waste there, but can also result from the spread of waste due to wind, the outflow of waste-polluted rivers into the sea, and lost items. Littering mainly involves smaller, more easily discarded items, such as cigarette butts, paper scraps, paper tissues, and bottle caps. Therefore, littering is the result of careless or consciously incorrect behaviour by individuals.

In the field of littering, the responsibility of local communities has been emphasised. Communities must prescribe measures to prevent littering with their acts, including preventing pollution due to the dumping of individual smaller pieces of waste onto external surfaces and remedying the consequences of littering (Article 24 (8) of the ZVO-2). These measures relate to public and private areas where, in accordance with regulations, free access or movement of the population is allowed. For example, Slovenian legal regulations that restrict property rights on agricultural land and forests define the right to innocent passage. Thus, these measures cover a large amount of land owned by individuals.[53]

Tasks regarding littering prevention were also determined in the extended producer responsibility regulations. Producers are required to provide public information regarding the separate collection of waste from products and the prevention of littering, as well as environmentally efficient product waste management (point 4 of Article 35 (1) of the ZVO-2). Waste producers, for whom the extended responsibility system applies, may also be required to finance the implementation of measures to prevent littering. The national program addressing littering places particular emphasis on measures aimed at preventing and reducing litter from certain single-use plastic products. The main measure is the introduction of a PRO system for such products, which obligates producers to cover part of the costs of cleaning up litter and raising awareness to prevent littering. The environmental goal of the separate collection of waste bottles; the goal of reducing the consumption of plastic drink cups, plastic food containers, and lightweight plastic bags; and the prohibition of placing certain single-use plastic products on the market in Slovenia will prevent littering.[54] Notably, supervisory authority related to littering has been specifically allocated: besides inspection authorities, police and municipal

53 | For more detail, please see: Juhart, Tratnik & Vrenčur 2023, 52.
54 | Program 2022, 223.

wardens are also empowered to supervise littering, as stipulated in Article 243 (7) of the ZVO-2.

3. Criminal and Punitive Sanctions

The Criminal Code (*Kazenski zakonik* – KZ-1) specifies environmental criminal offences in its thirty-second chapter in Articles 332–347, which outline criminal offences against the environment, space, and natural resources. Amendment KZ-1-B also brought environmental criminal offences in line with the binding provisions of international acts.[55] As a result of these adjustments, provisions regarding the objects of protection, methods of execution, consequences, and sanctions were changed to supplement criminal offences. The purpose of these legislative changes was to achieve a higher level of protection under criminal law in the environment.[56] Despite these changes, environmental protection within the scope of criminal law remained relatively low. An expert group preparing the assessment report 'Practical Implementation and Operation of European Policies for Preventing and Combating Environmental Crime' for Slovenia,[57] found that the general system for detecting environmental offences does not work. Most notably, the system is failing to effectively address crimes of pollution and destruction of the environment in connection with waste of all types; specifically, the system has not adequately prosecuted such crimes.[58] Shortcomings in relation to environmental crime are also recognised by the Government of Slovenia, and action in this area is a major priority. The Government adopted special Programme, which summarises all 20 recommendations of the expert group.[59] Further, as a special measure of the Government of Slovenia, the Programme states that the handling of criminality in the field of waste management should be a national priority and that a strategy for preventing environmental crime should be developed accordingly. How seriously the state will approach this goal will be examined in the coming years.

Mulec analytically examined the reasons behind this inadequate state of affairs, highlighting that initial complications emerge when competent institutions are called upon to discern whether an incident is merely a minor offence identified by inspection or an act that could be classified as criminal.[60] Criminal investigations are not led by specialised prosecutors because no such specialists exist; however, such environmental crime specialists would be especially necessary when dealing with actions prescribed for more than a ten-year prison sentence. Nevertheless,

55 | Mulec 2020, 17.
56 | Ambrož & Jenull 2012, 219.
57 | Council of the European Union, no. 8065/1/19 REV 1, 23 May 2019.
58 | For data on the period from 2010 to 2018, see Mulec (2020), p. 18.
59 | Program 2022, 235.
60 | Mulec 2020, 19.

law enforcement agencies do not currently prioritise environmental crimes or take them seriously. In addition, no special units for environmental crimes have been established by the police, prosecution, or courts.[61]

The basic criminal offence covering various forms of illegal waste management activities is Article 332 of the KZ-1, which defines the criminal offence of burdening and destroying the environment. In this context, the first three (of six) points in the first paragraph of this article are particularly relevant.

Whoever violates regulations by: 1) discharging, emitting, or introducing quantities of materials or ionising radiation into the air, soil, or water, thereby endangering the life of one or more persons or causing the risk of serious bodily injury or actual damage to the quality of air, soil, or water, or to animals or plants; 2) collecting, transporting, recovering, or disposing of waste, or supervision of such processes or activities after the after-care of disposal sites, or trading in or brokering waste in such a way as to endanger the life of one or more persons or to cause the risk of serious bodily injury or actual damage to the quality of air, soil, or water, or to animals or plants; 3) sending non-negligible quantities of waste in a single shipment or in several shipments which appear to be connected, as defined in point 35 of Article 2 of the Regulation (EC) of the European Parliament and of the Council of 14 June 2006 on shipments of waste; [...]

As we can see, Slovenian legislation closely follows (and does not deviate from) Directive 99/2008/EC.[62] This blind adherence to the directive is problematic: it introduces concepts into the law that differ from those in other parts of the legislation; ultimately, this results in a high degree of indeterminacy in the provisions. Therefore, it remains unclear whether the principle of *lex certa* is respected in defining the legal characteristics of criminal offences.[63]

This is a blanket norm; that is, the first condition for all further methods of execution is established by the perpetrator and constitutes a violation of the laws or other regulations in the field of environmental protection.[64] In particular, dumping and leaving waste violates Article 26 of the ZVO-2, which contains a general prohibition on such behaviours applicable to all individuals involved in dumping and leaving waste and in managing uncontrolled waste. However, criminal law experts maintain that criminal offences can only be committed intentionally, with either direct or eventual intent.[65] Currently, case law pertaining to Article 332 of the KZ-1 is very limited. The only published decision available suggests that the alleged conduct was related to the disposal of construction waste on the ground.[66] Mean-

61 | Ibid.
62 | Directive 2008/99/EC of the European Parliament and the Council of 19 November 2008 on the protection of the environment through criminal law.
63 | Florjančič 2012, 19.
64 | Florjančič 2019, 733.
65 | Ibid, 736.
66 | Decision of the Ljubljana High Court no. II Kp 7762/2020 of 22 June 2023.

while, deficiencies in environmental criminal law have also been identified in the Waste Management Program and Waste Prevention Program of Slovenia (2022).

In addition to criminal law protections for the environment, monetary fines for offences can be imposed for unlawful dumping or waste deposition. From a substantive law perspective, offences due to violations of the prohibition of dumping and depositing waste in the environment are specified in the ZVO-2; further, the general rules of the Minor Offences Act (*Zakon o prekrških*, ZP-1) apply to imposing fines.[67] Violations of the prohibition in Article 26 of the ZVO-2 were sanctioned in Article 259. A fine ranging from EUR 75,000 to EUR 125,000 shall be imposed on a legal entity for an offence of dumping waste, leaving it in the environment, and handling waste in an uncontrolled way (point 7 of Article 259 (1) of the ZVO-2). For a minor offence, a fine ranging from EUR 3,500 to EUR 4,100 should also be imposed on the person responsible for the legal entity if it commits an offence (Article 259 (3) of the ZVO-2). However, fines can increase if there is a more severe form of prohibited conduct. These cases pertain to situations where, due to prohibited conduct, there is a need for waste removal and environmental cleaning that exceeds EUR 250,000 or the conduct was committed intentionally or for personal gain, as stated in Article 259 (4) of the ZVO-2. However, the law does not specify any consequences if the conduct is executed by individuals. It is uncertain whether this was an intentional decision by the legislature or merely an oversight.

Special penalties were set for minor offences due to the unlawful dumping of waste into water and coastal lands. Fines for legal entities are prescribed in the range of EUR 4,000 to EUR 125,000. For unlawful waste deposition, fines range from EUR 400 to EUR 1,200. Meanwhile, a specific minor offence was envisaged for littering; notably, this offence is the least severe minor offence that constitutes a violation of the ZVO-2. A legal entity that litters shall be fined between EUR 10,000 and EUR 20,000 (Point 1 of Article 262 (1) of the ZVO-2). Additionally, the person responsible for the legal entity shall be fined between EUR 1,000 and EUR 1,500. Individuals can also impose fines for littering; however, this fine is relatively low at EUR 40. Additionally, littering by throwing objects from a vehicle constitutes a special minor offence; for such behaviour, the Road Traffic Rules Act prescribes a fine of EUR 80 (Article 5 (4)).

4. Conclusion

In my opinion, the legal framework established by the ZVO-2 fully meets the requirements of Article 36 of Directive 2008/98/EC. The Republic of Slovenia has taken necessary measures to prohibit the abandonment and dumping of waste in

67 | Official Gazette of the Republic of Slovenia, nos. 29/11, 21/13, 111/13, 74/14, 92/14, 32/16, 15/17, 73/19, 175/20, and 5/21.

the natural environment. The most essential measure is the legal prohibition on dumping and leaving waste (Article 26 of the ZVO-2), which primarily attributes responsibility to the entity that generated the waste. The system of subsidiary responsibility comes into play only if the person managing waste unlawfully cannot be identified. Therefore, I disagree with the assessment that such an arrangement undermines the polluter pay principle. Meanwhile, landowners' subsidiary responsibility is intended to have a real effect. The focus is on the objective of removing waste from nature. This study makes a significant contribution to existing understandings of the fundamental principles of environmental protection.

However, I observed two serious problems with the arrangement of subsidiary responsibilities. The first is a legal problem. The arrangement of subsidiary responsibilities imposes the burden of removing unlawful waste from landowners. Here, the law distinguishes between lands owned by the state and local communities and those owned by individuals. The subsidiary responsibility of the state and local communities as landowners can be linked to the general principle of subsidiary action under Article 13 of the ZVO-2. The state and local community are obligated to bear the burden of subsidiary measures. Therefore, the provision of Article 248 of the ZVO-2 can be understood as a derivative of the general principle whereby the burden of subsidiary action is distributed among the persons responsible. However, there is no general basis for the subsidiary responsibility of individual landowners or possessors. The occurrence of unlawful waste on the possessor's land is often beyond the possessor's control and is not a consequence of their actions or omissions—in such cases, it is a random event that could not be prevented. Therefore, such a measure is a disproportionate intrusion on an individual's property rights. This measure is constitutionally questionable, and I believe that the Constitutional Court would likely annul it in a review of its constitutional compliance. In this regard, it is irrelevant whether the possession of land arises from property rights or from other rights that enjoy the same constitutional protection as property rights. The burden of unlawful waste should be distributed across the entire community and should not be imposed on random individuals. In its decision,[68] the Constitutional Court merely postponed the review of constitutional compliance to a time when an individual, after exhausting all legal remedies, could initiate substantive decision-making on this issue. I am convinced that the legislature must find a different way to deal with unlawful waste on land owned by individuals.

The second problem is practicality. Adequate legal regulations do not guarantee that measures are actually implemented. The high rate of unlawful waste dumping indicates the inefficiency of the competent national authorities. It is sad that Slovenia was ineffective in the area of the implementation of environmental legislation, as evidenced by several high-profile cases that Slovenia lost before the

68 | Decision of the Constitutional Court of the Republic of Slovenia no.U-I-228/08-4 of 6 November 2008.

European Court of Justice.[69] Some of these cases are related to unlawful landfilling in the natural environment, mainly concerning the problem of used car tires.[70] Despite ambitious plans, the situation has not yet improved. It is difficult to assess how successful the special arrangement of subsidiary responsibility is for unlawful waste deposition and the extent to which it has contributed to the reduction of unlawful waste deposition. No relevant analyses on this matter have yet been performed. Competent national authorities provide neither a comprehensive registry of unlawful waste deposits nor process data for their elimination. According to data from environmental organisations – especially the Ecologists Without Borders Association, which has established a system for recording and inventorying unlawful waste deposits – the number of such deposits has not significantly decreased due to the system of subsidiary responsibility. Annual voluntary clean-up campaigns organised by civil society contribute significantly more to reducing the number of unlawful waste deposits than state authorities' actions.

In my opinion, the other part of Article 36 of Directive 2008/98/EC was also transposed into Slovenian legislation. Penal sanctions have been set for both unlawful waste dumping into the natural environment and litter. Prescribed monetary fines are appropriate and proportional to the severity of the prohibited actions. However, no data are available on the number and amount of fines imposed. Somewhat stricter, but also unclear, conditions are elements of the criminal offence of polluting and destroying the environment under Article 332 of the KZ-1. Slovenia cannot be accused of failing to comply with the requirements of Directive 2008/99/EC; however, difficulties have arisen in its implementation, as indicated by the low number of processed cases.

69 | See, for example, C-140/14 European Commission v. Republic of Slovenia of 16 July 2015. For more details, please see: Vuksanović 2015, 39.
70 | C-153/16 European Commission v. Republic of Slovenia of 15 March 2017. For more details, please see: Skubic 2017, 39.

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Harnessing regulation for circular economy advancement: Identifying breakthrough areas in the European Union and Hungary

Abstract

The prevailing linear economic model, characterized by resource extraction, production, consumption, and disposal, is unsustainable and poses significant environmental and social challenges. The circular economy (CE) has emerged as a transformative paradigm emphasizing resource efficiency, waste minimization, and closed-loop production systems. This paper provides a comprehensive overview of the CE concept, its potential benefits and challenges, and the regulatory frameworks enacted by the European Union (EU) and Hungary to facilitate the transition towards a circular economy. In order to facilitate this, the authors also propose specific regulatory steps based on a systematic concept.

Keywords: circular economy, regulatory environment, carbon credit, sustainable development

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1. Introductory thoughts

Environmental changes are changes that go beyond themselves. The continuing increase in greenhouse gas emissions and the associated climate crisis are generating socio-legal and economic issues. These changes trigger a whole series of complex social relations. The agricultural structure is changing, which will in turn require changes in other segments. These changes have a myriad of consequences. The question is whether there is a chance of halting or at least reducing these processes by highlighting a key element. Even among experts, there is often no consensus on whether there is any chance of avoiding disaster or whether we are already out of time.[5] As a result, national legislators have different views on these issues, and the European Union has its own policy on these issues. However, it must be seen that, as this is a global problem, it may also need to be addressed in a global form. This has resulted in the need to limit greenhouse gas emissions. This first appeared in the Kyoto Protocol. The aim of the framework convention is to stabilise greenhouse gas concentrations in the atmosphere at a level (+2°C) below which anthropogenic damage to the climate is not yet occurring.[6] Primary action at the global level would bring results in tackling the problem, but as László Fodor points out, the municipal level cannot be neglected either. The importance of the municipal level is increasing in some countries precisely because governments are not devoting enough energy to sustainability and it is left to local authorities. A good example is the United States, which is not party to international emission reduction agreements. However, some 200 city governments have declared that they will do their utmost to meet the Kyoto targets. This is not just a US specialty, however, as the situation is similar in Spain[7] and Italy. In the latter countries, this is due to relatively weak coordination of sustainability at the national level.[8]

This framework should take into account the economic situation, the willingness to engage, and the long-term goals of each state. These will have a significant impact on the commitment a country is willing to make. Hungary's initial commitment was also more of an indication than a serious commitment to change. The question is: to what extent are individual states, including our own, willing to act for the common good? However, Hungary is a member of the European Union, so its commitments are not only in the national interest but also have to be understood within the regulatory framework of the Union. The European Union is determined to protect the climate.[9]

5 | On a more popular side, see Friderikusz Podcast 2023
6 | Gerzsenyi 2004, 17–18.
7 | Hornyák & Lindt 2023, 42.
8 | Fodor 2019, 27.
9 | Fodor 2015, 249.

To unpack the topic, we first need to briefly outline the theoretical foundations of the circular economy. Indeed, emissions trading is more difficult to understand without these fundamentals. Our study is the first theoretical reflection of a complex research project. Our research will first focus on recent Hungarian legislation. It does so in the light of whether the decisions of the Hungarian legislator have been in line with the EU framework. Several recent decisions have fitted into this framework, but we also find some that are quite the opposite.

2. Circular economy: basic concepts, challenges, and potential benefits

The circular economy is an economic system that aims to use natural resources and materials sustainably. In contrast to the traditional linear economy, in which the production, use, and waste of products move in the same direction, the circular economy aims to recycle and reuse as much of the materials and energy as possible.[10] The circular economy is now an economic framework that aims to preserve the value of products, materials, and other resources within the economy for as long as possible. This can be achieved by optimizing the use of resources in both production and consumption processes to reduce the environmental footprint. In developing circular economy systems, we aim to minimize waste production and emissions of harmful substances throughout the life cycle, including through the implementation of a waste hierarchy.[11]

2.1. Basic concepts

The concept of a circular economy is now widely accepted by researchers and practitioners, but there is still no consensus on its meaning. Accordingly, several definitions of the circular economy are presented below, comparing the approaches and emphases of the international organizations that have defined the topic. The Ellen MacArthur Foundation's definition emphasizes the importance of eliminating waste and pollution in production systems as a primary task of the circular economy. As part of this, it reinforces the objective of keeping products and materials in use for as long as possible. The Foundation also addresses the concept of regeneration of natural systems as a priority area of the circular economy. The World Economic Forum definition emphasizes the intention and plan to create a restorative or regenerative industrial system. Accordingly, it calls for the elimination of waste through the excellent design of materials, products, and production

10 | Olajos 2016, 91–113.
11 | Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 establishing a framework for the promotion of sustainable investment and amending Regulation (EU) 2019/2088.

systems. The World Economic Forum attaches great importance to the transition to renewable energy sources and the elimination of toxic chemicals. According to the European Commission, the circular economy is an economic framework that encourages resources to be used for as long as possible. It also emphasizes extracting the maximum value from resources while they are in use. The Commission promotes the recovery and recycling of products and their raw materials at the end of their (earlier) life as a key objective. The United Nations Industrial Development Organisation (UNIDO) stresses the need for the development of restorative or regenerative industrial systems and the related design intentions. It aims to ensure that products, components, and materials retain their usefulness and value for as long as possible.[12]

Looking at the different concepts, it can be said that although all definitions agree on the principles of value preservation, waste minimization, and the promotion of resource efficiency, each source gives a slightly different emphasis or perspective to the concept of a circular economy. The Ellen MacArthur Foundation[13], for example, emphasizes the design aspect, while the World Economic Forum emphasizes intention and planning[14]. The European Commission attaches great importance to the longevity and utilization of resources[15] and UNIDO emphasizes the preservation of utility and value[16]. All these approaches emphasize the holistic and sustainable nature of the circular economy.

The concept of the circular economy is also discussed in different ways in academic works. Kirchherr et al. in their study[17] where they identify about 114 definitions of the topic, distinguish three main approaches. These distinct perspectives collectively underscore the multifaceted nature of the circular economy concept, highlighting its potential to address the interconnected challenges of resource scarcity and environmental degradation. The materials management approach emphasizes maximizing resource utilization through the efficient reuse and recycling of materials and energy, minimizing waste generation and resource depletion. This approach advocates for circular material flows and a closed-loop economy, maximizing resource value retention. The environmental approach conceptualizes the circular economy as a departure from the traditional linear, extractive economic model toward a regenerative one. It aims to minimize environmental impact by promoting sustainable production and consumption practices, extending the lifespan of products, and minimizing waste generation. This approach emphasizes the circular economy's potential to mitigate environmental degradation and promote environmental stewardship. The systems approach

12 | Müller 2023
13 | Ellen MacArthur Foundation 2023
14 | World Economic Forum 2022
15 | European Commision 2023
16 | Müller 2023
17 | Kirchherr et al. 2017, 221–232.

adopts a holistic view, encompassing both material management strategies and environmental sustainability principles. It envisions the circular economy as an integrated economic model that aligns economic growth with environmental protection. This approach advocates for a balance between resource utilization and environmental protection, recognizing the interconnectedness of economic and environmental systems.

The comparative theoretical work of Kirchherr and his colleagues also confirms that the definition of the circular economy today is diverse and encompasses several ideas. There are also major overlaps between the different basic concepts and the differentiable approaches that have emerged. Overall, it can be concluded that most of the main schools of thought on the circular economy have a specific approach, but that the concepts are not distinguishable. [18]

2.2. Potential benefits of turning the economy circular

The potential benefits of the circular economy are not yet fully understood from a scientific perspective, but the available evidence suggests that the circular economy can make a significant contribution to environmental, economic, and social sustainability. The circular economy has several potential benefits[19]; we go through the following part of the chapter. The circular economy emerges as a transformative paradigm for resource management, proffering a constellation of potential benefits. The circular economy promotes sustainability and economic resilience by decoupling economic growth from resource consumption. By extending the lifespan of value-added products through robust design, repairability, and recyclability, the circular economy reduces waste generation and enhances material reuse efficiency. This, in turn, mitigates the environmental burden associated with raw material extraction and processing. The circular economy fosters the development of novel markets and products, creating economic opportunities and driving innovation. The circular economy enhances supply security by optimizing resource utilization and minimizing waste and contributes to a more sustainable and resilient economy. The circular economy creates new employment opportunities in various sectors, including green system engineering and maintenance, recycling operations, and bio-based economy value chains. The circular economy also promotes entrepreneurship, particularly in rural and smaller-scale enterprises, fostering innovation and adaptability. In conclusion, the circular economy presents a holistic strategy for resource management, offering a pathway towards sustainable development and economic growth. Overall, the circular economy has several benefits that can contribute to reducing environmental pressures, making economic growth sustainable, creating new jobs, and stimulating innovation.

18 | Németh 2021
19 | Nyist 2023

2.3. Key challenges of the transformation

The circular economy, emerging as a transformative paradigm for resource management and sustainable development, offers a promising path towards a more resource-efficient and environmentally responsible economic system. However, its implementation faces several critical challenges that hinder its widespread adoption and realization. Several open social science dilemmas need to be adequately addressed if the successful adaptation of circular economy models is to contribute to reducing environmental pressures and making economic growth sustainable. The main problems and needs for action arise in the following areas.[20] (1) The circular economy's success hinges on transformative technological advancements that are not yet fully developed. The development of efficient recycling and reuse processes, resource-efficient product design, and novel materials requires continuous technological innovation to close material loops and minimize waste generation. (2) Integrating the circular economy into the current profit-oriented economic system presents a significant challenge. Market mechanisms may not adequately incentivize circularity, and shifting from a linear to a circular economy demands a paradigm shift in economic thinking, encompassing value retention, resource efficiency, and life-cycle thinking. (3) Changing consumer habits and attitudes towards sustainable consumption is crucial for the circular economy's success. Individuals play a pivotal role in reducing waste generation, adopting circular consumption practices, and valuing products with extended lifespans. This requires education, awareness campaigns, and behavioral change initiatives that promote sustainable consumption patterns and encourage individuals to embrace circular principles. (4) The circular economy requires significant investments in research and development, infrastructure, and education to overcome technological and behavioural barriers. Collaboration between governments, businesses, and civil society is crucial to mobilize resources, share knowledge, and accelerate the transition to a circular economy. (5) Last but not least, establishing robust regulatory frameworks that promote circularity and penalize waste generation is essential to incentivize businesses and individuals to adopt circular practices. Clear and enforceable regulations can guide the development and adoption of circular technologies, product designs, and consumption patterns.

3. The EU Commission agenda for developing the circular economy

Both the Circular Economy Action Plan (CEAP) and the Emissions Trading Scheme (ETS) aim to reduce greenhouse gas emissions and promote sustainable practices.

20 | Németh 2021

The CEAP focuses on reducing the environmental impact of products throughout their lifecycle, from production to disposal. This includes measures to promote resource efficiency, sustainable consumption and production, and innovation in circular economy technologies. The ETS puts a price on carbon emissions, creating an incentive for businesses to reduce their emissions. This can be done by improving energy efficiency, switching to renewable energy sources, or investing in carbon capture and storage technologies. The two policies can further work together to reduce greenhouse gas emissions and promote sustainable practices. For example, the Circular Economy Action Plan could support the development of circular economy business models that reduce emissions, while the ETS could provide incentives for companies to adopt these models.

3.1. Regulations by the Circular Economy Action Plan

To achieve a circular economy, the European Commission has adopted an action plan for 2020, focusing on seven key areas. The Commission's action plan is an important step towards achieving the circular economy[21]. The measures set out in the plan can contribute to reducing environmental pressures, making economic growth sustainable, and promoting social justice[22]. The European Commission's (EC) 2020 Circular Economy Action Plan encompasses seven key areas to transition to a circular economy. These areas address the different types of materials and the regulations required to manage them effectively. The first area focuses on EPR, which shifts the responsibility for end-of-life treatment from consumers to producers. This approach promotes collecting, sorting, and recycling electrical and electronic equipment (WEEE), batteries, and packaging waste. The second area emphasizes resource efficiency, aiming to minimize the consumption of resources throughout the product lifecycle, from manufacturing to disposal. The third area advocates for sustainable consumption practices, encouraging consumers to reduce their environmental impact by purchasing fewer items, reusing, or sharing products. The fourth area emphasizes innovation, fostering the development of new technologies and business models that support circularity. This includes supporting research and development in circular economy technologies and promoting the adoption of circular economy business models. The fifth area promotes market development and information dissemination, aiming to establish a secondary raw materials market and enhance circular economy product information. The sixth area emphasizes governance and enforcement to ensure the comprehensive execution of the circular economy action plan, encompassing strengthening the regulatory framework and enhancing the enforcement of circular economy legislation. The seventh area promotes international cooperation to facilitate the global

21 | Európai Parlament 2023
22 | Európai Parlament 2021

adoption of circular economy practices by supporting international initiatives and encouraging the exchange of best practices among countries. We can conclude that the EC's Circular Economy Action Plan outlines a comprehensive strategy for transitioning to a resource-efficient and waste-minimizing economy. By focusing on EPR, resource efficiency, SCP, innovation, market creation, governance, and international cooperation, the plan aims to achieve environmental sustainability, economic resilience, and social equity.

3.2. Regulations by the Emissions Trading Scheme

EU Directive 2003/87 laid the foundation for the emissions trading scheme. Under the legislation, certain installations emitting greenhouse gases can only be operated if they have a special emissions permit. This requires separate permit procedures. This allows the process to be monitored. The central element of the system is the greenhouse gas emission allowance. Under the Directive, this unit is an allowance to emit one tonne of carbon dioxide or equivalent other greenhouse gases. The reason for traceability is to achieve market scarcity.[23]

For the European Union, this provision was only the first step. It then adopted a complete climate protection package, calling for a 20% reduction in carbon dioxide generation and an average 20% increase in the share of renewable energy. These expected changes have not progressed in the way the EU would have liked. Despite this, or perhaps because of it, it has not lowered its targets but has made even more ambitious commitments. In its updated nationally determined contribution submitted to the UNFCCC Secretariat on 17 December 2020, the EU committed to reduce net greenhouse gas emissions from the EU economy as a whole by at least 55% by 2030 compared to 1990 levels. With the adoption of Regulation (EU) 2021/1119 of the European Parliament and the Council, the Union has set an economy-wide climate neutrality objective at the secondary legislation level to be achieved by 2050 at the latest and the ambition to achieve negative emissions thereafter. It also sets a binding target for net greenhouse gas emissions (emissions after removals) within the Union. All sectors must contribute to this reduction. This means that each sector will have to make different changes to its energy demand (sacrifice?) and its best practices.

Along the lines of the principles set out in Directive 2003/87/EC, emission sources can be aviation-related or even stationary. It is, however, independent of the emitter that a specific permit is required for commissioning and continued operation. Under Article 9a of the Directive, for installations carrying out activities listed in Annex I to the Directive which will only be included in the Community scheme from 2013, Member States shall ensure that the operators of such installations submit to the relevant competent authority emission data that are duly

23 | Fodor 2015, 249.

verified by an independent verifier. This is necessary to take such data into account when adjusting the quantity of Community allowances to be issued.

However, since we are talking about Community-wide allowances, Member States will take the necessary measures to ensure that the conditions and procedures for issuing greenhouse gas emissions permits to installations carrying out activities listed in Annex I to Directive 2010/75/EU are harmonized. This is also necessary because, in addition to national markets, the EU Member States are all part of the same Community market. In this respect, the EU can be considered as a single market for Community allowances, in particular in the light of the commitments outlined above.

3.2.1. Allocation of allowances by auction

Allowances that are not allocated for free are sold by states through auction. However, this does not mean that they are free to hold all unallocated allowances. Allowances that are not placed in the market stabilization reserve can also be auctioned. This also means that from 2021 onwards, even taking into account the reduction rules, the share of auctionable quantities will be 57%. However, this does not mean that all 57%. Article 10 of the Directive stipulates that 2% of the total quantity of allowances for the period 2021-2030 shall be auctioned by the Member States to create a fund to improve energy efficiency and modernize the energy systems of certain Member States. This will essentially mean allowances based on a solidarity principle and used up. It is called the EU Legal Modernisation Fund. The beneficiaries of this fund can be any state that, for this quantity of allowances, is a Member State whose GDP per capita at market prices was below 60% of the EU average in 2013. In addition, 2.5% of the total quantity of allowances must be auctioned for the Modernisation Fund between 2024 and 2030. For this quantity of allowances, the number of beneficiary Member States will also change. This includes Member States whose GDP per capita at market prices was below 75% of the EU average between 2016 and 2018.

The remaining allowances in the EU ETS can be auctioned by Member States, with 90% of the total quantity of allowances to be auctioned being distributed among Member States in a proportion equal to their share of verified emissions in the EU ETS. This share shall be determined either for 2005 or for the average of the 2005-2007 period, whichever is the higher. The remaining 10% will be distributed among certain countries.

Part of the proceeds from the auction should be used by the state for specific purposes, such as shifting the energy mix towards renewables, avoiding power cuts, protecting peatlands, reducing the amount of energy from solid fossil fuel combustion, and supporting forms of transport linked to the decarbonization of the sector. In summary, we are talking about financing objectives and instruments that contribute to reducing emissions.

3.2.2. Allocation of allowances for free

EU-wide ex-ante benchmarks will be set for the EU market for allowances to ensure that the way they are allocated provides incentives to reduce greenhouse gas emissions. This is necessary to find efficient technical solutions for energy use. It sets the framework within which allowances can be determined. These frameworks and limits include the emission allowances generated by electricity production. It is important to stress that, except for electricity from waste management, energy from other waste cannot be distributed for free.

If there is an obligation to carry out an energy audit or to implement a certified energy management system by Article 8 of Directive 2012/27/EU of the European Parliament and the Council (17) and if the recommendations contained in the audit report or the certified energy management system are not implemented, the free allocation shall be reduced by 20%. Exceptions to this rule shall be made where the payback period for the investments concerned exceeds three years or where the costs of these investments are disproportionate. The free allocation shall not be reduced where the operator demonstrates that other measures have been implemented that result in greenhouse gas emission reductions equivalent to those recommended in the audit report or certified energy management system of the installation concerned.

The EU wants to complete a harmonized market by applying the above rules. harmonized rules should provide in particular deadlines, conditions for the recognition of energy efficiency measures implemented, and alternative measures to reduce greenhouse gas emissions, using a procedure for national implementing measures. The issues and rules for individual sectors would go beyond the scope of this study, and it is therefore only indicated here that the definition of allowances in some sectors differs from the general one. A more detailed analysis of these will be the subject of further research and publications.

4. Regulations and actions in Hungary

Hungary is a signatory to the Paris Climate Agreement. It is also one of the signatories that is continuously fulfilling its reporting obligations. As you can see from the graph below, Hungary has steadily reduced its emissions. Szunyogh and Vadászi point out that this is interesting in the context of the fact that data from developing countries generally show an increase.[24] The authors also provide a more in-depth presentation of the blueprint under which Hungary has strategically planned the individual steps.

24 | Szunyog & Vadászi 2023

The key steps for the next period are set out in the following documents and strategies:[25] (a) National Energy Strategy 2030 (NES); (b) Hungary's National Energy and Climate Plan (NEKT); (c) Climate Change Action Plan (CCAP); (d) National Clean Development Strategy 2050 (NTFS).

The documents listed are built around the following key principles: (a) strengthening the security of energy supply by increasing the extraction of domestic hydrocarbons, increasing the use of renewable energy sources, and further diversifying the gas market; (b) At the same time, climate proofing the energy sector by greening the district heating sector and reducing greenhouse gas emissions from the electricity industry; (c) implementing energy innovation through economic development; (d) while continuing to focus on the consumer.

Along the principles listed above, we should see that there is a kind of commitment to the green transition. The question is, of course, to what extent can this capital-exposed Eastern European development state enforce these aspects? The strategy documents set out declared objectives. The question is, have some of the recent period's important environmental sustainability?

4.1. Deposit charges for single passenger products in the light of German practice

Re-use of plastic waste is steadily increasing in all countries that have recognized that rapidly growing landfills are a direct and indirect threat to the environment.[26] The recycling of plastic waste is increasing in Europe and is strongly supported by the European Union. According to data received from companies, the main source of waste from recycling plants is manufacturing waste from industrial plants, of which 90% is processed.[27] The deposit scheme, to be reintroduced in 2024, will introduce DRS, the most recent experience of which has been in Slovakia.

The plastics processing industry, as a secondary raw material processing industry, is mainly based on bottles and packaging materials. The legislator is using a variety of incentives to motivate the public to participate in the waste cycle. By these means, the legislator recognizes the raw material nature of waste even without written provisions. However, legislation is always lagging behind technological progress and, because the legislator is also late, people's attitudes are also late in changing.

The use of the deposit fee was perhaps one of the longest-used instruments in Hungary, and in the beginning, it was not primarily for environmental reasons, but for economic reasons. It should also be seen that, although there is a relatively recent provision for deposit charges in this country, the system has steadily been

25 | Szunyog & Vadászi 2023
26 | Pál 2007
27 | Pál 2007

dismantled, and is now fully developed in Germany.[28] However, the system that has been set up has many peculiarities. This packaging continued to live its life as a single-use item, i.e. after being collected, it was recovered (incinerated for energy) or recycled. The scheme aims to reduce the proportion of single-pouch packaging in the commercial offer, due to the high deposit fee and the need to redeem.[29]

The products to which the deposit applies in Germany are bottles and flasks between 0.1 and 3 liters.[30] In Hungary, the scope of deposit-fee products was not previously so defined, since a "*product manufactured or marketed with the designation 'deposit-fee product' or the packaging of a product whose manufacture or first placing on the market with this designation has been notified to the National Inspectorate for the Environment, Nature Conservation and Water Management.*"[31] As of January 2024, the. The return fee would also be a kind of incentive not to throw the packaging in the bin, but to return it. However, it should not be forgotten that if the collection capacity is not properly built up, this will mean a price increase. This price increase will also generate inflation, especially as producers are given a free hand in setting the price for multi-passenger packaging. It is therefore important that the return on investment and the social benefits outweigh the inflation-generating effect.

In the Hungarian legal system, the use of deposit fees was allowed for a similarly wide range of products. However, the system was phased out, with some indications that the then-existing Waste Management Act was expected to be revised in 2013. However, this did not happen. As we can see we had to wait until 2023 for the regulation and 2024 for its revival.

The domestic system also applies the method clearly defined in the German legal solution. Whereas previously, deposit fees in Hungary ranged from 25 to 160 ft (depending on the type of product). There is a 25-cent charge for disposable bottles and metal beverage cans. For returnable bottles, the deposit varies between 8 and 15 cents. Under the new rules, we can also set a single price for single-use products.

Related to this, two other issues may arise in the case of one-way and multi-way packaging. One is to what extent will the public be willing to redeem? This is particularly important because, in certain regions, families are burning their rubbish because of the financial and social situation, thus increasing emissions. The other question is whether, for these socially deprived people, the deposit will be of such value that it is worth redeeming. In the socially deprived areas mentioned, there is another very important phenomenon. Shops in these villages generally have access to food and other products at higher prices than in towns or other better-off areas. The question is: how much more expensive on average is a deposit

28 | Csokonay 2005, 3.
29 | Hulladék munkaszövetség 2012, 43.
30 | Bundesministerium für Umwelt- Naturschutz und Reaktorsicherheit 2012, 1
31 | Governmental Decree no. 209/2005 (X.5.) 2. § Point a)

for a socially deprived family? This also implies the general question of whether the introduction of a deposit charge will also bring a hidden price increase. This is an important question, especially in the current inflationary environment of spiraling prices. Where this hidden price increase does not occur, or only to a very limited extent, the propensity to redeem is likely to be higher. In disadvantaged areas, on the other hand, there is more likely to be some degree of consumption transformation, with deposit charges reducing the quantity or at least changing the composition of products available for purchase in more extreme cases. It may be worthwhile to include extra incentives for the residents of these areas, taking inspiration from the Social Plastic concept.[32]

4.2. Green Bond

A Green Bond is a special security with limited use. It is used to finance investments that have some direct or indirect environmental or climate protection benefit. Sustainable objectives

To ensure the achievement of sustainable objectives, green bond issuance, as opposed to conventional issuance, requires additional documentation to establish sustainable use objectives before the issuance of the bond and to demonstrate the appropriate use of resources and the impact of environmental objectives after the issuance. This also fits in well with the series of attempts to sort out the fate of quotas. The international Green Bond Standards have been developed to ensure comparability of sustainability targets, transparency of appropriate resource use, and investor expectations of sustainability. These, both in their standards and in their objectives, have environmental transition and greening of the economy as a key element. However, within the scope of this report, we do not have the opportunity to fully develop this instrument, but we believe it is certainly the right way forward.

4.3. National rules – taxation

One part of our study aims to examine allowances in the context of the models of use and utilization of allowances by the various industry players. The above section requires an understanding of the general legal basis for the surrender system and the Green Bond, which was the task of the previous section. Therefore, it is within this framework that we try to place the latest Government Decree no. 320/2023 (17.VII). This decree has the unconcealed aim of taxing the country's largest carbon dioxide emitters to a significant extent.[33] Installations with significant carbon dioxide emitting activities covered by the ETS have a

32 | Hornyák & Lindt 2023, 43–44.
33 | Clamba 2023

fixed number of allowances per year, which entitle them to emit a certain amount of CO2 'for free'. The free carbon quota is degressively reduced each year, providing an incentive for large companies to go greener by cutting their emissions.[34] The green transition process is an area of high priority, with the aim of companies leaving a smaller and smaller ecological footprint. But of course, it doesn't happen overnight.[35] This is true even if there have been ideas before, even in the area of taxation. But they would have been primarily a tax to encourage consumers, with differentiation in the level of consumption taxes. This would mean, encouraging the use of products with a lower environmental impact through lower tax rates.[36]

Businesses are therefore required to compensate for the extra pollution with new allowances purchased if they emit more than the free allowances available. This requires instruments that give companies a different incentive to make the green transition. This could be through taxation, but there are other, perhaps more effective, instruments. In this paper, we highlight taxation rules as the most recent legislative product of domestic legislation in this field. The provisions will be specific transaction costs for the operator of an installation receiving a significant free allocation of allowances. The definition of what constitutes such an emitter is set out in the Directive already mentioned above. However, the regulation under consideration is intended to go in a different direction, which appears to be more of a sanctioning rule than an incentive. We would, however, highlight Zoltán Nagy's point that public finance management influences environmental management, both in terms of public revenue (environmental taxes, other charges, fines, etc.) and public expenditure (specialized administration, subsidies).[37] The only question is how the current legislation interprets the scope of what is allowed to be granted. Under the regulation, the personal scope applies to installations with significant carbon dioxide-emitting activities. To put it succinctly, as summarised by PwC, the tax liability applies to installations with average annual emissions of more than 10,000 tonnes over the above periods and which have received a free allocation of several allowances equal to at least half of their average annual emissions.[38] In line with Viktória Clamba's summary, we believe that these provisions affect operators in the fertilizer, cement, oil refining, steel, glass, chemical, metal, etc. sectors. The number of companies affected by the new intervention could exceed forty.[39] However, it should also be stressed that the new regulation goes completely against the EU regulatory logic.

34 | Clamba 2023
35 | Barański et al. 2023, 329–356.
36 | Csák & Nagy 2020, 38–50.
37 | Nagy 2010, 73.
38 | A significant new tax and fee burden will be imposed on operators of certain installations receiving free allocation.
39 | Clamba 2023

Instead of having a quantity of carbon dioxide allowances that entitle them to free emissions, they will be liable to pay a tax on their total emissions. However, it should be stressed that this does not include electricity-generating companies not covered by the free carbon quota system. Also exempted are generators that were in bankruptcy or liquidation proceedings in the year preceding the year under review, even if they would otherwise meet the above criteria. However, companies that fall within the scope of the Regulation will no longer have a quantity of carbon dioxide allowances available to them to emit free of charge but will be liable to pay a tax on their total emissions. In addition, if there were free allowances, the Government Regulation also requires the transfer of free allowances to be subject to a transaction fee to be paid to the Climate Change Authority. The amount of this fee is 10% of the value of the free quota transferred converted at the daily mid-market exchange rate of the EEX-EUA exchange rate set by the Hungarian National Bank. The Decree also provides for cases where the tax base is reduced. The Regulation also provides for cases where the tax base is reduced. In this context, a 50% reduction of the taxable amount can be achieved if the taxpayer's production level with CO2 emissions is at least 90% of the capacity of the main activity. The reduction is also granted if the capacity of the main activity has not decreased compared to the capacity of the previous year. Therefore, neither capacity nor production has been significantly reduced by the acquisition of a free carbon quota. Finally, it can also be claimed that the CO2 emissions per unit of output have decreased by an amount equal to the linear reduction factor of the ETS in force in the year in question.[40]

The question is how these rules relate to the framework and objectives of the European Green Deal. As a new growth strategy, the EU aims to transform the EU into a just and prosperous society with a modern, resource-efficient, and competitive economy, where net greenhouse gas emissions are eliminated by 2050 and where economic growth is not resource-dependent.[41] This transition must be fair, and the fair transition mechanism itself will support regions that are highly dependent on carbon-intensive industries. The mechanism will support the most vulnerable citizens in the transition, giving them access to retraining programs and job opportunities in new economic sectors. [COM (2019)640 final]

The question is whether the domestic legislation serves this purpose. The question is also topical because it has created rules that go against the regulatory framework set by the EU, which some market players believe will jeopardize the very investments that are linked to emission reductions.[42]

40 | Clamba 2023
41 | Jakab 2022, 237–249.
42 | CeMBeton's statement on Government Decree no. 320/2023 (17.VII.)

5. Conclusions and regulatory proposals

The circular economy is about the sustainable use of natural resources and materials. In contrast to the traditional linear economy, in which the production, use, and waste of products follow a straight line, the circular economy aims to recycle and reuse as much of the materials and energy as possible. The circular economy is an economic system that focuses on preserving the value of products, materials, and resources by minimizing waste and pollution. It emphasizes that products should be 1) used for as long as possible, 2) extracted to the maximum value during their lifetime, and 3) recovered and regenerated at the end of their life. The fundamental aim is therefore to maintain resources at the highest possible utility and value throughout their life cycle, with minimal environmental impact and waste.

Promoting a circular economy and reducing greenhouse gas emissions is key to tackling the climate crisis and achieving sustainable development. The European Union has taken several measures to reduce greenhouse gas emissions, including the carbon credit scheme (auctioning of credits and free allocation of allowances). However, experience so far suggests that these measures are not sufficient to achieve the desired results.

To promote a circular economy, the EU should take further measures, including: (1) Changing the design of products and materials to make them more durable and easier to recycle. (2) Transforming waste management systems to focus on recycling and reuse of waste. (3) Addressing consumer attitudes is a critical step in transitioning to a circular economy. By promoting product longevity and waste reduction, we can optimize resource utilization, minimize environmental impact. (4) A reform of the EU's regulatory and tax systems can also help to promote a circular economy. The regulatory system should encourage businesses to adopt circular practices, such as recycling and reusing products and materials, and the tax system should encourage consumers to adopt circular practices, such as using products for longer and recycling or reusing waste.[43]

Promoting a circular economy is a complex task that requires the cooperation of the European Union and Member States, businesses, and consumers. The quality of Hungarian regulation in reducing greenhouse gas emissions and promoting the circular economy is generally good. The government has taken several measures in recent years that have contributed to reducing emissions, such as auctioning allowances, promoting renewable energy sources, and improving energy efficiency. However, Hungarian regulations need further improvements to promote a circular economy. To improve Hungarian regulations, it would be important to harmonize domestic legislation in line with EU directives and recommendations.

43 | Csák 2022, 76–83.

In addition, the government should work with businesses and consumers to promote circular practices.

Our recommendations to the regulators:

Government intervention plays a pivotal role in incentivizing circularity in product development. Regulatory measures, such as mandating extended product lifespans or promoting recyclability-enhancing technologies, can catalyze the adoption of circular principles in product design. An attributed paradigm shift can prioritize resource efficiency, durability, and recyclability over disposability, driving a more sustainable and resource-efficient economic model. By embracing circularity in product development, businesses can contribute significantly to the transition towards a sustainable economy. This can be done by adding consumer protection rules. Action against types of rules such as planned obsolescence. There is no doubt that regulation at the national level would be an essential but not sufficient step.

To transform waste management systems, the government should redesign waste collection and treatment systems to focus on recycling and reuse. This can be done, for example, by improving the efficiency of waste collection or by encouraging waste sorting. Recent years have seen significant steps in this direction with the centralization of the waste collection and processing market. It remains to be seen whether these changes will have the expected positive impact or whether the unleashing of commercial considerations will ultimately become an obstacle to developing a circular approach. An excellent first element of this is the introduction of redemption from 1 January 2024. This is certainly a positive change from the past. Related to this, two issues may arise in the case of one-way and multiway packaging. One is to what extent will the public be willing to redeem? Apart from the social issues that arise, it is certainly in the public interest to try to keep it in circulation in some way. In addition to these, Hungary has committed to more efficient selective collection of waste, with pilot projects also starting in 2024 with the distribution of new types of waste bins and composting frames. However, waste policy change alone cannot bring about change, it also requires a change in consumer attitudes. To change consumer attitudes, the government should launch communication campaigns on the benefits of the circular economy. The government should also encourage consumers through subsidies and legislation to adopt circular practices, such as using products for longer and recycling or reusing waste. Whereas in previous collection campaigns, everyone knew the slogans, such as ‘Tap it flat’. The new deposit scheme has not yet been accompanied by any relevant launch campaign. There is nothing to shake out what was entrenched in the past. Indeed, under the new system, packages will have to be delivered intact, but many people still have the slogan ‘Tap it flat’ in their minds.

Full adoption of EU climate policy, but not uncritical application. The EU’s climate policy objectives should be examined on a country-by-country basis, taking into account the capacity of each country to cope. However, it would be

worthwhile to take the main guidelines and objectives as axiomatic and to cooperate effectively in achieving them. This is why isolated solutions do not help to achieve a common goal. After all, the climate crisis will not be country-specific. It will affect everyone, which is why common European thinking and action is needed. But a critical attitude does not mean that it is necessary to face up to unpopular solutions in an absolute way. It is worth looking for compromise solutions. This is why a more flexible approach to the taxation issues addressed in this study would also be worthwhile. This is even more important in the context of the fact that there is no tax obligation under EU law. Therefore, the introduction of such a public tax would be very economically and competitively self-defeating. This also shows that while domestic climate policy tries to follow the mainstream, some of its provisions have the opposite effect. There are two reasons for this, either it is too weak an instrument or too strong. In our study, we have given an example of too strong a tool, which cannot be sustained in the long term, as it involves taxing economic operators such as cement and fertilizer plants. The problem is not so much the instrument as the level of the tax. Some of these companies have become unviable. This may be causing more harm than good, as efficient agricultural production without fertilizer is unthinkable in the current context.

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Legal regulation facilitating the transition to a circular economy in the legal system of Slovakia[2]

Abstract

This chapter explores Slovakia's transition to a circular economy within the framework of its membership to and the influence of the European Union (EU). Despite the implementation of robust environmental policies, significant gaps remain, including the marked lack of a raw material strategy. This chapter scrutinises legal regulations, revealing a convergence of circular economic initiatives regarding waste management. After analysing specific strategic documents impacting Slovakia's transition to a circular economy, this chapter examines crucial legal regulations, with a primary focus on waste management. A key finding underscores the interdependence of Slovakia's circular economy transition and advancements in waste management. However, progress is hindered by several challenges, particularly in terms of the need for mandatory changes in waste management practices looming to meet both EU and national goals. There is also a clear legislative gap in other areas that need to be actively addressed before the country can transition to a circular economy. In this respect, this chapter highlights a positive development: a collaborative effort in formulating a circular economy roadmap, one identifying impactful reforms in economic instruments, the construction sector, and the food and bio-waste value chain. This chapter concludes by calling for a cohesive and strategic approach, advancing the need for Slovakia to adopt a long-term vision and strict implementation timetable to champion a circular economy embodying sustainability principles.

Keywords: circular economy, environmental policies, waste management, transition to circular economy.

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1. Introduction to the concept of the circular economy

Spanning the late eighteenth and early nineteenth centuries, the Industrial Revolution brought about profound and transformative changes to society, the economy, and technology, enabling humanity to overcome the scarcities of food, shelter, and goods.[3] There are clear linkages between the beginnings and course of the Industrial Revolution and the conceptualisation of the linear economy, including substantial resource extraction and exploitation, greater production and consumption, increased waste production and overall environmental pollution, and the use of single-use products. Historically, humanity has traditionally used the economic model of a linear economy, which is characterised by a 'take-make-use-dispose' process. In this model, resources are extracted and used to manufacture products, which are discarded once they are no longer useful, typically ending up in landfills or waste incinerators. Indeed, it is estimated that up to 80% of all manufactured goods meet such a fate once their shelf life has expired,[4] with only 7.2% of secondary materials cycled back into the global economy.[5] Environmental policy has long concentrated on addressing and mitigating the repercussions of economic development, often neglecting the underlying issue: the unsustainable nature of current economic development practices, which surpass our planet's ecological boundaries.

In recent decades, opposition to this distance from the planet and the environment has emerged. Initially only an idea, this opposition has since developed into a new direction and way of thinking about the world economy: a circular economy. Neither the creation of this term nor the idea itself can be traced to a specific person or publication. That said, the initial concept can be attributed to Boulding. Writing in 1966, he proposed the concept of a 'cyclical ecological system capable of continuous reproduction of materials'.[6] Nevertheless, several scholars contributed to the development of this concept, including John Tillman Lyle, who proposed a regenerative approach that seeks to counter the degeneration of the earth's natural systems while designing human systems capable of co-evolving with these natural systems.[7] McDonough and Braungart developed the notion of 'cradle to cradle', which involves reimagining the design of industrial processes and products. This entails ensuring that, at the conclusion of their life cycle, materials can be reclaimed and repurposed. For instance, they can be reintroduced into the environment as biological nutrients or utilised as technical

3 | No. APVV-20-0076.
Stahel 2020, 7.
4 | Ellen MacArthur Foundation 2013
5 | Circle Economy 2023
6 | Boulding 1966, 3–14.
7 | Lyle 1996

resources for the creation of new products.[8] Another important contribution is that of Stahel and Reday, who outlined the concept of an economy operating in loops – that is, a circular economy – and discussed its potential effects in terms of job generation, economic competitiveness, the conservation of resources, and waste prevention.[9] Arguably, the concept also drew inspiration from seminal texts like Carson's Silent Spring (1962)[10] and the Club of Rome's first report, The Limits to Growth (1972).[11]

In contrast to a linear approach, a circular approach is defined by three essential strategies: prolonging product life to slow resource loops, promoting recycling and reuse of materials in order to close resource loops, and reducing resource usage per product to streamline resource flows.[12] It is difficult to believe that anyone in the science community is unfamiliar with the term 'circular economy'. However, the definition of this term may pose challenges, the extent and content of which may vary according to both geographical location and scientific discipline. In an excellent analysis of this concept, Kirchherr, Reike, and Hekkert gathered 114 definitions of circular economy and coded them on 17 dimensions.[13] In a subsequent study published six years later, the authors expanded these numbers to 211 definitions coded on 30 dimensions and provided a 'meta definition' of the circular economy as follows: *"regenerative economic system which necessitates a paradigm shift to replace the 'end of life' concept with reducing, alternatively reusing, recycling, and recovering materials throughout the supply chain, with the aim to promote value maintenance and sustainable development, creating environmental quality, economic development, and social equity, to the benefit of current and future generations. It is enabled by an alliance of stakeholders (industry, consumers, policymakers, academia) and their technological innovations and capabilities.*[14]*"*

Apart from the foregoing, the Ellen MacArthur Foundation, a British non-governmental organisation, has provided one of the most widely-recognised definitions of this concept: 'a circular economy is based on the principles of designing out waste and pollution, keeping products and materials in use, and regenerating natural systems.'[15] Understanding the term and its meaning is essential for knowing and determining the individual benefits of transitioning from a linear to circular economy.

8 | Braungart & McDonough 2002
9 | Stahel & Mulvey 1981
10 | Carson 1962
11 | Meadows et al. 1972
12 | Fischer 2023, 130.
13 | Kirchherr et al. 2017, 221–232.
14 | Kirchherr et al. 2023
15 | Ellen MacArthur Foundation 2023

1.1. The importance of transitioning to a circular economy

Transitioning to a circular economy is increasingly recognised as a crucial step towards achieving sustainability and addressing environmental challenges.[16] The circular economy is a model that aims to minimise waste and make the most of resources by promoting the continuous use, reuse, refurbishment, and recycling of materials. Arguably, the main benefits of transitioning to a circular economy include: (1) Environmental protection: Promoting the reuse and recycling of products would decelerate the depletion of natural resources, minimise disturbances to landscapes and habitats, and mitigate biodiversity loss. (2) Waste Reduction: A circular economy minimises the generation of waste by designing products and systems with an emphasis on durability, repairability, and recyclability. It also reduces the environmental impact of waste disposal, including landfills and the incineration of waste. (3) Slowing down climate change: By minimising the need for raw materials and new products, a circular economy can play a pivotal role in lowering global emissions, particularly from sectors like construction, transportation, and the food industry, where emissions can be mitigated throughout the production, use (including energy for heating, cooling, and fuel), and disposal phases. According to a paper published by the Ellen MacArthur Foundation 'circular economy strategies could help reduce emissions by 40% in 2050'.[17] (4) Energy Efficiency: A circular economy promotes energy efficiency through the reuse of products and materials, as recycling often requires less energy than extracting and processing raw materials. (5) Economic Opportunities: A circular economy can create new business models and opportunities for innovation, such as remanufacturing, recycling technologies, and sustainable product design, generating jobs in recycling, remanufacturing, and related industries.[18] (6) Resilience to Supply Chain Disruptions: The transition from a linear to a circular economy will enable diversification and strengthen supply chains by reducing dependence on scarce or geopolitically sensitive resources. This shift will enhance the resilience of businesses to disruptions in the availability of raw materials. (7) Long-term sustainability: Perhaps the most universal benefit for all of humanity will come from creating a more sustainable and resilient economy by promoting practices that can be sustained over the long term without depleting natural resources.

In summary, transitioning to a circular economy is essential for achieving a more sustainable and resilient future, addressing environmental challenges, and fostering economic and social well-being. It involves a shift from a linear model to a regenerative system that values resource efficiency and minimises environmental impact.

16 | Schroeder et al. 2019; Corona et al. 2019
17 | Ellen MacArthur Foundation 2021
18 | Ellen MacArthur Foundation 2015

2. Circular economy in the legal context of the European Union

The European Union (EU) is a significant player in and a leading advocate of the transition to a circular economy. For more than a decade, the EU has demonstrated a strong commitment to promoting sustainability, resource efficiency, and shifting to the circular economy as integral components of its policy framework. This subchapter explores the EU's approach to the circular economy, discussing the origins, current policies, and legislation of the transition to a circular economy.

2.1. Historical context and evolution

The importance given to this issue by the EU first became apparent in 2010, with the adoption of the Europe 2020 strategy, which noted 'sustainable growth: supporting a greener and more competitive economy that uses resources more efficiently' as one of the three basis priorities of the EU over the next decade.[19] In order to fulfil this priority, the Europe 2020 strategy noted the need to detach economic growth from resource consumption, facilitate the transition to a low-carbon economy, enhance the utilisation of renewable energy sources, modernise the transportation sector, and promote energy efficiency. A year later, the European Commission (EC) presented The Roadmap to a Resource Efficient Europe,[20] which established a vision for the year 2050, and emphasised the significance of sustainable management across all resources, from raw materials to energy, water, land, air, and soil.

However, the road has proved a bumpy one beset with obstacles. Based on the Roadmap, in July 2014, the EC presented the Circular Economy Package entitled Towards a Circular Economy: A Zero Waste Programme for Europe.[21] This first package advocated for a comprehensive transformation of the EU into a circular economy by 2030, intending to achieve this transition by modifying six EU waste directives. However, in December 2014, the new EC withdrew the proposal. According to Sharff, there was little consensus regarding the package, with responses including both valid and more kneejerk criticisms.[22] Although the EC withdrew the proposal, it by no means abandoned the goal of transitioning to a circular economy. On the contrary, the EC wished to develop an even more ambitious proposal, one covering the entire economic cycle, not just waste reduction targets.

19 | European Commission, 2010. Europe 2020: A strategy for smart, sustainable and inclusive growth (COM(2010) 2020 final).
20 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Roadmap to a Resource Efficient Europe (COM(2011) 571).
21 | European Commission (2014), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards a circular economy: A zero waste programme for Europe (COM(2014) 398 final).
22 | Scharff 2023

A year later, on 2 December 2015, the EC adopted the updated Circular Economy Package. Significantly, in addition to the four proposals to amend six waste directives suggested in the first package,[23] the 2015 package advanced the first circular economy action plan: Closing the Loop: An EU Action Plan for the Circular Economy[24] (hereinafter, CEAP 1). CEAP 1 outlines a programme of initiatives encompassing the entire cycle, from product design, production, and consumption to waste management and the secondary raw materials market. The attached annex provided 54 actions together with a timeline for the completion thereof. That all of these actions had been implemented or approved by 2019[25] is incredibly promising.

In 2018, six EU waste directives were amended as proposed in the 2015 package: (a) Directive (EU) 2018/849 of the European Parliament and of the Council of 30 May 2018 amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment. (b) Directive (EU) 2018/850 of the European Parliament and of the Council of 30 May 2018 amending Directive 1999/31/EC on the landfill of waste. (c) Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste. (d) Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste.

Legally binding waste management targets have been implemented in the EU's legal system, including the goal to reduce the amount of municipal waste landfilled to 10% or less of the total amount generated by 2035.[26] Additionally, targets for the reuse and recycling of municipal waste are set at a minimum of 60% by 2030,[27] and 65% by weight by 2035.[28] There is also a target to recycle at

23 | Proposal for a directive amending the Waste Framework Directive (2008/98/EC), proposal for a directive amending the Directive on Packaging and Packaging Waste (94/62/EC), proposal for a directive amending the Directive on the Landfill of Waste (1999/31/EC), and the proposal for a directive amending four directives, namely, the Directive on End-of-Life Vehicles (2000/53/EC), the Directive on Batteries and Accumulators and Waste Batteries and Accumulators (2006/66/EC), and the Directive on Waste Electrical and Electronic Equipment (2012/19/EU).

24 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Closing the loop: An EU action plan for the Circular Economy (COM(2015) 614 final).

25 | Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the Circular Economy Action Plan (COM(2019) 190 final).

26 | See Art. 1 para. 4 (d) of the Directive (EU) 2018/850 of the European Parliament and of the Council of 30 May 2018 amending Directive 1999/31/EC on the landfill of waste.

27 | See Art. 1 para. 12 (c)(ii)(d) of the Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.

28 | See Art. 11 para. 12 (c)(ii)(e) of the Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.

least 70% of all packaging waste;[29] this target is complemented by specific targets related to individual materials contained in packaging waste, such as 55% of plastic, 30% of wood, 80% of ferrous metals, 60% of aluminium, 75% of glass, and 85% of paper and cardboard.[30] Alarmingly, despite the adoption of these new and more aggressive targets, 10 of the 27 EU Member States are at risk of missing the targets for municipal and all packaging waste for 2025: namely, Bulgaria, Croatia, Cyprus, Greece, Hungary, Lithuania, Malta, Poland, Romania, and Slovakia.[31] It is worth highlighting other pieces of EU legislation that have been adopted to fulfil the requirements outlined in CEAP 1, whether in the legal form of a directive[32] or a regulation.[33]

29 | See Art. 5 para. (5)(f) of the Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste.
30 | See Art. 5 para. (5)(g) of the Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste.
31 | Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions identifying Member States at risk of not meeting the 2025 preparing for re-use and recycling target for municipal waste, the 2025 recycling target for packaging waste and the 2035 municipal waste landfilling reduction target (COM(2023) 304 final).
32 | Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC; Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment; Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.
33 | Commission Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No. 1069/2009 and (EC) No. 1107/2009 and repealing Regulation (EC) No. 2003/2003; Commission Regulation (EU) 2019/424 of 15 March 2019 laying down eco-design requirements for servers and data storage products pursuant to Directive 2009/125/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No. 617/2013; Commission Regulation (EU) 2019/2021 of 1 October 2019 laying down eco-design requirements for electronic displays pursuant to Directive 2009/125/EC of the European Parliament and of the Council, amending Commission Regulation (EC) No 1275/2008 and repealing Commission Regulation (EC) No 642/2009; Commission Regulation (EU) 2019/2024 of 1 October 2019 laying down eco-design requirements for refrigerating appliances with a direct sales function pursuant to Directive 2009/125/EC of the European Parliament and of the Council; Commission Regulation (EU) 2019/1784 of 1 October 2019 laying down eco-design requirements for welding equipment pursuant to Directive 2009/125/EC of the European Parliament and of the Council; Commission Regulation (EU) 2019/2023 of 1 October 2019 laying down eco-design requirements for household washing machines and household washer-dryers pursuant to Directive 2009/125/EC of the European Parliament and of the Council, amending Commission Regulation (EC) No 1275/2008 and repealing Commission Regulation (EU) No 1015/2010; Commission Regulation (EU) 2019/2019 of 1 October 2019 laying down eco-design requirements for refrigerating appliances pursuant to Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulation (EC) No. 643/2009; Commission Regulation (EU) 2019/2022 of 1 October 2019 laying down eco-design requirements for household dishwashers pursuant to Directive 2009/125/EC of the European Parliament and of the Council amending Commission Regulation (EC) No. 1275/2008 and repealing Commission Regulation (EU) No. 1016/2010.

2.2. A new era of EU transformation to a circular economy

In December 2019, the EC adopted a new approach to tackle climate and other environmental-related challenges with the adoption of the Green Deal, a new growth strategy intended 'to transform the EU into a fair and prosperous society, with a modern, resource-efficient, and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use'.[34] One of the basic pillars of this strategy involves mobilising industry for a clean and circular economy. Through its new circular economy action plan and industrial strategy, the EC has promised to help modernise the EU's economy and harness the benefits and opportunities of the circular economy both domestically and globally. It did not take long for the EC to prepare the new circular economy action plan under the title For a Cleaner and More Competitive Europe[35] (hereinafter, CEAP 2), which was adopted in March 2020. CEAP 2 pursues the vision of accelerating the transition towards a regenerative growth model that will take less from the planet than it gives back and which aims 'to provide a future-oriented agenda for achieving a cleaner and more competitive Europe in co-creation with economic actors, consumers, citizens, and civil society organisations and is associated with the recent European Green Deal'.[36]

While CEAP 2 builds upon the achievements and initiatives of CEAP 1, there are discernible fundamental differences between them – something that is both necessary and to be expected given that it represents an enhanced approach by the EU. Where CEAP 1 placed emphasis on waste management and recycling, particularly in terms of the end-of-life phase of products, CEAP 2 adopts a more holistic and systemic approach by considering the entire life cycle of products. CEAP 2 also outlines more specific actions for key sectors – including electronics, packaging, construction, and textiles – encompassing a total of 35 actions, all of which are detailed in the document's appendix. A notable aspect of CEAP 2 is its explicit recognition of the importance of innovation and digital technology, underscoring the EU's role as a global leader in this field. Furthermore, the plan includes measures for a just and inclusive transition, acknowledging the social dimension of the circular economy transition.

Several actions in CEAP 2 will be realised through the adoption of specific strategies. Some of these strategies have already been adopted by the EC: namely,

34 | Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions (COM(2019) 640 final).
35 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A New Circular Economy Action Plan for a cleaner and more competitive Europe (COM(2020) 98 final).
36 | Fidélis et al. 2021, 2.

Chemicals Strategy for Sustainability 'Towards a Toxic-Free Environment',[37] A New Industrial Strategy for Europe,[38] EU Strategy for Sustainable and Circular Textiles,[39] and Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil'.[40] Both the aforementioned strategies and the CEAP itself will have to be transformed into a legally binding form in order to become part of the EU legal system. While some legal regulations for their implementation have already been adopted,[41] others have only been proposed and the legislative process of their adoption remains ongoing.[42] Evidently, the EU has progressed beyond the initial stages of transitioning to a circular economy. However, there is still a long way to go before it achieves its ultimate goal, the attainment of which will require substantial negotiations, discussions, and refinements. It will also be necessary for individual legislation at the EU level to be transposed into the legal systems of the Member States because the EU has no chance of achieving a circular economy without the effective contribution of individual states.

37 | A Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Chemicals Strategy for Sustainability Towards a Toxic-Free Environment (COM(2020) 667 final).
38 | A Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A New Industrial Strategy for Europe (COM(2020) 102 final).
39 | A Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy for Sustainable and Circular Textiles (COM(2022) 141 final).
40 | A Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' (COM(2021) 400 final).
41 | Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC.
42 | Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No. 1257/2013 and (EU) No. 2020/1056 (COM(2021) 709 final); Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 (COM(2022) 144 final); Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste; Proposal for a Regulation of the European Parliament and of the Council on reporting of environmental data from industrial installations and establishing an Industrial Emissions Portal (COM(2022) 156 final); Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (COM(2022) 677 final); Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) (COM(2023) 166 final); Proposal for a Directive of the European Parliament and of the Council on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 (COM(2023) 155 final).

3. Legal framework outlining and facilitating Slovakia's transition to a circular economy

Slovakia is a relatively small landlocked country with approximately 5.4 million inhabitants. Located in the heart of Europe, Slovakia has been a Member State of the EU since 1 May 2004. In 2016, the Slovak Presidency of the Council of the European Union organised an international conference entitled Transition to the Green Economy. Attended by over 500 experts from 32 countries, the conference was the first significant manifestation of Slovakia's interest in the notion and issues of the circular economy. Slovakia has confirmed its commitment to promoting green innovations and facilitating collaboration among Slovak and foreign universities, scientific institutions, the private sector, and the third sector, including towns and villages, with broad support for co-operation between ministries and the third sector.

Divided into two further sections, this subchapter examines individual strategic documents and individual formal legal sources that address Slovakia's transition to a circular economy. The subsequent subchapter then discusses Slovakia's future outlook and the anticipated legislative changes that will need to be adopted in order for Slovakia to comply with the requirements of EU law regarding the transition to a circular economy.

3.1. Strategic documents related to the circular economy

According to a special report by the European Court of Auditors, almost all EU Member States had developed or were in the process of developing a national circular economy strategy in June 2022. Slovakia was preparing such a plan, as were Austria, the Czech Republic, Hungary, Estonia, Lithuania, Latvia, Romania, and Bulgaria.[43] It should be noted that while neither CEAP 1 nor CEAP 2 oblige Member States to adopt a national circular strategy, CEAP 2 encourages the adoption or updating of national circular economy strategies and plans. However, at present, there is no evidence to suggest that Slovakia is preparing such a document. Indeed, the very transformation of the Slovak economy to a circular economy is not even mentioned in the latest Programme Statement of the Government of the Slovak Republic, adopted in the fall of 2023.[44] Nonetheless, the transformation of the Slovak economy into a circular economy is addressed or at least mentioned in several strategic documents.

43 | European Court of Auditors 2023
44 | Government of the Slovak Republic 2023

3.1.1. Greener Slovakia: Environmental Policy Strategy of the Slovak Republic by 2030

In 1993, Slovakia adopted its first environmental strategy, entitled Strategy, Principles and Priorities of State Environmental Policy.[45] Although the strategy remained in effect, over time, it neither corresponded to the Slovak reality nor reflected the goals and direction of the environmental policy expected from a modern democratic state and member of the EU. Accordingly, Slovakia developed a new, comprehensive, and modern environmental policy strategy addressing the country's current situation and pressing environmental challenges. The initial draft of a new strategy entitled Greener Slovakia: Environmental Policy Strategy of the Slovak Republic until 2030, colloquially known as Envirostrategy 2030, was prepared in the fall of 2017.[46] Formally adopted at the beginning of 2019, the basic vision of Envirostrategy 2030 is defined as follows: *"the basic vision of Envirostrategy 2030 is to achieve better environmental quality and sustainable circulation of the economy, which is based on rigorous protection of environmental compartments and using as little non-renewable natural resources and hazardous substances as possible, which will lead to an improvement in health of the population. Environmental protection and sustainable consumption will be part of the general awareness of citizens and policy makers. Through the prevention and adaptation to climate change, the consequences will be as subdued as possible in Slovakia.*[47]*"*

The concept of the circular economy is embedded in the fundamental vision of Eurostrategy 2030, which dedicates a separate section (section 10) to the transition to a circular economy. However, it is important to note that within this section, most, if not all, attention is given to waste management. According to Valenčiková and Marišova, *"With this document, they hope to gradually increase landfill fees, introduce quantity collection incentives, prevent the establishment of black dumps, and reduce biodegradable and food waste"*.[48] The basic measures in this area comprise supporting the circular economy, gradually but significantly increasing landfill fees, introducing incentive bulk collection, increasing the prevention of illegal landfills, and enforcing the 'polluter pays' principle.

3.1.2. Economic Policy Strategy of the Slovak Republic until 2030

Approved by the Government of the Slovak Republic in 2018, Economic Policy Strategy of the Slovak Republic until 2030 is a strategic policy document outlining the direction of Slovakia's economic policy through 2030. Maintaining an apolitical tone, the document provides insights into the continuous development and growth

45 | Approved by the Resolution of the Government of the Slovak Republic No. 619, dated 7 September 1993, and Resolution of the Government of the Slovak Republic No. 339, dated 18 November 1993.
46 | Resolution of the Government of the Slovak Republic No. 87/2019.
47 | Envirostrategy 2019
48 | Valenčiková & Marišova 2023, 11.

of the Slovak economy and outlines a strategy that seeks to facilitate the resolution of long-term conceptual issues beyond the constraints of political cycles.[49] According to this strategic document, Slovakia hopes to achieve a competitive economy by 2030 that enables flexible responses to new global trends and technologies built on the principles of sustainable development. Among its objectives, the strategy seeks to develop an ecologically efficient economy based on resource and energy efficiency, primarily through the adoption of the 'concept of circular economy of the Slovak Republic'. However, despite the approval of this strategic document in 2018, the aforementioned concept has yet to be adopted.

3.1.3. Low-Carbon Development Strategy of the Slovak Republic until 2030 with a View to 2050

Adopted in March 2020,[50] Low-carbon Development Strategy of the Slovak Republic until 2030 with a view to 2050 is Slovakia's main mitigation strategic document and identifies current and additional measures to achieve climate neutrality by 2050. This strategic document was adopted shortly after the presentation of the European Green Deal at the EU level, which established the ambitious goal of climate neutrality. As such, this section focuses on the less ambitious emission reduction scenarios proposed by this strategy, namely, the scenario with existing measures and a scenario with additional measures. The strategy itself acknowledges that the outlined measures may not be sufficient to propel Slovakia toward climate neutrality, necessitating additional efforts. Consequently, the strategy introduces supplementary measures labelled as 'neutral', which are slated for incorporation in future updates. Climate neutrality and the shift towards a circular economy are closely intertwined, with references to the circular economy scattered throughout this document. Enhanced support for the circular economy is explicitly highlighted through the following: (a) Eco-design emphasising reuse, durability, recyclability, recycled content, and reparability. (b) Measures to enhance resource efficiency. (c) Support for the development of new business models based on sharing, lending, or repairs. (d) Strategies to curb food waste, including the donation of edible food, composting, and energy-wise or otherwise enhanced utilisation. (e) The prevention of waste generation. (f) Mandates for the use of certified products from recycled materials when equivalents from non-renewable sources exist. (g) Obligations to reuse purified water from wastewater treatment plants and purified technological water, particularly for energy applications like water vapor.

Even in this document, emphasis is placed on waste management as the main means of transitioning to a circular economy, although to a lesser degree than in the two previous strategic documents.

49 | Resolution of the Government of the Slovak Republic No. 300/2018.
50 | Resolution of the Government of the Slovak Republic No. 104/2020.

3.1.4. Waste Management Programme of the Slovak Republic for the Years 2021–2025

According to Waste Management Programme of the Slovak Republic for the Years 2021–2025, the general strategic document for waste management, Slovakia's primary goal in this area is to divert waste from disposal by landfilling, especially for municipal waste, by 2025. Preventing waste is a crucial component of the overarching shift towards a circular economy, leading to a reduction not only in the consumption of natural resources but also in the efforts needed for waste collection and recycling. This general regulation is supplemented by another strategic document for the area of waste prevention, one better suited to the concept of transitioning to a circular economy. The strategic document in question subsequently regulates the goals and measures across several thematic areas: namely, municipal waste, biodegradable waste, bioplastics, textiles, packaging, non-packaging products, construction waste and demolition waste, waste tires, old vehicles, batteries and accumulators, electrical equipment and electrical waste, waste oils, hazardous waste, and polychlorinated biphenyls. However, given the limited scope and relatively general nature of this document, further detail is unnecessary for the purposes of this chapter.

3.1.5. Waste Prevention Programme of the Slovak Republic for 2019–2025

In compliance with the Waste Directive, Member States are obligated to formulate and adopt what is known as the Waste Prevention Programme.[51] In Slovakia, a second such programme is currently in effect, namely, the Slovak Waste Prevention Programme for the years 2019–2025.[52] The programme's main goal is to shift away from material recovery as the sole priority of waste management in Slovakia and focus on the prevention of waste in accordance with the hierarchy of waste management. This strategic document contains several measures related to Slovakia's transition to a circular economy, primarily in the area of waste management. It is worth noting that the document considers current developments in the EU regarding the application and principle of the circular economy as involving the transition from a linear model of economic growth ('extract-produce-distribute-use-dispose') to a complex, dynamic, and largely closed model, with a focus on developing efficient resource use and sustainable growth. The European Environmental Agency conducted research on individual waste prevention programmes of EU Member States, identifying seven possible research issues: eco-design; repair, refurbishment, and remanufacture; recycling; economic incentives and finance;

51 | See Art. 1 para. 22 (a) of the Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.
52 | Resolution of the Government of the Slovak Republic No. 86/2019.

governance, skills, and knowledge; circular business models; and eco-innovation. In this respect, the Slovak waste prevention programme addresses all but two of the possible issues, namely, circular business models and eco-innovation.[53]

3.2. Legislation related to the transition to the circular economy

The foregoing strategies notwithstanding, identifying specific pieces of legislation in Slovakia that facilitate the transition to a circular economy has proven challenging. This difficulty is partly rooted in the absence of a unified and comprehensive strategy for the circular economy in Slovakia. Strategic documents related to this matter primarily emphasise waste management rather than broader circular economy initiatives. It is similarly difficult to identify individual legal regulations pertaining to the transition to a circular economy. Indeed, a comparable scenario arises when pinpointing specific legal regulations that would govern the shift towards a circular economy. Accordingly, this section presents individual legal regulations that govern waste management and contribute to the transition toward a circular economy in practice. It also notes two further laws that regulate ecolabelling and green public procurement.

3.2.1. Act on Waste

In Slovakia, the main piece of legislation in the area of waste management is Act No. 79/2015 Coll. on Waste and on Amendments of Certain Laws, as amended (hereinafter, the Act on Waste), which was adopted on 17 March 2015, and came into force on 1 January 2017. The Act on Waste has been amended more than 20 times since its adoption. Slovakia has chosen the path of a unified legal regulation that covers the majority of the legal agenda regarding waste management. In other words, most of the EU directives have been transposed into Slovakia's legal order through amendments to the Act on Waste. This legal regulation thus regulates several aspects of waste management related to the transition to a circular economy, primarily through the transposition of the following EU directives.

3.2.1.1. Extended producer responsibility

When introducing extended producer responsibility, the EU was directly inspired by the concept developed by the Organisation of Economic Co-operation and Development (OECD).[54] The EU introduced extended producer responsibility through Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives, according to which

53 | European Environmental Agency 2021
54 | OECD 2021

"Member States may take legislative or non-legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products have extended producer responsibility".[55] The implementation of extended producer responsibility is structured by a number of directives regulating waste management of several different types of products, including batteries and accumulators,[56] vehicles,[57] electrical and electronic equipment,[58] and packaging.[59] In the legal conditions of Slovakia, extended producer responsibility is defined as a summary of the obligations of the manufacturer of the reserved product relating to the product during all phases of its life cycle, the aim of which is to prevent the generation of waste from the reserved product and to strengthen the reuse, recycling, or other recovery of this waste stream.[60] It is possible to conclude that Slovakia correctly and completely transposed the directives related to the introduction of extended producer responsibility and established it for batteries and accumulators, packaging, vehicles, tires, and unpackaged products. It is worth noting the Waste Act establishes that the fulfilment of the obligations of producers of such products is possible individually (by creating a system of individual management with a dedicated waste stream) or collectively (through one producer responsibility organisation and its system of joint management, with a dedicated waste stream in the case of batteries and through a third party in the case of accumulators).[61]

3.2.1.2. Prohibition and restrictions of single-use plastic products

One of the last significant changes to the Act on Waste was an amendment[62] through which Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the

55 | Art. 8(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.
56 | Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC. It should be noted that the abovementioned directive has been repealed with effect from 18 August 2025 by Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC.
57 | Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles.
58 | Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE).
59 | European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste.
60 | See § 27 para. 3 of Act on Waste.
61 | See § 27 para. 6 of Act on Waste.
62 | Act No. 430/2021 Coll. which amends Act No. 79/2015 Coll. on waste and on the amendment of certain laws as amended and which amends Act No. 302/2019 Coll. on the backup of disposable packaging for drinks and on the amendment of some laws as amended.

environment was transposed. As one of the main objectives of the aforementioned directive is to 'promote the transition to a circular economy with innovative and sustainable business models, products and materials', it is necessary to mention it in this context. Interestingly, this change saw the introduction of 'circular economy' and 'transition to circular economy' into the Act on Waste.[63] This amendment to the Act on Waste resulted in a ban on introducing selected single-use plastic products, which include cotton bud sticks, cutlery (e.g. forks, knives, spoons, chopsticks), plates, straws, beverage containers, and cups made of expanded polystyrene, and products made from oxo-degradable plastics, like refuse bags, to the Slovakian market.[64] The second important aspect of this amendment was the adoption of provisions aimed at reducing the consumption of single-use plastic products. As part of the freedom to choose the means to achieve the objectives of the directive, Slovakia has decided to ensure the reduction of single-use plastic by introducing the following measures: (a) The producer of a single-use plastic product, who provides selected single-use plastic products to the final consumer for consumption of food and beverages at a place other than the point of sale, is obliged to charge payment for such projects, offer the final consumer a reusable alternative, or offer a biodegradable alternative.[65] (b) The provision of single-use plastic products to the final consumer for consumption of food and beverages at the point of sale in permanent public and fast-food establishments is prohibited.[66] (c) The provision of single-use plastic products to the final consumer for consumption of food and beverages at the point of sale at public events is prohibited.[67]

The Slovak government has also introduced a new measure obliging the producers of selected disposable plastic products (e.g. containers or drinking glasses)[68] to bear the costs of increasing awareness of the introduction of their products to the Slovak market; the costs associated with the collection, transport, recovery, recycling, processing, and disposal of product waste; and the costs associated with cleaning up the environment polluted by waste from these products when not disposed of using local waste collection systems.[69] Starting from 1 December 2024, additional entities, such as producers of tobacco products, balloons, and wet

63 | Provision of § 75a para. 1: *"This section regulates the requirements and measures to prevent the impact of certain single-use plastic products on the environment, in particular on the aquatic environment, on human health, with the aim of reducing this impact and supporting the transition to a circular economy with innovative and sustainable business models, products and materials".*
64 | See part B of annex No. 7a Act on Waste and part B of Annex to the Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.
65 | Provision of § 75b para. 1 of Act on Waste.
66 | Provision of § 75b para. 2(a) of Act on Waste.
67 | Provision of § 75b para. 2(b) of Act on Waste.
68 | See Section I of part E of annex No. 7a Act on Waste and Section I of part B of Annex to the Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.
69 | Provision of § 75f para. 1 of Act on Waste.

wipes,[70] will be included among these producers of disposable plastic products.[71] However, it is necessary to note the imperfection of the transposition as the details regarding these obligations have not been transposed. In this respect, the Slovak legislator has asserted that the EC has yet to issue guidelines regarding the criteria for the costs of cleaning the environment polluted by waste.[72] For this reason, it can be assumed that these costs will not have to be paid by these producers at this point in time.

3.2.1.3. Mechanical-biological treatment of waste

According to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, only waste that has been subject to treatment can be landfilled. Slovakia's reaction to this obligation of EU law has been somewhat peculiar. Originally, the ban on the storage of untreated mixed waste in landfills was established in the legal order of Slovakia through the decree of the Ministry of the Environment of the Slovak Republic (hereinafter, the Ministry) adopted in 2021,[73] with effect from 1 January 2023. However, the adopted proposal met with strong opposition from representatives of cities and municipalities, who claimed that they would be unable to introduce mechanical-biological sorting by this date. The Ministry backed down and adopted an amendment[74] to the decree in question, postponing the effective date of the obligation to treat mixed municipal waste to 1 January 2024. However, several studies have confirmed that Slovakia currently does not have the capacity for the mechanical-biological treatment of mixed waste, although a significant increase in this capacity is expected in 2024.[75] Based on the foregoing, the Ministry issued a decree[76] extending the deadline for this obligation by an additional year, purportedly the final extension. Consequently, until 1 January 2025, municipalities are allowed to deposit untreated mixed municipal waste in landfills, provided

70 | See Sections II and III of part E of annex No. 7a Act on Waste and Sections II and III of part B of Annex to the Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.
71 | Provision of § 75f para. 3 of Act on Waste.
72 | See Table of conformity to Act No. 430/2021 Coll., which amends Act No. 79/2015 Coll. on waste and on the amendment of certain laws as amended and which amends Act No. 302/2019 Coll. on the backup of disposable packaging for drinks and on the amendment of some laws as amended.
73 | See Decree of the Ministry of the Slovak Republic No. 26/2021 Coll. which amends the decree of the Ministry of the Environment of the Slovak Republic No. 382/2018 Coll. on waste dumping and storage of waste mercury.
74 | See Decree of the Ministry of the Slovak Republic No. 522/2022 Coll. amending the decree of the Ministry of the Environment Slovak Republic No. 26/2021 Coll., amending Decree of the Ministry of the Environment of the Slovak Republic No. 382/2018 Coll. on waste dumping and storage of waste mercury.
75 | See Inštitút environmentálnej politiky 2023; Zväz odpadového priemyslu 2023.
76 | See Decree of the Ministry of the Slovak Republic No. 521/2023 Coll. amending Decree of the Ministry of the Environment of the Slovak Republic No. 382/2018 Coll. on waste landfilling and on the storage of waste mercury as amended by decree No. 26/2021 Coll.

that the municipality ensures the organised sorting of selected municipal waste components.[77]

3.2.2. Act on Fees for Waste Disposal

Act No. 329/2018 Coll. on fees for waste disposal and on amendments to Act No. 587/2004 Coll. on the Environmental Fund and on amendments to certain laws, as amended (hereinafter, the Act on Fees for Waste Disposal), is an important legal regulation primarily intended to motivate municipalities to recycle more. The adoption of this legislation was driven by several factors. Slovakia has one of the highest percentages of waste sent to landfills among EU Member States, while charging some of the lowest landfilling fees in the EU. The Act on Fees for Waste Disposal was designed to disadvantage landfilling and establish incentive mechanisms for the separate collection of municipal waste, ultimately promoting increased recycling of municipal waste.[78] Based on this Act, every municipality is obligated to pay a fee for depositing mixed municipal waste and bulky waste in landfills. The quantity of waste subject to the landfilling fee is established by the landfill operator, who weighs the waste at the landfill site. The landfilling fee for municipal waste is computed by the landfill operator by multiplying the waste quantity with the applicable rate specified in Annex No. 1 of the Regulation issued by the Government of the Slovak Republic, No. 330/2018 Coll., which sets the rates of fees for waste disposal and provides details concerning the redistribution of revenues from waste disposal fees. When depositing mixed municipal waste and bulky waste at a landfill, the applicable rate is determined based on the share of separately collected municipal waste in a municipality. The specific fee varies according to this sorting level, and, as Table No. 1 illustrates, the range is extensive (ranging from EUR 7 to EUR 17 in 2019, and from EUR 11 to EUR 33 in 2021 and subsequent years). This was intended to incentivise municipalities to enhance their separate municipal waste collection systems. However, based on research carried out by the European Environmental Agency,[79] these fees are still relatively low compared to those charged in other Member States. If we take the lowest possible rate of EUR 11 for depositing one ton of municipal waste in a landfill in Slovakia, then only Italy has a lower fee while the same fee is charged in Slovenia. If we take the highest possible fee of EUR 33, Spain, Estonia Austria, France, Portugal, Greece, Hungary, Romania, and Poland have lower fees. Arguably, these rates need to be

77 | This includes biodegradable kitchen waste from households, used edible oils and fats from households, biodegradable waste from gardens, parks and cemeteries, as well as sorted collection for paper, plastics, metals, glass, and cardboard-based composite packaging, bulky waste, small construction waste, and hazardous household waste.
78 | Act No. 329/2018 Coll. on fees for waste disposal and on amendments to Act No. 587/2004 Coll. on the Environmental Fund and on amendments to certain laws as amended.
79 | European Environmental Agency 2023

updated to provide even greater motivation for municipalities to try to increase the recycling rate in their territory.

3.2.3. Deposit System Act

In 2019, Slovakia became the ninth EU country to introduce a deposit return scheme for plastic bottles and beverage cans through the adoption of Act No. 302/2019 Coll. on Deposit on Single-use Beverage Packaging and on amendments to certain acts (hereinafter, the Deposit System Act). In Slovakia, when buying a drink in a plastic bottle or can with a volume of 0.1–3 litres, the customer pays the so-called deposit, which will be returned only upon returning this package. The system in question finally reached full functionality on 1 January 2022, and has produced very positive results in its short period of operation. Indeed, in the 18 months, a total of 1,311,799,190 beverage containers were collected, representing a 77% return rate for beverage containers.[80] However, a missed opportunity involves the idea of also collecting packaging sold before the system was launched as no deposit was paid for it; doing so may contribute to cleaning black landfills.

3.2.4. Ecolabelling Act

Ecolabelling is a voluntary environmental policy tool aimed at encouraging the production and consumption of products that exhibit greater environmental friendliness throughout their life cycle. These labels furnish consumers with accurate and science-based information, ensuring transparency about the environmental impact of products. The conditions procedure for the award and use of the national ecolabel are regulated by Act No. 469/2002 Coll. on Environmental Labelling of Products, as amended (hereinafter, the Ecolabelling Act). An ecolabel can serve as a valuable guide for consumers during product purchases and may influence their buying decisions. Since 1997, 269 products have been evaluated and awarded the environmentally suitable product mark. Currently, 44 products have the right to use this brand.[81]

3.2.5. Public Procurement Act

In Slovakia, the general legal regulation in the area of public procurement is the Act No. 343/2015 Coll. on public procurement and amending certain acts, as amended. The environmental aspect was added to this law in 2022, and defined as an environmental aspect related to the subject of the contract that reduces or prevents the negative impacts of procured goods, construction works, or services on

80 | Ministry 2023
81 | Ministry 2023

the environment during any phase of their life cycle, contributes to the protection of the environment, supports adaptation to climate change, or promotes sustainable development The environmental aspect has been added to several parts of the aforementioned act. In the Slovak Republic, GPP has long been considered a voluntary instrument. However, in the Envirostrategy 2030, Slovakia stated its intent to secure 70% of the total amount of contracts in public procurement through green public procurement by 2030, while making the same mandatory for central state administration bodies, self-governing regions, and cities. To achieve this goal, the Slovak government passed a resolution whereby green public procurement instruments must be applied in public procurement procedures related to construction works valued above EUR 30,000; public procurement procedures related to construction works below this value and line construction works are excluded from this obligation. In addition to applying green public procurement instruments wherever possible, emphasis should be placed on environmental aspects.[82]

4. Conclusion

As Slovakia is an EU Member State, a portion of this chapter is dedicated to the EU's approach towards the transition to a circular economy. The significance of this topic is evidenced by the wealth of strategic documents and EU legislation in this domain. Slovakia's EU membership is the primary driving force behind the country's transition to a circular economy. This chapter has addressed various strategic documents facilitating the transition to a circular economy to some extent. Analysis revealed that while Slovakia possesses relatively well-established policy frameworks concerning waste management and the environment overall, several other areas have been neglected, such as raw material strategy, which has yet to be adopted. This chapter also examined several legal regulations with a focus on this transition. In this respect, it appears that in Slovakia, the transition to a circular economy is generally understood as being synonymous with more efficient waste management.

In Slovakia, the transition to a circular economy is closely intertwined with more efficient waste management. Slovakia has made remarkable progress in this area, achieving a substantial reduction in the rate of municipal waste landfilling, which decreased from 78.7% in 2005 to 39.3% in 2022. There has also been an extraordinary improvement in the amount of recycled municipal waste, which increased from around 3% in 2005 to 49.5% in 2022.[83] However, Slovakia cannot afford to rest on its laurels, as achieving the national goals outlined in the Envirostrategy 2030 and the EU's targets will not be easy. These goals include

82 | Resolution of the Government of the Slovak Republic No. 541/2022.
83 | Ministry 2023.

increasing the recycling rate of municipal waste, including its preparation for reuse to 60% by 2030, and reducing the rate of landfilling to less than 25%. As Šimková et al. note, 'Achieving [these goals] requires new approaches, as well as innovative solutions in this area'.[84] In terms of waste management, Slovakia will face several challenges in the near future, including the mandatory introduction of mechanical-biological treatment for municipal waste and the implementation of sorted collection for textiles in 2025. Perhaps one of the most significant obstacles Slovakia faces involves the construction of the necessary infrastructure to divert waste from landfill disposal.

It is worth noting that Slovakia is approaching the transition in a relatively fragmented manner, as evidenced by the absence of a singular strategic document or comprehensive legal regulation (*lex generalis*). A good example of comprehensive legislation is Art. 5 of the Polish Constitution, which is the basis for the national raw materials policy.[85] Such a document would be instrumental in detailing and encompassing the vision through an inclusive approach, incorporating a longer-term plan, principles, management, as well as monitoring and evaluation. In an encouraging update, between 2020 and 2022, the Ministry, in collaboration with the EC and the OECD, launched a project entitled, Preparation of a Road Map for a Circular Economy in the Slovak Republic. The objective of this initiative was to analyse and formulate recommendations for transitioning the Slovak economy to a circular model. The result of this project was presented in May 2022 and represents a comprehensive study that provides basic elements for building a road map for the transition to a circular economy in Slovakia. The initiative identified three areas where implementing circular economy reforms could have a particularly significant impact: *"the use of economic instruments to promote sustainable consumption and production, the construction sector, and the food and bio-waste value chain"*.[86] An inevitable result of the analysis of Slovakia's approach towards the transition to a circular economy is the need to harmonise the non-conceptual approach applied to date. It is necessary to adopt a long-term vision, a plan comprising individual measures, and a strict timetable for implementation. Only such a procedure can be effective if Slovakia is to become a promoter of the circular economy and a sustainable and low-emission country.

84 | Šimková et al. 2023, 62.
85 | See Ledwoń 2023.
86 | OECD 2022.

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EU environmental regulation for a circular economy in the light of national sovereignty[2]

Abstract

This paper aims to explore the impact of the latest European Union (EU) circular economy initiatives on the national sovereignty of EU Member States, specifically examining whether new EU measures encouraging a circular economy limit the domain of Member States' sovereignty. Accordingly, the paper begins with the assessment of the measures laid out in the second Circular Economy Action Plan (CEAP) adopted in 2020. It analyses the effectiveness and impact of these measures in promoting a circular economy in the EU (Chapter 2). Following this, it reviews the progress made on implementing the actions listed in the CEAP, with a special focus on legislative and non-legislative measures. It highlights the achievements in the implementation process and provides a brief overview of key legislative proposals (Chapter 3). The following section explores how different countries in the EU are developing their own strategies to promote a circular economy (Chapter 4). Lastly, the paper delves into the notion of sovereignty within the EU and the relationship between the EU and its Member States. It analyses how Member States balance their national sovereignty in relation to the EU and investigates the types of instruments and legal basis used for regulating a circular economy (Chapter 5). The final section concludes, noting the current minor impact of the EU's environmental regulation for a circular economy on national sovereignty (Chapter 6).

Keywords: EU Circular Economy Action Plan (CEAP), National Circular Economy Strategies, National Sovereignty, National Identity, Environmental Regulation

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1. Introduction

This paper explores two intricate concepts that have been extensively examined in scientific research – circular economy and national sovereignty. The question of national sovereignty in the European Union (EU) tends to resurface during times of economic, financial, or other crises.[3] The series of crises and conflicts over sovereignty often threaten to halt the process of European integration. Among the most prominent examples where sovereignty conflicts in the EU have emerged are the economic crisis and new macroeconomics and fiscal governances, the crises of migrants and asylum seekers, Brexit, and the conflicts with the rule of law.[4] However, the current climate crisis, as well as natural resource depletion and animal species extinction, are prompting states to collaborate to find effective solutions to address these challenges.[5] In this context, the concept of a circular economy appears as a sustainable system wherein materials are continually reused and regenerated, ensuring that nothing goes to waste.[6] Products and materials are kept in circulation through practices such as maintenance, reuse, refurbishment, remanufacture, recycling, and composting. The circular economy addresses issues such as climate change, biodiversity loss, waste, and pollution by separating economic growth from the use of limited resources.[7] The circular economy concept does not have a specific origin attributed to a single individual or date, but rather, it has evolved from various schools of thought over time.[8]

The EU has been actively implementing measures in the circular economy framework since 2014, with certain aspects appearing in EU regulations as far back as the 1970s.[9] The first EU action plan for the circular economy was adopted in 2015.[10] A circular economy was defined as one *"where the value of products, materials and resources is maintained in the economy for as long as possible, and the generation of waste minimised"*.[11] The European Commission adopted the new Circular Economy Action Plan (CEAP) 'for a cleaner and more competitive Europe' in March 2020.[12]

3 | Bifulco & Nato 2024
4 | Ibid. 37.
5 | Ibid. 16. For more information on the protection of future generations see, Szilágyi 2022; Szilágyi 2021 and Krajnyák 2023.
6 | Ellen MacArthur Foundation 2024
7 | Ellen MacArthur Foundation 2024
8 | Wautelet 2018, Mazur-Wierzbicka 2021
9 | Mazur-Wierzbicka 2021, 2.
10 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Closing the loop – An EU action plan for the Circular Economy, COM/2015/0614 final.
11 | Ibid. 2.
12 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan for a cleaner and more competitive Europe, COM/2020/98 final.

This paper aims to explore the impact of the newest EU circular economy initiatives on the national sovereignty of EU Member States, specifically examining whether new EU measures encouraging a circular economy limit the domain of Member States' sovereignty. In view of this aim, the present paper begins with the assessment of the measures laid out in the new CEAP. It evaluates how successful and influential these measures are in advancing a circular economy in the EU (Chapter 2). It continues with an update on the progress of implementing the actions listed in the CEAP, with a special focus on legislative and non-legislative measures (Chapter 3). The following section examines the various approaches taken by different EU countries to promote a circular economy (Chapter 4). Finally, the paper explores the concept of sovereignty within the EU and the relationship between the EU and its Member States. It examines how Member States manage their national sovereignty in regards to the EU and explores the types of instruments and legal basis used for regulating a circular economy (Chapter 5). The final section of the paper gives a conclusion on the minor impact of the current EU's regulation for a circular economy on national sovereignty (Chapter 6).

2. Assessing the measures of the new Circular Economy Action Plan

The new EU's CEAP aims to expand the circular economy to the mainstream economic actors to achieve climate neutrality by 2050 and separate economic growth from the use of resources, as foreseen in the European Green Plan.[13] To fulfil this objective, the EU has highlighted four objectives: (1) to accelerate the transition towards a regenerative growth model that gives back to the planet more than it takes; (2) to advance towards keeping its resource consumption within planetary boundaries; (3) to strive to reduce its consumption footprint, and (4) to double its circular material use rate in the coming decade.[14]

The new CEAP builds upon previous initiatives and policies related to the circular economy that have been implemented since the adoption of the first EU action plan for the circular economy in 2015. The new CEAP does not contain the definition of a circular economy, but instead, it implicitly follows it from the previous action plan.[15] In the annex to its new plan, the Commission announced key actions, which include legislative initiatives that it intended to implement from 2020 to 2023. In comparison to the 2015 action plan, the new plan contains a higher

13 | Ibid. 2.
14 | Ibid.
15 | Krämer 2020, 278.

number of legislative measures.[16] The anticipated proposals or amendments to the legislation consist of the following key actions: (a) legislative proposal for a sustainable product policy initiative; (b) legislative proposal empowering consumers in the green transition; (c) legislative measures establishing a new 'right to repair'; (d) legislative proposal on substantiating green claims; (e) review of the industrial emissions directive, including the integration of circular economy practices in upcoming best available techniques reference documents; (f) introduction of the Circular Electronics Initiative and common charger solution; (g) review of the Directive on the Restriction of the use of Certain Hazardous Substances in Electrical and Electronic Equipment; (h) proposal for a new regulatory framework for batteries; (i) review of the rules on end-of-life vehicles; (j) review of the rules on proper treatment of waste oils; (k) review to reinforce the essential requirements for packaging and reduce (over)packaging and packaging waste; (l) mandatory requirements on recycled plastic content and plastic waste reduction measures for key products such as packaging, construction materials and vehicles; (m) restriction of intentionally added microplastics and measures on unintentional release of microplastics; (n) initiative to substitute single-use packaging, tableware and cutlery with reusable products in food services; (o) waste reduction targets for specific streams and other measures for waste prevention; (p) EU-wide harmonised model for separate collection of waste; (q) revision of the rules on waste shipments, and (r) regulatory framework for the certification of carbon removals.[17]

As Nogueira explains, these key actions fall in the category of regulatory measures, that is, public command and control instruments that include the following: prohibitions; limits (emission limit values, standards, product or process standards) and impact assessments; permits, previous communications, and responsible statements; and inspections and penalties (fines, withdrawal of permits or rights).[18] Nogueira classified the remaining CEAP measures into the following categories: non-regulatory strategies and policies, market-based tools, information measures, and self-regulative instruments.[19]

The second category of non-regulatory (voluntary) EU strategies and policies include: (a) policy framework for bio-based, biodegradable, or compostable plastics; (b) EU Strategy for Textiles; (c) strategy for a Sustainable Built Environment; (d) leading efforts towards a global agreement on plastics, and (e) proposing a Global Circular Economy Alliance and initiating discussions on an international agreement on the management of natural resources.[20]

16 | The previous plan included a total of 54 actions. However, most of these actions, specifically 47, were focused on non-legislative measures, and the main focus of legislative proposals revolved around amending the waste legislation; ibid, 81.
17 | COM/2020/98 final (fn. 10), Annex. See also Nogueira 2023, 1551.
18 | Ibid.
19 | Ibid. 1551–1552.
20 | Ibid. 1551.

Market-based tools constitute the third category of EU measures and consist of both mandatory and voluntary instruments. Within this type of instruments Nogueira lists: (a) mandatory Green Public Procurement (GPP) criteria and targets in sectoral legislation and phasing-in mandatory reporting on GPP; (b) supporting the circular economy transition through the Skills Agenda, the forthcoming Action Plan for Social Economy, the Pact for Skills and the European Social Fund Plus; (c) supporting the circular economy transition through Cohesion policy funds, the Just Transition Mechanism and urban initiatives; (d) reflecting circular economy objectives in the revision of the guidelines on state aid in the field of environment and energy; (e) mainstreaming circular economy objectives in the context of the rules on non-financial reporting, and initiatives on sustainable corporate governance and on environmental accounting; (f) mainstreaming circular economy objectives in free trade agreements, in other bilateral, regional and multilateral processes and agreements, and in EU external policy funding instruments, and (g) reward systems to return old devices.[21]

As Nogueira indicates, information measures, which could be mandatory or voluntary, comprise reports, studies, indicators, platforms, as well as information about product or service specifications, rankings, guides, recommendations, good practices, and labels. This category contains the following EU measures: (a) updating the Circular Economy Monitoring Framework to reflect new policy priorities and develop further indicators on resource use, including consumption and material footprints; (b) non-legislative measures establishing a new 'right to repair'; (c) guidance to clarify how the Directive on the Restriction of the use of Certain Hazardous Substances in Electrical and Electronic Equipment links with REACH and Ecodesign requirements; (d) labelling to facilitate separate waste collection; (e) methodologies to track and minimise the presence of substances of concern in recycled materials and articles made thereof; (f) harmonised information systems for the presence of substances of concern; (g) scoping the development of further EU-wide end-of-waste and by-product criteria, and (h) improving measurement, modelling, and policy tools to capture synergies between the circular economy and climate change mitigation and adaptation at the EU and national level.[22]

The last category refers to self-regulatory (voluntary) instruments (technical standardisation, certification, and environmental audits). This final category includes one CEAP measure, that is, the launch of an industry-led industrial symbiosis reporting and certification system.[23]

In a comprehensive critical assessment of the proposed EU measures, Nogueira highlights numerous problematic points of the new CEAP that have implications

21 | Ibid. 1552.
22 | Ibid.
23 | Ibid.

for its ability to achieve a systemic and transformative transition to the circular economy in the EU. There is currently no initiative for a 'Framework Directive' on the circular economy that would bring all sectoral measures into alignment, and CEAP, as an action plan, is not legally binding.[24]

Although legislative measures have increased, their categorisation still indicates a transition away from public law interventions towards softer and voluntary measures, including purely informative measures (e.g., indicators, information platforms, and guidelines).[25] Whether the chosen instruments are appropriate to transform the economy from a linear to a circular one is questionable. As an example, the initial CEAP proposed voluntary measures for green public procurement, whereas the new CEAP recognises the drawbacks of this approach and envisions compulsory circularity requirements for public procurement.[26] In addition, Nogueira observes that there is a significant imbalance in the extent of measures proposed in the plan,[27] and some of them will need to be developed as separate strategies or policies (e.g., EU strategy for textiles and Policy Framework for bio-based plastics and biodegradable or compostable plastics). However, some of the measures are vaguely defined, making it difficult to determine how the outcome will be evaluated or measured.[28]

Regarding the question of how transformative the proposed measures are, Krämer observes that the new CEAP seeks to take a more active role in regulating products, potentially leading to significant changes.[29] In the past, producers maintained discretion over deciding and implementing measures related to their products. Until now, the regulation aimed at producers mainly referred to their voluntary participation.[30] As Krämer explains, previously, EU legislation focused on limiting the use of dangerous or unwanted substances in various products such as cars, electrical devices, batteries, pesticides, and chemicals. However, the regulation did not extend to controlling the composition of the products. Therefore, it would be a significant advancement if the EU were to mandate the inclusion of a minimum content requirement for producers and potentially, importers as well, focusing on plastic material.[31] Krämer concludes that achieving consensus among all 27 Member States is not self-evident.[32] Moreover, he suggests that the concept of a circular economy may not be suitable or sufficiently effective to serve

24 | Ibi. 1552–1553.
25 | Ibid. 1554 and 1559.
26 | Ibid. 1553.
27 | Ibid.
28 | Ibid.
29 | Krämer 2020, 280.
30 | E.g. Regulation (EC) No 66/2010 on the EU Ecolabel and Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
31 | Krämer 2020, 281.
32 | Ibid.

as the foundation for the overall product policy and growth strategy of the EU.[33] As an example, he points out that despite having legislation on circular economy since 1994,[34] it cannot be assumed that products in Germany are inherently more durable, repairable, or recyclable.[35]

A recent report by Watkins, Van der Ven, and Bondi noted the EU's approach to transitioning into a circular economy lacks a direct emphasis on reducing the use of material resources by addressing consumption patterns.[36] In other words, the EU's strategy does not adequately prioritise actions aimed at reducing material resource consumption. In addition, a 2023 report by the European Court of Auditors has determined that the EU's transition towards a circular economy is progressing slowly. The report notes that achieving the goal of doubling the circularity rate by 2030 appears to be highly challenging.[37]

Most of the CEAP's measures primarily focus on mitigating the adverse effects of the existing linear economy by enhancing product design, promoting resource efficiency through repair and re-use, and improving the management of products at the end of their life cycle. The key actions and legislative proposals, however, do not specifically address the top level of the waste hierarchy, which aims to reduce the need for products or resources through improved system design.[38] A related shortcoming pertains to the lack of enforceable regulations and specific objectives aimed at minimising material resource consumption. Existing frameworks primarily concentrate on end-of-life measures rather than actively reducing the consumption of resources.[39]

To achieve the ambitious objectives of the new CEAP, Watkins, Van der Ven, and Bondi argue that it is necessary to directly tackle resource consumption through the development of an EU Material Resources Law.[40] This would empower the EU to directly confront the escalating use of natural resources, which lies at the core of some of the most pressing environmental challenges, including climate change, biodiversity loss, and pollution.[41]

33 | Ibid. 282.
34 | Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen, 27. September 1994 (BGBl. I S. 2705). Latest legislation updates from 24 February 2012 (BGBl. I S. 212).
35 | Krämer 2020, 282.
36 | Watkins, Van der Ven & Bondi 2023
37 | European Court of Auditors, Circular economy: Slow transition by Member States despite EU action, Special Report.
38 | Watkins, Van der Ven & Bondi 2023, 6.
39 | Ibid. 7.
40 | For more information on EU raw materials policy see, Ledwoń 2023
41 | Watkins, Van der Ven & Bondi 2023, 2.

3. Progress of the implementation of the CEAP

The European Commission regularly updates information regarding the implementation of the actions listed in the CEAP, with a special focus on legislative and non-legislative measures.[42]

3.1. Progress on legislative measures

The first initiative that was delivered under the CEAP was the adoption of the proposal for a new regulation on sustainable batteries in December 2020. The European Parliament and the Council adopted the new Batteries Regulation on 12 July 2023, repealing the Batteries Directive.[43] One could argue that regulations are more suitable for manufacturers as opposed to directives because they guarantee consistent standards across all EU Member States, making it easier to navigate through different national laws and, thus, creating a fairer market. Certain provisions came into effect starting 18 February 2024, while others will gradually become applicable in the upcoming years, with specific dates corresponding to different types of batteries. The outcome of voting on this legislative act was 25 Member States in favour, while only two (Bulgaria and Slovenia) abstained.[44]

Furthermore, in the category of legislative measures listed in the CEAP, the Commission adopted a proposal to update rules on persistent organic pollutants in waste in October 2021. The Regulation, amending Annexes IV and V to Regulation (EU) 2019/1021 on persistent organic pollutants, was adopted by the European Parliament and the Council on 23 November 2022.[45] Hungary was the only Member State that voted against the proposed legislative act.[46]

Regarding circular economy measures that are currently ongoing in the ordinary legislative procedure, the Commission adopted the following proposals: (a) New rules on waste shipments;[47] (b) Sustainable Products Initiative,[48] including

42 | European Commission, Circular Economy Action Plan.
43 | Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, OJ L 191, 28.7.2023.
44 | Council of the European Union, Voting result, Document ST 117012023 INIT, 10 July 2023.
45 | Regulation (EU) 2022/2400 of the European Parliament and of the Council of 23 November 2022 amending Annexes IV and V to Regulation (EU) 2019/1021 on persistent organic pollutants, OJ L 317, 9.12.2022.
46 | Council of the European Union, Voting result, Document ST 140272022 INIT, 24 October 2022.
47 | Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056, COM/2021/709 final.
48 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, On making sustainable products the norm, COM/2022/140 final.

the proposal for the Ecodesign for Sustainable Products Regulation;[49] (c) Revision of the Construction Products Regulation;[50] (d) Proposal to amend the Unfair Commercial Practices Directive and the Consumer Rights Directive to empower consumers for the green transition;[51] (e) Proposals to revise the Industrial Emissions Directive[52] and the European Pollutant Release and Transfer Register (E-PRTR);[53] (f) Revision of the Packaging and Packaging Waste Directive[54] (g) Proposal for a Directive on green claims;[55] (h) Proposal for a Directive on common rules promoting the repair of goods;[56] (i) Adoption of measures that restrict microplastics intentionally added to products under the EU chemical legislation REACH,[57] and (j) Proposal for a Regulation on preventing pellet losses to reduce microplastic pollution.[58]

Each of these legislative measures can be examined individually. Thus, the following analysis only focuses on providing a concise summary of the key legislative proposals to the extent necessary to consider their impact on the national sovereignty of Member States.

49 | Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, COM/2022/142 final.
50 | Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011, COM/2022/144 final.
51 | Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, COM/2022/143 final.
52 | Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, COM/2022/156 final/3.
53 | Proposal for a Regulation of the European Parliament and of the Council on reporting of environmental data from industrial installations and establishing an Industrial Emissions Portal, COM/2022/157 final.
54 | Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC, COM/2022/677 final.
55 | Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive), COM/2023/166 final.
56 | Proposal for a Directive of the European Parliament and of the Council on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828, COM/2023/155 final.
57 | Commission Regulation (EU) 2023/2055 of 25 September 2023 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards synthetic polymer microparticles, OJ L 238, 27.9.2023.
58 | Proposal for a Regulation of the European Parliament and of the Council on preventing plastic pellet losses to reduce microplastic pollution, COM/2023/645 final.

The proposal of the new Waste Shipment Regulation has three primary objectives: preventing the export of waste problems from the EU to third countries, simplifying the transportation of waste for recycling and reuse within the EU, and enhancing the measures to combat illegal waste shipments.[59]

The proposed Ecodesign for Sustainable Products Regulation will replace the current Ecodesign Directive 2009/125/EC, which only covers energy-related products. The proposal aims to establish ecodesign criteria for certain product categories, with the objective of significantly enhancing their circularity, energy efficiency, and other environmental sustainability aspects. Except for certain exclusions like food and feed defined in Regulation 178/2002, this measure will establish the requirements for performance and information standards for nearly all types of physical products sold in the EU market. The framework will enable the establishment of a diverse set of requirements, encompassing various aspects such as product durability, reusability, upgradability, and reparability; presence of substances that inhibit circularity; energy and resource efficiency; recycled content; remanufacturing and recycling; carbon and environmental footprints; and information requirements, including a Digital Product Passport.[60]

The objectives of the revision of the Construction Products Regulation are to enhance the functioning of the internal market for construction products, tackle the existing obstacles in national implementation (especially related to market supervision), streamline the legal framework, and facilitate the shift towards green transition in the industry.[61]

The proposed revisions in EU consumer law aim to facilitate the transition towards climate and environmental goals outlined in the European Green Deal by promoting changes in consumer behaviour, that is, enhancing consumer awareness regarding the longevity and repairability of products through improved information provision. Furthermore, the goal is to safeguard consumers against commercial practices that hinder sustainable purchases.[62] However, as Pantzar and Suljada explain, the effectiveness of providing enhanced information on products in influencing actual changes in purchasing behaviour is unproven.[63] The main drives for consumers are price–quality ratio and convenience.[64] Additionally, they question whether citizens should be solely responsible for the transformative

59 | European Commission, Press release, European Green Deal: Commission adopts new proposals, 17 November 2021

60 | For more information see, European Commission, Ecodesign for Sustainable Products Regulation

61 | European Commission 2022

62 | European Commission, Factsheet Empowering Consumers for the Green Transition, 30 March 2022

63 | Pantzar & Suljada 2020, 13.

64 | European Commission, Consumers, Health, Agriculture and Food Executive Agency, Cerulli-Harms, Porsch, Suter et al. 2018, 3.

change as consumers, especially when both market forces and societal influences continue to promote material consumption.[65]

The revision of the Industrial Emissions Directive aims to enhance the regulation of pollution generated by large industrial installations, foster industrial activities that minimise their adverse environmental effects, and ensure their full alignment with the EU's environment, climate, energy, and circular economy policies.[66] The purpose of the proposed Regulation on reporting of environmental data from industrial installations is to transform the European Pollutant Release and Transfer Register (E-PRTR) into an Industrial Emissions Portal.[67]

The key measures included in the proposal of a Regulation on packaging and packaging waste repealing are: targets to reduce packaging waste, reuse targets for economic operators for specific packaging categories, limiting over-packaging and unnecessary forms of packaging, promoting the use of reusable containers and refill systems, minimum required levels of recycled content that must be included in plastic packaging, compulsory deposit return systems for plastic bottles and aluminium cans, and standardised labelling on packaging and waste bins that promotes accurate consumer disposal of packaging waste.[68]

The proposal on green claims aims to protect consumers from the greenwashing practice of providing incorrect or deceptive information to make consumers believe that products are more environmentally sustainable than is, in fact, the case. The proposal stipulates how companies should provide evidence to substantiate their green claims by complying with a number of requirements. Independent and accredited verifiers would assess and validate these claims. The proposal also aims to establish rules on environmental labelling schemes, which are not regulated by any other EU acts.[69]

The objective of the proposed Directive on common rules promoting the repair of goods is to reduce current trends in business and consumption, characterised by frequent and premature disposal and replacement of goods. The proposed directive aims to modify the current remedy systems for addressing issues with defective products, both within and outside the guarantee period. Additionally, it would progressively expand the scope of products covered by these changes. The proposed directive aims to prioritise repair over replacement when a product becomes defective under the legal guarantee unless the expenses for repair exceed those for replacement. Member States would be required to establish at least one national platform that enables consumers to easily locate appropriate repair services.[70]

65 | Pantzar & Suljada 2020.
66 | European Parliament, Revision of the Industrial Emissions Directive.
67 | European Commission, Directorate-General for Environment, Industrial emissions – Modernising EU rules for the green transition.
68 | European Commission, Directorate-General for Environment, Circular economy – New rules on packaging and packaging waste.
69 | European Commission, Circular Economy, Green Claims.
70 | European Commission 2024

The amendments to Annex XVII to the REACH Regulation include a new restriction that concerns synthetic polymer microparticles. These microparticles cannot be used when they are present to confer a sought-after characteristic in mixtures in a concentration equal to or greater than 0.01% by weight. The restriction also prohibits the sale of microplastics, including products that contain intentionally added microplastics and release them during use.[71]

The proposed Regulation on preventing pellet losses with the goal of reducing microplastic pollution seeks to ensure that all EU operators involved in handling pellets take precautionary measures. The priority order includes, first, taking preventive measures to avoid any accidents or spillages of pellets; second, implementing measures to contain spilt pellets to prevent environmental pollution; and third, resorting to clean-up activities after a spill or loss event as a last option. The proposal envisages best handling practices for operators, the implementation of mandatory certification and self-declarations, the establishment of a harmonised methodology to estimate losses, and the introduction of more relaxed requirements for small and medium-sized enterprises.[72]

The effectiveness of legislative measures currently being adopted will only be demonstrated in the future once they have been fully implemented and their impact has been assessed.

3.2. Progress on non-legislative measures

In the remaining categories of non-legislative measures, the Commission implemented as follows: (a) launching of the Global Alliance on Circular Economy and Resource Efficiency (GACERE) as an initiative of the EU and United Nations Environment Programme;[73] (b) Communication of the EU Strategy for Sustainable and Circular Textiles;[74] (c) communication of the EU policy framework on bio-based, biodegradable, and compostable plastics[75], and (d) revision of the Circular Economy Monitoring Framework.[76]

71 | European Commission 2023a
72 | European Commission 2023b
73 | Gacere 2024
74 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy for Sustainable and Circular Textiles, COM/2022/141 final.
75 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU policy framework on biobased, biodegradable and compostable plastics, COM/2022/682 final.
76 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan For a cleaner and more competitive Europe, COM/2020/98 final.

4. National Circular Economy Strategies

Although the CEAP does not mandate EU Member States to adopt a circular economy action plan, as of 2023, 23 of them have adopted national circular economy policies.[77] As one report notes, the emphasis placed by EU Member States on waste management and resource efficiency generally aligns with the priorities set at the EU level and their obligations to implement the EU waste law.[78]

Certain EU Member States have set goals aimed at enhancing resource productivity.[79] For instance, France aims to achieve a 30% increase in resource productivity from 2010 to 2030, and Austria intends to accomplish a circular material use rate (circularity rate)[80] of 18% by 2030, based on a baseline established in 2015.[81] As Watkins, Van der Ven, and Bondi explain, these national objectives aim to enhance resource efficiency[82] instead of reducing the overall quantity of resources used in the economy.[83] Increasing resource efficiency does not necessarily lead to reducing overall material resource consumption. The rebound effect occurs when resources are freed up due to increased efficiency, leading to a subsequent rise in the consumption of the same product or service. This can occur due to decreased costs or the reallocation of these resources elsewhere.[84] The European Commission has noted that in recent years, the transition towards more circular models of production and consumption has seen a combination of positive and negative developments. The EU has made progress in achieving greater resource efficiency in its production processes. However, the level of materials consumed and waste

77 | Four Member States that have not yet adopted the national plan are Hungary, Lithuania, Slovakia, and Croatia.
78 | Watkins, Van der Ven & Bondi 2023, 13.
79 | Resource productivity describes the economic gains achieved through resource efficiency. It depicts the value obtained from a certain amount of natural resources. At the macro-economic level, EUROSTAT measures it as the ratio between economic activity – expressed by gross domestic product (GDP) – and domestic material consumption (DMC). Resource productivity is the inverse of resource intensity.
80 | The circular material use, also known as circularity rate, is defined as the ratio of the circular use of materials to the overall material use. The overall material use is measured by summing up the aggregate domestic material consumption (DMC) and the circular use of materials. The circular use of materials is approximated by the amount of waste recycled in domestic recovery plants minus imported waste destined for recovery plus exported waste destined for recovery abroad. A higher circularity rate value means that more secondary materials substitute for primary raw materials thus reducing the environmental impacts of extracting primary material.
81 | Ibid. 15.
82 | *"In general terms, resource efficiency describes the overarching goals of decoupling – increasing human well-being and economic growth while lowering the amount of resources required and negative environmental impacts associated with resource use. In other words, this means doing better with less. In technical terms, resource efficiency means achieving higher outputs with lower inputs and can be reflected by indicators such as resource productivity (including GDP/resource consumption)."*
83 | Watkins, Van der Ven & Bondi 2023, 15.
84 | Ibid, 7.

generated remains exceedingly high in the EU, highlighting the necessity for future reduction efforts.[85]

Only four countries, namely, Austria, Belgium, Finland, and the Netherlands, have specifically adopted quantitative targets to address resource consumption.[86] Watkins, Van der Ven, and Bondi observe that the lack of their legally binding force is the main drawback of these targets, even though they are focused on reducing material resource consumption through quantitative measures. Over the past decade, there seems to be no evident correlation between the implementation of a material resource consumption target and a decrease in per capita material footprint.[87]

The absence of legally binding targets at the EU Member States' level could be attributed to several factors.[88] As Watkins, Van der Ven, and Bondi explain, the countries may face challenges in achieving a comprehensive government-wide approach and resolving conflicting goals pursued by various ministries. This can be further complicated by a lack of technical understanding regarding material flow, data availability, and specific methodological issues related to developing the required indicators. Having ambitious resource consumption targets could put a country at a competitive disadvantage compared to other EU Member States that do not have strict requirements for resource consumption. As a solution, Watkins, Van der Ven, and Bondi propose the development of an EU Material Resources Law that sets a mandatory target for all Member States regarding their consumption of material resources. Additionally, they provide for a comprehensive examination of how this law can be developed at the EU level.[89] Furthermore, they demonstrate the advantages of developing and implementing an EU Material Resources Law compared to current EU policies, as well as its ability to resolve inconsistencies present in the current approaches to EU regulation.[90]

5. The Concept of Sovereignty in the EU and the Relations between the EU and its Member States

The term 'sovereignty' essentially refers to the supreme authority within a territory.[91] As Tiedeke explained, sovereignty was a concept that, historically, existed separately from the nation state.[92] It was only with the emergence of the

85 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a revised monitoring framework for the circular economy, COM/2023/306 final.
86 | Watkins, Van der Ven & Bondi 2023, 15–17.
87 | Ibid, 18.
88 | Ibid. 19–20.
89 | Ibid. 20–40.
90 | Ibid. 40–51.
91 | Philpott 2024
92 | Tiedeke 2024

Westphalian system that state sovereignty began to evolve.[93] In the literature, sovereignty is often portrayed as possessing two distinct dimensions: internal and external. Internal sovereignty refers to the highest authority held within a specific territory or the ultimate power residing within that territory.[94] The concept of external sovereignty pertains to the positioning of a state within the realm of international relations.[95]

Throughout the twentieth century, alongside the United Nations' (UN) global and universal scope, sector-specific international organisations were notably expanding. The establishment of the UN, while grounded in the principle of state sovereignty, gradually undermines the concept of external sovereignty.[96] Over time, these international organisations, such as the World Trade Organization, will increasingly limit 'the sphere of action of state sovereignty, since they will demand from states, within their own sphere of action, functional supremacy'.[97] As Bifulco and Nato conclude, interpreting external sovereignty in the traditional sense, wherein a state possesses complete and independent control over all powers within its territory, will no longer be possible.[98] They also stress the fact that historically, the issue of states' sovereignty does not arise in periods of absence of crisis, as it is deemed unnecessary. However, sovereignty becomes relevant again during times of crisis and when established institutions and values are called into question, as it occurred during the period following the economic and financial crisis that began in 2007.[99]

Although the texts of the EU treaties do not explicitly mention the concept of sovereignty, the Treaty on EU (TEU) has several important articles that deal with the relations between the EU and its Member States. Article 1(1) of the TEU prescribes that by this Treaty, the Member States establish among themselves a EU, on which the Member States confer competences to attain their common objectives. According to Tiedeke, transferring competences to the EU is not a limitation on the sovereignty of Member States but rather an exercise of their sovereign rights.[100] As Bifulco and Nato observe, in the German literature,[101] sovereignty is associated with the concept known as Kompetenz-Kompetenz, where the person holding sovereign power has the authority to determine how competences are allocated between central and peripheral units.[102] The German Federal Constitutional

93 | Ibid. See also: Bifulco & Nato 2024, 9.
94 | Tiedeke 2024 and Bifulco & Nato 2024, 9–10.
95 | Ibid.
96 | Bifulco & Nato 2024, 10–11.
97 | Ibid. 11.
98 | Ibid.
99 | Ibid, 12.
100 | Tiedeke 2024
101 | Jellinek 1914
102 | Bifulco & Nato 2024, 19.

Court's case law includes this particular concept. In the landmark Lisbon Case,[103] the Federal Constitutional Court stated that, in the case of a conflict of laws, EU law may not claim primacy over the constitutional identity of the Member States.[104] It also reiterated that the Member States permanently remained the masters of the treaties.[105] Numerous constitutional courts, including those of Italy, France, Poland, and the Czech Republic, also asserted their authority to examine violations of their respective national constitutional identity by secondary legal measures undertaken by the EU.[106]

The 'identity clause' first appeared in the Treaty of Maastricht.[107] The reason for the inclusion of the identity clause in the Treaty can be attributed to the fact that the treaty introduced and expanded certain policies that had the potential to impact the fundamental aspects of national sovereignty.[108] As examples of new policies, Blanke states the creation of the European Monetary Union as influencing monetary sovereignty and granting European citizenship with voting rights to non-national EU citizens in local elections, thus impacting the traditional understanding of citizenship, in addition to the creation of new forms of cooperation in the spheres of foreign policy and justice and home affairs.[109]

The governing framework for the relationship between the EU and its Member States is prescribed in Art. 4 TEU.[110] The national identity, inherent in Member

103 | BVerfG, Urteil des Zweiten Senats vom 30. Juni 2009 – 2 BvE 2/08 -, Rn. 1-421.

104 | Par. 332. of the Lisbon Decision reads as follows: *"As primacy by virtue of constitutional empowerment is retained, the values codified in Article 2 Lisbon TEU, whose legal character does not require clarification here, may in the case of a conflict of laws not claim primacy over the constitutional identity of the Member States, which is protected by Article 4.2 first sentence Lisbon TEU and is constitutionally safeguarded by the identity review pursuant to Article 23.1 third sentence in conjunction with Article 79.3 of the Basic Law. The values of Article 2 Lisbon TEU, which are contained in part as principles in the current Article 6.1 TEU, do not provide the European union of integration with Kompetenz-Kompetenz, so that the principle of conferral also continues to apply in this respect".*

105 | Ibid, par. 231. The Constitutional Court concluded the following: *"It follows from the continuing sovereignty of the people which is anchored in the Member States and from the circumstance that the states remain the masters of the Treaties, that – in any case until the formal foundation of a European federal state and the change of the subject of democratic legitimation which must be explicitly effected with it – that the Member States may not be deprived of the right to review compliance with the integration programme".* – par. 334.

106 | Blanke 2012, 215–222.

107 | Treaty on European Union, OJ C 191, 29.7.1992. Article F, paragraph 1 reads as follows: *"The Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy."*

108 | Blanke 2013, 194.

109 | Ibid.

110 | Article 4 reads as follows: *"1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States. 2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State. 3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member*

States' fundamental structures, is protected in Art. 4(2). Blanke observes that the inclusion of this commitment indicates that there is a widely agreed understanding that, regardless of the advancements in European integration, the Union shall honour the distinct national identities of its Member States.[111] The concept of national identity must be congruent with the values enshrined in Art. 2 TEU, on which the EU is established.[112] Thus, as Blanke concludes, 'it is not any national identity which would be tolerated within EU membership, but only those which promote values on which the Union is founded'.[113]

According to the principle of conferral, the EU is limited to acting within the competences granted to it by the Member States.[114] The Union's powers are limited to those assigned to it by the Member States, as the States established the Union.[115] Despite the transfer of powers, the primary authority and control still lies with the Member States, referred to as residual sovereignty, as they are the 'masters of the Treaties'.[116] The principle of conferral is the main principle on the distribution and limits of the EU's competences.[117] The other two principles are the principle of subsidiarity and the principle of proportionality, which are also prescribed in Art. 5 TEU (paras. 3 and 4).[118]

States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives."

111 | Blanke 2013, 195–196.

112 | Art. 2 reads as follows: *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."*

113 | Blanke 2013, 197.

114 | Art. 5 TEU reads as follows:*"1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. 2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. 3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol. 4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality."*

115 | Blanke 2021, 63.

116 | Blanke 2021, 57.

117 | See Weber 2021, 255–286.

118 | Ibid.

5.1. Examining the form of instruments and legal basis for circular economy regulation

As Watkins, Van der Ven, and Bondi note, adopting legislation in the form of regulations has, historically, posed more challenges compared to adopting directives.[119] This can be attributed, at least in part, to the resistance of Member States towards legal instruments that limit their flexibility in implementing the legislation. However, findings in Chapter 3 indicate that recent legislative proposals in the field of circular economy imply a decrease in reluctance towards regulations as a form of instrument when developing new EU acts. It is also worth noting that replacing directives with regulations relevant to a circular economy is not unusual, as demonstrated by the entry into force of the regulation concerning batteries and waste batteries, which repealed the Battery Directive in August 2023.

To adhere to the Treaties, it is imperative for the EU to not only respect the limits of its competences but also follow the appropriate procedures and use the correct instruments. As there are specific legislative procedures in certain areas, it is crucial to assess the specific legal basis for any proposed EU measure. The first step involves determining whether the scope of an EU competence allows for its intended action.[120] Blanke further explains that when there are overlaps with competing Member State competences or other competences of the Union that are mutually applicable, the principles of speciality and subsidiarity determine the competence on which an EU measure can rely.[121] In principle, the specific legal basis should take precedence over the general.

According to the Court of Justice of the EU, the selection of the legal basis by the Union must rely on objective factors that can be scrutinised by judicial review.[122] Pursuant to the 'doctrine of the main or predominant purpose or component' of a Union measure, a legal act must be based on a competence that aligns with its primary objective. However, if an act simultaneously pursues multiple objectives or consists of several interconnected components, where each is not secondary or indirect in relation to the others, it is necessary for such an act to have a foundation based on various legal bases.[123]

New legislative measures concerning the circular economy are based on either Article 114 of the Treaty on Functioning of the EU[124] (TFEU) or Article 192 TFEU, which serve as the legal basis for all legislative proposals of the Commission (presented in Chapter 3.1). Article 114 TFEU serves as the legal foundation for measures primarily focused on market integration, while also incorporating components of

119 | Watkins, Van der Ven & Bondi 2023, 22.
120 | Blanke 2021, 69.
121 | Ibid. 69.
122 | Case C-411/06, Commission v Parliament and Council (ECJ 8 September 2009), par. 45.
123 | Blanke 2021, 69-70.
124 | Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012.

environmental policy. This article grants the EU the authority to adopt the measures for the approximation of laws to guarantee the successful establishment of the internal market. Article 192 enables the EU to adopt measures to attain the goals set forth in Article 191, which include safeguarding the environment and human health and promoting the prudent and rational exploitation of natural resources.

As Watkins, Van der Ven, and Bondi explain, once internal market harmonisation has been used as the legal foundation, EU Member States are not permitted to implement additional regulatory requirements.[125] It is challenging for the Member States to deviate from the requirements of harmonisation under this approach. However, if environmental protection is used as the legal basis, it would support minimum harmonisation and enable EU Member States to implement more stringent national standards if needed.[126]

The areas that are subject to debates in terms of safeguarding national sovereignty among Member States primarily pertain to concerns surrounding welfare-state policies and the decline in the protection of specific fundamental constitutional rights, notably social and economic rights.[127] Furthermore, Member States primarily strive to assert their sovereignty in the area of freedom, justice, and security,[128] as highlighted in cases of terrorist attacks, the migration crisis, and the asylum-seekers' crisis.[129]

Preserving, protecting, and improving the quality of the environment and the prudent and rational utilisation of natural resources as the basis for legislative measures for the regulation of circular economy so far has not triggered Member States to limit the EU's actions in this field and claim that their sovereignty has been undermined. Moreover, environmental protection is often used as an example of a global issue that cannot be effectively addressed by individual states without international cooperation and coordination.[130]

Both the internal market and environment fall into shared competences of the EU and its Member States. Pursuant to the principle of subsidiarity, in the area of its non-exclusive competences, the EU is only authorised to act when the goals of a proposed action cannot be adequately met by Member States and would be more effectively achieved at the EU level. Therefore, the regulation of the circular economy seems rational at the EU level, as it pertains to an issue that individual states cannot handle on their own. Moreover, the regulation of the circular economy does not seem to be controversial at the EU level (as shown in Chapter

125 | Watkins, Van der Ven & Bondi 2023, 23.
126 | Ibid.
127 | Bifulco & Nato 2024, 108.
128 | In 2022, the adoption of a comprehensive raw material policy in Poland greatly bolstered the country's security, particularly in terms of raw material security. For more information see Ledwoń 2023, 100–114.
129 | Bifulco & Nato 2024, 108.
130 | Ibid. 12–14.

3), and the fact that the vast majority of Member States have adopted national circular economy strategies even though they were not obliged to do so (as shown in Chapter 4) contributes to this conclusion.

6. Conclusion

This paper aimed to investigate how the latest EU CEAP affects the sovereignty of Member States, specifically whether the EU legislative initiatives restrict their national sovereignty. An analysis of the measures from the CEAP reveals that the new action plan includes more legislative measures compared to the 2015 plan. The examination of the advancement in the implementation of legislative measures indicates that, with rare exceptions, Member States are supporting the actions outlined in the CEAP. Moreover, although the CEAP does not require EU Member States to implement a circular economy action plan, 23 of them have chosen to adopt national policies on circular economy.

However, the suitability of the selected instruments for transitioning the economy from a linear to a circular model is uncertain. The report by Watkins, Van der Ven, and Bondi highlights that the EU's strategy for moving towards a circular economy does not place sufficient focus on reducing material resource usage through addressing consumption habits.[131] According to a 2023 report from the European Court of Auditors, the EU's move towards a circular economy is advancing at a slow pace. The report indicates that reaching the target of doubling the circularity rate by 2030 is likely to be very difficult.[132] Current regulations and objectives do not focus on minimising material resource consumption. Watkins, Van der Ven, and Bondi argue that to meet the ambitious goals of the new CEAP, it is imperative to address resource consumption by developing an EU Material Resources Law.[133]

The issues regarding safeguarding national sovereignty among Member States mainly revolve around welfare-state policies and the negative impact on the protection of certain fundamental constitutional rights, particularly social and economic rights. Moreover, Member States are primarily focused on asserting their sovereignty in the realm of freedom, justice, and security, especially in cases such as terrorist attacks, the migration crisis, and the asylum-seekers' crisis.[134] The EU's legislative measures for regulating the circular economy, which focus on protecting the environment and using natural resources rationally, do not fall into these controversial areas and thus far have not negatively influenced the domain of Member States' sovereignty. Indeed, environmental protection is frequently cited

131 | Watkins, Van der Ven & Bondi 2023, 2.
132 | European Court of Auditors 2024, 5.
133 | Watkins, Van der Ven & Bondi 2023, 2.
134 | Bifulco & Nato 2024, 12–14.

as an exemplar of a worldwide issue that requires cooperation and coordination between countries to be effectively addressed. Hence, it is reasonable for the EU to regulate the circular economy, as it is a matter that individual countries cannot adequately tackle on their own.

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PAULOVICS Anita[1] – VETTER Szilvia[2]

The significance and legal assessment of Zoophilia and Zoophilic Acts, with special reference to Hungary

Abstract

The recognition of the inherent intrinsic value of living beings clearly characterizes the legislation of Europe in the last few decades, a process that can be seen in the refinement of the legal status of animals, in the increasingly detailed regulations of animal welfare rules, in the tightening of regulations against animal cruelty, in some constitutional changes, and in the prohibitions related to zoophilic acts. Zoophilia is as old as humanity, and although the attitude towards it was not uniform in different historical eras, it was rather negatively judged and prohibited. It is important to distinguish between zoophilia as a psychiatric paraphilia and zoophilic acts as legally relevant acts. In the past few years, sexual abuse committed against vulnerable groups has been in the spotlight in Europe, society's sensitivity is growing and we can witness the tightening of regulations. Although animals cannot be considered victims in the narrow legal sense due to their lack of legal capacity, these processes will also affect the legal assessment of zoophilic acts. In the case of zoophilia, there seems to be a high latency, few cases come to light, but they cause strong public indignation. In the long term, it is likely that even those countries that currently do not sanction or do not sanction zoophilia at the criminal law level (such as Hungary) will take stronger action against it in the future.

Keywords: zoophilia, zoophilic acts, animal protection, animal protection law, sexual offences

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1. Introduction

Mankind has been in contact with the animal world for thousands of years, but this contact has not always been exclusively nutritional or utilitarian, but has also included emotions and even sexual desire for animals. At times throughout history, sexual relations with animals have been desirable and encouraged, while others, in other periods, have been punished or even tortured and murdered for bestiality. What is certain is that zoophilia is with us, and is still an integral part of many people's lives, whether as an artistic or literary activity, or as a sexual behaviour that is desired or achieved.

Zoophilia is a subject that raises many questions that are still taboo today. For example, it can affect the welfare, health and safety of animals, as well as human mental health, sexual dysfunction and health problems. Animal pornography and the 'industry' based on it can generate significant income for those involved, while raising a number of concerns about public morals and national image.

Although research on the topic is limited,[3] and, with few exceptions, the Hungarian literature is still waiting to be published, some research[4] and personal accounts from animal welfare workers suggest that zoophilia is present with a high latency in Hungary.

The aim of the present publication is to raise questions about the recognition of zoophilic acts and finally to propose future legislation in Hungary in order to ensure that zoophilic acts, in line with international trends, are also recognised in Hungary adequately.

2. The concept and history of zoophilia

2.1. The concept of zoophilia

Zoophilia is classified as a paraphilia by psychiatry. Paraphiliae are chronic sexual disorders that deviate from what society considers normal behaviour and can cause physical or psychological harm to others. They are repetitive and compulsive, requiring unusual or bizarre stimuli to arouse desire. The condition can be diagnosed if it persists for at least six months.[5] The personality of paraphilias is usually 'immature' and they have difficulty or no sexual contact with potential human partners.[6] The World Health Organisation's BNO classification

3 | Edwards 2009, 335–346.
4 | Bolliger & Goetsche, 2005, 23–45.
5 | Fekete & Grád 2012
6 | McManus et al. 2013

of zoophilia is classified as 'Other disorders of sexual preference', a category that falls under 'Adult personality and behaviour disorders'.[7] The American Psychiatric Association defines zoophilia as 'repetitive and intense sexual arousal directed at... animals'.[8]

The definitions of *zoophilia* and *bestiality* vary widely, making it difficult to compare research on the subject.[9] The two terms are used synonymously, but some researchers define zoophilia at the level of intention or attraction, while bestiality refers to when the act is actually performed.[10] Other authors see the difference in the fact that bestiality does not involve emotional fibres, but merely the satisfaction of needs.[11] Attempts have also been made to introduce the much more neutral term *zoosexuality (bestiosexuality)*, and the terms *zooerasty* and *zoorasty* are also used.[12]

People with an affinity for animals form communities, secret 'subcultures'. The Internet is a very important platform for people who often call themselves 'zoos'. Andriette (1996) has pointed out that most zoos' lives have been changed by connecting with others with similar preferences, because the sense of belonging to a group has given them a 'new self-understanding'.[13] Many of the zoophilic communities report deep feelings of love, affection and respect for the animals involved, often citing the animals' good housing conditions and cooperation. In contrast, another group of zoophilic acts are physically aggressive, coercive, violent, and *zoosadistas* even take pleasure in the suffering of animals.[14] Sexual attraction to dead animals is called *necrozoophilia*, also known as *necrobestiality*.[15]

There are many variations of zoophilia, zoophilic acts, and some authors have attempted to categorise them. An interesting attempt is the mathematical classification of zoophilia, which would group the nuances of zoophilia into different numerical classes, similar to the ten-level classification of necrophilia (*Table 1*).

7 | Krueger et al. 2017
8 | DSM 2013
9 | Beetz 2015, 19–36.
10 | Ranger & Fedoroff 2014, 421–426.
11 | Aggrawal 2011, 73–78.
12 | Beetz 2008, 201–220.
13 | Andriette 1996
14 | The latter is defined by the American Psychiatric Association as a paraphilia in which sexual excitement and satisfaction is caused by the torture of an animal. This can occur by direct sexual contact with the animal, or by the person later masturbating, using memories of the event as masturbatory fantasies. American Psychiatric Association.
15 | Aggrawal 2011

Table 1
10-stage classification of zoophilia, based on data from Aggrawal (2011) (own ed.).

	Title	Features	Does sexual activity happen with a live animal?	Is it relevant for animal welfare?
I.	**Role-playing zoofil**	Does not like to have sex with real animals, plays 'animal' role– plays with human partner.	No	No
II.	**Romantic zoofil**	The pet animal is a psychosexual stimulation for them, they do not engage in sexual activity with it.	No	No
III.	**Imaginative zoophile**	Fantasising about sexual relations with animals, possibly masturbating in their presence (*voyeurism* is also included).	No	No
IV.	**Tactile zoophile**	Touching or rubbing animals (*frotteurism*), including their genitals	No	**Possibly**
V.	**Fetishistic zoophile**	Using an animal body part or other object made from an animal during sexual activity.	No	**Possibly**
VI.	**Sadistic zoophile**	Sexual pleasure comes from torturing animals (*zoosadism*).	No	**Yes**
VII.	**Opportunistic zoophile**	They have human partners, but when the opportunity to have sex with animals occurs, they take advantage of it.	Yes	**Yes**
VIII.	**'Classic' (regular) zoophile**	They may have sexual relations with animals and humans, but prefer sexual activity with animals.	Yes	**Yes**
IX.	**'Homicide' zoophile**	They may have sexual intercourse with live animals, but they prefer dead animals, so they usually kill them to have intercourse with the carcass.	Yes	**Yes**
X.	**Exclusively zoophilic**	They only have sex with animals, not with human partners.	Yes	**Yes**

The psychopathology of sexual relations with animals is complex and multifactorial, with zoophilia often occurring in combination with other paraphiliae.[16]

A clear distinction must be made between zoophilia as a psychiatric disorder and the zoophilic acts that take place. The former has no legal relevance if, although paraphilia can be established, no act is committed with a living animal. However, the acts committed may be legally relevant even if the background does not reveal a pathology of zoophilia, but is motivated by other reasons (e.g. difficulty in finding

16 | One study, for example, found that of seventeen isolated cases of zoophilia found in association with other psychiatric disorders, nine of the zoophilic patients also had psychosis. Lesandrić et al. 2017, 27–32.

a partner, negative experiences in previous sexual relations, lack of a human partner in physical proximity, etc.). If the Aggrawal classification is taken as a basis, the legal relevance of zoophilia may be observed in some cases as early as category IV, but the legal consequence can certainly be linked to categories VI-X.

2.2. History of zoophilia

Sexual attraction to animals is as old as mankind, although its perception has changed throughout history. It has been a known phenomenon since prehistoric times,[17] Rosenberger (1968) suggests that the practice of human-animal sex was present between 40,000 and 25,000 years ago.[18] Depictions of zoophilia are found in ancient Egyptian tombs, and hieroglyphics also mention bestiality.[19] In ancient Egypt, according to some sources, a method of sexual intercourse with a crocodile was also found, and the goat was used to 'treat' nymphomaniac women. Men mostly had sex with cattle and other large herbivores, and women with dogs.[20] A recurring motif in ancient mythology is that of a god (such as Zeus) seducing a woman in the form of an animal.[21] Zoophilic depictions can be found in countless works of art, paintings and sculptures.[22] The Colosseum in ancient Rome depicted people raped by animals, and several emperors (e.g. Claudius, Tiberius, Nero) were known to have taken pleasure in bestiality.[23] Sexual intercourse with animals was severely punished in other eras or cultures, but it was not uncommon for different perceptions of zoophilia to coexist

or rapidly alternate. The code of Hammurapi (18th century BC), for example, punished those involved with death. Zoophilia was widespread and accepted in Western society in the Middle Ages, and in many cases sexual intercourse with animals was even believed to be healthy and a cure for various diseases. However, bestiality was also associated with black magic and witchcraft,[24] often considered to be the work of a demon in animal skins, and zoophilic people were burned at the stake with 'sinful' animals.[25] In both the Old Testament and the Talmud, zoophilia was seen as a disrespect for divine creation.[26] St Thomas Aquinas considered bestiality to be the most serious sin against nature.[27]

17 | Miletski 2002b
18 | Rosenberger 1968
19 | Bullough 1976
20 | Love 1992
21 | Miletski 2009, 1–23.
22 | Davis 1954
23 | Love.
24 | Rosenberger 1968
25 | Evans 1987
26 | Weidner 1972
27 | Salisbury 1994

Hundreds of bestiality trials during the Renaissance have been documented.[28] Parisian brothels provided turkeys to their clients. As the men were close to the end of their sexual activity with the bird, they would break its neck, causing the bird's sphincter to contract and spasm, giving the brothel's visitors a pleasurable sensation.[29] At the beginning of the 19th century, the Napoleonic legislation decriminalised consensual sexual acts between adults, and zoophilic acts were decriminalised in France. During this period, several countries significantly abolished or reduced the penalties for bestiality to a few years' imprisonment.[30]

At the turn of the 20th century, the research of Kinsey and his co-authors (1948) attracted a lot of attention, which showed that adolescent males in the American farm community had a very high level of zoophilic activity.[31] The Kinsey report has been the subject of much criticism in recent decades, but it has highlighted the widespread nature of the issue.

While for a long time in Europe's modern history, zoophilia was decriminalised, partly as a matter of decoupling ethics from law, and by the mid-20th century 80% of European states did not sanction zoophilic acts,[32] the trend has reversed in the last 10-15 years.

For both human and animal protection reasons, zoophilia has been reintroduced in some form into the criminal law of most European countries, typically with penalties of a few years' imprisonment.

3. Health, welfare and economic assessment of zoophilic acts

One Health is an emerging concept that links human, animal and environmental health.[33] Sexual contact with animals can pose a number of human health risks.[34] In the literature, there are typically five different categorisations of these acts: (1) Genital acts (anal and vaginal intercourse, insertion of fingers, hands, arms or foreign objects), (2) Oral genital acts (*fellatio*, *cunnilingus*), (3) Masturbation, (4) *Frotteurism* (rubbing genitals against animals) and (5) *Voyeurism* (the observation of third parties during sexual intercourse with animals).[35]

28 | Dekkers 1994
29 | Love.
30 | Dekkers 1994
31 | The Kinsey report strongly refuted the assumption that sexual acts with animals were a rare phenomenon in 20th century society. Among rural populations with more direct access to animals, 17 per cent of men surveyed reported intimate experiences with animals that led to orgasm. In some communities, the latter rate was as high as 65 (!) percent. Kinsey et al. 1948.
32 | Bolliger 2016
33 | At the beginning of the twentieth century, this was not the case, but subsequently researchers such as Pasteur and Koch, and doctors such as Osler and Virchow, crossed the boundaries between animal and human health, drawing attention to the close connection between the two fields. Atlas 2012
34 | Miletski 2002a, 273–283.
35 | Masses 1994

Both animal welfare and human health risks also depend on the animal involved in the act. Schaffer and Penn (2006) categorise the following orientations, which are not exhaustive: *Aelurophilia* (sexual attraction to cats), *Anolingus* (arousal by licking lizards), *Arachnephilia* (attraction to spiders), *Avisodomy* (intercourse with a bird and breaking its neck in the process), *Batrachophilia* (sexual attraction to frogs) *Bee stings* (using bees to stimulate the genitals), *Canophilia* (sexual attraction to dogs), *Cynophilia* (arousal by sexual activity with dogs), *Entomophilia* (sexual attraction to insects, or use of insects in sexual intercourse), *Formicophilia* (a person derives pleasure from the sexual use of ants or other insects), *Melissophilia* (sexual attraction to bees), *Musophilia* (sexual attraction to mice), *Necrobestiality* (sexual attraction to dead animals), *Ophidiophilia* (sexual attraction to snakes), *Ornithophilia* (sexual attraction to birds), *Phthiriophilia* (sexual attraction to lice).[36]

Animals can carry various micro-organisms that can be dangerous to humans. Although the prevalence of zoonoses transmitted through sexual contact is relatively low, it cannot be excluded (e.g. hookworm infections, chlamydia, salmonella, dog and cat faecal infections, etc.).[37]

In terms of animal welfare, the consequences can range from no physical or psychological harm to the animal dying in particular suffering. What the animal feels is a difficult question to answer. It can be assumed, as in the case of humans, that a reduction in the welfare of the animal can only be partially ascertained from clinical examinations. Even in cases where the animal appears to be seeking sexual intercourse with humans,[38] we cannot be sure of the animal's subjective experience, as other circumstances (e.g. habituation, training) may override the animal's actual welfare concerns. Nor does it necessarily seem to be an argument for animal welfare if the animal is easily aroused, physically cooperative to human touch.[39] As these questions are not settled to our present knowledge, further animal welfare-centred investigation of zoophilic acts is a dead end for the time being.

In the case of animal pornography products, typically videos, that 'record' sexual activity with animals, there are serious economic interests at stake, in addition to sexual preference.[40] The damage to the image of the country is difficult to quantify, but it is undoubtedly present.[41] Just as the Internet makes it easier for live specimens and animal products from the illegal pet trade to find a market, it also

36 | Shaffer & Penn 2006
37 | Chomel & Sun 2011, 167–172
38 | Bolliger 2016
39 | Obviously, it is a far-fetched analogy because of the animal-human difference, but the fact is that the non-consensual sexual stimulation and rape of either women or men can lead to unwanted sexual arousal or even orgasm. The relevant human literature concludes that the elicitation of arousal and orgasm does not indicate that the subjects consented to the stimulation. Levin & van Berlo 2004, 82–88.
40 | Bartow 2016
41 | The Independent newspaper noted in 2000 that in Hungary, animal pornography magazines are openly available in bookshops. Byrd 2000

makes zoophilic content easier to find and download, which makes it more difficult to combat effectively.[42]

4. The ethics of zoophilic acts and the basis for legal regulation

According to the Jellinek principle of 'law is the minimum of morality', ethics and morality are sometimes more and sometimes less prominent behind legislation and law enforcement. If, for example, a value is enshrined in the constitution, the legally elusive concept of morality becomes a tool for interpreting the law. According to Deli (2013), while the morality clause is primarily seen as a gap-filling function (i.e. it can be used when legal rules do not apply, and mostly in the area of civil law), the function of the *contra bonos mores* clause was also, from the beginning, to provide a benchmark for the classification of certain specific acts in the absence of visible, physical harm, i.e. to create a kind of protected legal subject matter.[43] This could also serve as a legal theoretical and ideological basis for the criminalisation of zoophilic acts that do not cause demonstrable harm but are contrary to good morals.

The majority of societies condemn and sanction zoophilia in some way, but zoophilia remains largely a social taboo even where it is not otherwise prohibited, and even animal welfare organisations are reluctant to address the issue.[44] What is outlined in the legislation is the attitude of some states towards 'animal dignity', even if not in a legal sense: animals deserve a certain respect by their very existence. 'Dignity' is traditionally associated in law with 'human-centred' or at least 'person-centred' values.[45] One group of scholars questions the justification for animal dignity,[46] [47]Zuolo, for example, argues that extending dignity to animals is inappropriate, but that recognising the moral importance of animals is important under other normative concepts.[48] Other authors argue that the existence of 'animal dignity' is beyond doubt[49] [50] [51], Ortiz goes so far as to state that respect for animal dignity provides an irrefutable reason not to modify an animal's genetic makeup, even if the modification would improve its well-being.[52]

42 | Typing the term 'bestiality' into a Google search returned 114,000,000 results, and 'zoophilia' returned 16,500,000 results (many of which were obviously educational). In Yahoo search, turning off the Safe Search mode, the term "bestiality" returned 8,080,000 results, with hardcore animal pornography on the first page. Search date: 30 April 2023.
43 | Deli 2013
44 | Bolliger 2016, 311–395.
45 | Hadley 2017, 993–1004.
46 | Martin 2019, 83–99.
47 | Steinbock 1999, 141–147.
48 | Zuolo 2016, 1117–1130.
49 | Chauvet 2018, 387–411.
50 | Nussbaum 2007
51 | Abbate 2020
52 | Ortiz 2004, 94–120.

If we assume the existence of animal dignity, we must also assume the right of animals to sexual integrity. The violation of the sexual integrity of an animal does not depend on the question of what an animal feels during a zoophilic act (since we can only speculate about this), but on whether such an act is in accordance with its free will. Rather, Bolliger (2016) argues, we should start from the assumption that an animal's cooperation can be considered coerced through the artificial creation of fixation or some other method of influencing animal behaviour. To call such acts 'animal love' or 'partnered sexuality' is a misreading of the circumstances.[53] However, in the absence of legal personality of animals, the reference to their dignity has essentially no context from a legal aspect, although it does provide indicative legislative guidance and expresses respectful behaviour towards animals. Some countries, although not referring to the 'dignity' of animals at the constitutional or legislative level (with the exception of Switzerland), presumably take this into account when criminalising zoophilic incidents that do not involve serious health damage.[54]

An argument could be the lack of 'victim' consent on the part of the animal, although this argument is hampered by the fact that the animal is not a legal entity. It is important to note that the recognition of the animal as a special, sentient being is gaining ground in relation to the legal status of animals. In the spirit of a legal fiction (i.e. a legislative technique that accepts a manifestly untrue fact as real in order to achieve a higher purpose), it may be worthwhile to continue the reflection on the consent, or lack thereof, of animals. According to Roman law, '*volenti non fit injuria*', that is, actions committed with the consent of the victim are not illegal – based on the *argumentum a contrario*, this means that actions committed without the victim's consent are illegal. The consent of the victim can also be seen as a matter of self-determination.[55] Currently, the consent of the victim is an obstacle to criminal liability, provided that it does not harm the interests of society.[56] Among humans, sexual acts without consent are considered rape.

In legal terms, the protection of public order and public morals can be seen as a better argument for the sanctioning of zoophilia than the issue of animal dignity or the lack of consent of the victim, since the regulatory roots of legal action against animal cruelty can be found here.[57] In the past, the protection of the public, public order and public safety were considered to be the legal object of animal cruelty, but this has changed to the protection of nature and the environment, which is closer to the ideology of animal protection. Although the point of view that animals

53 | Bolliger 2016
54 | Vetter et al. 2020
55 | Németh 2015, 302.
56 | Bérces 2017, 47–55.
57 | *"Anyone who publicly tortures or grossly ill-treats an animal in a scandalous manner, or who violates an ordinance or regulation against animal cruelty, shall be punished by imprisonment for a term of up to eight days and a fine of up to one hundred forints".* Article XL of the Hungarian Penal Code of 1879 on offences. Chapter VII. Offences against public order and public decency.

are protected only for the protection of public order has been overcome, in some aggravated animal abuse cases the point of view that an act committed against animals is considered more serious can still be seen in Europe if, e.g. it takes place in front of a large public (like the Hungarian regulation since 2022), or it takes place in the presence of a minor (like the Spanish regulation).[58]

5. Criminalisation of zoophilic acts in Europe

In Europe, there are big differences in the way different countries regulate zoophilia. In some countries the criminal code itself, in others other legislation (such as animal welfare legislation) provides for criminal sanctions. The Netherlands, Norway and Switzerland have very detailed criminal legislation which criminalises all forms of zoophilic acts, including the distribution and possession of animal pornography. According to the Dutch Criminal Code, anyone who engages in a sexual act with an animal ('lewd act') is punishable by imprisonment of up to one and a half years or a fine (Section 254). Anyone who distributes, offers, publicly displays, manufactures, imports, transports, exports, obtains or possesses any visual material or any medium containing visual material which depicts or appears to depict sexual abuse involving human or animal contact is punishable with a maximum of six months' imprisonment or a fine (Sec. 254a). In Switzerland, the legislation has also attempted to introduce a legal concept of animal dignity, although in the absence of legal personality of animals, the reference to their dignity is almost without context in international and legal history, the legislator is providing guidance and expressing a respectful attitude towards animals. Animal dignity not only means that the interests of animals must be considered against, where appropriate, certain human interests, and that they must not be subjected to undue suffering or pain, but in practice the protection of animal dignity in the Swiss Constitution also requires that animals must not be humiliated, used as mere tools or have their appearance altered.[59] In Switzerland, animal protection legislation explicitly prohibits sexually motivated acts with animals.[60] This prohibition shall apply irrespective of whether the act has harmed the animal's welfare. According to the Swiss Criminal Code, acts involving writings, images, sound recordings, illustrations or similar objects that contain sexual activity with animals (so-called 'harte Pornographie') are punishable. For certain less serious offences (such as possession of animal pornography products, production for private use), the legislator provides for a maximum penalty of one year's imprisonment or a fine, and for more serious cases (such as distribution, advertising, offering for

58 | Vetter
59 | Vetter & Ózsvári 2020
60 | Animal Welfare Decree (TschV) Sec. 16 (2) j)

sale), a maximum penalty of three years' imprisonment or a fine. Depictions are considered pornographic if their sole purpose is to arouse sexual arousal in the consumer and animals are unmistakably and directly integrated into the sexual act with humans. Acts, objects or performances are not pornography if they have a cultural or scientific value worthy of protection.[61]

In contrast, the criminal laws of Italy, Slovenia and Hungary do not contain penal sanctions specific to zoophilic acts. The other countries fall between the two ends of the scale, there are criminal sanctions, but they are not as differentiated as the Dutch and Swiss legislation. In Poland, animal cruelty is sanctioned by the 2017 Animal Protection Act. It prohibits a number of acts, including intentional mutilation, cosmetic alterations, transport causing unnecessary suffering and distress, organising animal fights and bestiality. The offence of cruelty to animals is punishable by a fine or up to two years' imprisonment, or up to three years' imprisonment in cases of extreme cruelty, or confiscation of the animal if the offender is the owner.[62] Any person who produces, imports or propagates pornographic material using animals for the purpose of distribution shall be punished by a term of imprisonment of between 3 months and 5 years.[63] The Czech Republic has a similar solution: under the Czech Criminal Code, anyone who produces, imports, exports, offers, distributes or makes publicly available photographs, films, computer, electronic or other pornographic works depicting or otherwise showing sexual intercourse with an animal is liable to imprisonment of up to one year in the main or up to three years in aggravated cases.[64] In 2022, Romania has taken a major step forward in the strict sanctioning of zoophilia: under the new legislation, the intentional, unauthorised killing of animals; torture of animals; organising a fight between or with animals and zoophilia are criminal offences punishable by imprisonment from 2 to 7 years.[65]

According to a 2020 study on the criminal law on zoophilia in 15 European countries, countries with differentiated criminal law on zoophilia were 3.62 times more likely to rate animals higher in terms of their legal status.[66]

6. Proposal to amend the Hungarian Criminal Code

Currently in Hungary, zoophilic acts that do not involve animal cruelty are not a criminal offence, but have been prohibited since 2012 by Law No. XXVIII of 1998 on Animal Protection ('it is prohibited to use an animal in an act intended to satisfy

61 | Swiss Criminal Code (StGB) Sec. 197.
62 | Polish Animal Protection Act, Sec. 6.
63 | Kodeks karny (Polish Criminal Code) Sec. 202.
64 | Czech Criminal Code, Sec. 191.
65 | Romanian Law on Animal Protection (205/2004)
66 | Vetter et al. op. cit.

sexual desire'). The question we are examining is whether it would be necessary to criminalise zoophilic acts in Hungary, i.e. to make them a criminal offence. There is no doubt that there are arguments for and against the penalisation of zoophilic acts.

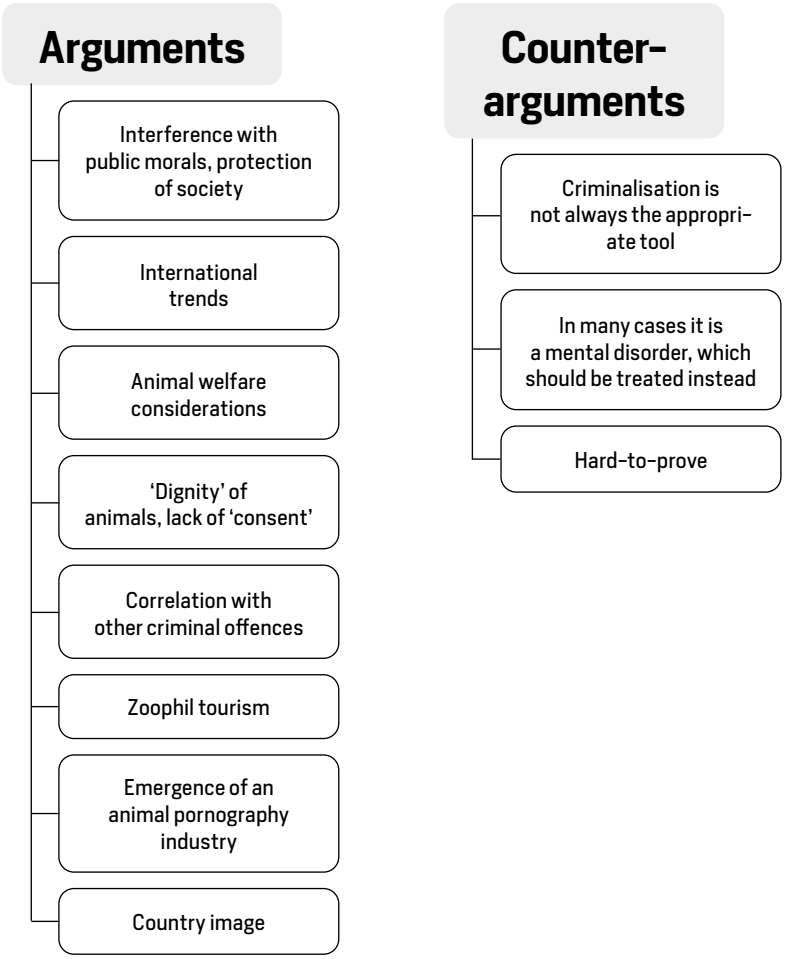
Counter-arguments include that criminalisation does not always produce the expected results (and may even be counterproductive under certain conditions[67]), and that perceptual research on deterrence tends to conclude that the inevitability of punishment is inversely related to participation in illegal behaviour, rather than the severity of the punishment.[68] A significant proportion of zoophilic acts are not due to the lack of a potential human partner, but are associated with a specific paraphilia.[69] The difficulty of proving zoophilic acts may also be a problem, but this is a procedural rather than a substantive issue.

The criminalisation of zoophilic acts is supported by the public morality of the offence, its offensive nature and consequent danger to society, its close association with animal cruelty and other related crimes. In the absence of adequate public sanctions compared with other European countries, the country is becoming a production site for animal pornography and a destination for zoophile tourism, a trend which is not desirable in terms of the country's image (*Figure 1*).

Ultimately, we believe that the Hungarian criminal sanctioning of zoophilic acts would fit into the European 'evolution' of sexual crimes in the 20th and 21st centuries. It would also make punishable by criminal law codification cases that are not currently considered animal cruelty under the current Criminal Code, which would have ideological and practical significance. It is important to protect human morals, to protect minors and to show respect for living beings, which also sends out a strong message in terms of sustainability, environmental and climate protection. In addition, however, it is strongly recommended to avoid re-directing zoophilic sex tourism and animal pornography 'industry' from Europe.

67 | Sherman 1993, 445-473.
68 | Harold et al. 1980, 471-491.
69 | It should be noted, however, that the same is true for many other crimes and related pathologies, such as paedophile motivated acts or the antisocial personality disorder that underlies many violent crimes. Even in the latter cases, the fact that a psychiatric disorder may be linked to the offence was not a barrier to criminalisation.

Figure 1
Arguments for and counter-arguments against criminalisation of zoophilic acts in Hungary (own edit.)



7. Conclusions

The recognition of the inherent intrinsic value of living creatures has characterised European legislation over the past few decades, a process that can be seen in the refinement of the legal status of animals, the increasingly detailed animal welfare rules, the tightening of anti-cruelty legislation, some constitutional changes and bans on zoophilic acts.

The prohibition or sanctioning of sexual intercourse with animals is although known, but not uniform across Europe, and national laws have different solutions. The production and distribution of animal pornography is prohibited in most European countries and in most countries zoophilia is also criminalised as a criminal offence, however, in Hungary there are no specific provisions in the criminal law.

In case of zoophilia, there seems to be a high latency rate, with few cases revealed, but they are causing a strong public outcry. In the long term, even countries that do not currently sanction or criminalise zoophilia (such as Hungary) are likely to take stronger action against it in the future.

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Ján ŠKROBÁK[1]

Illegal waste dumping in the Slovak Republic[2]

Abstract

The paper aims to outline the legal aspects of illegal waste dumping in the Slovak Republic. It presents some factual information on the issue and the legal regulations governing waste management, landfill operations, and illegal waste disposal. The analysis includes suggestions for improving legal regulations, specifically focusing on identifying those responsible for illegal waste disposal and determining who is obligated to remove the waste legally. It also discusses the administrative and criminal penalties for illegal waste dumping.
Keywords: waste, waste management, landfill, illegal landfill, illegal waste dumping

Illegal landfills (or waste dumps), established in violation of the law, have been a major ecological issue in Slovakia for decades.

In 2013, approximately 6,000 illegal landfills were estimated to exist in Slovakia, primarily situated along roads and used for storing small amounts of waste. These illegal landfills have detrimental effects on the landscape, biota, economy, and public health.[3]

Slovak authors Šedová and Haluš wrote in 2016 about thousands of illegal landfills in Slovakia. The largest amount of illegal waste is found in the Bratislava region, where, on average, approximately 1.5 litres of illegal waste were generated per citizen. The Senec District held the infamous top spot among districts, with more than 2 litres of waste per capita. The Prešov region had the least amount of illegal waste. According to data from the TrashOut system[4], more than half of illegal waste is domestic and construction waste. Šedová and Haluš therefore

1 | dr. jur., professor at the Comenius University Bratislava, Faculty of Law; e-mail: janskrobak@gmail.com.
2 | *The research and preparation of this study was supported by the Central European Academy.*
3 | Enviroportál 2013
4 | TrashOut is an application that allows residents to use their phones to easily report illegal activity at landfills in their surroundings, including determining their basic characteristics. However, TrashOut data have several limitations. Instead of the actual state of black landfills, they can only describe the situation of reported landfills. See Šedová & Haluš 2024

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established the assumption that regular individuals were mostly responsible for the illegal dumping, with almost 50% of the waste consisting of plastics, car parts, glass, and electronics.[5]

A source from 2020 reiterated that there are thousands of illegal landfills in Slovakia. This paper by Gális pointed out that the risks of landfilling to human health could manifest themselves especially during a long-term stay in the vicinity of landfills. Gális estimated that approximately 10,700 inhabitants of Slovakia had permanent residence closer than 500 metres from legal landfills. Thousands more live in the immediate vicinity, less than 100 meters from larger illegal dumps. Residents from marginalized Roma communities are – compared to society as a whole – affected above average.[6] It should be noted that illegal landfills are often located near marginalized communities because the residents of these communities often contribute to the creation of these landfills. This is closely tied to the fact that these communities are very impoverished.

Gális points out that landfilling poses a potentially serious risk to human health and nature. The harmful substances that result from improper waste management can contaminate the soil, groundwater, and local air, affecting public health. In addition, chemical processes in landfills persist even after landfills are closed and thus continue to negatively affect the environment. The resulting methane and carbon dioxide, in turn, contribute to global warming.[7]

A study by Slovak authors shows that higher education and higher income do not necessarily lead to lower waste production or contribute to the reduction of illegal dumping. People with higher education and income tend to consume more goods, resulting in increased total waste production. Despite potentially having enough resources for legal waste disposal, there is still a higher rate of illegal dumping. Therefore, higher education and additional means for legal waste disposal do not guarantee increased environmental awareness. The study confirmed that in districts with higher income and education levels, there is also an increase in illegal waste. On average, a 1% increase in income led to a 2.6% rise in illegal waste, while a 1% increase in the population with higher education resulted in a 10% increase in waste production.[8]

Based on the aforementioned facts, there is no doubt that the problem of illegal landfills in Slovakia is not only widespread but also serious. This paper aims to present the Slovak legislation regarding the legal and illegal disposal of waste in landfills, in addition to subjecting this regulation to critical analysis. Subsequently, this paper also aims to offer possible impulses for improving the legal regulation.

This paper addresses the issue of illegal waste dumping in the Slovak Republic in the following structure: (a) it outlines important activities, actors, as well as

5 | Šedová & Haluš 2016
6 | Gális 2020
7 | Ibid.
8 | Šedová & Haluš 2016

their obligations and prohibited activities related to waste management – the obligations and prohibitions are presented primarily on a general level, but the paper also lists some special obligations and regimes (Chapters 1 and 2); (b) it briefly outlines the organisation of the state administration of waste management in the Slovak Republic (Chapter 3); (c) the fourth chapter of the paper presents the legal regulation of waste dumps; (d) in the key fifth chapter, the paper presents legal consequences of illegal waste disposal; (e) the sixth chapter deals with illegal waste dumps; (f) selected types of waste that are significantly involved in illegal dumping are processed in the penultimate, seventh chapter; and (g) these chapters are followed by a summarising conclusion.

In terms of methodology, the paper is primarily based on the presentation of the positive legal regulation of the issue in the Slovak Republic. Based on empirical data, which are presented herein to the necessary extent, the paper draws from the works of other authors and, to a lesser extent, from the empirical practice of the author from his work in advocacy. The presentation of the existing positive legal regulation is followed by its heuristic examination. Positive legal and empirical knowledge is subjected to analytical research using the method of abstraction, induction, and deduction.

Before moving on to the issue itself, let us briefly present an outline of the sources of law relevant to the subject matter: Although wastes and hazardous substances are primarily dealt with at the local and national level, there are potential long-range effects caused by persistent pollutants.[9] This paper is mainly based on Slovak legislation. However, this legislation was and continues to be significantly influenced by the international obligations of the Slovak Republic[10] and the law of the European Union (EU)[11], mainly the Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives and Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 on waste and repealing certain directives.

The valid and effective Slovak law on waste, which is the Act No. 79/2015 Coll. on waste, and on the amendment of some laws (also referred to in the text of the paper as 'Act on Waste') governs several aspects related to the issue of illegal waste disposal. Examples of waste management measures include waste prevention, the rights and obligations of legal entities and natural persons in waste management, municipal waste management, and the jurisdiction of state administrative bodies

9 | Beyerlin & Marauhn 2011

10 | See for example the 1989 Basel Convention on the control of transboundary movements of hazardous wastes.

11 | In addition to the aforementioned directives, the principles of European environmental law, which also shape the national legal order, cannot be neglected. See Košičiarová 2009, 15. Such principles are: High level of protection, the precautionary principle, the prevention principle, the prevention at source principle, the polluter pays principle and the safeguard clause. See Jans 2024, 31.

and municipalities in waste management. The legislation also addresses liability for failing to meet waste management obligations.

1. Waste management in the Slovak Republic

Waste management according to the Act on Waste is a set of activities aimed at preventing and limiting the generation of waste and reducing its danger to the environment and managing waste in accordance with this law. The law regulates the definition of several terms that express different forms of waste management in its Section 3. Among these terms, I will define (based on the diction of the law) those that directly relate to the topic of the present paper: (1) Waste handling is the collection, transportation, recovery, including sorting and disposal of waste, including the supervision of these activities and the subsequent care of disposal sites, and also includes the actions of a trader or intermediary. (2) Waste disposal is an activity that is not recovery, even if the secondary result of the activity is recovery of substances or energy; the list of waste disposal activities is given in Annex no. 2 of the Act on Waste. (3) Landfilling of waste is the deposition of waste in a landfill. (4) Backfilling is a waste recovery activity in which suitable non-hazardous waste is used for reclamation purposes in excavated areas or for technical purposes in landscaping. The waste used for backfilling must replace non-waste materials, be appropriate for the stated purposes, and only be used in the amount necessary to achieve the stated purposes.

The law regulates the hierarchy of waste management activities, which is the binding order of the following priorities: (a) prevention of waste generation; (b) preparation for reuse[12]; (c) recycling[13]; (d) other recovery[14], for example, energy recovery; and (e) disposal.[15]

It is allowed by law to dispose of waste in a way that neither endangers people's health nor harms the environment, specifically if it is not possible and expedient

12 | Reuse is an activity in which a product or part of a product that is not waste is reused for the same purpose for which it was intended.
13 | Recycling is any waste recovery activity by which waste is reprocessed into products, materials, or substances intended for the original purpose or other purposes, if specific rules of the Act on Waste (§ 42 par. 12, § 52 par. 18 and 19 and § 60 par. 15 of the Act on Waste) do not provide otherwise; recycling also includes the reprocessing of organic material. Recycling does not include energy recovery and reprocessing into materials to be used as fuel or for backfill operations.
14 | Waste recovery is an activity, the main result of which is the beneficial use of waste in order to replace other materials in production activities or in the wider economy or ensuring the readiness of waste to fulfil this function; the list of waste recovery activities is given in annex no. 1 of the Act on Waste.Material recovery of waste is the activity of recovery of waste except for (1) energy recovery and (2) reprocessing into materials to be used as fuel or other means of energy production. Preparation for reuse, recycling and backfilling are considered to be material recovery.
15 | § 6 par. 1 of the Act on Waste.

to prevent its occurrence or the procedure according to paragraphs 7 to 9 is not possible and expedient.[16] This also applies to landfilling.

The law also regulates terms that regulate the specific roles, respectively, of specific actors in waste management (§ 4): it is especially the originator of the waste. The originator of the waste is (a) every original producer whose activity generates waste; (b) the person who performs treatment, mixing, or other actions with waste, particularly if their result is a change in the nature or composition of this waste; or (c) every lessor of an object, manager of an administrative or business centre who fulfils the transferred fee obligation for the taxpayer and simultaneously ensures the collection of sorted municipal waste components from other originators (from tenants) based on the contract.

Legal terms such as the holder of the waste[17], waste merchant, waste intermediary, and waste transporter are also regulated by the Act on Waste.

2. General and specific obligations related to waste management

In the following text, I will briefly state the rules regulating the general obligations regarding waste management, as the law regulates them in § 12 of the Act on Waste:

First, everyone is obliged to dispose of waste or otherwise treat it (1) in accordance with the Act on Waste; the person who has obligations resulting from the decision issued on the basis of this law is obliged to dispose of waste or otherwise treat it also in accordance with such a decision; (2) in a way that neither endangers human health nor harms the environment, such that no (2a) risk of water, air, soil, rock, nor environment pollution, neither the endangerment of plants and animals; (2b) disturbing the neighbourhood with noise or odour; (3c) adverse impact on the country or places of special importance.

Of course, one of the most general issues that need to be regulated is the issue of waste management costs. It can be assumed, as already outlined in the introduction of the paper, that this very aspect can be one of the key factors that lead to the creation of illegal landfills, or, if the system is properly set up, they can serve as one of the tools to prevent them. The obligation to bear the costs of waste management activities must be fulfilled by persons in the following order (with the exception that I mention below): (a) holder of waste for whom waste management is carried out, if known, or (b) the last known holder of the waste.

16 | § 6 par. 10 of the Act on Waste.

17 | This term is also used because, in the case of waste, it is generally not possible to talk about the owner. For issues of waste as an object of ownership, as demonstrated for example in relation to Hungarian law in the paper: Mélypataki 2012, 51–58.

If the holder of the waste is known but does not reside in the territory of the Slovak Republic, the waste management state authority, in whose territory the waste is located, will ensure, at the expense of the holder of the waste, the treatment of the waste.[18]

Natural persons may, in principle, not dispose of and otherwise treat other than municipal waste, small construction waste, and construction waste from not only simple but also small constructions.[19]

The Act on Waste also regulates some specific obligations regarding specific types of waste (waste containing mercury, electrical equipment, electrical waste, batteries and accumulators, automotive batteries and accumulators, and industrial batteries and accumulators, packaging and packaging waste, tires and waste tires, and so on). These are, on the one hand, special obligations and legal regimes of waste management and, on the other hand, special prohibitions. Of course, these special regimes are in most cases stricter compared to the general regime, as they are usually more dangerous cases of waste. However, it does not necessarily have to be particularly dangerous waste, a special regime for dealing with a certain type of waste can be given exclusively by the effort to reduce the generation of this type of waste (e.g., such a case is the waste from single-use plastic products).

Systematics of the Slovak statutory regulation of waste management, which is structured into a general regime and several special regimes, can be considered logical and functional not only from the point of view of its continuity with the EU regulation and the regulation contained in international documents but also for substantive aspects. Of course, legal regulation conceived in this way can be more demanding for the recipients in terms of knowledge and orientation. However, this complication may be only a complication at first glance because 'ordinary' natural persons and legal entities usually do not dispose of specific types of waste (I have already partly mentioned that two paragraphs above). In addition, the law imposes an obligation on the holder of the waste to hand over waste only to a person authorised to dispose of waste according to this act, if not regulated otherwise and if he/she does not ensure their recovery or disposal himself/herself.

However, a complex legislation, and the Slovak waste management legislation is undoubtedly very complex, always in itself entails a certain risk of non-compliance by 'ordinary' persons within the general public, if only because it is objectively difficult to get to know and 'navigate' it. However, the solution to this problem cannot be so much the simplification of the system and content of legal regulation, but the key importance here (more so than sanctioning) is education and public enlightening.

18 | § 12 par. 5 of the Act on Waste.
19 | § 12 par. 6 of the Act on Waste.

2.1. Prohibited activities related to waste in general

First, let us discuss the so-called 'general' restrictions that basically apply to any waste. Under § 13 of the Act on Waste, it is prohibited (inter alia) to store or leave waste in a place other than the place designated for it in accordance with this law. This is a general prohibition of key importance to this paper. It follows that waste cannot be disposed of by dumping it anywhere.

It is also prohibited to dispose by landfilling of some types of waste, such as liquid waste; wastes that are explosive, corrosive, oxidising, highly flammable, or flammable under landfill conditions; certain waste from healthcare and veterinary care; sorted biodegradable kitchen and restaurant waste; biodegradable waste from wholesale, retail, and distribution; sorted components of municipal waste, which are subject to the extended responsibility of producers, except for unrecoverable waste after sorting; biodegradable waste from gardens and parks, including biodegradable waste from cemeteries, except non-recoverable waste after sorting; or waste that has not undergone treatment (with some exceptions).

It can be empirically proven that several types of waste, the landfilling of which is prohibited as such, are also found in illegal landfills (e.g., tires). However, the ban on landfilling (including otherwise legal) of certain types of waste is relatively difficult to enforce. For example, it is probably difficult to prevent liquid waste from being a part of municipal waste. A similar problem concerns the controllability of the ban on landfilling biodegradable waste or one of the bans on the incineration of waste. Although waste incineration is not directly related to the topic of the post, I consider it necessary to mention this problem as well, as judging by media coverage or discussions on social media, it is a frequently violated ban in Slovakia.

2.2. Obligations of the waste holder in general

The waste holder is obliged (inter alia): (a) to ensure waste processing in accordance with the hierarchy of waste management; (b) to hand over waste only to a person authorised to dispose of waste according to this act, if not regulated otherwise and if he/she does not ensure the recovery or disposal himself/herself; (c) to keep records on the types and amount of waste and on their disposal; (d) to enable state supervisory authorities in waste management to access land, buildings, premises and equipment, take waste samples and, upon their request, submit documentation and provide true and complete information related to waste management; and (e) to carry out remedial measures imposed by the state supervisory authority in waste management, and others.[20]

As the problem of close encounters with brown bears is currently widely discussed in Slovakia (according to some opinions, this animal is overpopulated in

20 | These obligations are regulated in § 14 of the Act on Waste.

Slovakia), I will also mention the obligation to ensure waste from the access of the brown bear (*Ursus arctos*) in designated areas. The abovementioned obligations do not apply to a natural person who is not an entrepreneur, with one exception (the obligation to ensure waste from the access of the brown bear in designated areas). These problems are more related to the topic of the paper than it may seem at first glance: Illegal dumping of garbage, which can attract bears as food, can lead to bears approaching human settlements and encounters with humans.

It is worth noting that in relation to the topic of the paper, there is a regulation in § 14 par. 9 of the Act on Waste. This regulation states that if the waste is generated from service, cleaning, or maintenance work performed for an entrepreneur, the entrepreneur is considered the originator of the waste. However, when these works are done for individuals, the person performing the works is the originator of the waste. In practice, this means that if, for example, a natural person that owns a building provides maintenance on such building through a third party as a contractor, this third party is responsible for waste management. Therefore, if unauthorised dumping of such waste was to occur, the responsible entity will be this third party.

3. State administration of waste management

The bodies of the state administration of waste management are[21]: (a) the Ministry of the Environment of the Slovak Republic, (b) the Slovak Environmental Inspection, (c) District Authorities in the seats of the regions, (d) District Authorities, (e) municipalities, (f) Slovak Trade Inspection, (g) customs offices, and (h) Criminal Financial Administration Office.

Among these bodies of the state administration of waste management for the topic of paper, the ones that have key competences in their hands are: (a) Slovak Environmental Inspection (more details in the subchapter on permitting the operation of landfills), (b) District authority (see below), and (c) municipality (see the subchapter on the duties of the landfill operator and the subchapter on liability for illegally deposited waste).

3.1. District authority

The key body of the state administration of waste management in relation to the illegal dumping of waste is the district authority. Let us mention some competences of the district authorities relevant from the viewpoint of the issue addressed in this paper. The district authority: (a) is a state supervisory body in waste management

21 | See § 104 of the Act on Waste. For more information on the organisation of the Slovak State Administration of Waste Management, see Valenčiková & Marišová 2023, 997–1015.

(§ 112 of the Act on Waste), (b) imposes fines and decides on offences (§ 115 and § 117 of the Act on Waste), and (c) makes decisions in administrative proceedings in the first instance in matters according to this act with the exception of matters belonging to other bodies of the state administration of waste management (all performance of state administration of waste management, which according to this act does not belong to other bodies of the state administration of waste management, is carried out by district authorities).

Of crucial importance is then in particular the regulation contained in § 108 letter q) of the Act on Waste, stating, that the district authority performs proceedings according to § 15 par. 8 to 16 of the Act on Waste. This is a procedure in which the person responsible for illegally deposited waste is determined and corrective measures are imposed on this person (see Chapter 5).

4. Legal regulation of waste dumps

One of the probable reasons why there are cases of illegally deposited waste is the fact that people and legal entities avoid setting up legal waste dumps, or putting waste in such legal landfills, for reasons of economic or administrative burden. Therefore, I consider it necessary to acquaint readers with the legal regime for the establishment and operation of landfills according to Slovak law.

According to § 5 par. 5 of Act on Waste a waste dump (or a landfill) is a place with a waste disposal facility where waste is permanently deposited on the surface of the earth or in the ground. In 2023, there were 81 active landfills operating in Slovakia, with the majority being non-hazardous waste landfills. Out of the total of 65 landfills, some received municipal waste from households.[22] In 2020, there were 111 legally established and operating landfills in Slovakia.[23] The State of the Environment Report in 1998 listed 568 active landfills.[24] By comparing these data, it is clear that the number of active legal landfills in Slovakia is decreasing.

4.1. Waste dump operation permit

To operate a waste dump, the consent of the competent body of the State Administration of Waste Management is required.

Slovak Environmental Inspection (more precisely, it is the territorially competent inspectorate of this inspection), and within this inspectorate, its Department of Integrated Permitting and Control (hereinafter referred to as 'Inspection') permits landfills as the competent authority of the state administration according

22 | Potočár 2023
23 | Gális 2020
24 | Klinda et al. 1998, 125.

to the provisions of § 9 par. 1 letter c) and § 10 of the Act no. 525/2003 Coll. on the state administration of environmental care and on amendments of certain laws as amended and according to the provisions of § 32 par. 1 letter a) Act No. 39/2013 Coll. on integrated prevention and control of environmental pollution and on amendments to certain laws as amended.

It is therefore a legal institute of integrated pollution prevention and control, comprising a set of measures aimed at preventing environmental pollution; reducing emissions into the air, water, and soil; limiting the generation of waste; and recovering and disposing of waste to achieve a high overall level of environmental protection.

A key part of the integrated prevention and control of pollution is integrated permitting, or the procedure for issuing an integrated permit. Integrated permitting is a procedure that permits and determines the conditions for carrying out activities in existing industrial plants and in new industrial plants in a coordinated manner, with the aim of guaranteeing the effective integrated protection of environmental components and maintaining the level of environmental pollution within environmental quality standards.

The result of the integrated permitting is the integrated permit, a decision, that authorises the operator to carry out activities in the industrial plant or part of it and which determines the conditions for undertaking activities in the industrial plant and which is issued instead of decisions and consents issued according to special regulations in the field of the environment and public health protection, as well as in the field of agriculture and construction permit. This permit also includes the consent to operate a waste dump.

In this case, it is a so-called substantive concentration, or concentration of proceedings.[25] Its goal is to speed up permitting processes (especially by the fact that participants can apply objections only within one procedure instead of several procedures, that they can apply only one ordinary remedy instead of several, all the procedural deadlines run only in one procedure instead of several, and so on).

The integration of proceedings within the scope of material concentration can be considered an excellent procedural tool that does not threaten the rights of participants in the proceedings and is suitable to make permitting (in our case, landfills) faster and more efficient without discounting environmental protection.

It is possible to ask whether the way to prevent the creation of unauthorised landfills can be the administrative simplification of permitting those that are built as official and legal landfills. I certainly do not consider any reduction of material legal prerequisites to be a suitable solution. As far as the procedural regime is concerned, caution is appropriate here as well, especially because through procedural regulation, material values are guaranteed. In addition, 'simplification' could probably conflict with the Aarhus Convention in some cases.

25 | Vrabko et al. 2018, 91–92.

Figuratively speaking, when put on the scales, it entails, on the one hand, the possible risk of a weaker protection of the environment or another aspect of public interest at legally operated waste dumps and, on the other hand, the protection of the environment and other social interests in the context of illegal waste disposal. It must be said that probably greater risks are engendered by weak public law regulation of large 'official' landfills, rather than the existence of small illegal landfills, whose impact on the environment is generally relatively limited (also considering the type of waste that is usually deposited there).

In addition, there is not a clearly proven reliable piece of evidence that if the operation of official landfills were simplified (e.g., in terms of permits), the volume of illegally landfilled waste would decrease.

The ongoing recodification of the Slovak public construction law will offer an opportunity for empirical investigation of such a possible link. As part of this recodification, the zoning procedure as a type of application process aimed at assessing the compliance of the building's intention with the spatial plan[26] is to be abolished. The compliance of the building's intention with the spatial plan will now be demonstrated only in a simplified way: by a binding opinion of the spatial planning authority, which will be issued as part of the construction procedure. Currently, also with regard to the ongoing political processes in the Slovak Republic, the exact form whereto the Construction Act will be is unclear. This new act is currently scheduled to enter into force on April 1, 2025. If the current concept remains in place even after the law is amended (which the new Slovak government intends to do even before the law comes into force), it will be possible to investigate whether the permitting of the construction of waste landfills will be accelerated. However, it is important to understand that even if the zoning procedure were to be waived and a simplified system for assessing the compliance of the construction plan with the zoning plan purely based on a binding opinion would be introduced, the possible acceleration of the permitting process may not be exclusively attributable to this one change.

4.2. Obligations of the waste dump operator

The administrative rigor of the operation of the waste dump is determined not only by the rigor of its permitting procedure but also by the demanding conditions of its operation. The costs of operating the landfill, which are related to the obligations that the landfill operator must fulfil, are understandably also transferred to the costs of landfilling waste. The high costs of legal waste disposal can probably also lead to the creation of illegal landfills.

26 | It should be noted that, unlike the construction procedure, the zoning procedure is currently not part of the integrated permitting of landfills and is therefore carried out as a separate procedure.

The waste dump operator has of course many legal obligations, in addition to the obligations according to § 14 and § 17 of the Act on Waste, such as the obligations (a) to process and have approved project documentation for the closure, reclamation, and monitoring of the waste dump, while ensuring the care of the waste dump after its closure; (b) to ensure the operation of the waste dump by a person who meets the qualification requirements prescribed by law; (c) to ensure professional training and technical training of the waste dump personnel; (d) to close the waste dump, recultivate, monitor, and ensure care after its closure in accordance with the approved project documentation; (e) to notify the competent body of the state waste management administration of negative conditions and environmental impacts detected by monitoring during the operation of the waste dump and after its closure and to remove negative conditions and impacts on the environment detected by monitoring the waste dump; (f) to carry out monitoring during the operation of the landfill and after its closure, to keep records from this monitoring, and to report the monitoring results to the competent body of the state waste management administration; (g) and further obligations.

It can be said that these obligations are not unreasonably rigorous and can be seen as justified.

Landfills are typically shut down for two main legal reasons: reaching full capacity or the expiration of the permit for operation. The operator of the waste dump is obliged, no later than six months from the date of filling the capacity of the waste dump or from the date of expiry of the decision on its operation issued under § 97 par. 1 letter a) of the Act on Waste[27] to apply for approval according to § 97 par. 1 letter j) of the Act on Waste (decision to close the waste dump or part of it, carry out its recultivation, and its subsequent monitoring after closing the waste dump as a whole), and if the decision to operate the waste dump has expired according to § 114c par. 13 letters b) and par. 14, the operator of the waste dump is obliged to request the granting of this approval according to § 97 par. 1 letter j) of the Act on Waste within two months from the date of expiry of the decision on its operation issued under § 97 par. 1 letter a) of the Act on Waste.

According to § 24 of the Act on Waste the operator of the waste dump is obliged to create a special-purpose financial reserve during the operation of the waste dump, the funds of which will be used for not only closing, recultivation, monitoring, and ensuring the care of the waste dump after its closure but also activities related to averting an accident or limiting the consequences of an imminent or occurring accident after the landfill is closed. The use of reserve funds is strictly regulated: Funds of the special-purpose financial reserve can be used after approval pursuant to § 97 art. 1 letter j) Act on Waste for the

27 | Consent of the state waste management authority for the operation of a waste disposal facility, except for waste incinerators and waste co-incineration facilities and water structures, in which special types of liquid waste are disposed of.

activity for which this consent is issued. This approval is issued by the Ministry of Environment.

The author of the paper knows, from his own empirical practice, a case, where the operator of the landfill (a legal person), in order to avoid fulfilling the obligations associated with the closure of a landfill, was deliberately abolished as a legal entity. For such cases, the following regime applies:

If the waste dump operator ceases to exist without a legal successor before the end of the closure, reclamation, monitoring, or provision of care for the landfill after its closure, all rights and obligations related to the issued consent pass to the date of termination of the landfill operator to the municipality in whose territory the majority of the waste dump is located; on the date of the transfer of rights and obligations, the right to dispose of the funds of the special-purpose financial reserve shall also pass to this municipality. Obligations are transferred to the municipality only up to the amount of the purpose-built financial reserve.

A similar regulation then applies to cases of bankruptcy of the operator or its economic restructuring.

In conclusion, the legal regulations for the termination of the operation of the landfill (including the regulation of the special financial reserve) can be deemed functional. One significant issue is the possibility of the landfill operator going bankrupt without a legal successor. In this scenario, the responsibility for closure and restoration of the landfill would fall onto the municipality. These responsibilities are limited to the funds in the special financial reserve, which may not always be adequate. In such situations, seeking financial assistance from the state may be necessary. However, this topic is not within the scope of the current paper.

From the standpoint of the topic of this paper, it is important to say that although the administrative (and financial) complexity of operating a landfill in accordance with the law is not low, I definitely do not deem it appropriate to consider reducing it to prevent the creation of unauthorised landfills.

5. Legal consequences of illegal waste disposal

The issue of the legal consequences of dumping waste in violation of the law, which is the core topic of this paper, includes two thematic sub-areas: (1) First, it is a procedure for identifying the entity responsible for dumping waste in violation of the law. This issue, which is of key importance from the perspective of the topic of the paper, is regulated in detail in § 15 of the Act on Waste. The law uses the term 'Administrative liability for illegal placement of waste' to refer to the set of relevant institutes used for this purpose. (2) The next area is the penal liability for the breach of obligations deriving from the illegal dumping of waste, both administrative and criminal.

5.1. Administrative liability for the illegal placement of waste

First, it is necessary to deal with information obligations concerning cases of illegal landfills, in relation to the relevant state administration authorities. This issue is regulated differently by law, depending on whether it is a notification by a person who has some legal relationship to the plot where the waste is located, or a notification by a third party: Any natural person or legal entity may report the placement of waste on real estate that is in violation of law to the competent body of the state waste management administration or the municipality in whose territorial district the property is located. The owner, manciple, or lessee of the plot is obliged to notify the state waste management authority or the municipality in which the property is located within three working days after discovering that waste has been illegally placed on his property.[28]

Evidently, in the case of third parties, notification is a right, while in the case of individuals who have the right to the affected land, it is an obligation. It is a logical approach, and the regulation is also functional (including a relatively short notification period intended for the land owner). The importance of this approach is not only in the protection of these persons but also in the fact that in the case of persons who have a legally regulated right to the land, purposeful action or omission is not excluded, that is, that for some reason they knowingly allow waste to be illegally dumped on their land (in some cases, not only knowingly but also for the purpose of obtaining a financial renumeration). Moreover, it cannot be ruled out that the originator of the waste is the owner of the land, and that he/she could significantly delay the notification of the illegal dump in order to make it difficult for the competent authorities to identify him/her as the responsible person.

Despite the fact that the short notification period for the owner 'looks good in books', it must be said that its enforceability can be problematic, as in many cases it will be difficult to prove when the owner of the land actually learns that there is waste on his land landfilled in violation of the law. A solution that would be worth considering could be a statutory regulation of the burden of proof regarding the moment of discovery of the waste, which would be on the side of the landowner.

After filing a notification by a person with the right to the land or a third party, the municipality and state waste management authority shall inform each other of the notifications within seven working days from the date of notification at the latest. In cases of illegal placement of waste in specific places (e.g., in a water course, inundation areas, or protected natural area), the authority who receives the notification is obliged to immediately inform also the relevant body of the state water administration or the relevant state organisation for the protection of nature and landscape.

28 | See § 15 art. 1 and 2 of the Act on Waste.

Based on the notification, the competent body of the state administration of waste management shall, after carrying out a local inspection, verify whether the extent of illegally placed waste indicates that a crime has been committed, and shall issue an expert statement about it. If it can be assumed from the notification and from the previously mentioned expert opinion of the competent authority that the facts indicate a criminal offence, the competent state administration of the waste management authority shall report it to law enforcement authorities, and in such a case, the administrative procedure of this authority to determine the person responsible for the illegal placement of waste will not even start.

I see this regulation as partly controversial. On the one hand, it is logical that if there is a suspicion that a violation of the law is so serious that it has the intensity of a criminal offence, it is necessary for the law enforcement authorities to act on the matter, and, of course, it is true that in a situation where a criminal prosecution would be initiated, the parallel investigation of the responsible person by a public administration body may be perceived as problematic from the viewpoint of the principle of ne bis in idem and from the perspective of the principle of the presumption of innocence. On the other hand, the purpose of determining the responsible person according to the Act on Waste in the proceedings that are dealt with in this section is not primarily to impose punitive liability but mainly to ensure the correction and elimination of a situation that is unacceptable from the standpoint of environmental protection requirements. Criminal proceedings can be lengthy due to their nature. It is worth considering whether it would not be more appropriate if the authorities of the state administration of waste management could and would investigate the responsible person in parallel with the ongoing criminal proceedings, exclusively to ensure the removal of the illegal landfill as quickly as possible, and the law could explicitly state, that this investigation uniquely applies to the determination of the person responsible for the purposes of financing the removal of an illegal landfill. In the event that the criminal proceedings did not end with the conviction of the person identified as responsible by the public administration body, this person would have the right to return funds from the state. In sum, at the level of the primary financial burden, the situation would turn 180 degrees in the proposed regime.

As was evident from the previous text, if facts indicating the commission of a criminal offence were not found, the competent administrative authority will start proceedings to determine the responsible person, in which it proceeds as follows[29]:

The competent administrative authority should (a) find the person responsible for the illegal placement of waste; (b) ascertain whether the owner, manciple, or lessee of the property on which waste was illegally placed, did not neglect the obligation to take all measures to protect his property according to a special regulation

29 | The proceedings proceed according to § 15 art. 9 to 12 of the Act on Waste.

or an obligation according to a court decision, or whether he had a financial benefit or other benefit from this placement of waste, especially if he does not identify the person according to letter a).

If the competent body finds the person responsible for the illegal placement of waste according to § 15 art. 9 letter a) of the Act on Waste, it designates by a decision this person as one obliged to ensure the disposal of illegally placed waste. If the competent body finds the facts that establish the owner's liability according to the law (or the liability of the manciple or the lessee), it designates the owner, manciple or lessee of the property on which waste has been illegally placed, as the person obliged to ensure the disposal of illegally placed waste. In both cases the competent authority also determines a reasonable period for removal of the waste.

If, following the procedure mentioned earlier, no responsible person is found, the competent authority shall terminate the procedure for identifying the responsible person with a decision stating this fact (i.e., it was not possible to find the person responsible).

The person designated as responsible for dealing with illegally placed waste is obliged to ensure the recovery or disposal of this waste in accordance with the law at his/her own expense. If the respective waste is municipal waste or minor construction waste, the responsible person shall do so exclusively through a person who has a contract for this activity with the municipality according to § 81 art. 13 of the Act on Waste, or directly through the municipality, if the municipality provides this activity itself.

In the cases referred to in § 15, Articles 7 (the case when the procedure for determining the responsible person does not start, because the matter was handed over to the law enforcement authorities /due to the suspicion of committing a crime), 12 (the case, when in the proceedings it was not possible to determine the person obliged to ensure the disposal of illegally placed waste, and thus the proceedings was terminated), and 19 (cases where the law enforcement authority initiated proceedings), the competent authority of the state administration of waste management shall initiate proceedings in the matter of determining the person obliged to ensure the recovery or disposal of illegally placed waste. In the decision, the competent authority shall state that the recovery or disposal of illegally placed waste shall be ensured within a specified reasonable period, so that there is no threat to life or health of people or damage to the environment, by (a) the municipality on whose territory waste was illegally placed, if it is municipal waste or minor construction waste, (b) the competent body of the state administration of waste management, if it concerns waste other than the waste listed in letter a), (c) the holder of illegally placed waste or the person referred to in § 15 art. 2 of the Act on Waste, if he or she expresses an interest in ensuring the recovery or disposal of illegally placed waste.

All three categories of designated responsible persons (listed above) are obliged to take care of the recovery or disposal at their own expense. Whoever of them

has ensured waste recovery or waste disposal is entitled to the reimbursement of incurred costs against the person who is responsible for the illegal placement of waste. If funds from the Environmental Fund are provided to ensure waste recovery or waste disposal, the costs that are reimbursed, are income of the Environmental Fund.

There is also a special regulation concerning illegally placed municipal waste or minor construction waste.[30] The municipality is entitled to ensure, in accordance with this law, the recovery or disposal of illegally placed municipal waste or minor construction waste, immediately after its detection, in which case the previously mentioned procedure[31] shall not apply; the municipality is obliged to inform the competent body of the state administration of waste management about it within three working days at the latest. The purpose of this specific regulation is to allow municipalities to remove smaller illegal landfills on their territory containing less dangerous types of waste promptly and without formalities.

In principle, it can be stated that the normative framework for identifying persons responsible for the illegal dumping of waste and for the removal of such waste in the Slovak Waste Act is set functionally. The following can be identified as potential weak points:

- practical identification of the responsible person; however, this problem is apparently not quite well solvable normatively, and the solution is rather proactive control by municipalities and state administration bodies, which allows identifying illegal dumping of waste as soon as possible, which, among other things, also has a preventive effect (in Slovak there is a saying 'a big pile asks for more', and this undoubtedly applies literally in the case of illegal landfills, since if people see that other people are getting rid of waste in a specific place, they tend to dump their waste there too); and
- legal exclusion of the possibility of simultaneous investigation of the responsible person by law enforcement authorities and state waste management authorities may not be an effective solution from the point of view of quick and effective detection of a person for the purpose of financial coverage of waste removal.

The practical problems of the application of the normative framework are also the finding that illegally stored waste is located somewhere, and the issue of financial coverage of its removal by the municipality.

It can be concluded that the existing normative regulation is not capable of completely preventing the creation of illegal landfills (including the level of general prevention), but apart from some practical problems, it provides a functional and suitable framework for tackling the problem.

30 | See § 15 art. 18 of the Act on Waste.
31 | Procedure according to § 15 articles 3 to 17 of the Act on Waste.

5.2. Penal consequences of illegal waste dumping

As Šedová and Haluš correctly state, the consistent application of fines for the creation of illegal landfills can effectively reduce their creation. A person who decides whether to dump waste illegally, at least subconsciously, compares the benefits and costs of doing so. The benefits include lower waste disposal costs in particular. The costs mainly represent the amount of the fine and the probability of being caught, the social costs (shame) in the community in case of being caught, or the distance that has to be covered to the illegal dump. The empirical model of the mentioned authors, and similarly, as Šedová and Haluš state, also foreign studies, confirm that higher costs of illegal dumping can significantly limit its occurrence. Accordingly, they conclude that the first step in the fight against illegal landfills should therefore not be to deal with the consequences but to prevent them from occurring by consistently punishing the offenders, potentially by increasing fines or by exposing the offender to public defamation (disclosure of the offenders).[32]

In the case of illegal dumping of waste, two lines of sanctions come into consideration. In less serious cases of violation of the law, it can be an infringement or another administrative offence, and in more serious cases, it can be a criminal offence. Thus, the establishment of an illegal landfill can also constitute a crime against the environment. As already mentioned, before the district authority begins to investigate the person responsible for the illegal dumping of waste, it determines whether the circumstances indicate that it could be a crime. The boundary between an infringement and a criminal offence in the Slovak legal order is formed by the value of the damage that is caused (or threatened to arise) by the act or the extent of the act. In the case of crimes against the environment, damage means the sum of ecological and property damage, while property damage also includes the costs of restoring the environment to its previous state.[33] The distinction between criminal offences and infringements is generally determined by the so called substantive corrective (§ 10 par. 2 of the Criminal Code), according to which there is no misdemeanour[34] if, with regard to the manner in which the act is carried out and its consequences, circumstances in which the act is committed, degree of fault, and motivation of the offender, the seriousness of the conduct is negligible. If the circumstances warrant the use of this corrective measure, it will likely be considered an infringement. I should also mention that the ne bis in idem principle[35] and the prohibition of double punishment should prevent double punishment for both the criminal and administrative offences.

Infringements governed by the Act on Waste are regulated by § 115 of the Act. According to this regulation, an infringement is committed by a person who, inter

32 | Šedová & Haluš 2016
33 | Mochorovská 2023
34 | A misdemeanour he less serious category of criminal offenses in the Slovak penal system.
35 | Hamuľáková 2017, 55.

alia, (a) handles waste in violation of this act [§ 12 art. 1 and 2] (b) places waste in a place other than that designated by the municipality [§ 13 letter a)] (c) recovers or disposes of waste in violation of this act [§ 13 letter b)]

Of these offences, for the cases covered by our paper, the one I present as the second one has key relevance. It is therefore an infringement under § 115 art. 1 letter b) of the Act on Waste. For committing this infringement, a fine of up to EUR 1,500 may be imposed.[36] The proceedings regarding this infringement fall in the scope of competence of the municipality.[37]

However, other infringements with stricter fine rates also come into consideration, these in some cases are dealt with by the district authorities—these are cases where, by depositing waste at an illegal waste dump, special obligations regarding special types of waste would be violated. For example, it could be the case of illegal dumping of batteries or electrical waste in an illegal landfill.

It is also necessary to mention the infringement according to § 115 art. 1 letter u) of the Act on Waste. This infringement is committed by a person who, by the decision of the district office issued in the administrative procedure, which I have discussed in the previous subsection, is designated as the person responsible for dealing with illegally placed waste. Let us repeat that this person is obliged to ensure the recovery or disposal of this waste in accordance with this law at his/her own expense; if it is municipal waste or minor construction waste, he/she shall do so exclusively through a person who has a contract with the municipality for this activity, or through the municipality, if the municipality provides this activity itself. Therefore, if these obligations were to be violated, it is a more severe offence because it is a more serious violation of the law. Thus, a stricter fine (up to EUR 2,500) can be imposed for this infringement, and a hierarchically higher authority is responsible: the district authority.[38]

Legal entities and natural persons: entrepreneurs can be sanctioned for similar actions within the scope of responsibility for so-called other administrative offences (they are also called 'hybrid administrative offences' in Slovak theory[39]). Unlike infringements, which require culpability, other administrative offenses are based on objective liability and therefore do not require or investigate culpability. Therefore, if a legal entity violates the prohibition to store or dump waste in a place other than that designated for it in accordance with this law[40], a fine of from EUR 4,000 to EUR 350,000 may be imposed for such an administrative offence.[41] Both the district authority[42] (and the district authority in the seat of a region[43]) and the

36 | § 115 art. 2 letter a) of the Act on Waste.
37 | § 115 art. 3 letter a) of the Act on Waste.
38 | § 115 art. 2 letter b) and § 115 art. 3 letter b) of the Act on Waste.
39 | Hamuľáková & Horvat 2019, 179. or Vrabko et al. 2012, 301.
40 | § 13 letter a) of the Act on Waste.
41 | § 117 art. 6 of the Act on Waste.
42 | See § 108 art. 1 letter j) of the Act on Waste.
43 | See § 107 letter k) of the Act on Waste.

Slovak Environmental Inspection[44] can be responsible for proceedings in matters of such other administrative offences under § 117 of the Act on Waste.

In cases of infringements, as well as in cases of other administrative offences, the responsible person can be imposed an obligation to take corrective measures in addition to a fine.[45]

Finally, let us mention that in certain cases, where a fine for an offence was imposed by the municipality, the income from its payment goes to the municipality's budget. In other cases, the revenue from fines is the income of the Environmental Fund.[46]

The legal regulation of criminal liability in the field of waste management is an example where national legislation is fundamentally influenced by European law. According to the Directive 2008/99/EC of the European Parliament and of the Council of November 19, 2008, on environmental protection through criminal law, the member states shall ensure that, inter alia, the following conduct constitutes a criminal offence: *"...(b) Supervision, collection, transport, recovery, disposal, and after-care of waste by dealers or brokers (waste management), which causes, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (c) Shipment of waste within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of June 14, 200620, undertaken in a non-negligible quantity, whether executed in single or several shipments..."*[47]

At the level of Slovak criminal law, the criminal offence 'unauthorised handling of waste' comes into consideration according to § 302 of the Slovak Criminal Code: Whoever, even negligently, disposes of waste on a small scale in violation of generally binding legal regulations, commits this criminal offence and he or she shall be punished by imprisonment for up to two years.

For more serious cases, the law also regulates the so-called qualified facts[48]: The offender shall be punished by imprisonment for six months to three years if he or she commits this act and puts the environment at risk of greater damage or places another person by such act r in danger of serious injury or death. The offender shall be punished by imprisonment for one to five years if he commits the mentioned act to a significant extent. The offender shall be punished by imprisonment for three to eight years if he commits the mentioned act and either causes serious injury or death by it or commits it on a large scale.

44 | See § 106 letter b) of the Act on Waste.
45 | § 115 art. 4 and § 116 Art. 3 of the Act on Waste.
46 | § 116 art. 6 of the Act on Waste.
47 | See Udvarhelyi 2023, 159–170.
48 | This regulation is also in accordance with the above-mentioned directive 2008/99/EC on environment protection through criminal law.

6. Illegal waste landfills

In addition to cases where waste is dumped 'spontaneously' in random places in violation of the law, more serious negative phenomena can occur when unofficial waste dumps are operated without the necessary permits. Slovak law 'remembers' such situations and the Act on Waste regulates them mainly in its provisions § 114b.

In such cases, the state waste management authority may order the waste landfill operator who has not fulfilled the obligation to submit an application for approval pursuant to § 97 art. 1 letter j) and has not fulfilled all the requirements and conditions for issuing consent according to § 97 art. 1 letter j), to carry out the actions necessary to close the waste dump or part of it or carry out its reclamation within the period determined by the decision. If the operator of the waste dump has not carried out all the necessary actions in accordance with the decision, the state waste management authority can ensure, through a legal entity or a natural person who has authorisation for construction work, the execution of these actions and also the execution of works for the purpose of closing the waste dump or its part or carrying out its recultivation at the expense of the waste dump operator.

7. Selected types of waste that are significantly involved in illegal dumping

In this chapter, which concludes the present paper, I will briefly outline selected types of waste, which to a significant extent become the object of illegal dumping. I will briefly discuss what legal regimes apply to their management, as these legal regimes are intended, among other things, to contribute to the prevention of illegal landfills.

7.1. Special regulation of construction waste and demolition waste

Both construction and demolition waste arise as a result of construction works, securing works on constructions, as well as works performed during building maintenance, when modifying buildings or removing structures ('construction and demolition work').

If the waste was generated during construction and demolition works carried out at the seat or place of business, organisational component, or in another place of operation of a legal entity or a natural person (entrepreneur), this legal entity or this natural person – entrepreneur (who was issued permit according to a special

regulation[49]) – is considered by law to be the originator of the waste. When performing similar work for natural persons, the person who performs said work is the originator of the waste.

The originator of waste is responsible for waste management in accordance with the Act on Waste. In addition to the general obligations[50], the originator of the construction waste and demolition waste is required (inter alia) to ensure the recovery and recycling of construction waste and demolition waste, including backfilling as a substitute for other materials, in a prescribed extent, to carry out selective demolition in such a way as to ensure their maximum reuse and recycling.

The law also determines some special notification obligations for the originator, either ex ante or ex post.

Construction and demolition waste should preferably be materially recovered and the output from recycling reused at the place of origin – preferably in the activity of the originator, if technical, economic and organisational conditions allow it. The material recovery of the construction waste generated during the construction, maintenance, reconstruction, or demolition of roads should be carried out as a matter of priority in such a way that it is used especially for the construction, reconstruction or maintenance of roads.

7.2. Special regulation of municipal waste and minor construction waste

Municipal waste[51] is (a) mixed waste and separately collected waste from households, including paper and cardboard, glass, metals, plastics, biological waste, wood, textiles, packaging, waste from electrical and electronic equipment, used batteries and accumulators, and bulky waste, including mattresses and furniture, (b) mixed waste and separately collected waste from other sources, if this waste is similar in nature and composition to household waste.

Municipal waste is not deemed to be hazardous; it generally includes waste generated by households, shops, offices, and other commercial units, and it includes paper, cardboard, glass, plastics, metals, organic matter, and putrescible materials. Landfill is accounting for the majority of disposal of municipal waste in OECD countries (the other most significant technique being incineration).[52] According to Marišová and Fandel, as of 2021, Slovakia's rate of waste incineration with energy recovery and landfilling rate of municipal waste are below the EU average, while the recycling rate, both for materials and composting and digestion,

49 | It will typically be a building permit according to the Building Act.
50 | Obligations of the originator of waste according to § 14 art. 1 of the Act on Waste.
51 | Municipal waste is regulated in the Act on Waste in the provisions of § 80 et seq.
52 | Sands 2009, 678.

is higher.[53] It should be remembered that municipal waste has great potential in a circular economy.[54]

The legislation also subjects so-called minor construction waste to the same legal regime as municipal waste. Minor construction waste is that from common maintenance work on a construction carried out by or for a natural person, for which a local fee for municipal waste and small construction waste is paid. It is therefore waste from the smallest construction activities, such as replacing non-essential partitions, repairing roofing, repairing plaster, replacing windows and doors, and the like.

The Act on Waste also contains a negative definition of municipal waste: Municipal waste does not include waste from production, waste from agriculture, forestry and fishing, waste from septic tanks, sewage networks and treatment plants including sewage sludge, old vehicles, construction waste, or demolition waste.

7.3.1. Management of municipal waste and minor construction waste

Municipal waste management[55] is a responsibility of: (a) the municipality, in the cases of: (1) mixed waste and separately collected waste from households, (2) mixed waste from other sources, (3) minor construction waste, (b) the originator of waste, a natural person, which is an entrepreneur and a legal entity, in these cases: (1) separately collected waste from other sources that are not covered by extended producer responsibility (2) electrical waste and used batteries and accumulators (3) separately collected packaging waste from other sources and separately collected waste from non-packaged products from other sources (4) separately collected waste from disposable packaging for drinks, which was rejected by the packaging distributor on the grounds that they do not meet the requirements for collection according to a special regulation

The costs of the collection container for mixed municipal waste shall be borne by the original producer of the waste. The municipality shall establish in a generally binding regulation the amount of these costs and their inclusion in the local fee for municipal waste and small construction waste or establish another method of their payment. The costs of providing collection containers for the sorted collection of components of municipal waste, where extended producer responsibility is applied, are borne by the manufacturer of such specific products, the relevant producer responsibility organisation or a third party. The costs of providing collection containers and compost bins for the sorted collection of components of municipal waste, where extended producer responsibility

53 | Marišová & Fandel 2024, 65–84.
54 | Šimková & Bednárová 2021, 56–68.
55 | See § 81 of the Act on Waste.

does not apply, are borne by the municipality and may be included in the local fee for municipal waste and minor construction waste. The municipality may establish in a generally binding regulation another method of payment for the costs of providing collection containers and compost bins for biodegradable municipal waste.

The law regulates in detail the special obligations regarding the management of municipal and minor construction waste, including the regulation of what the municipality has to regulate in its generally binding regulation. Moreover, it not only regulates more detailed issues of the costs of handling this type of waste but also governs issues of contractual relations between municipalities and persons who ensure the collection of separated waste and other specific activities for the municipalities.

7.3.2. Collection yard

The so-called collection yards significantly help prevent the creation of unauthorised landfills. A collection yard is a facility for the collection of municipal waste and minor construction waste established by a municipality or an association of municipalities and operated by a municipality, an association of municipalities or a person who has a contract with the municipality or an association of municipalities for this activity; an approval of the competent authority of the state administration of waste management is required for the operation of the collection yard. At the collection yard, a natural person can hand over small construction waste, bulky waste, waste whose collection at the collection yard is permitted by the law, and separately collected components of municipal waste within the scope of sorted collection established in the generally binding regulation of the municipality.

Every natural person may hand over separately collected components of municipal waste free of charge[56] to (a) the collection yard, which is located in the territory of the municipality in which he/she is a taxpayer, (b) the collection yard, the operation of which is ensured by the association of municipalities, whereof the municipality in which he/she is a taxpayer is a member.

Delivery of a separately collected component of municipal waste at the collection yard by other persons may be charged.

56 | Although it is possible to hand over this waste free of charge, it is not, in the true sense of the word, typifying an exception to the 'polluter pays' principle, as these persons pay a local fee for municipal and small construction waste. Regarding the 'polluter pays' principle (and landfill fees in Hungarian conditions), see e.g. Csák 2014, 48–61.

8. Conclusion

The problem of illegal landfills is quite widespread and results in serious negative environmental impacts, which have been briefly mentioned. Unfortunately, a Slovak study indicates that increasing education levels and awareness among the population are not effective enough in solving this problem; however, effective punishment for illegal waste dump appears to be a viable solution. The key is to shift the 'informal cost–benefit evaluation' that individuals make before dumping waste in illegal landfills towards recognizing the economic disadvantages of breaking the law.

This paper presented information about the legal regulation of waste management in the Slovak Republic, as they relate to the topic of illegal waste disposal.

This paper defines several activities that are included in waste management. Under the law, a prescribed hierarchy of waste management exists, which is the binding order of the following priorities: prevention of waste generation is the most desirable, followed by preparation for reuse, recycling, other recovery (e.g., energy recovery), and lastly, disposal.

Further, the paper presents waste management actors and their responsibilities. The originator and holder of waste have key roles to play. The obligations and prohibitions are presented primarily on a general level, but the paper also lists some special obligations and regimes (concerning mainly specific categories of waste).

In Chapter 3, the paper briefly outlines the organisation of the state administration of waste management in the Slovak Republic. Among the bodies of the state administration of waste management for the topic of paper most important are (a) Slovak Environmental Inspection (which has competence in permitting the operation of landfills, but also when inferring administrative legal responsibility) (b) District authority (it has important competences in particular in determining the persons responsible for illegal dumping and inferring administrative liability) (c) Municipality (in some cases, it decides on infringements, in some cases it is the entity that practically ensures the removal of illegal landfills, etc.).

Chapter 4 of the present paper deals with the legal regulation of landfills. Although this is only a brief outline of the issue, it shows clearly that the legal regulation of the establishment and operation, as well as the subsequent closure of the waste dump, is very complex. This indicates that even this aspect of the issue can to some extent be an indirect stimulant for the creation of illegal landfills. Despite this, I do not think it would be appropriate to consider reducing claims in terms of material legal prerequisites for operating waste landfills. The reason is not only the need for balancing of the importance of benefits and risks for the environment but also the fact that the connection between the administrative and economic complexity of operating 'legally established' waste dumps (and dumping waste on

them) and the emergence of illegal dumps, to be a sufficient basis for a recommendation to reduce the administrative complexity of operating landfills, would have to be proven beyond any doubts, which is not the case.

At the procedural level, any simplifications must also be made in such a way that the rights of the public are not compromised, at least to the extent of the standards of the Aarhus Convention. The integration of proceedings within the scope of material concentration can be considered an excellent procedural tool that does not threaten the rights of participants in the proceedings and is suitable to make permitting (in our case) of landfills faster and more efficient without discounting environmental protection. Integrated permitting is therefore a very useful tool, and it is also applied in the case of landfills.

The ongoing recodification of the Slovak public construction law will engender another simplification: the zoning procedure as a type of application process aimed at assessing the compliance of the building's intention with the spatial plan is to be abolished. The compliance of the building's intention with the spatial plan will now be examined only in a simplified way: by a binding opinion of the spatial planning authority, which will be issued as part of the construction procedure. This new law is currently scheduled to enter into force on April 1, 2025.

The fourth chapter also deals with the legal regulation for the termination of the operation of the landfill (including the regulation of the special financial reserve). This regulation is well set. The single most fundamental practical shortcoming can be identified in the case of the dissolution of the landfill operator without a legal successor (i.e., his bankruptcy, etc.). In such a scenario, the obligations associated with the closure and reclamation of the landfill pass to the municipality. These obligations will only go up to the amount of the special purpose financial reserve, which may not always be sufficient. In such a case, there is no other option than to look for financing instruments on the part of the state.

The fifth chapter is of key importance for the issue under scrutiny. It presents the legal consequences of illegal waste disposal. First, it tackles the topic of administrative liability for illegal placement of waste. This concerns problems such as the notification obligation regarding illegally deposited waste in relation to the authorities, issues of the procedure for determining the person responsible for the disposal of such waste, as well as the connection of these procedures with the criminal law aspects of the issue and with criminal proceedings. However, the paper understandably also deals with the criminal aspects of the issue, whether it is infringements or the so-called other (or hybrid) administrative offences, or even criminal offences.

Concerning the right or obligation to notify illegal placement of waste, the study identified a practical problem: in many cases it will be difficult to prove when the owner of the land actually learned that there was waste on his land dumped in violation of the law. A proposed solution could be a statutory regulation of the

burden of proof regarding the moment of discovery of the waste, which would apply to the landowner.

Another proposal de lege ferenda in this chapter concerns the change of the current approach, which excludes the simultaneous investigation of the person responsible for illegal dumping in criminal and administrative proceedings. The authorities of the state administration of waste management should be able to parallelly investigate the responsible person alongside the ongoing criminal proceedings but exclusively for the purpose of ensuring the removal of the illegal landfill.

I also point out another practical problem – the issue of identification of the responsible person; however, this problem is apparently not quite well solvable normatively, and the solution is rather proactive control by municipalities and state administration bodies.

The brief sixth chapter deals with a specific aspect of the issue, namely, illegal waste dumps in the true sense of the word. In this case, the problem entails not only the simple deposition of waste in a place where it cannot be deposited according to the law but also the organised and planned illegal operation of a waste dump.

In the penultimate, seventh chapter, the present paper also deals with selected types of waste that are significantly involved in illegal dumping, including construction and demolition waste, as well as municipal and minor construction waste.

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Laura-Cristiana SPĂTARU-NEGURĂ[1]

Short considerations regarding the Romanian deposit return system – "How imperfect but perfectible" the system really is now?!

Abstract

On 30 November 2023, a historic moment in Romania was marked, being officially launched the Deposit Return System (DRS – called in Romanian `sistemul de garantie returnare` and abbreviated `SGR`). This represents a huge step towards a greener and a more sustainable future of Romania. The deposit return system is an important component of the circular economy, and through this implementation, Romania must attain the recycling objectives of the European Union and to be clean.

On short, through this deposit return system, consumers and end-users will pay a guarantee of 0.50 RON (i.e. ten euro cents) when they purchase from a retailer any product from certain categories of beverages (i.e. water, soft drinks, beer, cider, wine or spirits), in primary non-refillable glass, plastic or metal packaging, with volumes between 0.1 l and 3 l inclusive. For the ease of identification, the products included in the DRS are marked with the packaging with guarantee symbol, as shown below.

In this study we want to present the main legal provisions applicable to DRS, what is the current status of the DRS implementation in Romania, after less than two months of application, and the visible challenges of this system.

But several questions appear in our mind? How is intended the DRS to work? Was Romania ready, on 30 November 2023, for the operation of the DRS, especially that it is supposed to collect more than 7 billion recipients at the national level? Did Romania manage to put in place a functioning operating system? Were all stakeholders involved in the DRS ready to take their positions in the system? All of these questions will be answered in this present study.

Keywords: deposit return system, DRS, European Union, packaging waste, Romania, targets, SGR, `system de garantie returnare`.

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1. Introduction

The demand for disposable beverage packaging continues to grow each year; most of this packaging is used once before it becomes waste, and a considerable amount ends up in nature, in the oceans, in the rivers, on the streets and in landfills.

Based on the key principles recognised in the international law and in the European Union[2] in order to prevent pollution (e.g. the polluter pays principle[3] and the extended producer responsibility), the European Union, in its supranational governance,[4] has regulated the deposit return system as a complex component of the circular economy, supposing that things are made and consumed in such a way to minimize the world resources use, to cut waste and to reduce carbon emissions.

This means that trough repairing, recycling and redesign, products are kept in use for as long as possible being used again and again, and when a product's life is ended, the component materials are kept in the economy and are reused wherever possible.

Deposit return systems (hereinafter referred as '*DRS*') play a vital role in preventing pollution by providing a financial incentive for consumers to return post-consumer packaging for recycling. These schemes are usually established by legislation adopted at national level.[5] The effectiveness of this type of policy is recognised, with successful returnable packaging take-back schemes typically recovering over 90% of packaging placed on the market.

Please note that the deposit return system is very complex from the legislative point of view, because, while complying to the waste and packaging waste legal provisions, all the stakeholders involved in the producer-consumer recycling chain organize a system of voluntary return of packaging, single use or reusable, through the use of a financial incentive (guarantee).

Nowadays, with the start of the operation of the DRS system, Romania joins the 13 European countries (e.g. Germany, Denmark, Norway, Sweden, Finland and Croatia) that have already implemented a DRS system nationally, being considered the second largest in Europe and the largest centralised national DRS in the world in terms of packaging volume. Romania has its specificities.[6]

2 | Regarding the relationship between the international law and the European Union law, please see Popescu 2023, 31 and following; Oanta in Ovidiu Predescu, Augustin Fuerea, Andrei Dutu-Buzura 2022, 50; and Conea 2019.

3 | This principle applies not only on waste management and on nature conservation, but also in the agriculture. For more information on the application of this principle in agriculture, please see Bobvos et al. 2006, 29–54.

4 | As considered in the legal doctrine – see e.g. Valcu 2023, 1.

5 | For example, for the analysis of the Polish legal frame, see Ledwoń 2023, 100–114, and of the Slovakian legal frame, see Maslen 2023, 73–90.

6 | For a complex view of the history of the Romanian state and law, please see Ene-Dinu 2023.

Therefore, in the deposit return system in Romania, now, when buying[7] a product packaged in returnable packaging, each consumer or end-user[8] has to pay the guarantee together with the product's price, and when returning the packaging of the respective product to a collection centre organised by traders on the Romanian territory, this guarantee will be recovered by the respective person.

The guarantee shall be recovered regardless of where the packaged product was purchased and without being required to present the tax receipt.[9]

Therefore, as you can imagine, December was a very intense month from the point of view of the deposit return system in Romania, because on the last day of November 2023, the system was started operating according to the legislation put in place.

But what are the current issues in operating the deposit return system in Romania?

2. Romania, the Waste Management and the DRS

It is well known that Romania struggles with the waste management, from illegal landfills to minimal recycling, many infringement[10] procedures being under scrutiny of the European Union authorities.[11]

Regarding the deposit return system, through its legislation, Romania has committed to regulate and to transpose the deposit return system into national legislation by 1 January 2021, but because not all the stakeholders were ready at that time, the Romanian authorities postponed this deadline to 30 November 2023[12], according to the Government Decision No. 1074/2021 on the establishment of the deposit return system for primary non-refillable packaging, published in the Romanian Official Journal No 955 of 6 October 2021.[13]

7 | The DRS applies to both products manufactured on the Romanian territory and to products imported or purchased intra-Community. Additionally, please note that the law does not differentiate between sale, promotional or gift products, therefore DRS guarantee applies to packaging of products offered as gifts or advertising.

8 | Consumer or end-user means a natural or legal person purchasing for their own consumption products packaged in primary non-refillable packaging that are part of the deposit return system.

9 | Please be informed that the guarantee applies to each unit of product in DRS packaging and is separately evidenced in the fiscal documents of producers, distributors and traders when marketing products, including to consumers or end users.

10 | Dimitriu 2023

11 | Please see European Commision 2024

12 | Please note that, additionally to the first postponement, in September 2023, the Romanian DRS administrator RetuRO requested a three-month postponement of the project's start date, but this request was refused by the Romanian Environment Ministry.

13 | For the Romanian version of this legislative act, with all subsequent amendments and additions, please see the Romanian Legislative Portal 2022. This decision governs the obligations of the producers, traders and the DRS administrator (RetuRO), as well as matters relating to enforcement and recovery of the guarantee, payment or receipt of implementation fees, penalties attracted by non-compliance.

In order to determine whether a beverage bottled in disposable packaging (which is disadvantageous from the point of view) falls within the scope of the guarantee, we have to look at the definition given in the Government Decision No. 1074/2021 above mentioned.

Therefore, through the deposit return system, the producers [i.e. the economic operators referred to in art. 16 paragraph (1) of Law no. 249/2015] carry out the responsibility for the collection, transport and recycling of DRS packaging[14] – primary non-refillable packaging made of glass, plastic or metal with volumes between 0.1 L – 3 L inclusive, related to the following products: beer, beer mixes, alcoholic beverage mixes, cider, other fermented beverages, juices, nectars, soft drinks, mineral waters and drinking waters of all kinds, wines and spirits.

The following description serves as indicative legal information for determining beverages packaged drinks to which the guarantee applies – beverages bottled in non-refillable primary packaging made of glass, plastic or metal with a volume of 0.1 litres to 3 litres inclusive, bearing the DRS mark: (1) Beer. Beverages containing beer, including mixed beverages with beer. These include non-alcoholic beers, mixes of beer with cola or lemonade, beer with syrup, beer in combination with another alcoholic beverage (e.g. beer with vodka) or flavoured beer (e.g. tequila-flavoured beer). (2) Water. All water-based beverages, i.e. mineral water with or without added carbon dioxide, spring water, medicinal water, table water and other waters, such as 'near-water products', regardless of additives (including flavoured water, caffeinated water or oxygenated water). (3) Carbonated and non-carbonated soft drinks. In addition to Coke or Lemonade this includes mixes of fruit juice with tea and mineral water (apple juice with mineral water), sports drinks so-called `energy drinks`, drinks with tea or coffee, which are drunk cold, bitter/bitter-flavoured drinks and other drinks with or without carbohydrates. (4) Mixed drinks with alcohol (especially so-called alcopop drinks) (i) which are produced using preparations that are subject to beverage tax spirits (fermentation alcohol from beer, wine or wine products, whether or not further processed, which has undergone a technical treatment which no longer corresponds to good with an alcoholic strength of less than 15% vol. %), or (ii) which are produced using preparations which are subject to beverage tax spirits.

Please note that the following products are not subject to this legal regime: beverage glasses, pouches – flexible pouch-type packaging in layers, bag-in-box – beverages in closed cartons and any other packaging which cannot retain its shape after emptying.

The objectives of the Romanian deposit return system will be achieved by the national administrator, a Romanian dually managed company, unique at the national level, created exclusively for the purpose of implementing, managing, operating and financing the DRS (based on the not-for-profit principle – it

14 | "DRS packaging" means a single unit of bottled product in a single DRS packaging.

has to undertake to reinvest any profits made exclusively in the development of the DRS).

3. About the Selection of the Deposit Return System Administrator

In the Romanian Official Journal No. 191 of 25 February 2022, a special procedure for selecting the deposit return system administrator has been published.

According to this Procedure, the steps in selecting the national system administrator are the following: (a) the registration for the selection procedure of the DRS administrator; (b) the assessment of the fulfilment of the eligibility criteria; (c) the analysis of the documentation submitted and awarding of scores; (d) the publication of the announcement of the result of the selection.

The eligibility criteria for participants in the selection procedure are as follows: (a) they must be set up as joint stock companies; (b) all the shareholders of the applicant are constituted as an association; (c) have as shareholders the producers' association structures which together hold a market share of at least 30%, based on the number of DRS packaging units placed on the market in the last completed fiscal year preceding the submission of the documentation for accreditation; (d) all the members of the associative structures that are part of the applicant's shareholding must be producers; (e) the members of the associative structures that are part of the applicant's shareholder structure do not have debts due to the Romanian Environmental Fund; (f) the share capital of the incorporated company may not be less than 5 million RON[15]; (g) to describe and assume the proposed mechanism for the acquisition of shareholder status by the Romanian State.

Where the company's shareholders include the associative structures of traders selling products packaged in DRS packaging on the national market, they must meet the following eligibility criteria: (a) they must be set up as an association; (b) they must have the status of trader; (c) they do not have debts due to the Romanian Environmental Fund.

The documentation for the application for the selection procedure of the DRS administrator must contain the following documents, together with an opis of the documents: (a) the standard application; (b) the articles of association of each of the company's shareholding associations, in a copy certified as being in conformity with the original; (c) a notarised sworn declaration by each producer association, shareholder of the company, that all members are economic operators within the meaning of Article 16 para. (1) of Law No. 249/2015 on the management of packaging and packaging waste, as amended and supplemented, and that they

15 | RON is the Romanian currency – `leu` in Romanian, and the exchange rate is 1 EUR is approximately 5 RON.

have placed DRS packaging units on the market in the fiscal year preceding the selection procedure, accompanied by a list of members; (d) a notarised sworn declaration by each producer association shareholder of the company that all its members have paid all contributions due to the Environmental Fund up to date, accompanied by a list of members and their identification data, including their tax identification code; (e) a notarised declaration on their own responsibility from each producer association shareholder of the company, showing the number and total weight of DRS packaging placed on the market on a professional basis in the last fiscal year ending on the date of submission of the documentation by each of its members who are economic operators; [please note that this declaration shall detail the total quantity of DRS packaging both in number of pieces and in kilograms, broken down for each type of material and for each member of the association structure individually for both DRS and non-DRS packaging, and that this declaration shall be submitted electronically to the Administration of the Environment Fund, bearing a qualified electronic signature]; (f) a description of the proposed mechanism for the acquisition by the Romanian State of the status of shareholder and a written commitment on the application of this mechanism, signed in original by all the entities holding shareholder status in the applicant.

Where the company's shareholders also include associations of traders[16] selling products packaged in DRS packaging on the national market, the company must include the following documents in its application for the selection procedure, in addition to the documents set above: (a) the articles of association of each traders' association which is a shareholder of the company, in a copy certified as being in conformity with the original; (b) a notarially certified affidavit of each traders' association that is a shareholder of the company, stating that all the members of the association are traders within the meaning of point 1 letter (e) of the Annex to the Government Decision No. 1074/2021, together with a list of the names of their members; (c) a notarized affidavit of each traders' association, shareholder of the company, stating that all its members have paid up to date all the contributions due to the Romanian Environmental Fund, accompanied by the list of members and their identification data, including the tax identification code.

The selection documentation shall be submitted by the participant to the central public authority for environmental protection both in hard copy and by e-mail. The documents submitted electronically must bear a qualified electronic signature.

If the Romanian Commission finds that the documentation does not contain all the documents and information required or considers it necessary to supplement it, it shall request the participant in writing to provide additional documents or information. Failure to submit within five days the additional documents or

16 | Where a producer is a member of more than one association of producers participating in the selection procedure, the number of units of DRS packaging placed on the market by that producer in the last fiscal year preceding the submission of the documentation shall be taken into account only once, within the association with the largest market share.

information requested shall result in the participant being eliminated from the selection procedure. Reasons shall be given for the decision rejecting the application and the Commission shall notify the applicant in writing.

Please note that according to the provisions of Article 18 para. (3) of the Government Decision No. 1074/2021, the share capital of the DRS administrator cannot be less than 5 million Romanian lei (i.e. approximately 1 million euros).

Based on this procedure, the company RetuRO Sistem Garanție Returnare S.A.[17] was created and started operating in Romania. The shareholders of RetuRO are associative structures of the producers (hold a market share of at least 30%, based on the number of DRS packaging units placed on the market in the last fiscal year completed prior to the submission of the documentation for accreditation), and the Romanian State is represented by the central public authority for environmental protection.

The revenues recorded in any capacity by the DRS administrator, including unclaimed guarantees, shall be used exclusively to support the operation and increase the efficiency of the guarantee-return system, according to the provisions of Article 18 para. (6) of the Government Decision No. 1074/2021.

4. How the System Is Intended to Work in Romania?

Firstly, the producer/importer of a product in DRS packaging is required to register products with DRS packaging held in portfolio in DRS Packaging Register,[18] based on the new bar codes[19] obtained.

Afterwards, the producer/importer will put on the market the products in DRS packaging, marked with a specific symbol. The packaging must contain one of the following designs, depending on the colour of the packaging, expressly stating *packaging with guarantee*:





17 | Please see the official page of the DRS administrator – RetuRO 2024. RetuRO's mission is to implement DRS, Romania's largest circular economy project, through which Romania is supposed to have a cleaner environment and to achieve the collection and recycling targets set at European level by the new EU package for the environment.

18 | A database in which DRS packaging on the market is registered.

19 | Please note that the DRS packaging shall be identified by new barcodes (unique numerical structures), the DRS barcodes being the basis for the traceability of packaging in the system – they ensure their identification and traceability throughout the packaging flow within the DRS.

This representative symbol is easily recognisable and understood by consumers, and it is a registered trademark of the Romanian central public authority for environmental protection.

This symbol is indicating the product's membership of the deposit return system and shall be applied directly on the packaging, on the product label or on the additional label, as appropriate, while it is expected to be visible, legible, durable, without overlapping with any other graphic element of the packaging or label.

The bar code[20] affixed to the DRS packaging or product label shall provide the necessary, sufficient and verifiable information, through linkage to the data contained in the DRS Packaging Register, to enable the DRS administrator to at least establish the DRS membership of the packaging, the weight and volume of the packaging and the identity of the producer.

Please note that this symbol has been approved by Order No. 1802/2023 approving the symbol indicating membership of the guarantee-return system, issued by the Minister for the Environment, Water and Forests, on the basis of the proposal drawn up by the DRS administrator.

Additionally, please note that the DRS administrator has completed the formalities necessary for the acquisition of the related intellectual property rights, and their transfer, within a maximum of one year from its registration, to the central environmental authority, which will hold these rights – the trade mark no. is 190344.

The DRS administrator shall grant, free of charge, the right to apply the DRS mark to the DRS packaging that they place on the national market. We underline that from the date of the entry into operation of the deposit return system, in Romania it shall be prohibited to introduce or make available on the national market products packaged in DRS packaging that do not bear the marking indicating that they belong to the guarantee-return system in accordance with the provisions of the Government Decision No. 1074/2021.

Until the date of entry into operation of the guarantee-return system (i.e. 30 November 2023), according to Article 24 para. (7) of the Government Decision No. 1074/2021, it was prohibited to introduce or make available on the national market products packaged in DRS packaging bearing the marking indicating that they belong to the guarantee-return system in accordance with the provisions of the respective Government Decision.

Secondly, the consumer or the end-user pays the guarantee of 0.50 RON (i.e. 10 euro cents) when purchasing that product in DRS packaging from a trader. Of course that the DRS administrator has the right to request the central public authority for environmental protection to modify the value of the guarantee,

20 | A bar code (EAN) is a national bar code allowing the identification of products packaged in DRS packaging, made available on the Romanian and other markets, which by linking to the data contained in the DRS Packaging Register allows access at least to the weight and volume of the packaging, as well as to the identity of the producer.

including differentiated by type of packaging and type of material. The value of the guarantee modified in accordance with this request shall be approved by Government decision, at the initiative of the central public authority for environmental protection, in accordance with the provisions of Article 10 para. (6) letter e) of Law No. 249/2015, as amended.

Please note that the same economic operator may not be required to pay the guarantee for the same unit of product in DRS packaging more than once.'

The refund of the price of products in DRS packaging following the return of ordered products shall include the refund of the guarantee for the returned products.

Thirdly, after emptying[21] the product, the consumer or the end-user will have to bring it, whole, undamaged and undeformed (with the barcode visible or readable), to any[22] of the return points organised by the retailers, no receipt being necessary to be presented. In order to be accepted in the DRS, packages must be handed in within 24 months of publication on the DRS website of the notice of the producer's cessation of placing the product on the market.

Thus, DRS packaging on which a guarantee has been paid may be returned to any return point within traders or at the points set up by the territorial administrative units or by the associations of development associations. They are differentiated only by material, i.e. plastic, glass or metal. In other words, the trader selling plastic drinks containers and glass disposable beverage containers subject to a mandatory guarantee fee is obliged to receive plastic and glass containers, regardless of where they were purchased. Reverse vending machines (RVM) can be used with success by the retailers – a RVM is a device designed to identify and process in and to provide a means of refunding the guarantee for disposable beverage containers.

What are the advantages of taking back packaging with an automated system? We can think of the following: (a) staff cost efficiency, (b) optimise the allocation of space needed to manage returned packaging, (c) maximise volumes of packaging processed, (d) reduction of waiting time for the consumer, (e) preventing fraudulent activities (e.g. returning a pack to the system more than once), (f) avoiding human error, (g) collection of data for reporting and statistics at local and national level for producers, traders and authorities.

And what happens to recyclable packaging taken back from consumers? The retailer is obliged to keep the returned DRS packaging separate from waste or other non-DRS packaging for later collection by the national administrator RetuRo.

Fourtly, in exchange for the packaging, the consumer or the end-user will receive back, on the spot, the amount of the guarantee originally paid, in cash,

21 | But not necessarily clean in the sense of being washed the packaging. There is a margin of weight, but it is recommended that products be completely emptied to be sure of guarantee recovery.
22 | We underline that even if the product was not purchased from that location.

voucher[23] or bank transfer. No guarantee can be claimed for beverage packaging that was purchased before the application of the guarantee fee or from abroad.

But who covers the cost of handling packaging at return points? The trader's costs directly related to the fulfilment of the take-back and storage obligations for DRS returnable packaging will be covered by the system administrator through a management fee depending on the take-back method, manual or automatic, for each unit of validated packaging.

Fiftly, the DRS administrator will recover the package from the return points, the returned DRS packaging being kept separate from other packaging. Moreover, the DRS administrator will operate several counting and sorting centres that will manage the collected DRS packaging throughout Romania. These centres will be geographically distributed to ensure the best possible geographical coverage of the country.

So, on this chain, who is the first person in the supply chain to collect the guarantee? The guarantee must be collected at all stages of distribution, starting with the bottler or importer, as the first distributor, through wholesalers and intermediaries to the final distributor. If the same economic operator is a producer and a retailer at the same time, it shall be bound by the obligations imposed by the Government Decision No. 1074/2021 on both categories of economic operators.

5. Specific Obligations of the Main Actors Involved in the Process

According to the Government Decision No. 1074/2021, each category of actors involved in the process has its own obligations, as set below:

5.1. Obligations of Producers

5.1.1. Obligations Concerning Registration

Producers who place on the national market packaged products referred in the law, were obliged to register in the database managed by the DRS administrator until 28.02.2023. For these purposes, producers shall be required to submit to the DRS administrator the information referred to in Article 18 para. (2) of the Government Decision No. 1074/2021, in a notification in digital format with a simple or qualified electronic signature containing at least the following: (a) the identification data of the producer, accompanied by a copy of the tax registration certificate; (b) the name, telephone number and e-mail address of the designated

23 | A 'voucher' can be a physical or electronic voucher issued to the consumer or end-user, which can be used either to pay for purchases or redeemed for cash.

contact person on behalf of the producer in relation to the DRS administrator; (c) the number of packaging units covered by the DRS, and the related weight of packaging in kilograms placed on the national market in the previous calendar year, broken down by type of material, volume per packaging unit and product categories contained.

The date of registration is deemed to be the date on which the producer has correctly and completely submitted the documentation required and that requested by the DRS administrator.

Producers are obliged to provide clarifications and information requested by the DRS administrator in relation to the notification of registration in the DRS within 5 working days of receipt of the notification.

5.1.2. Obligations Specific to the Operation of the DRS

Producers are obliged: (a) to enter into contracts with the DRS administrator, no later than 60 days from the date of registration, in order to fulfil their legal obligations; (b) to mark the DRS packaging in accordance with the law and to use for reporting the packaging placed on the market, subject to DRS, the computer program developed, managed and provided by the DRS administror; (c) to register in the DRS Packaging Register each type of DRS packaging placed on the market; (d) to keep records of the total number of products in DRS packaging by type of material, weight and volume, as well as records of the related guarantees charged; (e) to communicate to the DRS administrator the updated records by the 10th of the following month for DRS packaged products placed on the national market during the reference month, in the format and procedure established by the DRS administrator; (f) to pay to the DRS administrator, by bank transfer, the amount of the guarantee for the DRS packaged products placed on the national market, on a monthly basis, by the 25th of the month following the month in which the products were placed on the market; (g) to collect from their customers the guarantee for the DRS packaged products placed on the national market and purchased by them, unless the producer decides to bear the cost of the guarantee in the case of offering the DRS packaged products free of charge to the consumer and/or end-user, for example as prizes or free samples, in which case the guarantee will be borne directly by the producer and will not be collected from the producer's customers or traders or from the consumer and/or end-user; (h) to pay the DRS administrator the administration fee as agreed with the DRS administrator; (i) to inform consumers or end-users, by submitting detailed information by product, brand, type of material, weight and volume of packaging to be posted on the DRS administrator's website, of the commencement or cessation of the placing on the market of a particular type of product packaged in DRS packaging; (j) to enable controls by the competent authorities and to provide them with documents, correct and complete information on their own DRS packaging, data communicated to and settlements

with the DRS administrator, other packaged products subject to environmental obligations.

Please note that the Romanian beverage producers, through RetuRO, are obliged to achieve the following minimum annual DRS packaging return targets for recyclable glass, plastic or aluminium packaging within DRS set-up in Romania:

Material / Year objectives	2024	2025	2026
Glass	65%	75%	85%
Plastic	65%	80%	90%
Metal	65%	80%	90%

The degree of achievement of the return targets shall be calculated by the ratio of the total number of DRS packaging placed on the national market to the total number of DRS packaging validated by barcode as being returned under the DRS in the reference calendar year and shall be verified by the Environmental Fund Administration.

The DRS packages validated as being returned under the DRS are those established at the return points by the electronic counting system of the automatic take-back equipment and, respectively, at the counting centre if the packages were taken back manually at the return points. Producers are obliged to use the computer software developed, managed and made available by the DRS administrator.

5.2. Obligations of Traders

5.2.1. Obligations Relating to Registration

Traders were also obliged to register in the database managed by the DRS administrator by 28 February 2023. They were also required to submit to the DRS administrator a notification in digital format with a simple or qualified electronic signature containing at least the following: (a) identification data, accompanied by a copy of the tax registration certificate; (b) the name, telephone number and e-mail address of the designated contact person on behalf of the trader in relation to the DRS administrator; (c) the address and surface area of each sales structure operated by the trader as a point of sale; (d) the address and access details of the take-back point for returned packaging and the opening hours of the take-back point; (e) the method of taking back returnable packaging from holders: manually or by means of take-back equipment; (f) the number of products in DRS packaging put on the national retail market in the previous calendar year; (g) the number of products in DRS packaging that the trader expects to market in the calendar year in which the registration notification is submitted; (h) information showing whether the trader falls within one of the exceptions provided by law.

The date of registration was deemed to be the date on which the trader has correctly and completely submitted the full documentation.

Traders were obliged to provide clarifications and information to the DRS administrator in relation to the notification of registration in the DRS within 5 working days of the request.

5.2.2. Obligations Specific to the Operation of the DRS

As expected, traders have also many obligations arising from Article 6 of the Government Decision No. 1074/2021: (a) to enter into contracts with the DRS administrator for the fulfilment of the obligations arising from the Government Decision No. 1074/2021, no later than 90 days from the date of registration; (b) to indicate the amount of the guarantee separately from the price of the product, both on the shelf and in the fiscal documents relating to the product in the DRS packaging; (c) to pay the amount of the guarantee to the economic operators from whom they purchase products packaged in DRS packaging, unless the producer has decided to pay the guarantee directly; (d) to not market products packaged in DRS packaging, purchased from producers not registered with the DRS administrator or from distributors of such producers; (e) to not market products in DRS packaging which are not marked in accordance with the law; (f) to collect the guarantee for DRS packaged products from their customers, unless the trader decides to bear the cost of the guarantee in the case of offering DRS packaged products free of charge to the consumer and/or end-user, e.g. as prizes or free samples, in which case the guarantee shall be borne directly by the producer, if the free offer is made at the instruction of the producer, or by the trader if the free offer is made by the trader and will not be charged to the consumer and/or end-user.

Additionally, specific distinction has to be made for HoReCa[24] traders – according to the provisions of Article 17 para. (3) of the Government Decision No. 1074/2021, HoReCa traders are obliged to charge the guarantee to final consumers for DRS packaged products consumed outside the sales structure and not to charge the guarantee for DRS packaged products consumed at the sales structure[25]; (a) to display information to consumers or end-users in the sales facilities on: (1) the types of products covered by the deposit return system; (2) the amount of the guarantee; (3) the possibility for consumers or end-users to return the DRS packaging for the refund of the value of the guarantee at any return point in Romania; (4) the address and opening hours of the return point

24 | 'HoReCa trader' means the economic operator in the hospitality, food service industry, in particular establishments organising events, preparing and serving food and beverages.

25 | Therefore, DRS packaging of products consumed at the HoReCa traders' sales structure location will be collected and managed by the DRS administrator under the return guarantee scheme in the same manner as that collected from the return points. Please note that HoReCa traders are not obliged to organise return points.

operated by the trader; (5) the method of picking up the packaging, manually or by automatic picking up equipment; (6) the means available for returning the guarantee; (7) the right of the person returning the DRS packaging to request the return of the value of the security in cash, by voucher or by bank transfer; (8) the situations in which the return of the guarantee is refused; (b) to organise return points [by way of exception, the following two categories of traders do not have to organise return points (i) traders who make products packaged in DRS packaging available on the Romanian market exclusively via online platforms, according to the provisions of Article 17 para. (2) of the Government Decision No. 1074/2021, and (ii) traders who make products packaged in DRS packaging available on the Romanian market to final consumers exclusively through vending machines, according to the provisions of Article 17 para. (6) of the Government Decision No. 1074/2021]; (c) to take back all DRS packaging returned by consumers or end-users at the return points and to return the value of the guarantee to them when the DRS packaging is returned; (d) to protect the DRS packaging taken back at the return points against damage, theft and other similar situations until it is taken back by the DRS administrator; (e) to allow the DRS administrator to take back the DRS packaging from the return points only at the request of the DRS administrator or his designated representative; (f) to use the software provided online by the DRS administrator for reporting on DRS packaging and the associated guarantees; (g) to use the software provided online by the DRS administrator for reporting on the packaging subject to the DRS and the related guarantees; (h) to keep records of the total number of DRS packaged products sold, broken down by product, for each sales structure and/or online shop it operates, records of the total number of DRS packages returned to the trader by consumers or end-users, broken down by type of material and volume, as well as records of the guarantees paid, collected on the sale of products and returned to consumers at the point of return, respectively collected from the DRS administrator; (i) to allow controls by the competent authorities and to provide them with documents, accurate and complete information on the trader's compliance and supporting documents received from consumers or end-users, the DRS administrator, and other economic operators within the DRS with whom the trader has contracts; (j) to provide in writing, within a maximum of 10 working days, clarifications and information requested by the DRS administrator in relation to the fulfilment of the obligations arising from the law.

Traders with sales structures of less than 200 sqm who do not organise their own return points shall fulfil their obligations to organise return points by association with other traders with sales structures of less than 200 sqm or by partnership agreement with the administrative-territorial units or inter-community development associations according to the provisions of Article 8 of the Government Decision No. 1074/2021. In this situation, the distance to the point of return realised may not be more than 500 m from each sales structure of the trader in

the partnership agreement, for sales structures in rural areas, and 150 m for sales structures in urban areas.

These traders who are not entitled to opt for the organisation of return points in partnership with the administrative-territorial units or inter-community development associations, in accordance with the provisions of art. 8 of the Government Decision No. 1074/2021, shall display in the sales structures, visible and easily legible for customers, the following text: 'This shop does not operate as a packaging return point', as well as information on the location of the return points provided.

5.3. Obligations of the Administrative-Territorial Units and Inter-Community Development Associations

In Chapter IV of the Government Decision No. 1074/2021 it is regulated the role of administrative-territorial units and inter-community development associations. The deliberative authorities at the level of administrative-territorial units may approve the conclusion of partnership agreements with traders with sales structures with a surface area of less than 200 sqm, at their request, in order to organise and operate the return points in accordance with this Decision, provided that the obligations set out in Article 8 para. (1) of the Government Decision No. 1074/2021 are met.

The deliberative authorities at the level of the administrative-territorial units, as well as inter-community development associations, shall be responsible for organising return points for DRS packaging within the administrative-territorial radius of the respective administrative-territorial unit/inter-community development association, in collaboration and under the coordination of the DRS administrator.

Moreover, according to Article 8 of the Government Decision No. 1074/2021, the deliberative authorities at the level of the administrative-territorial units may approve the conclusion of partnership agreements exclusively with traders having sales structures with a surface area of less than 200 sq.m. located within the administrative-territorial radius.

For these return points, their operators must: (a) ensure a take-back capacity at least equal to the amount of the DRS packaging sold by the associated traders; (b) comply with the obligations laid down by the DRS administrator under the terms of the Government Decision No. 1074/2021; (c) appoint a person responsible for relations with the DRS administrator.

These return points shall be organised by the executive authorities at the level of administrative-territorial units or by inter-community development associations, respectively by the association between them and traders with sales areas of less than 200 sqm, through the person in charge designated for the relationship with the DRS administrator.

The operator of these return points shall be obliged to offer to the end consumers the possibility of reimbursement of the guarantee in cash, by bank transfer or

by voucher that can be used or exchanged for cash in the sales structures of the associated traders or within the sales structures of the administrative-territorial area, as appropriate.

The operator of the return points shall be obliged to keep a record of the total number of DRS packaging returned to it, broken down by type of material and volume, as well as a record of the guarantees paid to consumers at the point of return and collected from the DRS manager.

The operator shall be liable to the same contravention as traders operating return points under the terms of the Government Decision No. 1074/2021.

According to Article 9 of the Government Decision No. 1074/2021, as for the compensation of costs, in the event that the deliberative authorities at the level of administrative-territorial units or inter-community development associations ensure the organisation and operation of the return points in accordance with the provisions of Articles 7 and 8, they shall benefit from the DRS administrator's compensation of costs through the management fee, set by the DRS administrator in accordance with the law, depending on the method of taking back the returned DRS packaging, i.e. manually or by means of automatic[26] take-back equipment.

Please also note that the return point shall be organised within the trader's sales structure or in its immediate vicinity, not exceeding a distance of 150 metres from the sales structure and having at least the same opening hours as the trader's sales structure. The return points shall be located in areas accessible to consumers. For all return points, including those organised outside the sales area, the operators of the return points shall ensure their monitoring and security, based on their own regulations that ensure the preservation of the integrity of the return point, its equipment and the returned packaging.

5.4. Obligations of the DRS Administrator

The DRS administrator shall implement, manage, operate and finance the deposit return system. The DRS administrator shall be obliged to reimburse the costs of operating the sorting stations for DRS packaging from separate collection of municipal waste that meets the take-back conditions set for traders. For this situation, the DRS administrator shall pay a management fee to the sorting plants only if the latter meet the acceptance criteria for the return points, which may not exceed the management fee set by the DRS manager for manual take-back.

According to the provisions of Article 23 para. (4) of the Government Decision No. 1074/2021, the DRS administrator is obliged to display monthly on its website

26 | An 'automatic take-back equipment' is an automated device designed to take back the DRS packaging from the consumer or end-user, recognize and enable one-time validation of the return of the DRS packaging into the DRS by validating the eligibility of the DRS packaging and/or instantly compacting or crushing the packaging and issuing a voucher with the details of the return, i.e. the quantity returned and the value of the guarantee.

the quantity of DRS packaging placed on the market and, respectively, recovered, in number of units and in kg, for each type of material: plastic, metal, glass, by the 15th of the month following the reference month.

Additionally, the DRS administrator is obliged to provide reporting for each administrative-territorial unit in which it carries out the take-back of used packaging, the quantity of packaging taken back from its administrative territory, on a quarterly basis, within a maximum of 25 days after the reference quarter.

The DRS administrator shall report quarterly, no later than 25 days after the reference quarter, to the central public authority for environmental protection on the extent and manner of fulfilment of the obligations arising from this Decision, including with regard to the entrustment for recycling, and shall provide any other information requested in writing by the competent authorities in relation to the functioning of the take-back guarantee system.

In the Romanian Official Journal no. 995 of 2 November 2023 was published the Methodology of 2023 for the reporting of the DRS administrator, according to which the DRS administrator has the following obligations: (a) to establish, within 60 days from the establishment, the Supervisory Board; (b) to require the conclusion of service contracts (hereinafter referred to as 'DRS contracts', with all producers placing DRS packaging on the market, within 60 days from the date of registration of the producer; (c) to notify the central environmental protection authority of producers who refuse to conclude the DRS contract, providing information on their tax identification and the steps taken to conclude the contracts, no later than 30 days after the expiry of the period referred to in point b); (d) to provide the producers with the technical specifications of the DRS marking which they are obliged to affix to the DRS packaging, no later than 30 days after signing the contract referred to in point b); (e) to establish and manage the DRS Packaging Register; (f) to report to the Supervisory Committee producers who do not fulfil their contractual obligations towards the DRS administrator; (g) to require the conclusion of service agreements (hereinafter referred to as 'DRS agreements', with all traders of products covered by DRS, within 90 days of the date of registration of the trader; (h) to notify the central environmental protection authority regarding the traders who refuse to conclude the DRS agreement, providing information on their tax identification and the steps taken to conclude the agreements, no later than 30 days after the expiry of the period referred to in point g); (i) to entrust all quantities of DRS packaging returned under the deposit return scheme for recycling; (j) to take into account and make use of existing infrastructure, public or private, in carrying out its logistical operations related to the returned packaging, provided that it complies with the technical requirements of the DRS; (k) to reimburse traders, by bank transfer, the full amount of the guarantees returned to consumers or end users, under the conditions laid down in the Government Decision No. 1074/2021, on a monthly basis, by the 25th day of the month prior to payment; (l) to establish and pay monthly, by bank transfer, to

traders, at the same time as the reimbursement of the guarantee under point k), the management fee for DRS packaging taken back by them through the return points from consumers or end users; (m) to ensure and pay for the take-back of DRS packaging from the return points with a frequency and in a manner that does not disrupt the proper functioning of the traders, in accordance with the contract; (n) to set, charge and collect the management fee paid by producers to the DRS administrator; (o) to carry out all the measures set out in the documentation submitted for designation; (p) to establish and carry out the procedure for the registration of economic operators under the deposit return system who are obliged to register; (q) to ensure that the return objectives set out in the Government Decision No. 1074/2021 are met; (r) to provide information requested by economic operators and consumers or end-users on the functioning of the deposit return system, the obligations incumbent on economic operators under the system and any other information that serves to ensure that their conduct complies with the proper functioning of the system; (s) to carry out its activity in a non-discriminatory manner in its relations with economic operators; (t) to establish, operate and update an information system that centralises data relating to: (1) records of all DRS packaging placed on the national market; (2) records of guarantees paid, refunded and not refunded within the DRS; (3) producers and traders registered under the DRS; (4) return points and counting centres within DRS; (5) operators who collect and transport DRS packaging; (6) recyclers who have concluded a contract with the DRS administrator. (u) to prove the traceability of the DRS packaging from the return points from which the economic operators with which it has contracted the services have taken the packaging to the counting centre or the recycler, respectively, by means of financial-accounting documents and supporting documents; to identify and implement in a timely manner optimal solutions for the removal of any malfunctioning of any kind in the proper functioning of the system, with the participation of the economic operators involved, where appropriate; (v) to carry out educational and publicity campaigns to inform and raise awareness among the population and economic operators about the functioning of the guarantee-return system, allocating for this purpose an annual amount equivalent to 1.5-2% of its revenue consisting of unclaimed guarantees and sums obtained from the sale of material sent by the DRS administrator for recycling; (w) to allow controls to be carried out by the competent authorities and to provide them with documents, correct and complete information on the way in which the DRS administrator and the other economic operators in the system fulfil their obligations; (x) to keep confidential data, reported by economic operators under the Government Decision No. 1074/2021, secure, if such data are communicated to it; this obligation applies also to the members of the constitutive bodies and the staff employed by the DRS administrator; the data on which the DRS administrator is responsible shall be kept secure. (y) to publish on its website, with respect for the obligation of confidentiality towards the economic operators of the system: (1) the

quantity of DRS packaging placed on the market and returned, respectively, in kg and number of pieces, for each type of material: plastic, metal, glass, by the 25th of the following month; (2) the quantity of returned DRS packaging taken back from the administrative territory of each administrative-territorial unit, broken down by number of pieces, weight and type of material, at least quarterly; (3) the information for consumers and end-users on the functioning of the guarantee-return system and the possibility for them to return DRS packaging in order to recover the guarantee; (4) the information on the cessation of the placing on the market of a specific type of product in DRS packaging, at the request of the produce; (aa) to keep in electronic format, for a period of 10 years, all records and reports required under the Government Decision No. 1074/2021.

Please have in mind that in the event that the DRS administrator ceases to meet any of the criteria considered for designation as a DRS administrator, it shall: (a) immediately notify the central environmental protection authority in writing, indicating the criteria that are no longer met and the event that led to the criteria no longer being met; (b) take all necessary measures to ensure compliance with the criteria for designation as a DRS administrator within 90 days of the date of the event that led to non-compliance.

It is also relevant to underline that, if the Supervisory Committee finds significant deficiencies in the activity of the DRS administrator, which may lead to non-compliance with its obligations under the Government Decision No. 1074/2021, it shall propose remedial measures to the DRS administrator and notify the competent institutions and may recommend the repeal of the regulatory act by which it was appointed as DRS administrator.

However, the shareholders of the DRS administrator shall ensure continuous monitoring of the business plan and the designation documentation and shall propose to the Supervisory Committee to amend them whenever necessary to ensure the achievement of the objectives set out in this resolution.

The DRS administrator is obliged to comply with the measures set out in the Government Decision No. 1074/2021, the measures proposed in the DRS organisation plan, the annual financial plan and the method of financing the guarantee-return scheme, the annual plan for achieving the return targets, the plan for contracting with economic operators who are part of the guarantee-return scheme and the annual plan for educational and publicity campaigns to inform and raise public awareness of the DRS.

Moreover, the DRS administrator shall propose to the competent authority for environmental protection the plan for the continuation of the company's activity.

Please note that the DRS administrator is the sole owner of the DRS packaging returned at the return points.

6. Fees Established by the Government Decision No. 1074/2021 Related to DRS

Regarding the administration fee (in Romanian 'tariful de administrare'), please note that according to Article 15 of the Government Decision No. 1074/2021, in order to cover the financial costs of carrying out its obligations under the Decision, the DRS administrator shall set and collect from producers the DRS administration fee. For the period from 30 November 2023 to 31 December 2024 the amount of the administration fee shall be as set out in Annex No 2 to the Decision, and from 1 January 2025 the amount of the administration fee shall be set transparently by the DRS administrator.

Regarding the management fee (in Romanian 'tariful de gestionare'), please note that according to Article 16 of the Government Decision No. 1074/2021, it shall be paid by bank transfer to the operators of the return points, HoReCa traders and sorting station operators, where applicable, for packaging taken back by the DRS administrator. For the period from 30 November 2023 to 31 December 2024, the amount of the management fee shall be as set out in Annex No 2 to the Decision, and from 1 January 2025 the amount of the management fee shall be set transparently by the DRS administrator.

In the addendum no. 2 to the Government Decision No. 1074/2021, the Romanian legislator establishes the amount of the administration fee and of the management fee, applicable in Romania by the DRS administrator for the period 30 November 2023-31 December 2024, as follows:

(1) Administration fee:

Type of DRS packaging	Administration fee
Small bottle (< = 500 ml)	0,1472 RON
Big bottle (> 500ml)	0,2304 RON
Transparent plastic	0,0590 RON
Blue or green plastic	0,0773 RON
Mixt culour plastic	0,1029 RON
Plastic with barrier	0,1233 RON
Metal	0,0077 RON

(2) Management fee:

Type of DRS packaging	Management fee		
	Automatic takeover (RVM)	Manual takeover	HoReCa
Small bottle (< =500 ml)	0,1820 RON	0,1005 RON	0,0544 RON
Big bottle (> 500 ml)	0,1889 RON	0,1645 RON	0,1089 RON
Small plastic	0,1970 RON	0,0596 RON	0,0136 RON
Large plastic	0,2486 RON	0,0989 RON	0,0432 RON
Metal	0,1773 RON	0,0482 RON	0,0097 RON

7. Special Provisions Regarding the Reporting of the DRS Administrator

According to the Methodology of 2023 for the reporting of the DRS administrator, this entity shall report to the following actors:

7.1. Reporting to Public Authorities

In order to ensure the traceability of the DRS packaging taken from the administrative-territorial area of each town or municipality in which the DRS administrator has implemented the deposit return system, the DRS administrator shall draw up and send to each inter-community development association or, where applicable, to each local public authority, a quarterly report in unreadable electronic or letter format. This quarterly report shall be sent by electronic mail or, where applicable, by post and/or courier service to each city and municipality in which the DRS administrator has implemented the deposit return system, at the latest by the 25th day of the month following the reference quarter.

The quarterly report shall contain the quantity of DRS packaging taken back by the DRS administrator in each town or municipality, broken down by number of units, weight in kilograms and type of material.

7.2. Reporting to the Supervisory Committee

In order to supervise the implementation of the deposit return system and the exercise of the powers provided for in Government Decision No. 1074/2021, the DRS administrator shall draw up and submit quarterly reports to the Supervisory Committee. These reports are intended to provide information on the manner in which the DRS administrator has fulfilled its obligations under the law.

The monthly bulletins and quarterly reports shall be sent in electronic format within a maximum of 25 days at the end of the reference period. These quarterly reports shall be public.

The DRS administrator shall inform the Supervisory Committee of the confidential nature of certain data contained in the reports.

These quarterly reports shall mainly contain the following data: (a) the total quantities of DRS packaging taken back within the DRS and entrusted by the DRS administrator to recyclers, broken down by number of units, weight in kilograms and type of material; (b) the total quantities of DRS packaging placed on the national market by producers, broken down by number of units, weight in kilograms and type of material; (c) information on the achievement of the return target for DRS packaging expressed as a percentage, with detailed calculations; (d) information on how the DRS administrator fulfils the obligation to entrust for recycling all quantities of DRS packaging returned under the deposit return system, including the cases in which it has not fulfilled this obligation and the reasons for not fulfilling it; (d) how the operator of the DRS has fulfilled the obligation to prove the traceability of the DRS packaging; (e) the manner in which the DRS administrator has fulfilled the obligation to carry out educational and advertising campaigns, including the value of the related contracts; (f) the volume of receipts and payments of the DRS administrator by way of guarantee for DRS packaging for the quarter in question; (g) the volume of receipts of the DRS administrator from the administration fee and the volume of payments of the administration fee; (h) the evolution of the number of DRS contracts/agreements concluded with producers and traders; (i) the manner in which the DRS administrator fulfils the reporting obligations; (j) the manner in which the DRS administrator has fulfilled the obligation to make available reports for each administrative-territorial unit; (k) the manner in which the DRS administrator has fulfilled the public information obligation; (l) the complaints received from producers and traders in relation to non-compliance with the DRS contract/agreement by the DRS administrator; (m) the disputes pending before the courts and their status; (n) the producers refusing to conclude the DRS contract, including by providing the information necessary for their fiscal identification, as well as details of the steps taken by the DRS administrator to conclude DRS contracts with each of them, i.e. producers whose DRS contracts are suspended or terminated; (o) the producers who fail to fulfil their contractual obligations to the DRS administrator, including by submitting information, if applicable, on the amount of the guarantee and/or the administration fee not paid within the legal deadline by them, as well as information on the steps taken and the measures taken by the DRS administrator to recover them; (p) the traders who refuse to conclude the DRS agreement, including by providing the information necessary for their fiscal identification, as well as details of the steps taken by the DRS administrator to conclude DRS agreements with each of them, i.e. traders whose DRS agreements are suspended or terminated; (q) the information on the

fulfilment by the DRS administrator of the obligation to reimburse the full amount of the guarantees on a monthly basis, including by providing a detailed list of the cases in which it has not fulfilled this obligation and the reasons for the non-fulfilment; (r) the information on the fulfilment by the DRS administrator of the obligation to pay the monthly management fee, including by providing a detailed list of cases in which it has not fulfilled this obligation and the reasons for non-compliance; (s) the information on the fulfilment by the DRS administrator of the obligation to provide the technical specifications of the DRS marking, including by providing a detailed list of cases where it has not fulfilled this obligation and the reasons for non-compliance.

Moreover, please be informed that the fourth quarterly report shall also contain an annual summary of the activity of the DRS administrator.

8. Challenges of the Romanian DRS After the Launch of the System

Although the legislator apparently thought extensively on how the system will have to work and tried to prevent any shortcomings, the Romanian DRS lacked some important elements to be fully functional on 30 November 2023, reason for which it was even stated that there is 'a fake start'[27] of the DRS in Romania.

First of all[28], *the producers* have not printed the packaging with the DRS logo, so the number of the packaging put on sale is very small at this moment (i.e. end of January 2024) – you can hardly see products with the DRS logo on the shelves of the stores. However, it is important to have in mind that, according to the Romanian legal provisions, it was allowed to place on the market packaging without the DRS logo until 31 December 2023. After this date it was prohibited to place products on the market in packaging without the DRS logo on the label, except for products already in stock. But these products which do not bear the DRS symbol on the label could be sold only until 30 June 2024, the date after which their placing on the Romanian market is fully prohibited.

Second of all, *the traders* did not have the special machines for recycling packaging, reason for which only the manual collection could be put in place, raising problems regarding the space of the collection centres. Additionally, the best practices guide drafted by RetuRO was not available at the launch of the system in Romania[29], the bags or seals to put the packages in were not provided on time, the

27 | Please see Funcționează sistemul garanție-returnare? La raft domină în continuare produsele nemarcate 2023

28 | The media presented largely these problems – e.g. Care sunt problemele Sistemului de Garanție Returnare (SGR) și cum poate deveni complet funcțional – declarațiile CEO ReturRo, Gemma Webb 2024, Sistemul Garanție-Returnare le face probleme micilor comercianți 2023.

29 | Now this guide is available, in Romanian, DRS Manual for Traders 2024

application to scan the barcodes on packaging was not launched, things that made unhappy the majority of the traders.

Third of all, *RetuRO* did not made available the application allowing the traders to scan barcodes of products and determine whether they are part of the DRS or not (and therefore carry the guarantee or not). This verification could be possible by linking to the DRS Packaging Register. Additionally, one day prior to the launching of the deposit return system, a single packaging numbering[30] and sorting hub (the centre in Bontida, Cluj) was insufficient for the whole country, taking into account the distances involved.

Fourth of all, *the consumers and the end-users* were insufficiently informed and familiar with what they had to do. This is why even before the launch of the deposit return system, people were collecting packaging that did not have the DRS logo in order to get their guarantee amounting to 0.50 RON once the system comes into force.

However, we are optimistic that all these problems will be solved very quickly, with the involvement of the main stakeholders – it is just a question of time to arrange all things and to have a functional deposit return system.

For these reasons, we agree with what the CEO of RetuRO, Mrs Gemma Webb, stated recently: "*The system we are starting is not perfect, but it is perfectible. It is a living mechanism and, working together, we will make it work. The reason we asked for a delay of a few months was because we wanted to test the system. As with any IT system, there are bugs that could have occurred during the testing period. Now, with the DRS in place, errors will occur as the program runs. We will fine-tune things as they occur. Otherwise, all the basics are in place.*"[31]

Even the representatives of the Romanian authorities[32], for example the Minister for the Environment, Mr Mircea Fechet[33], underlined at the middle of December 2023 that he did not have any expectations from the deposit return system for December 2023, but that the target is that by 30 June 2024, 100% of packaging on shop shelves will be marked with the DRS logo[34]. It is expected that in January 2024, 10% of the beverage products put on the market to be in DRS packaging (not seen at this moment, unfortunately).

30 | A 'numbering centre' is a space organised and managed by the DRS administrator for bar-coded verification of the packaging's membership of the deposit return system and for determining the number of units of DRS packaging taken back from return points organised by retailers.

31 | Care sunt problemele Sistemului de Garanţie Returnare (SGR) şi cum poate deveni complet funcţional – declaraţiile CEO ReturRo, Gemma Webb 2024.

32 | For a detailed presentation of the Romanian administrative system, please see Cliza & Ulariu 2023, and for a detailed presentation of the legal responsibility in Romanian administrative law, please see Stefan 2013.

33 | Mircea Fechet, ministrul mediului, despre Sistemul de Garanţie-Returnare: Pentru luna decembrie nu am nicio aşteptare. Targetul este însă ca la 30 iunie anul viitor 100% din ambalajele de pe rafturile magazinelor să fie marcate cu sigla SGR 2023.

34 | Ibid.

9. Concluding Remarks

Therefore, as from 30 November 2023, the deposit return system, which is unique at the Romanian level, started to operate, being compulsory for all producers and traders under the terms of the Government Decision No. 1074/2021, and applying both to products manufactured on the Romanian territory and to products imported or purchased intra-Community, under non-discriminatory conditions, including as regards the possibility of effective participation of economic operators in the operation of the scheme and the tariffs imposed on them by the DRS administrator. By way of exception, the DRS does not apply to exported products traded in duty-free shops and to those traded in international means of transport.

The role of the Romanian deposit return system is to ensure in Romania that the annual collection and recycling targets for packaging set by national and EU legislation are attained. Additionally, considered to be the second largest in Europe, after the German one, the deposit return system is supposed to boost the recycling market in Romania, providing significant quantities and quality of raw material.

So, after all, what will be the environmental benefits after the implementation of the deposit return system in Romania or everywhere in the world? *Firstly*, the reduction of environmental pollution from disposable packaging used for bottling beverages. *Secondly*, avoidance of high energy consumption during production and disposal of this packaging, and reducing the greenhouse effect. *Thirdly*, reintegrate packaging into the economy and stimulate the circular economy. *Fourthly*, stimulating selective collection and better use of valuable raw materials.

All Romanian stakeholders are under pressure to be ready for the implementation of this system, especially that the change from one management system to deposit return system involve thorough preparations by all of them.

The year 2024 will be for Romanian deposit return system a calibration year, and there shall be, however, challenges to be addressed in implementing the system in Romania. It is worth mentioning that through the deposit return system the Romanian authorities are hoping to increase the percentage of recycling targets achieved nowadays around 12% to 95%. In order that this target to be attained, the consumers, retailers, distributors and producers have to work together, although there is a crucial need for further research.

What consumers should know when buying drinks under the deposit return system in Romania? That they should choose beverages packaged in eco-friendly packaging, i.e. in bottles in disposable eco-friendly packaging advantageous. When buying drinks, they should also remember that the material from which they are made packaging can be reused by returning and recycling it.

Only time will teach us how to improve the deposit return system, a huge step towards a more sustainable[35] development in Romania, what lessons Romania will have to learn regarding the functioning of the system and how targets could be achieved in the shortest time possible, in applying and enforcing, after all, the polluter pays principle.[36] Of course, the work of the EU institutions, including of the Court of Justice[37] (including in cases when the EU institutions, bodies and agencies exceed their powers, and their actions are declared to be carried out in excess of their powers, or *ultra vires*[38]), will have to be pursued, in order to improve the system. And, of course, that the practice of other international administrative and judicial[39] institutions must be researched at the European level, in order to make the deposit return system coherent in the EU.

Until then... we just have to start working with the other stakeholders in order to make the deposit return system work in Romania and to mitigate the problem of pollution which is one of the greatest challenges of our time. Let's do it together, Romania!!!

35 | For an interesting study on sustainable development in Hungary, please see Csák & Jakab 2012, 50–78.
36 | Csák 2011, 27–40.
37 | In this respect, please see Boghirnea & Valcu 2009, 253–264.
38 | For an interesting study on this topic, please see Stanciulescu 2023.
39 | Please see in this respect how the legal doctrine anticipates the further development of the international judiciary, Veljanovska & Tuntevski 2022, 172–178.

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SZAMEK Gabriella[1]

Regulatory changes in waste management following the EU's Circular Economy Action Plan[2]

Abstract

This study reviews Hungary's implementation of the European Union's circular economy action plan and related waste regulations, including amendments to national law. In particular, it outlines the new waste management system, extended producer responsibility, and the binding return fee scheme. Further, this paper highlights the enormous significance of waste management from an environmental perspective and related challenges.[3]

Keywords: circular economy, extended producer responsibility, binding return fee scheme, waste, concession

1. Introduction

The quantity and nature of the waste we produce pose significant challenges for all, including regulators. Consequently, waste management has long been a crucial issue for policy-makers and legislators, both in the European Union (EU) at large and within individual Member States. Notably, multiple problems occur simultaneously in waste management. For example, each type of waste requires different treatments and regulations. Further, every individual produces waste and wants to dispose of it as cheaply as possible—if not for free. At the household level, the willingness to prevent the generation of waste remains relatively low. Accordingly, waste management is one of the so-called 'wicked' problems[4] that are challenging to resolve.

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2 | *The research and preparation of this study was supported by the Central European Academy.*

3 | This study is based on law effected and/or promulgated as of 01.11.2023.

4 | Rittel & Webber 1973, 155–169.

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The new action plan for the circular economy focuses on decoupling waste generation from economic growth.[5] There is a longstanding belief that economic growth only involves an environmental burden early on and that a tipping point exists, after which the negative environmental impact of growth begins to diminish. However, this phenomenon has not occurred, or only partially occurred in reality.[6] In earlier times, environmental protection was often ad hoc – only one specific problem was solved at a time.[7] The lack of a holistic approach sometimes triggered other concerns. For example, when the planned reduction of one environmental load, in fact, only results in the loading of another environmental element. While this paper does not focus on economic growth, it is critical to note that the pursuit of high economic growth rates, rather than high-quality growth, does not advance the interests of future generations.

Broadly, the concept of the circular economy can be viewed as an alternative to the prevailing linear economic model. Its fundamental aim is to keep products in the economy's cycle for as long as possible, beginning with the design phase.[8] Along these lines, circular economies increase the efficiency of natural resource management. Notably, the circular economy reflects the United Nations' Sustainable Development Goals (SDGs), especially Goal 12, which focuses on responsible consumption and production. Specifically, Target 12.5 states the following: 'By 2030, substantially reduce waste generation through prevention, reduction, recycling, and reuse'. Although waste management is only one element of the circular economy, it is both economically significant and a crucial component of the institutional structure established for environmental protection.

2. The European Union and the circular economy

The European Commission (the Commission) published its circular economy action plan[9] in 2015. As part of its implementation, several directives,[10] including

5 | A new Circular Economy Action Plan For a cleaner and more competitive Europe COM(2020) 98 final 14.
6 | Virág 2019, 55–56.
7 | For more information on this matter, see: Kerekes 2022, 5.
8 | Bándi 2022, 547.
9 | Closing the loop – An EU action plan for the Circular Economy Europe COM(2015) 614 final
10 | Directive (EU) 2018/849 of the European Parliament and of the Council of 30 May 2018 amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment; Directive (EU) 2018/850 of the European Parliament and of the Council of 30 May 2018 amending Directive 1999/31/EC on the landfill of waste; Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste; Directive (EU) 2018/852 of the European Parliament and of the council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste.

the Waste Framework Directive,[11] were reviewed and amended. The EU's primary objectives related to waste in the circular economy are as follows: (a) a common EU recycling target of 65% for municipal waste by 2035 (55% by 2025 and 60% by 2030); (b) a common EU recycling target for packaging waste of 70% by 2030; (c) a mandatory target for reducing landfill use for municipal waste to a maximum of 10% by 2035; (d) a ban on the landfilling of separately collected waste, requiring the separate collection of biowaste by 2023, and of household textiles and hazardous waste by 2025; (e) the introduction of economic instruments to reduce landfilling; (f) the introduction of simplified and improved definitions and harmonised calculation methods for recycling rates across the EU; (g) specific measures to promote reuse and encourage industrial symbiosis, that is, the use of by-products from one industry as raw materials in another; (h) mandatory extended producer responsibility schemes for manufacturers to encourage them to introduce more eco-friendly products to the market and support recovery and recycling systems (e.g. for packaging, batteries/accumulators, electrical and electronic equipment, and end-of-life vehicles).

As a cornerstone of the European Green Deal, a new action plan for the circular economy was introduced. This includes a 'sustainable products policy' to support the circular design of all products based on a common methodology and principles; in particular, the plan prioritises reducing and reusing before recycling. Notably, this plan will foster new business models and set minimum requirements to prevent environmentally harmful products from being placed on the EU market. Additionally, it will strengthen extended producer responsibility.[12] The plan is designed to accelerate the transformation required by the European Green Deal by building on circular economy initiatives implemented since 2015.

More specifically, the plan presents a set of interrelated initiatives to establish a strong and coherent product policy framework. The framework is expected to make sustainable products, services and business models the norm and, relatedly, transform consumption patterns to eliminate waste. This framework will be progressively rolled out and prioritise key product value chains. Further measures will be implemented to reduce waste and ensure that the EU has a well-functioning internal market for high quality secondary raw materials. Ultimately, the framework will strengthen the EU's capacity to take responsibility for its waste.[13]

The section of the circular economy plan related to waste states that the Commission will introduce reduction targets for specific waste streams and enhance the implementation of the recently adopted requirements for extended producer responsibility schemes. These actions will serve the common objective of

11 | Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives.
12 | The European Green Deal COM(2019) 640 final 8.
13 | A new Circular Economy Action Plan For a cleaner and more competitive Europe COM(2020) 98 final 3.

significantly reducing the total amount of waste and halve the amount of residual (i.e. non-recycled) municipal waste by 2030. The Commission will also propose the harmonisation of separate waste collection systems.[14]

Given that these EU action plans are linked to their implementation, the circular economy objective has also been integrated into the taxonomy regulation.[15] Specifically, this regulation defines the 'circular economy' as an economic system in which the values of products, materials, and other resources are maintained for as long as possible by enhancing their efficiency use in production and consumption; this, in turn, reduces their environmental impact by minimising waste and the release of hazardous substances at all stages of their life cycle, including through the application of the waste hierarchy.[16]

As suggested above, the new circular economy action plan builds upon earlier plans and achievements. For example, the goal of the abovementioned 2018 directive package (among other) is to establish a uniform system at the EU level that ensures the exploitation and utilisation of secondary raw materials in waste. In light of the amendment, the goals include reducing administrative burdens; simplifying implementation; increasing employment; reducing greenhouse gas emissions; enhancing the EU's competitiveness in waste management and recycling; and reintroducing a greater quantity of secondary raw materials back into the EU economy, thereby reducing its dependence on raw material imports.

3. The situation in Hungary

While the EU sets targets, its Member States mostly decide how to implement them. Of course, this is consistent with the choice of EU regulation. Directive-level[17] regulations leave Member States to decide which methods they will use to meet EU targets. This paper explores Hungary's implementation of EU action plans and legal documents related to the circular economy.

3.1. Fundamental Law

Although not strictly related to the subject, it is essential to begin this analysis by considering the Fundamental Law of Hungary, which provides the framework on which legislation can be established and implemented, including EU law. Art P of

14 | A new Circular Economy Action Plan For a cleaner and more competitive Europe COM(2020) 98 final 14-15.
15 | Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Taxonomy Regulation)
16 | Taxonomy Regulation Art. 2 (9)
17 | In the case of packaging waste, however, a new regulation is currently being negotiated. See: COM(2022) 677 final.

the Fundamental Law states that the responsibility to protect and preserve the nation's common heritage for future generations lies with the State and every individual. Meanwhile, Art XX establishes the right to physical and mental health; Art XXI establishes the right to a healthy environment; Art XXII outlines Hungary's endeavour to ensure universal access to public services; and Art XXVI establishes the State's goal of employing the latest technology to make improvements in different domains, including public services.

The Constitutional Court (hereinafter: CC) has already elaborated on these articles in several decisions on constitutional expectations and questions related to their enforcement. Below are presented some decisions useful for this analysis. In Decision 16/2015. (VI.5.), the CC emphasised that *"the Fundamental Law not only preserved the protection level of the constitutional fundamental right to a healthy environment but also contains significantly broader provisions in this area compared to the previous Constitution. Thus, the Fundamental Law further developed the environmental value system and perspective of the Constitutional Court"*.[18] The CC elaborated that *"According to Article P (1) of the Fundamental Law, the current generation is burdened with three main obligations: preserving the possibility of choice, preserving quality, and ensuring access. The assurance of the possibility of choice is based on the consideration that the life conditions of future generations can be best ensured if the natural heritage passed on is capable of giving future generations the freedom of choice in solving their problems, instead of the decisions in the present forcing later generations onto a constrained path. The requirement of preserving quality dictates the need to strive to pass on the natural environment in at least the same condition as we received it from past generations. The requirement for ensuring access to natural resources implies that current generations can freely access available resources as long as they respect the fair interests of future generations"*.[19] Regarding regulations affecting the nation's common heritage, the CC states, *"Indeed, legislation that does not encourage frugal economical management of natural resources violates the requirement arising from Article P (1) of the Fundamental Law that the current generations can only freely use the available resources as long as they respect the fair interests of future generations as well."*[20]

The CC also elaborated on public services and access thereto, advising, *"it cannot be denied that the legislator, based on the obligations arising from Article I (1) of the Fundamental Law and particularly to ensure access to public services as stipulated in Article XXII of the Fundamental Law, may enact legislation that, given appropriate authorization, could entail a radical transformation of a public service*

18 | 16/2015. (VI.5.) ABH [91]
For further analyses, see: Szilágyi 2018; Prugberger 2004, 201–221.
19 | 28/2017. (X.25.) ABH [33]
For an analysis of the CC decision, see: Krajnyák 2023
20 | 13/2018. (IX.4.) ABH [71]
For an analysis of the CC decision, see: Olajos & Mercz 2022

system. It is not even excluded that in the future, this might involve intervention in long-term, fixed-term contractual relationships. However, in doing so, the legislator, along with many other obligations, must take into account the fair interests of all parties as established above."[21]

Regarding the polluter pays principle – a fundamental principle of environmental law that is especially significant to waste management – the CC noted, "*The polluter pays principle, as articulated in Article XXI (2) of the Fundamental Law, holds prominent significance in Hungarian, international, and EU law, and is closely related to the preservation, protection, and improvement of environmental quality, protection of human health, and the careful utilisation and preservation of natural resources belonging to the nation's common heritage. Accordingly, the polluter pays principle, in relation to the right to a healthy environment and the right stipulated in Article P (1) of the Fundamental Law which in the context of adjudicating constitutional complaints, is not considered a right ensured by the Fundamental Law, as an integral part of these rights separately named in the Fundamental Law, not only prescribes an absolute content limit for legislation but also requires adjudicators in individual cases to always consider the realisation of this principle in the application of laws."*[22] Further, during a constitutional review of the transformation of the domestic waste management system, the CC stated that *"especially for the protection and assurance of the right to health as per Article XX of the Fundamental Law, and the right to a healthy environment as per Article XXI of the Fundamental Law, restrictions on property rights over waste, and consequently the right to manage waste, may be imposed in accordance with Article I (3) and Article XIII (2) of the Fundamental Law."*[23] It also highlighted that *"it is the legislator's task to create a sufficiently differentiated system that simultaneously provides compensation for waste owners and takes into account the full implementation of mandatory public service, environmental protection, and public health considerations in such a way that they also comply with our regulatory obligations arising from EU legislation."*[24,25]

3.2. Levels of strategies

Hungary has not presented a specific action plan for the circular economy. However, the circular economy is mentioned near the end of The Irinyi Plan, a strategy from 2016 focused on the directions of industrial innovation. The plan discusses the extension of the National Industrial Symbiosis Programme, stating that industrial symbiosis is a significant foundation for job creation, the green

21 | 10/2019. (III.22.) ABH [41]
22 | 3162/2019. (VII.10.) ABH [18]
23 | 5/2021. (II.9.) ABH [28]
24 | 5/2021. (II.9.) ABH [35]
25 | For more works summarising the development of environmental law in the Hungarian Constitutional Court, see: Hojnyák 2021; Bándi 2020

economy, eco-innovation, and resource efficiency. In particular, this style of symbiosis transforms production systems by making them similar to biological systems. These systems generally do not produce any waste because resource and energy efficiency is ensured by giving each material and resource its own place in the production process. These emerging systems demonstrate measurable environmental results. As we can see, this concept (The Irinyi Plan) refers to the circular economy; notably, it approaches the issue from a waste management, rather than a holistic, perspective.

At the plan level, the circular economy is mentioned in Government Decision 1037/2021. (II.5.) on the Economic Restart Action Plan, which designated it a priority area in the development of the Recovery and Resilience Facility.[26] Its goal is to reduce the amount of waste produced by households and the broader economy, and to enhance eco-friendly recycling using advanced technologies. Again, this approach is based on waste management.

Parliamentary Resolution 62/2022. (XII.9.) on the 5th National Environmental Protection Programme, which is valid until 2026, set the goal of shifting further toward a circular economy and presented related recommendations. In particular, the programme notes that the creation of the Circular Economy Technological Platform[27] can strengthen eco-innovations. The Programme's strategic goals include enhancing the circular operation of the economy, fostering a sustainable, resource-efficient circular economy (focusing on elements such as materials, water, land, arable land, energy use, design for reusability and durability, configuring material cycles as a closed-loop system, reducing transportation needs, and shortening supply chains). Further, the programme seeks to mitigate adverse environmental impacts (through strategies such as efficiently using raw materials, minimising emissions and waste generation, efficiently using energy and water, clean energy production, and sustainable transportation) and increase the value of products and services for consumers. On the path to a circular economy, active citizen participation is also necessary, including changes in consumption patterns. Along these lines, this programme presents a more comprehensive view

26 | The Recovery and Resilience Facility (RRF) is a temporary instrument that is the centrepiece of NextGenerationEU-the EU's plan to emerge stronger and more resilient from the current crisis. Through the Facility, the Commission raises funds by borrowing on the capital markets(issuing bonds on behalf of the EU). These are then available to its Member States, to implement ambitious reforms and investments that: 1) make their economies and societies more sustainable, resilient and prepared for the green and digital transitions, in line with the EU's priorities. 2) address the challenges identified in country-specific recommendations under the European Semester framework of economic and social policy coordination.

27 | The mission of the Circular Economy Technology Platform (KGTP) is to accelerate the transition to a circular economy and make Hungary a leader in circular technologies, thereby enhancing the competitiveness of the country as a whole and the companies operating in Hungary in the global arena. To achieve the above goal, the objective of KGTP is to connect and strengthen the connections between economic, academic, professional, civil, and administrative stakeholders engaged in circular economic activities and interested in the transition to a circular economy.

of the circular economy, extending well beyond waste management and better aligning with the original concept.

Government Decision 1704/2021. (X.6.) on the National Waste Management Plan also addresses issues related to the circular economy. For example, it highlights that transitioning to a circular economic model and fulfilling EU obligations are among the biggest challenges faced by the waste management system. The National Waste Management Plan details that waste management can effectively facilitate the implementation of the circular economy by encouraging participants in the waste management process to apply higher levels of the waste hierarchy—reducing consumption, preventing waste generation, and repairing and reusing end-of-life products. A medium-term strategic goal is for the Hungarian waste management sector to become a model example of the circular economy in Europe.

3.3. Legislation level

Moving beyond plans to the level of legislation, we may consider the Hungarian National Assembly's adoption of a significant amendment package[28] in 2021 to Act CLXXXV of 2012 on Waste (the WA). The amendment aimed, among other things, to execute the EU's 2018 directive package, which was designed to facilitate the transition to the circular economy. Accordingly, the amendment emphasises the establishment of legal foundations for the transition to the circular economy to maximise the absorption of the related EU resources by defining the rules pertaining to governmental responsibility for this transition. Thus, the amendment expands the system for selective waste collection, providing for separate collections for hazardous household waste by 2025, biowaste by 2023, and textile waste by 2025. Under this law, the recycling targets for municipal waste are set to increase to 55% by 2025, 60% by 2030, and 65% by 2035. Concurrently, this law mandates the gradual elimination of landfilling, whereby landfilling for disposal purposes, in line with the waste hierarchy, is to be considered only as a last, necessary, and unavoidable solution. Accordingly, it mandates that by 2035, the proportion of municipal waste allocated to landfills must be reduced to 10% or less of the total municipal waste generated. This law lays the foundation for the new extended producer responsibility and return fee schemes.[29]

3.4. Fundamental concepts

Further, it is necessary to establish some fundamental concepts. In accordance with the Waste Framework Directive, the WA regulates the concept of waste

28 | Act II of 2021 on the Amendment of Certain Laws Related to Energy and Waste Management
29 | Final explanatory memorandum of Act II of 2021 on the Amendment of Certain Laws Related to Energy and Waste Management.

through a general clause solution. 'Waste' is defined as any substance or object that the holder discards or intends or is required to discard.[30] Waste management comprises the collection, transport, recovery, and disposal of waste, including the supervision of such operations; the actions of dealers, brokers, and broker organisations; the operation of waste management facilities and equipment; and the after-care of waste management facilities.[31] The WA defines several different types of waste, among which household waste is the most pertinent for our analysis. 'Household waste' comprises mixed waste and separately collected waste from households, including residential or resort properties, weekend houses, and common sections and areas; more specifically, it can be categorised into paper and cardboard, glass, metals, plastics, biowaste, wood, textiles, packaging waste, electrical and electronic equipment, waste batteries and accumulators, and bulky waste (e.g. mattresses, furniture).[32] Mixed waste and separately collected waste generated in places other than households (e.g. retail, administration, education, health, accommodation, and food services and activities) are similar to household waste in nature and composition.[33] Among these two types of waste – that is, household waste and waste similar to household waste – it is important to identify the material streams subject to the EU's reduction expectations. Waste management activities should follow the waste hierarchy, with activities conducted in the following order of priority: prevention of waste production, preparing waste for reuse, recycling of waste, other recovery of waste (e.g. energy recovery), and disposal of waste.[34] The primary goal is preventing a material from becoming waste. To this end, the Act articulates the following minimum requirements: (a) promote, encourage, and support sustainable production and consumption models; (b) encourage the design, manufacturing, distribution, and use of products that are resource-efficient, durable, reparable, reusable and upgradable; (c) prevent the conversion of products containing critical raw materials into waste; (d) encourage the reuse of products and the creation of systems promoting repair and reuse activities, especially in the domains of electrical and electronic equipment, textiles and furniture, and packaging and construction; (e) encourage, as appropriate and without prejudice to intellectual property rights, the availability of spare parts, instruction manuals, technical information, equipment, software, and other instruments enabling the repair and reuse of products without compromising their quality and safety; (f) reduce the generation of waste in processes related to industrial production, extraction of minerals, manufacturing, construction, and demolition, taking into account the best available techniques; (g) reduce the generation of food waste in primary production, processing and manufacturing, retail

30 | WA Section 2 (1) 23.
31 | WA Section 2 (1) 26.
32 | WA Section 2 (1) 21.
33 | WA Section 2 (1) 22.
34 | WA Section 7 (1)

and other distribution domains, restaurants and food services, and households to reduce, in step with the SDGs, the following: (ga) per capita global food waste at the retail and consumer levels by 2030 and (gb) food losses along production and supply chains; (h) encourage food donation and other methods of redistributing food for human consumption, prioritising use for human consumption over animal feed and non-food products; (i) promote the reduction of the content of hazardous substances in materials and products; (j) reduce the generation of waste, especially waste that is not suitable for reuse or recycling; (k) identify products that are the main sources of littering and the unlawful dumping of waste and take appropriate measures to prevent and reduce litter from such products ensuring – where implemented through market restrictions – that such restrictions are proportionate and non-discriminatory; (l) prevent and significantly reduce marine pollution; and (m) develop and support information campaigns to raise awareness about waste prevention and reduce and combat littering and the unlawful dumping of waste.[35]

This section implements the EU's waste hierarchy measures and methods into national law. It is important to emphasise that such work is crucial from an environmental perspective, as focusing on preventing waste generation best serves the interests of future generations. In particular, it is notable that the WA establishes the following target objectives: (a) The quantity of municipal waste going to landfills shall be reduced to 10% of the municipal waste (by weight) produced in the year throughout the country or below 10% by 2035.[36] (b) The combined share of preparing for the reusing and recycling of non-hazardous construction and demolition waste—other than soil and stone—and other material recovery, including waste used as substitutes in backfilling operations, shall be increased by 31 December 2020 to 70% relative to the total volume produced at the national level.[37] (c) The National Prevention Programme shall contain waste prevention objectives and measures to break the link between economic growth and the environmental impacts associated with the generation of waste by 2035, as well as qualitative and quantitative benchmarks adopted in order to monitor and assess the progress of the measures.[38] (d) The quantity of municipal waste prepared for reusing and recycling shall be increased to at least 55% of municipal waste (by weight) produced in the year throughout the country by 31 December 2025.[39] (e) The quantity of municipal waste prepared for reusing and recycling shall be increased to at least 60% of municipal waste (by weight) produced in the year throughout the country by 31 December 2030.[40] (f) The quantity of municipal waste prepared for reusing

35 | WA Section 11
36 | WA Section 92 (2a)
37 | WA Section 92 (3)
38 | WA Section 92 (4)
39 | WA Section 92 (5)
40 | WA Section 92 (6)

and recycling shall be increased to at least 65% of municipal waste ((by weight) produced in the year throughout the country by 31 December 2035.[41]

3.5. Waste management

In Hungary, the organisation and execution of waste management is a public service.[42] The State has outsourced this responsibility through a concession framework by way of public tender,[43] granting the right to exercise public waste management functions at the national level in a single procedure to only one concessionaire under a concession contract awarded for a specific duration.[44] The geographical base for waste management concession rights covers the entire territory of the country.[45] The right granted under the concession contract may not be delegated to other parties; however, the concession company (the concessionaire) shall be entitled to involve a concessionary or another subcontractor.[46] Integrated public waste management services[47] and integrated waste management services to institutions[48] shall be construed services of general economic interest. The right to serve as the concessionaire for waste management involves the obligation to provide integrated public waste management services and integrated waste management services to institutions. The contract also includes guidelines for the delegation of the concessionaire.[49]

Regarding waste covered by integrated public waste management services and integrated waste management services to institutions, the responsibilities

41 | WA Section 92 (7)
42 | WA Section 2 (1) 27b.
43 | WA Section 53/B (5)
44 | WA Section 53/A (1)
45 | WA Section 53/B (4)
46 | WA Section 53/A (2)
47 | WA Section 2 26c. specifies that: *"integrated public waste management service' shall mean a binding integrated waste management service covering the reception, collection, transport, preconditioning and trading of the mixed municipal waste and separately collected waste of property users, including their delivery for treatment – excluding the separately collected waste comprising part of waste similar to household waste where the property user is an economic operator – and the bulky waste of natural person property user within the framework of collection of over-sized waste, covering also the maintenance and operation of waste management facilities required for integrated public waste management services."*
48 | WA Section 2 (1) 26b. states that *"integrated waste management services to institutions' shall mean a binding integrated waste management service covering the reception, collection, transport, preconditioning and trading of the municipal waste of property users outside the scope of integrated public waste management services, including their delivery for treatment, the waste from products falling within the scope of the extended producer responsibility scheme defined by the Government Decree on the Detailed Provisions Relating to the Extended Producer Responsibility Scheme, products within the binding return fee system and their waste, the maintenance and operation of waste management facilities, and the functions of bodies and organisations implementing the extended producer responsibility obligations defined in Subsection (4) of Section 53/A on behalf of producers of products established under the extended producer responsibility schemes set up for that purpose, and the operation of the binding return fee system."*
49 | WA Section 53/A (4a)

of organisations implementing extended producer responsibility obligations on the producer's behalf shall be fulfilled by the concessionaire, including specific waste management operations, such as the acceptance, collection, transport, and preconditioning of waste; the delivery of waste for treatment at predetermined retrieval and recycling targets; and the related processes of communication, financial coordination and settlement, and reporting.[50] Concession-bound waste management activities shall be subject to a concession fee (paid to the State) or another form of compensation.[51] The components of the remuneration due to the concessionaire shall include public service fees, the fees chargeable for integrated waste management services to institutions, and the proceeds from the sale of waste allocated to the concessionaire.[52] For 35 years, MOL Nyrt. has held this contract, managing approximately e.g. 4–5 million tons of waste per year. To perform this work, MOL Nyrt. founded a new waste management company, MOHU. The new waste management system started on 1 July 2023.

3.6. Extended producer responsibility

According to the definition in the WA, an extended producer responsibility scheme comprises a set of measures taken to ensure that product producers bear financial and/or organisational responsibility for the management of the waste stage of a product's life cycle.[53] Accordingly, the WA includes the principle of extended producer responsibility; specifically, this principle establishes that the manufacturer is responsible for selecting the technology most suitable for a certain product from the point of view of prevention and waste management; choosing raw materials; the resilience of the product to external effects; the product's life cycle; whether the product will be recycled or recovered; developing a path for the product's recovery and disposal; operating a take-back scheme for the acceptance and collection of returned products and the waste that remains after those products have been used; and the financial aspects of such activities.[54]

Extended producer responsibility schemes define the roles and responsibilities of all relevant actors involved, including producers of products on the domestic market, organisations implementing extended producer responsibility obligations on their behalf, private or public waste operators, local authorities, reuse operators, and social economy enterprises. In line with the waste hierarchy, producers shall set national targets to realise the prescribed objectives. They shall set up and operate a reporting system to gather data on the products placed on the internal market by producers subject to extended producer responsibility and data on the

50 | WA Section 53/A (4)
51 | WA Section 53/F (1)
52 | WA Section 53/E (2)
53 | WA Section 2 (1) 36b.
54 | WA Section 3 (1) b)

collection and treatment of different types of waste. They shall ensure equal treatment for producers of products regardless of their origin or size, without placing a disproportionate regulatory burden on producers of small quantities of products, including small and medium-sized enterprises. Further, they shall ensure that waste holders are informed of waste prevention measures, centres for reuse and preparing for reuse, take-back and collection systems, and the prevention of littering to create appropriate incentives (prescribed by law) that encourage waste holders to assume responsibility for organising their waste based on separate collection systems; notably, many of these incentives are economic.[55]

To comply with the obligations of extended producer responsibility, producers must make payments based on the following: (a) payments that, inter alia, cover the following costs for products the producer puts on the internal market: (aa) costs of the separate collection of waste and its subsequent transport and treatment, including treatment necessary to meet waste management targets in light of revenues from reuse, sales of secondary raw material from products, and unclaimed deposit fees, (ab) costs of providing adequate information to waste holders, and (ac) costs of data gathering and reporting, (b) in the case of collective responsibility obligations, payments shall be modulated for individual products or groups of similar products based on their durability, reparability, reusability, and recyclability and the presence of hazardous substances – this strategy reflects a life-cycle approach and aligns with the requirements set by relevant EU legislation and, where available, harmonised criteria to ensure the smooth functioning of the internal market; and (c) shall not exceed the costs necessary to provide waste management services in a cost-efficient way (such costs shall be established transparently between the concerned actors).[56]

The extended producer responsibility scheme encompasses the so-called circular products[57] and their waste. These include packaging under the jurisdiction of the packaging government decree,[58] certain single-use and other plastic products, electrical and electronic equipment, batteries and accumulators, vehicles, tyres, specific types of paper, cooking oil and fat, textile products, and certain wooden furniture. The producer of these products typically fulfils their extended producer responsibility obligations through the concessionaire.[59] The concessionaire, within the framework of collective fulfilment, handles the reception, collection, transportation, pre-treatment, trading, and delivery for the treatment of waste generated from circular products; maintains and operates the waste management facilities

55 | WA Section 30/A (1)
56 | WA Section 30/A (3)
57 | Government Decree 80 of 2023. (III.14.) (EPR Gov. Dec.) on the detailed regulations for the operation of the extended producer responsibility scheme Section 1.
58 | Government Decree 442 of 2012. (XII.29.) on packaging and waste management activities related to packaging waste.
59 | EPR Gov. Dec. Section 3 (1)

necessary for these activities; handles the accounting and, relatedly, manages the finances related to the operation of the extended producer responsibility scheme; operates the reporting system, and fulfils the obligation to provide data and publications. It also carries out communication tasks related to the operation of the extended producer responsibility scheme and operates an internal, independently audited self-inspection system.[60] The concessionaire ensures that the collection systems for the waste of circular products throughout Hungary meet the legally specified level of accessibility.[61]

Prior to submitting a registration application, the producer must provide the necessary data through the electronic platform operated by the concessionaire and, from the date of commencement of the obligation to pay the extended producer responsibility fee, pay the fee to the concessionaire in accordance with the rules set out in the EPR Gov. Dec. The producer should then comply with regular and requested data provision obligations as determined by law, related to the national waste management authority's tasks or those of the concessionaire, and cooperate with the concessionaire.[62] The obligation to pay the extended producer responsibility fee arises as soon as the producer places the circular product on the market.[63] As part of its extended responsibility, the producer also contributes financially to the concessionaire's organisational tasks.[64] Notably, the EPR Gov. Dec. situates cases that do not involve market entry, such as the use of circular products by natural persons for personal purposes, as separate from economic activities.[65]

The EPR Gov. Dec. allows for deviations from the prescribed collective implementation led by the concessionaire and permits individual implementation only in a few cases.[66] Individual implementation is defined as the producer taking over the waste generated from the product belonging to the specific circular product stream (at their own or an affiliated company's premises or jointly with the retail unit selling the circular product) at the point of sale and taking care of its recovery and disposal.[67] To ensure the conditions for individual implementation, the producer enters into a subcontracting agreement with the concessionaire.[68] The obligation of extended producer responsibility can be contractually transferred, in which case the transferee is considered the producer for the fulfilment of the specified obligations.[69] To ensure regular dialogue, national consultative bodies for each product stream serve as forums for extended producer responsibility and

60 | EPR Gov. Dec. Section 3 (2)
61 | EPR Gov. Dec. Section 4 (1)
62 | EPR Gov. Dec. Section 6
63 | EPR Gov. Dec. Section 16 (1)
64 | EPR Gov. Dec. Section 15
65 | EPR Gov. Dec. Section 16 (4) c)
66 | EPR Gov. Dec. Section 7
67 | EPR Gov. Dec. Section 8 (1)
68 | EPR Gov. Dec. Section 8 (2)
69 | EPR Gov. Dec. Section 13 (1)-(2)

councils for extended producer responsibility fees.[70] These are consultative bodies of the minister, which do not have independent decision-making authority.[71]

3.7. Return fee scheme

The binding return fee scheme came into effect in Hungary on 1 January 2024. Notably, the scheme is designed to help Hungary achieve the EU targets. In essence, return fee schemes require the consumer to pay a certain amount upon purchasing a product (typically related to packaging materials), which is refunded upon the product's return – put differently, they essential require a quasi-deposit. To this end, the State should set up and operate a binding return fee scheme for specified products for reuse and establish a nationwide, single, integrated waste management system for the waste generated by those products. The concessionaire shall operate the binding return fee scheme, including related communication, financial coordination and settlement, and the reporting system.[72] Returns shall be accepted by the concessionaire in a uniform manner through a reverse vending machine operated by the concessionaire or manually with the assistance of a distributor.[73] Waste collected within the binding return fee scheme shall become the property of the concessionaire.[74] A return fee scheme can also apply to products not covered by the binding return fee scheme.

The rules pertaining to the return fee scheme are found in Government Decree 450 of 2023. (X.4.)[75] (hereinafter referred to as the DRS Gov. Dec.) on the determination and application of the return fee, as well as the detailed rules for the distribution of products subject to the return fee. Products subject to the binding return fee scheme (with the exception of specified milk-based products[76]) include consumer products and products (both non-reusable and reusable) related to the direct packaging of ready-to-consume or concentrate beverage products made of plastic, metal, or glass, in bottle or can form, and with a capacity between 0.1 and 3 litres (excluding packaging for beverage products placed on the market by low-emission producers).[77] A voluntary return fee product is a specified product or form of product packaging that is: not included in the above category; manufactured or placed on the market by the producer; and voluntarily marked as 'returnable'.[78]

70 | EPR Gov. Dec. Section 30
71 | EPR Gov. Dec. Section 33 (1)
72 | WA Section 32/B (1) (effective: January 1, 2024.)
73 | WA Section 32/B (3) (effective: January 1, 2024.)
74 | WA Section 32/B (2) (effective: January 1, 2024.)
75 | For the preparation of this study, I used the version of the DRS Gov. Dec. available on January 1, 2024.
76 | See DRS Gov. Dec. Section 2 (1) g)
77 | DRS Gov. Dec. Section 2 (1) e)
78 | DRS Gov. Dec. Section 2 (1) f)

For non-reusable products subject to the binding return fee, a return fee of 50 forints per item will be paid. However, the return fee per item for reusable products subject to the binding return fee will be determined by the producer.[79] Packaged beverage products subject to the binding return fee can be placed on the market or sold at a purchase price that includes the 50 forint return fee specified in the DRS Gov. Dec., provided that the packaging is not transferred to the consumer along with the beverage product at the point of sale.[80] The amount of the return fee must be indicated separately from the product price on the invoice or receipt.[81]

As a general rule, the obligation for the producer to pay the return fee arises upon the first domestic placement on the market of non-reusable products subject to the binding return fee.[82] The producer pays the concessionaire the monthly return fee for non-reusable products subject to the binding return fee and placed on the market during the current month by the last day of the next month.[83] The return fee per item for products under the voluntary return fee scheme is determined by the producer.[84] The producer must notify the distributor of any changes in the return fee for reusable products under the binding return fee scheme or for products under the voluntary return fee scheme, providing the date of the change, at least 30 days before the change takes effect.[85]

The producer must initiate the registration of the product subject to the binding return fee on the electronic platform provided by the concessionaire at least 45 days before the product is introduced to the market.[86] The product must have an appropriate label indicating the binding return, in accordance with Appendix 1 of the DRS Gov. Dec. The producer sends samples of the product to be registered to the concessionaire, who then checks whether they conform to the parameters provided during registration and verifies the readability of the packaging label using a reverse vending machine. The concessionaire can deny registration if the product label does not comply with the criteria outlined in Appendix 1 of the DRS Gov. Dec.[87] The concessionaire determines and publishes the detailed requirements for registration on its website.[88] If the producer fails to meet the registration obligations or if the concessionaire denies registration, the product cannot be placed on the market.[89]

79 | DRS Gov. Dec. Section 3 (1)
80 | DRS Gov. Dec. Section 3 (4)
81 | DRS Gov. Dec. Section 5
82 | DRS Gov. Dec. Section 3 (2)
83 | DRS Gov. Dec. Section 3 (3)
84 | DRS Gov. Dec. Section 4 (1)
85 | DRS Gov. Dec. Section 3 (5); DRS Gov. Dec. Section 4 (2)
86 | DRS Gov. Dec. Section 6 (1)
87 | DRS Gov. Dec. Section 6 (2)
88 | DRS Gov. Dec. Section 6 (3)
89 | DRS Gov. Dec. Section 6 (4)

The producer buys back the reusable product subject to the binding return fee from the distributor and the consumer for reuse and gives them back the return fee they originally paid. If the producer ceases the production of the reusable product subject to the binding return fee, they must buy it back from the distributor and consumer at least four months after its production has ceased.[90] After placing the reusable product subject to the binding return fee on the market, the producer pays the concessionaire a connection and service fee. In the case of non-reusable products subject to the binding return fee, the producer pays the concessionaire connection, service, and return fees.[91]

The producer can agree with the distributor to classify a product or packaging, not subject to the binding return fee scheme, as a voluntarily returnable product in order to encourage its return to a specified location. In this case, the producer ensures that the 'returnable' label is placed on the voluntarily returnable product in a visible, permanent, and legible manner.[92] For voluntarily returnable products for which the consumer has paid a return fee, the producer buys back the product from the distributor and the consumer and gives them back the return fee they originally paid.[93]

The distributor ensures the redemption of products subject to the binding return fee. To ensure the redemption of non-reusable products subject to the binding return fee from the consumer, the distributor enters into a contract with the concessionaire, and manages the redemption of non-reusable products, subject to the binding return fee according to this contract, ensuring that the process follows the agreement made with the producer.[94]

When redeeming a product subject to the binding return fee, the operated reverse vending machine may directly refund the return fee; alternatively, the distributor may refund the return fee to the person redeeming the product or its waste or, upon the consumer's request, provide them with the refund amount in the form of a credit toward the purchase of a new product.[95]

The distributor ensures the redemption of products subject to the binding return fee from the consumer during opening hours at the redemption location. In stores selling food with a sales area larger than 400 m², a reverse vending machine is mandatory for the redemption of non-reusable products subject to the binding return fee. In addition, manual reception must be used in case the reverse vending machine malfunctions.[96] Based on the agreement with the producer, the distributor takes back products with voluntary return fees with the same characteristics

90 | DRS Gov. Dec. Section 8
91 | DRS Gov. Dec. Section 9
92 | DRS Gov. Dec. Section 10 (1)–(2)
93 | DRS Gov. Dec. Section 10 (3)
94 | DRS Gov. Dec. Section 11
95 | DRS Gov. Dec. Section 12
96 | DRS Gov. Dec. Section 13

and purpose as the products it distributes against a voluntary return fee. The distributor ensures the continuous redemption of voluntary return fee products from the consumer in the same manner and throughout opening hours at the distributor's site or a designated location. Distributors with a store with a floor area of at least 200 m² can provide redemptions for products with voluntarily return fees at their sites.[97]

The consumer is entitled to a refund of the return fee paid to the distributor for the purchase of a return fee product, provided the product is returned at the redemption location. According to the DRS Gov. Dec, redemptions can only be received for products subject to the binding return fee if the products are returned with an undamaged, readable, and identifying label. Meanwhile, redemptions can only be received for products subject to voluntary return fees if the products are suitable for return as specified by the producer and returned with a recognisable and identifying label.[98]

Regarding products subject to the binding return fee, the concessionaire: (a) acquires, installs, maintains, and, when necessary, renews and upgrades the reverse vending machines for waste reception; (b) ensures the reception, transportation, pre-treatment, and transfer of waste for recovery; (c) maintains and operates waste management facilities; and (d) ensures the proper functioning of reverse vending machines that accept reusable packaging.[99]

The concessionaire is also responsible for establishing a nationwide network of redemption locations for the redemption of products subject to the binding return fee, offering both reverse vending machines and manual return options. To ensure the redemption of non-reusable products subject to the binding return fee, the concessionaire: (a) provides reverse vending machines for distributors in every food retail store with a sales area larger than 400 m² and (b) enables the distributor to establish a redemption location in every settlement with a population greater than 1,000 or, in the absence of this, provides an alternative redemption location if a redemption location is not established based on point a).[100]

Notably, the concessionaire publishes the requirements for the condition of non-reusable products subject to the binding return fee at the time of redemption on its website.[101] The concessionaire pays the consumer the return fee for the non-reusable products subject to the binding return fee. The concessionaire fulfils this obligation either by directly repaying the consumer the return fee via reverse vending machines or by paying the redemption location operator the return fee that it paid out to the consumer.[102]

97 | DRS Gov. Dec. Section 16 (1)–(2)
98 | DRS Gov. Dec. Section 18
99 | DRS Gov. Dec. Section 20
100 | DRS Gov. Dec. Section 21 (1)–(3)
101 | DRS Gov. Dec. Section 22 (1)
102 | DRS Gov. Dec. Section 24 (1)–(2)

Further, the concessionaire also: (a) confirms information for consumers and waste holders regarding measures for the prevention of waste generation, return options and solutions, and the prevention of littering; (b) raises awareness and conducts educational activities to strengthen the responsibility of consumers and waste holders to increase the rate of redemption of products subject to the binding return fee; (c) informs consumers about the locations of redemption sites; (d) ensures that the public is aware of the connection and service fees paid by producers based on the quantity of products placed on the market as well as how products subject to the binding return fee are selected; and (e) may not disclose information classified as business secrets or data related to the sales volumes at the producer and product level; accordingly, data should only be made public if they cannot be used to draw conclusions about the producer's business secrets.[103]

The producer's obligation to pay connection and service fees arises when it introduces products subject to the binding return fee to the market. The producer's obligation to pay the connection fee continues until the end of the fifth year following the national introduction of the binding return fee scheme.[104] As with the EPR system, the national bodies of the Binding Return Fee Scheme Forum and the Binding Return Fee Scheme Fee Council are responsible for ensuring regular dialogue on the return fee scheme.[105] Producers are not required to pay extended responsibility fees for products subject to the binding return fee for which there is an obligation to pay fees according to the decree on the determination and application of the return fee or the detailed rules for the distribution of products subject to the return fee.[106]

4. Conclusions

Hungary is continuing to implement EU action plans through national law and related regulations. The national legislator has chosen a very specific solution by introducing the concession system outlined above. This system entrusts a single entity with, among other things, the operation of both the extended producer responsibility scheme and the binding return fee scheme. Although producers and distributors have little or no influence over the system's operation, they bear its costs. Meanwhile, the concessionaire possesses powers that can prevent a product from being placed on the market, such as when it refuses to register a binding return fee product in the binding return fee system. This grants quasi-governmental authority to a private economic company. Conceivably, this private

103 | DRS Gov. Dec. Section 28
104 | DRS Gov. Dec. Section 29
105 | DRS Gov. Dec. Section 34
106 | EPR Gov. Dec. Section 15 (the provision of the EPR Gov. Dec. came into effect on 1 January 2024).

company could also assume a quasi-authoritative role; however, this would raise significant questions and ultimately affect the right to a fair procedure.

Without question, encouraging consumers toward more economical resource use and reducing waste are very important tasks. Therefore, the binding return fee scheme is a welcome development. Hopefully, the binding return fee will prove to be an adequate incentive despite its relatively low monetary value. Nevertheless, there is a great deal of work left to normalise conscious consumption and responsible waste management.

As suggested above, it is important to emphasise that transforming our current linear economic system while implementing EU objectives and legislation is also related to Articles P, XX, and XXI of the Fundamental Law, as it affects the living conditions of both present and future generations across many domains. In particular, this work will involve reducing the burden on future generations and preserving their opportunities and chances of accessing natural resources while improving the living conditions of our own generation by preventing – or at least reducing – the generation of waste and appropriately recovering waste materials.

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UJHELYI-GYURÁN Ildikó[1] – LELE Zsófia[2] – PÁRTAY-CZAP Sarolta[3]

Locus standi in administrative proceedings concerning environment protection, in the case law of the CJEU and the ECtHR[4]

Abstract

Effective legal protection against the unlawfulness of administrative acts is essentially achieved if the aggrieved party has some form of legal remedy to enforce his/her rights. This remedy may be at the stage of the administrative procedure, however, in some cases it may achieve its real purpose only through judicial means.
The right to a fair hearing is closely linked to the right to remedy, which means the possibility of simultaneously appealing to another body or to a higher forum within the same organization regarding decisions on the merits. An essential element of all remedies is the possibility of remedy, i.e. the remedy conceptually and substantively includes the possibility of reviewing of the violation of law.[5] The aim of the person affected is nothing other than to remedy his or her disadvantage. But who can be affected?
Keywords: administrative procedure, environmental law, environment protection, locus standi, civil organisations.

1. Introductory thoughts

Administrative judication has both a subjective and an objective legal protection role. In the subjective legal protection function, the court protects individual rights and interests, i.e. the right to bring an action is by definition based on the

1 | Administrative Judge of Curia of Hungary
2 | Head of Administrative College of Szeged General Court
3 | Administrative Judge of Budapest Metropolitan Court
4 | *The basis of this study was made in the research of Law Working Paper of the Network of European Law Consultant Judges, which authors are the same than the authors of the present study.*
5 | Patyi & Varga 2019, 37–38.

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violation of law caused by the administration, i.e. the plaintiff shall alleged a violation of a subjective right or legitimate interest. On the contrary, in the context of the objective legal protection function, the court's task is to protect the substantive right, so it is not necessarily possible to link the right of action to the infringement of a subjective right or interest. This could be done by assigning the plaintiff's position to a privileged scope, such as the right of action of the prosecutor or the body exercising judicial oversight, while another possibility is to make access to justice independent of the right infringed.[6]

In the development of both domestic and, even more so, European administrative judication, there is an increasing trend towards the objective legal protection function[7], which is also reflected in the widening of the scope of those entitled to bring court actions, such as collective actions and actions by social organizations. In practice, the primary area of this is environmental protection. And this is also referred to in the uniformity decision no. 1/2004. KJE: *"International case law and, accordingly, Hungarian prevailing law in accordance with the requirements of legal harmonization – recognizing the importance of environmental protection in ensuring the present and future healthy living conditions of mankind – is increasingly extending the boundaries of legal protection and provides action in cases of environmental harm or danger to the public interest, the wider community, beyond the justification of specific individual harm."*

The question is, in environmental litigation, where is the line drawn to determine who is entitled to bring an action for a particular right, and when can we say that the person bringing the action has no locus standi?

We have attempted to answer this question. The main purpose of our paper is to examine the question of locus standi in environmental cases from several aspects.

2. The general context of the right of legal remedy

If we are intended to deal with the right of legal remedy, we have to start from a broader fundamental right at international, EU level, and this fundamental right is none other than the right to access to justice. This is the fundamental right that appears in almost all international instruments, obliging the participating states to guarantee the right to access to justice. It covers several fundamental human rights, such as the right to a fair trial and the right to an effective remedy.[8] The concept of the right to access to justice is reflected in Articles 6 and 13 of the

6 | F. Rozsnyai 2018, 109.
7 | Trócsányi 1991, 41.
8 | European Union Agency for Fundamental Rights/Council of Europe 2016, 16.

European Convention on Human Rights (ECHR)[9] and in Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter referred to as: Charter), guaranteeing, as a partial right, the right to a fair trial and, at the same time, the right to a remedy, as interpreted by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). These rights are also guaranteed by Articles 2 (3) and 14 of the International Covenant on Civil and Political Rights of the United Nations (UN) (hereinafter referred to as 'ICCPR') and Articles 8 and 10 of the Universal Declaration of Human Rights of the United Nations (hereinafter referred to as 'UDHR').

If we consider the development of EU law, the Van Gend & Loos judgment is the most relevant, as it 'has defined the history of European integration better than any other policy, European politician or judicial judgment.'[10] The decision gave a special role to the citizens of the Member States as individuals by making the individual responsible for enforcing Community standards before the national courts.[11]

The Treaties of the European Communities, however, did not contain any reference to fundamental rights, those were developed by the practice of the CJEU.

Article 67 (4) of the Treaty on the Functioning of the European Union (TFEU) provides that 'the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'.

The Lisbon Treaty specifically guarantees access to justice, with particular attention to fundamental human rights.[12]

Now Article XXIV of the Fundamental Law of Hungary states that *"everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to state the reasons for their decisions, as provided for by an Act. Everyone shall have the right to compensation for any damage unlawfully caused to him or her by the authorities in the performance of their duties, as provided for by an Act."*

As a fundamental right relating to the justice system, Article XXVIII states that *"Everyone shall have the right to have any indictment brought against him or her, or his or her rights and obligations in any court action, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act."* And what is most relevant for the present study is that everyone has the right to a remedy at the statutory level against judicial, official and other administrative decisions which violate his or her rights or legitimate interests.

Therefore, when talking about legal remedies, the starting point at national level shall be the provisions of the Fundamental Law, since the fundamental right

9 | The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November, 1950, was promulgated in Hungary by Act XXXI of 1993.
10 | Pernice 2013, 55.
11 | De Witte 2013, 96.
12 | Carrera, De Somer & Petkova 2012

to be assessed as a requirement of the principle of fair trial, which is part of the principle of fair trial, and which can be limited, and which covers not only judicial proceedings but all official proceedings, is one of the most important guarantees of the enforcement of the rights of the client.[13] Although this fundamental right does not apply only to administrative proceedings or other administrative court proceedings, the provision is the 'mother law' of judicial review of administrative decisions and thus has a direct impact on the way in which the administrative procedure is regulated.[14]

„Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being […]"- said the Stockholm Declaration in 1972.[15] This Declaration stipulated the duty of man to protect and improve the environment for future generations. The above quote verifies the statement that the right to healthy environment stems from the connection of human rights and the environment protection.[16]

The constitutional basis of the right to a healthy environment and the protection of the environment, namely the right to a healthy environment and the right to the highest attainable standard of physical and mental health, was provided for by Articles 18 and 70/D of the former Constitution as amended in 1989. But the relationship between the right to a healthy environment, environmental protection and the Constitutional Court did not end with the Constitutional Court's interpretation of the relevant paragraphs of the Constitution.[17]

The right to access to justice in environmental matters derives from EU environmental law. It draws on the principles of EU law as reflected in the provisions of the EU Treaties, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted in Aarhus on 25 June 1998 (hereinafter 'the Aarhus Convention') and secondary legislation interpreted in accordance with the case law of the CJEU.[18] Since its ratification by the European Union and its entry into force, the Aarhus Convention has become an integral part of the EU legislation and is binding on the Member States within the meaning of Article 216(2) TFEU.[19] The CJEU therefore has, generally, jurisdiction to make preliminary decisions on the interpretation of such agreements.[20] Important, the Convention aims to protect the right of all individuals in present and future generations to live in an environment adequate

13 | Turkovics 2011, 333.
14 | Patyi & Varga 2019, 35.
15 | Stockholm Declaration (16 June 1972), Principle 1.
16 | Marinkás 2020, 133–151.
17 | Szilágyi 2021, 130–144.
18 | Commission Communication on access to justice in environmental matters, 4.
19 | Case C-243/15 Lesoochranarske zoskupenie VLK II (LZ II), paragraph 45.
20 | Case C-240/09 Lesoochranarske zoskupenie VLK I (LZ I), paragraph 30, on the interpretation of Article 9(3) of the Aarhus Convention.

for their health and well-being.[21] This obliges Member States to guarantee citizens the right to access to information, to participate in decision-making and to have access to justice in environmental matters.

The right to access to justice in environmental matters means supportive rights that enable individuals and their associations to exercise the rights conferred on them under EU law, but also help to ensure that the objectives and obligations of EU environmental law are met.[22]

3. The practice of ECtHR on the right to access to justice

3.1. Conditions for admissibility in ECtHR proceedings

If a legal entity intends to seek remedy in Strasbourg for a violation of its rights under the ECHR or its Additional Protocols, it may launch the supervisory mechanism by means of an individual application. The mandatory content of the application is set out in Article 47 of the Rules of Procedure of the Court of Justice. An application may be made to the Court by any individual or legal person within the jurisdiction of a State party to the Convention, so the potential applicants are wide-ranging: in addition to the 800 million inhabitants of Europe and the individuals of third-country nationals living in or passing through Europe, there are millions of associations, foundations, political parties, and companies.[23] For a long time, the Court has been inundated with individual applications, so that compliance with Rule 47 is a major filter in the admissibility test. The admissibility test is an important element of effective justice and access to the Court, whereby the Court examines whether the application complies with Articles 34 and 35 of the ECHR. Among the admissibility criteria, the closest to the legal legitimacy and locus standi is the concept of 'victim status', which shall be interpreted independently of the concept of victim as used in national law.[24] Article 34 of the ECHR provides that any natural person, non-governmental organization or group of persons claiming to be the victim of a violation by a High Contracting Party of the rights guaranteed by the Convention or its Protocols may apply to the ECtHR.

In the ECHR and in the Rules of Procedure of the ECtHR, the necessary legitimate interest is thus referred to as 'victim status' as one of the conditions for admissibility. The term refers, in the context of Article 34 of the Convention, to a person or persons directly or indirectly affected by an alleged violation. Consequently, the scope of Article 34 covers not only the direct victim or victims of the

21 | Aarhus Convention, Article 1.
22 | Case C-71/14 East Sussex, paragraph 52 and Case C-72/95 Kraaijeveld, paragraph 56
23 | European Court of Human Rights 2011, 14–20.
24 | Cabral-Barreto 2002, 9.

alleged violation, but also any indirect victim who is harmed by the violation or who has a real and personal interest in seeing the violation brought to an end.[25]

The concept of 'victim' is to be interpreted autonomously and independently of the domestic rules on the existence of an interest in bringing proceedings or on capacity to be a party[26], although the Court of Justice should take into account the fact that the applicant has been a party to the domestic proceedings.[27] Victim status does not presuppose that a disadvantage has occurred[28] and acts which have only a temporary legal effect may also give rise to victim status.[29]

The term 'victim' must be interpreted in an evolutive manner in the light of conditions in contemporary society, and an excessively formalistic interpretation shall be avoided.[30] According to the Court of Justice the question of victim status may also be linked to the merits of the case.[31]

In order to be able to submit an application under Article 34, the applicant shall claim that he/she has been 'directly affected' by the measure complained of.[32] This is indispensable for the Convention's protection mechanism to be put in motion[33], however the Court stated that this criterion cannot be applied in a rigid, mechanical and inflexible way throughout the proceedings.

In environmental cases, the guidance of the ECtHR where the alleged victim of a violation dies before the application is submitted, it is possible to be replaced by a person who has the necessary legitimate interest as a close relative.[34] Such an interpretation allowing indirect victim status is justified by the special situation arising from the nature of the infringement. In cases where the alleged violation of the Convention is not closely connected with the death of the direct victim, the Court will not normally accept the subjective capacity to be a party of a person other than the direct victim unless the person concerned can, exceptionally, demonstrate an interest of his/her own.[35]

25 | ECtHR, Vallianatos and others v Greece, 29381/09 and 32684/09, 7 November 2013, para 47.
26 | ECtHR, Gorraiz Lizarraga and others v Spain, 62543/00, 27 April 2004, para 35.
27 | ECtHR, Aksu v Turkey, 4149/04 and 41029/04, 15 March 2012, para 52; ECtHR, Micallef v Malta 17056/06, 15 October 2009, para 48.
28 | ECtHR, Brumărescu v. Romania, 28342/95, 28 October 1999, para. 50.
29 | ECtHR, Monnat v. Switzerland, 73604/01, 21 September 2006, para. 33.
30 | ECtHR, Gorraiz Lizarraga and Others v. Spain, 62543/00, 27 April 2004, para. 38; ECtHR, Stukus and Others v. Poland, 12534/03, 1 April 2008, para. 35; ECtHR, Ziętal v. Poland 64972/01, 12 May 2009, paras. 54-59.
31 | ECtHR, Siliadin v France, 73316/01, 26 July 2005, para 63; ECtHR, Hirsi Jamaa and Others v Italy, 27765/09, 23 February 2012, para 111.
32 | ECtHR, Tănase v Moldova, 7/08, 27 April 2010, para 104; ECtHR, Burden v United Kingdom 13378/05, 29 April 2008, para 33.
33 | ECtHR, Hristozov and Others v Bulgaria, 47039/11 and 358/12, 23 November, 2012, para 73.
34 | ECtHR, Varnava and others v Turkey 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/9, 18 September 2009, para 112.
35 | ECtHR, Nassau Verzekering Maatschappij N.V. v. the Netherlands (dec.), 57602/09, 4 October 2011, para. 2.

The Court will concern the applicant's participation in the domestic proceedings only as one of the relevant criteria. In the absence of a moral interest in the outcome of the proceedings or any other convincing argument, merely on the ground, for example, that he could have intervened in the proceedings as heir of the original applicant under domestic law, he cannot be considered a victim.[36]

In certain specific cases, the Court has also accepted that the applicant may be a potential victim. This was the case, for example, where the expulsion of a foreign national was ordered, but was not carried out, if the expulsion had been carried out, the applicant would have been subjected to treatment within the meaning of Article 3 of the Convention in the host country, or the expulsion would have led to a violation of the rights under Article 8 of the Convention.[37] Although the ECtHR applied this principle in an immigration case, the concept of potential victim may also arise in environmental cases. However, for someone to be qualified as a potential victim, he or she must have reasonable and convincing evidence that makes it likely that an infringement affecting him or her personally will occur; mere suspicion or assumption is not sufficient in this respect.[38]

The 14th Additional Protocol, which entered into force on 1 June 2010, added a new admissibility criterion to the criteria set out in Article 35 of the Convention, which is linked to the seriousness of the disadvantage suffered by the applicant.[39] Under this new criterion, the Court will declare an individual application inadmissible even if, with certain exceptions, the applicant has not suffered any significant disadvantage. The official reason for its establishment was to enable the Court to be more selective than before and to devote more time to the really important, more fundamental questions of principle among the cases brought before it.[40] The Court therefore requires, in addition to the existence of a violation of rights, that the new criterion be sufficiently serious. This gives the Court an additional tool to concentrate on those cases which really deserve to be examined on their merits (*de minimis non curat praetor*). At the same time, the introduction of the absence of significant disadvantage as a ground for inadmissibility has not escaped international criticism. Indeed, applicants cannot be sure that their application will be admitted even if their Convention rights have in fact been violated. Some argue that the introduction of the criterion of significant disadvantage has 'traded' the possibility of enforcing human rights.[41]

36 | ECtHR, Nölkenbockhoff v Germany, 10300/83, 25 August 1987, para 33; ECtHR, Micallef v Malta 17056/06, 15 October 2009, paras 48-49; ECtHR, Polanco Torres and Movilla Polanco v Spain, 34147/06, 2010, para 34. 21 September 2008, para. 31; ECtHR, Grădinar v. Moldova, 7170/02, 8 April 2008, paras 98-99; see also ECtHR, Kaburov v. Bulgaria (dec.), 9035/06, 19 June 2012, paras 57-58.
37 | ECtHR, Soering v United Kingdom 14038/88, 7 July 1989.
38 | ECtHR, Senator Lines GmbH v. 15 Member States of the European Union (dec.), 56672/00.
39 | European Court of Human Rights 2011
40 | Szemesi 2011, 134.
41 | Blay-Grabarczyk 2013

3.2. The right to bring a court action in environmental matters in ECtHR practice

International environmental law has evolved considerably in response to the current global environmental challenges. However, the ECHR, as the basis for the protection of human rights in the European region, does not contain explicit provisions on the right to a healthy environment or on the protection of the human environment. The Convention contributes to environmental protection only indirectly through the practice of the ECtHR. The greatest advance in the protection of environmental procedural rights is the Aarhus Convention, which is referred to several times in this study and which also provides the highest standard of protection for the European system of environmental procedural rights.

The right to access to justice in environmental matters includes the enforceability of the right to information and the right to participate in decision-making, i.e. the right of access to administrative and judicial procedures. The person subject to the right to access to justice (as an independent procedural right) may appeal acts and omissions by individuals and public authorities which violate the obligations arising from a healthy environment.[42] The ECtHR has also protected the proper enforcement of these rights, stating in relation to the right to access to justice that where a right to a healthy environment is enshrined in the national legal system of a State, the State is obliged to ensure access to justice in the event of a violation of that right. For this to be the case, the dispute must be real and serious, and the outcome of the proceedings shall directly affect this right or obligation.

The right to access to justice protected by the Convention is linked only to the rights protected by the Convention, so that in the event of a violation of other elements of the right to a healthy environment, the individual is entitled to justice only if it has been recognized in the national legal system.

The ECtHR's inadmissibility criteria narrow the scope of admissible applications. In relation to a healthy environment, the most relevant admissibility criteria are victim status and the existence of a significant disadvantage. A natural person is very likely to apply to the Strasbourg Court only if he or she claims a violation of his or her rights as a victim. For example, the ECtHR granted an association access to justice when it complained of a concrete and direct threat to its personal property and the way of life of its members.[43]

However, civil organizations, which can also submit applications alongside individuals under Article 34 of the Convention, typically serve a public interest. Nonetheless, the protection of collective interests faces already an obstacle at the admissibility stage because the Court requires civil organizations to have victim status. Moreover, they must suffer a significant disadvantage for the application to be admissible.

42 | Hermann 2016, 141.
43 | ECtHR, Gorraiz Lizarraga and Others v Spain, 62543/00, 27 April 2004.

Attempts at actio popularis in the public interest are declared inadmissible by the Court. In environmental matters, only those specifically concerned have the right to participate in the decision-making process. In the context of an *actio popularis* for the protection of the environment, the Court of Justice has declared that there is no provision for legal proceedings (public interest litigation) for the protection or enforcement of an environmental right enjoyed by the public.[44]

There is also a right to bring a court action in the event of a violation of right to participate in a decision protected under Article 2. This does not require that the decision in question is decisive for the rights of the applicant or that there is a serious risk. The State shall ensure the right to an effective remedy for all individuals whose right to life has been violated in environmental matters.

Although the ECtHR protects several procedural elements of the right to a healthy environment and the right to the protection of the environment, there is no comprehensive protection. The enforcement of procedural rights is linked to a direct interest, and there is a complete absence of a higher level of environmental obligation on the part of the state.[45] At the same time, the Court also makes frequent reference to sources of law which were not adopted under the auspices of the Council of Europe, but which have been implemented by a large number of parties to the Convention, such as the Aarhus Convention, to which the Court has already referred on several occasions in relation to the protection of environmental procedural rights. Moreover, its unique interpretative practice adapts the Convention to current requirements through dynamic interpretation, thus maintaining its up-to-date character.[46]

4. The case-law of the CJEU regarding the definition of the concept of 'person concerned' in the context of the right to remedy

The CJEU deals with locus standi in connection with the right to remedy in two aspects. On the one hand, in interpreting Article 47 of the Charter of Fundamental Rights and the related provisions of sector-specific EU legislation on the exercise of the right to remedy, and on the other hand, when deciding on direct actions submitted to the CJEU, it also examines the direct and individual involvement of the applicant in the admissibility of the action, i.e. his or her locus standi, in accordance with Article 263(4) of the TFEU. The present study focuses on the case law on the interpretation of the former, i.e. the EU legislation establishing an obligation for

44 | ECtHR, Ilhan v. Turkey, 22277/93, 27 June 2000, paragraphs 52-53.
45 | Hermann 2016, 16.
46 | ECtHR, Tyer v United Kingdom, 5856/72, 25 April 1978.

Member States to provide effective judicial remedies, as it is of practical importance for the application of law by the national courts.

4.1. The locus standi for civil organizations in environmental matters – the right to a remedy under the Aarhus Convention

The starting point for the right to remedy against decisions of public authorities in environmental matters is the right to remedy established by Article 9 of the Aarhus Convention, as mentioned above, which was approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005. The Aarhus Convention set out the principles of access to environmental information and public participation as a kind of minimum requirement, according to which the Aarhus Convention has three pillars: access to environmental information (Articles 4 and 5), public participation in environmental decision-making (Articles 6, 7 and 8) and, finally, the right to access to justice (Article 9).[47]

In accordance with Article 9(2) of the Aarhus Convention, each Party, consistently with the objective of giving the 'public concerned' wide access to justice, shall ensure to members of the public concerned who have a sufficient interest or who claim a violation of rights, where national law requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, where so provided for under national law, subject to the provisions of article 6, and, of other relevant provisions of this Convention.

The 'public concerned' referred to in Article 9(2) of the Aarhus Convention is defined in Article 2(5) as the public affected or likely to be affected by, or having an interest in, the environmental decision-making. Furthermore, this provision also specifies that for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest. In accordance with Article 9 and without prejudice to the review procedures referred to in paragraphs (1) and (2) above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

The definition of the locus standi under Article 9(2) is in the scope of the Parties, i.e. they shall determine, within the framework of their national legal systems, the content of the concept of 'sufficient interest' or 'alleging a violation of their rights' in cases where the administrative procedure requires it as a precondition for members of the public. While the Convention gives further guidance to civil society organizations on the interpretation of the concept of 'sufficient interest',

47 | Bögös 2018, 2.

it stipulates for private persons as 'individuals' the concepts of 'sufficient interest' and 'violation of rights' shall be defined in accordance with the requirements of national law. The discretion of the parties is limited in that the definition of locus standi shall be consistent with the objective of 'giving the public concerned wide access to justice'. This means that the Parties shall not apply an interpretation that would significantly narrow the scope of the locus standi.[48]

The case law of the recent years is well summarized by the judgment of 14 January 2021 in Case C-826/18 LB, Stichting Varkens in Nood, Stichting Dierenrecht, Stichting Leefbaar Buitengebied (hereinafter referred to as: 'Case C-826/18'), which interpreted the content and conditions of public concerned and the right of access to justice for the members of the public, both in relation to environmental associations and private individuals.

The CJEU has pointed out that Article 9(2) of the Aarhus Convention is not intended to confer on the public in general a locus standi against decisions and other acts of the public which are subject to Article 6 of that Convention and which concern projects which are the subject of public participation in decision-making but is intended to confer that right only on members of the 'public concerned' who satisfy certain conditions. This is because it explicitly distinguishes between the 'public' in general and the 'public concerned' by an act or activity. The members of the public concerned have specific procedural rights and are the only ones involved in the decision-making process, since they are covered by the objective of ensuring that the public concerned enjoys a broad right of access to justice in respect of all those who are or may be affected by the proposed act or measure.[49]

The Aarhus Convention aims precisely to ensure that the right to bring a court action to challenge acts and decisions covered by Article 6 is restricted to the 'public concerned' who satisfy certain conditions. Consequently, a person who is not a member of the 'public concerned' within the meaning of the Aarhus Convention cannot refer to the violation of Article 9(2). The right of that person to access to justice may be based on other rules if the law of the Member State provides for a wider right of public participation in decision-making which are more favorable than those of the Convention, such as those which allow for a wider public participation in decision-making. In that case, judicial remedies submitted under these measures fall within Article 9(3) of the Aarhus Convention.[50] According to paragraph 86 of the judgment of 20 December 2017 in Case C-664/15 Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation, the remedies referred to in Article 9(3) of the Aarhus Convention may be subject to certain 'criteria', which implies that the Member States, it consequently follows that the Member States may, within the limits of the discretion which they retain in that regard, lay down

48 | Ibid. 8-9.
49 | LB, a Stichting Varkens in Nood, a Stichting Dierenrecht, a Stichting Leefbaar Buitengebied, C-826/18., para 36-38.
50 | Ibid. para 45-48.

procedural rules concerning the conditions which must be satisfied for the exercise of those rights of remedy. In the same judgment, the Court also stated that the right of remedy would be deprived of its real effect if such criteria could be used to deny certain categories of 'members of the public' the right to bring an action.

Judgment C-826/18 has come to the conclusion that Article 9(3) of the Aarhus Convention precluded a 'member of the public' within the meaning of that Convention from not being able to have any access to justice for the purposes of relying on more extensive rights to participate in the decision-making procedure which may be conferred by the national environmental law of a Member State.[51]

The second part of the judgment ruled on the lawfulness of making the locus standi subject to the condition that a person who has not taken part in the prior administrative procedure, that is to say, the procedure for the preparation of the decision, does not have a locus standi.

The CJEU, referring back to its judgment of 15 October 2009 in Djurgården-Lilla Värtans Miljöskyddsförening C-263/08, also set out that members of the 'public concerned' shall be guaranteed a right of remedy against acts within the meaning of Article 9(2) of the Aarhus Convention and that Member States may not make the admissibility of an appeal conditional on the applicant's participation in the decision-making on the contested decision and the opportunity to express his views in that context. Participation in decision-making procedures in environmental matters is distinct from judicial remedy and has a different purpose. Regarding environmental associations, it is important to remember that non-governmental organizations within the meaning of the provisions of the Aarhus Convention are to be considered as either having a sufficient interest or as being the rightholders of the infringed right. The objective of Article 9(2) of the Aarhus Convention and its effective implementation, that the public should have 'a wide access to justice', is hindered if the admissibility of an civil organization's remedy is made conditional on the role that the civil organization may have played in participating in the decision-making process, even though that participation has a different purpose from judicial remedy. In addition, the way in which such an organization assesses a draft may vary depending on the outcome of the decision-making process.

In judgment C-826/18, the CJEU therefore concluded that Article 9(2) of the Aarhus Convention precludes the admissibility of a judicial remedy brought under that Convention by a non-governmental organization which is part of the 'public concerned' within the meaning of the Aarhus Convention from being subject to its participation in the decision-making process leading to the adoption of the contested decision.[52]

The solution would, however, be different if those proceedings were brought by a member of the 'public' on the basis of more extensive rights to participate in

51 | Ibid. para 51.
52 | Ibid. para 59-60.

the decision-making procedure conferred solely by the national environmental law of a Member State. In such a case, Article 9(3) of the Aarhus Convention, which provides more flexibility for Member States, would be applied. Thus, that provision does not, in principle, preclude the admissibility of the actions to which it refers from being made subject to the condition that the applicant has submitted his or her objections in good time following the opening of the administrative procedure, since such a rule may allow areas for dispute to be identified as quickly as possible and, where appropriate, resolved during the administrative procedure so that judicial proceedings are no longer necessary.

Notwithstanding the fact that it constitutes a limitation on the right to an effective remedy before a court within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), the CJEU has found that such a condition may be justified, in accordance with Article 52(1) of the Charter. The condition in question fulfilled the criteria of justifiable restriction, since it was imposed by law; it respected the essential content of the fundamental right to effective judicial protection, given that it provided for only one additional procedural stage for the exercise of that right and did not call it into question in its entirety; and it met the general interest objective of increasing the effectiveness of the reviewing procedure and there did not appear to be a manifest disproportionality between that objective and any disadvantages caused by the obligation to participate in the procedure for the preparation of the contested decision.[53]

It is worth mentioning that the CJEU deals with environmental issues not only by applying the Aarhus Convention, but also by applying Community environmental legislation. Direct actions against Commission decisions in environmental matters may be brought before the CJEU under Article 263(4) TFEU. The CJEU interprets the 'direct concern' presumption of locus standi in these cases strictly in relation to both EU and non-EU third country actors.[54] A detailed analysis of the jurisprudence on the admissibility of direct actions brought before the CJEU in environmental cases is beyond the scope of this paper and will not be addressed here.

5. The case-law of the Curia on the locus standi – the right to sue versus the locus standi in environmental cases[55]

The general rules on capacity to bring legal proceedings are set out in Act CXXX of 2016 on the Code of Civil Procedure (hereinafter: the 'Civil Procedure Code'). Pursuant to Article 33, a party to a lawsuit is anyone who is entitled to rights and subject to obligations under the rules of civil law. At the same time, according to Article 16

53 | Ibid. para 61-68.
54 | Hadjiyianni 2019, 155.
55 | To read more about the practice of f the Deputy Ombudsman for Future Generations: Olajos & Mercz 2022, 79–97.

(1) of the Administrative Procedure Code, a party to a lawsuit may also be a person who may be subject to rights and obligations under civil law or administrative law, as well as an administrative body which has independent administrative functions and powers.

In administrative proceedings, the right to bring an action is subject to the condition that the party has legal capacity to bring the action (procedural legitimacy) and that the matter on which the proceedings are based directly affects the party's right or legitimate interest. The party's involvement is embodied in the locus standi (substantive legitimacy), i.e. capacity to bring an administrative action means that the party has legal capacity and if a right or legitimate interest is directly affected by the administrative action, is entitled to bring an administrative action.

This direct involvement presupposes, according to established case-law, a specific relationship of interest between the party and the administrative activity. This implies that the party to the dispute has a legal right jeopardized, his/her interest is of a legal nature, i.e. the lawsuit has a direct impact on his legal position. In administrative litigation, the relationship of interest must therefore be direct, and this is only the case if the administrative legal relationship directly alters the scope of the plaintiff's rights and obligations, without the interposition of any other legal relationships. It is therefore essentially a question of substantive law, relating to the party's substantive legal interest in the dispute, and can therefore be assessed on the merits of the dispute, the absence of which results in the dismissal of the action with prejudice. The scope of the judicial review is also in line with the applicant's locus standi, the court being entitled and obliged to review the decision challenged in the action only to the extent that the plaintiff has locus standi.

How does this manifest itself in environmental cases? As it is a specialized area of law, so is the scope of those entitled to bring proceedings. The case of the Bős-Nagymaros hydroelectric power plant could be a starting point for this topic, in which the water authority of first instance denied right of status of client of the Duna Kör, to which the civil organization responded by turning to the public prosecutor's office. The Prosecutor General's protest submits as a matter of principle on the issue, stating that environmental associations are entitled to the status of clients in the above cases, given that their statutory functions are affected by the case.[56] However, this was of significance until 19 December 1995, when Act LIII of 1995 on the General Rules for the Protection of the Environment (hereinafter 'the Protection of Environment Act') entered into force and Article 98(1) of the Act grants status as a party in environmental administrative proceedings to associations operating in the area concerned. Subsequently, the Supreme Court of Justice also expressly recognized the right of these social associations to bring proceedings and locus standi in Administrative Law Judgment No 4/2010 (X.20.).

56 | Kiss 2016, 37.

The Aarhus Convention also emphasizes the need to ensure that the public concerned has wide access to effective, fair, equitable, timely and inexpensive justice. It is for the national court to interpret national law in a way that is as consistent as possible with the objectives of the Convention, in order to ensure effective judicial protection in the areas covered by EU environmental law.[57] The decision of the Supreme Court of Justice, acting as the predecessor of the Curia, in Case No Kfv.II.39.243/2006/5, pointed out that the locus standi of the social organization exists in the context of the provision of the decision imposing the obligation to compensate for the wood. The amount to be paid for the felling of the trees will be used to plant new trees in the district, as the building authority indicated in its decision. There is an obvious environmental interest in the value of the financial compensation, as more trees can be planted with a larger amount of money, and there is therefore an important environmental interest in ensuring that the value of the financial compensation is determined by applying the law correctly. *"The obligation to pay a financial contribution is not a sanction imposed for a violating and unlawful conduct, which the plaintiff would not be entitled to challenge, but an obligation to pay money to reduce the environmental impact of lawful and authorized conduct, the amount of which the plaintiff may legitimately challenge because of the strict purpose limitation of the amount to be paid."*

The ex lege right to bring an action provides environmental social organizations with a legal means of taking action to protect the environment, a task which they have undertaken voluntarily, without the need for such action to be preceded by a public authority procedure. The right of social organizations to bring actions in administrative proceedings is governed by the framework of the procedure before the environmental authority or the competent authority. This means that the social organization initiating the administrative action may only challenge the environmental context in the administrative action in question, which is not primarily environmental in nature, and that its locus standi does not extend to issues not directly related to the environment in the public authority proceedings.[58] The Curia pointed out in its decision No Kfv.IV.37.700/2020/5 that the right to participate in environmental matters and, in this context, the right to access to justice is not unconditional and unlimited, and cannot be independent of the applicable legislation, and thus of the framework and the powers conferred by the legislator on associations and social organizations established to represent environmental interests.

Another example of the limitations on the locus standi of civil organizations is the decision of the Curia in building cases, Kfv.VI. 38.150/2010/14, which found that the plaintiff may only challenge the provisions of a final decision which affect its rights or legitimate interests. In the present case, this concerned only the

57 | Case C-240/09 LZ I, paragraph 50
58 | Decision KJE 4/2010, point III.2.

provisions of the environmental protection authority contained in the decision of the building authority.

In another decision[59], the Curia examined whether the plaintiff was entitled to act as an organization specializing in environmental protection or as a person entitled to act under the Building Act, and the weight to be given to environmental considerations when granting a building permit. The decision emphasized the need to ensure, in accordance with the relevant legal provisions, that the siting of a building must ensure the proper and safe use of the building and of neighboring properties and structures, and that the specific requirements and interests of environmental protection and nature conservation are taken into account. In the present case, the plaintiff, as an environmental association, represented the legitimate and equitable interests of natural persons in their residential area and, in so doing, legitimately complained that the impact assessment did not comply with the legislation and did not demonstrate the environmental impact of the construction of the building in the area.

The decision of the Curia No. Kfv.II.37.690/2011/5 concerned the payment of a sewerage fine for discharging waste water into a public sewer with a biochemical oxygen demand and organic solvent extract content exceeding the threshold value. The locus standi was relevant in the case in so far as the court of first instance found only an economic interest in bringing the action, which did not constitute a direct legal interest and thus did not establish a locus standi. However, the Supreme Court took a different view and declared that, although the plaintiff was only indirectly involved in the legal relationship on which the proceedings were based, he was obviously a client. The plaintiff therefore had a right to bring an action. In the view of the Curia, direct interest can also be established in the case of the plaintiff, who suffered direct and individual damage as a result of the conduct of the intervener. The plaintiff was obliged to initiate the administrative procedure, the legal basis of which derives from the fact that the plaintiff is a public service provider and is therefore the operator and responsible for the operation of the sewer, who is the first to detect pollution or any unlawful conduct in connection with the sewer. The plaintiff is obliged to ensure the proper functioning of the public sewer, it can and must take steps to this end, and is therefore entitled to 97% of the amount of the sewer fine as a consequence. The Curia is of the opinion that the court of first instance erred in limiting the plaintiff's complex interest and situation to a mere economic interest and depriving it of its locus standi on that basis.[60]

59 | Kfv.III. 37.816/2012/8.
60 | Varga 2021

6. How can developments in EU law be incorporated into national practice?

As described in the introduction to this study, the subjective and objective legal protection role of administrative judication and the development of European administrative judication have increasingly shifted towards an objective legal protection function. Both national and international EU legislation are giving priority to the protection of the environment, since it is a priority area affecting a broad section of society, if not the whole of society. Societies that are prepared to protect their natural and built environment in order to protect their own and their descendants' health and cultural values cannot avoid involving their communities and environmental civil organizations in environmental decision-making processes and taking action against the decisions taken.[61]

In this area, the domestic legislation is fully in line with EU rules, and in environmental matters the civil organizations concerned have, as a general rule, the locus standi. On the other hand, the right of a member of the public to bring an action is already regulated more flexibly by the CJEU.

However, Hungarian case law also narrows the scope of civil society organizations, as the social organization initiating an administrative action, which is not primarily concerned with environmental protection, may only dispute the environmental issues in those administrative proceedings, and its locus standi may not extend to issues not directly related to the environment.[62] The locus standi of social organizations in administrative proceedings shall be governed by the framework of the proceedings before the environmental authority or the participation of the competent authority. This means that a social organization initiating an administrative action may only challenge the environmental context in a given administrative action, which is not primarily environmental in nature, and its right of action does not extend to issues not directly related to the environment in the public authority proceedings.[63] The right to participate in environmental matters and, in this context, the right to access to justice, is not unconditional and not unlimited, and cannot be independent of the applicable legislation, and thus of the framework and the powers conferred by the legislator on associations and social bodies set up to represent environmental interests. This in turn imposes additional scrutiny criteria on the proceeding court, since the civil organization may not have locus standi in certain actions.

However, it is clear from international examples[64] that it is not acceptable to allow civil organizations to play the role of mere interested parties in environmental

61 | Fülöp 2016, 85.
62 | Decision KJE 4/2010. para III.2.
63 | Decision KJE 4/2010.
64 | See below the example of Slovakia

cases; they must be granted client status and – under certain conditions -locus standi. The practice of the ECtHR is relevant in this context in that civil organizations can also submit public interest applications alongside individuals, however the protection of collective interests is already an obstacle at the admissibility stage, because it requires civil organizations to be victims and to suffer significant disadvantages. It can also be derived from the stricter regulation that only those specifically concerned have the right to participate in decision-making in environmental matters.

7. International perspective – Slovakian practice

The Slovakian legal system provides the prosecutor with a number of public law functions beyond the enforcement of the state's criminal claims, however does not give him the right to bring administrative proceedings[65], despite the fact that administrative judication was abolished in Czechoslovakia by the Act 65 of 1952 and the prosecutor's office was the primary body exercising control over the activities of the public administration instead of administrative judication. Only the judicial review of social security decisions remained, in addition to the rules governing civil procedures.[66] This rule prevailed until 1967, when the rules governing civil proceedings were applied to administrative proceedings, until the creation of a separate Code of Administrative Procedure.

Administrative procedure in the Slovak Republic is regulated, inter alia, by Act No 71/1967 on Administrative Procedure. Pursuant to Article 14 of this Act, persons whose rights and legitimate interests are directly affected by administrative proceedings may apply to be recognized as clients. The Slovak Code of Administrative Procedure thus recognizes as a party anyone whose rights, legitimate interests or obligations are the subject of the proceedings, who is directly interested in the proceedings or whose rights, legally protected interests or obligations are affected by the proceedings. However, recognition as a party is conditional on the existence of a direct, personal, legitimate interest and on the fact that the decision or the action of the authority relates to the (own) legal situation of the party.[67]

What is interesting from the point of view of locus standi in their regulation is that, prior to 30 November 2007, the second sentence of Article 83(3) of Act 543/2002 conferred the status of client on associations whose purpose was the protection of the environment. Such status was granted to associations which applied in writing for authorization to participate within a specified period. Under

65 | Varga Zs András 2008
66 | The Czech Supreme Administrative Court: The History of the Czech Supreme Administrative Court Microsoft Word – czech_en_2014.docx (aca-europe.eu) (9 April 2021.)
67 | Article 14(1)-(2) of the Code of Administrative Procedure No 71/1967 (Správny poriadok) (Slovak Republic).

paragraph 6 of this provision, these associations could request to be notified of any procedure likely to affect the environment. Under paragraph 7, the authorities were accordingly required to notify the associations. Such associations also had the possibility to challenge any decision before the courts in accordance with Article 250(2) of the Code of Civil Procedure. However, Act 554/2007 amended the Act 543/2002 with effect from 1 December 2007 and classified environmental associations as 'interested parties' instead of 'clients'. This decision of the Slovak Government excluded the possibility for these associations to directly initiate proceedings to review the legality of the decisions.

One of the best-known cases in this context is the so-called 'brown bear' case.[68] The legal dispute was between an association for environmental protection under Slovak law and the Slovak Ministry for Environmental Protection, in the issue that the association had requested to be allowed to participate as a 'party' in administrative proceedings concerning the authorization of derogations from the rules on the protection of species such as the brown bear, access to protected natural areas or the use of chemicals in such areas. The association's aim was to ensure the full protection of brown bears by prohibiting their hunting. Finally, the CJEU declared that it is for the national court to interpret the procedural rules governing the conditions for exercising the right of administrative or judicial review as fully as possible in a manner that is consistent both with the objectives of the Aarhus Convention and with the aim of effective judicial protection of rights guaranteed by EU law, so that environmental organizations can challenge before the courts decisions taken in administrative proceedings that may be contrary to EU environmental law.

8. Summary

Preserving, protecting and enhancing our environment as our life-support system and our common heritage must be a common European value. EU environmental law establishes a common, interdependent framework of obligations for public authorities and rights for the public.

The Member State legislation is infringing EU law, which does not recognize the locus standi for persons for whom it is granted by EU law. Where national rules and case-law on locus standi are inconsistent with the right of remedy under EU law, EU law is directly applicable and takes precedence over national law. EU law has made it clear that the right to access to justice in the field of the environment must reflect the public interests concerned.[69] Among the EU secondary legislation, national legal provisions on access to justice in environmental matters differ considerably,

68 | Lesoochranárske zoskupenie judgment, C-240/09.
69 | Commission Communication on access to justice in environmental matters, (2017/C 275/01)

however the CJEU has made important decisions clarifying EU requirements for access to justice in environmental matters both within and outside the scope of harmonized secondary legislation.

It can be seen that it is not only a matter for consideration under national procedural law, but that there are a number of means of legal protection available against certain acts of Member State administrations that go beyond that, and that these means also provide effective legal protection. There are areas of harmonized legal areas where the right of remedy is not only at the level of fundamental law, in the light of Article 47 of the Charter, but also in the form of specific EU legislation in the form of regulations or directives.

In environmental, consumer protection and data protection matters, the locus standi for civil organizations is taken into account in the common EU sources of law, in addition to the rights of the entities directly concerned. The Aarhus Convention gives a special role to civil organizations in environmental matters, for which the case-law of the CJEU already provides sufficiently developed guidance.

Finally, it is recalled that locus standi derives from the right to a fair trial as a fundamental right. The principle – which the CJEU has kept in mind in its practice in relation to direct actions – that the right to a fair trial, of which the right of access to a court is a specific aspect, is not an unlimited right and may therefore be subject to implied limitations, such as the examination of the admissibility of the action, is also a guiding principle in the application of national law. This must not, however, restrict the right of access to a court open to legal persons in such a way or to such an extent as to affect the essence of the fundamental right.

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UHRI László[1] – NEMES Orsolya[2]

Examination of environmental legislation (related administrative law and some criminal and civil law) and sanctions for illegal waste dumping in the V4+ countries (Czech Republic, Poland, Hungary, Slovakia and Slovenia)[3]

Abstract

Illegal dumping of waste is a high-profile environmental problem today. In order to address these challenges, cooperation and information exchange between the Visegrad Group (V4) countries and Slovenia (V4+) is vital. This study, which examines the regulatory mechanisms in the V4+ countries to combat illegal dumping, seeks to understand the environmental practices and legal frameworks related to this issue. The V4+ countries – the Czech Republic, Poland, Hungary, Slovakia and Slovenia – face similar challenges in the area of illegal waste management. The study seeks to highlight the common cultural, historical and legal backgrounds binding these countries together, providing an ideal basis for cooperation and exchange of experiences.

The analysis is accompanied by a detailed comparison of the environmental legal frameworks, criminal sanctions and enforcement mechanisms operational within the V4+ countries. Apart from analysing the specificities and strengths of each country, it focuses on the methods that have proved more effective in tackling the illegal waste problem. The document also highlights the importance of strengthening cooperation between the V4+ countries. By exchanging information and sharing best practices, countries in the region can apply tried and tested solutions. The document aims to promote enhanced regional cooperation as a catalyst for sustainable environment and waste management.

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1. Introduction

The environmental impact of illegal waste dumping and other related problems on the circular economy constitutes critical challenges for society. Illegally abandoned waste is not only a visual nuisance, but also poses a serious threat to the environment. Abandoned waste can spread easily, pollute soil and water sources, and cause serious damage to biodiversity.

Circular economy principles suggest that resources should be conserved and recycled, thereby minimizing waste. Illegal landfilling, however, has a contrary effect. Waste that is discarded and illegally dumped is not only environmentally damaging, but also represents resource misuse. Recycling and extending the life of products are crucial for a circular economy. Illegal landfilling distorts this process by making reuse impossible, thereby preventing discarded materials from getting recycled back into the economy.

Waste problems are not limited to environmental damage, but also have economic and social impacts. Illegal landfilling increases waste management costs and affects economically backward communities. These landfills are often found in poverty-stricken areas, and a lack of environmental justice increases social inequality.

Understanding and addressing the gravity of the problem require strong legal and regulatory measures, including sanctions and accountability for illegal dumping. Additionally, society and businesses must play a role in raising awareness and improving waste management practices. Technological developments and innovations can also contribute to tackling this problem, for example, through waste tracking devices or recycling technologies.

For a sustainable future, it is vital that both society and the economy are committed to circular economy principles and sustainable waste management. While illegal landfilling poses serious environmental, economic, and social problems, it can be prevented and managed through effective measures and concerted efforts.

To address this problem, this study examines the regulatory mechanisms related to illegal dumping in the Visegrad Group (V4) countries and Slovenia (V4+). The aim of this joint analysis is to identify more effective solutions and practices in the field of waste management, with specific focus on illegal waste disposal.

A comparative analysis of the regulatory mechanisms in V4+ countries will allow effective practices to be shared with and adapted to other regions. This study examines how the V4+ countries can effectively apply legal frameworks to prevent illegal waste dumping and punish offenders.

Closer cooperation and exchange of experiences between V4+ countries can help increase the effectiveness of environmental protection measures.

Strengthening cooperation provides an opportunity to jointly develop solutions that respond to specific challenges in the region.

The results of this pilot study are intended to promote more effective legislation, better resource use, and greater social awareness in the fight against waste abandonment. This comparative analysis will allow V4+ countries to inspire each other and contribute more effectively to sustainable waste management and environmental protection efforts.

2. Global waste management

The world generates approximately 20 billion tons of waste annually, but this figure is partly based on estimates. Global economy growth has led to a quantitative increase in the total waste stream.

The most accurate data are available for municipal waste. Currently, the world generates about two billion tonnes of municipal solid waste annually. The World Bank predicts that by 2050, the municipal waste generated will increase by 3.4 billion tonnes/year[4]. This is twice the expected population growth during this period.

The amount of waste generated is determined by two main factors: the population, and the level of consumption resulting from the standard of living. It is estimated that, by 2050, daily waste generation per capita in low- and middle-income countries will increase by 40% compared to 19% in high-income countries.

In the coming decades, the growing volume of waste and the concomitant increase in environmental concerns will pose significant challenges for global waste management. These challenges must be understood regionally. Uncontrolled and technically unprotected landfills remain the basis for disposal in most parts of the world. In many countries, basic environmental targets are not met, let alone those for energy and material recovery. Organised waste transport is also lacking in low-income countries, accounting for only 50% of waste collected in urban areas, and even lesser in rural areas. This is because of the lack of basic equipment and facilities required for organised waste collection.

2.1. Waste management in Europe

While Europe boasts the most complex and organised waste management systems, encouraging examples of complex systems working well in other parts of the world are also observed. Leaving behind the linear economic model, the European Union (hereinafter: EU) formulated the Circular Economy Package in 2018. This package sets a new waste management target for landfilling by municipal

4 | Kaza, Yao, Bhada-Tata & Van Woerden 2018

solid waste of 10%[5] by 2035 and a recycling efficiency target of 65%[6]. The Circular Economy Package will mark a truly paradigm shift in the EU, affecting not only waste management, but also industry and trade. The EU demonstrates a mixed picture of municipal waste management. Some Member States have already met the set target. However, many countries still need to cover a lot of ground to achieve results even close to the 'best performers'.

Of course, geographical factors and the principle of regionality must not be overlooked; that is, country-specific and territorially professional solutions must be sought to address the challenges facing the Member States of the Community.

3. General context of illegal dumping and waste management activities

Improper and environmentally harmful management of waste, which is against the law of any country, is considered illegal waste management. Of course, we can define illegal waste management activities or illegal waste dumping where the level of waste management development in a region or country allows these definitions to be justified. The differences in development already discussed in the chapter on world waste management indicate that many countries do not have the conditions for professional and environmentally sound waste management in place.

Consequently, the concept and legal interpretation of illegal waste management may vary among different regions and countries. In least-developed countries, the concept of illegal dumping is almost meaningless. Many places lack basic waste management services and infrastructure. These countries almost exclusively have unprotected landfills that are often operated by the informal sector. Non-technically protected landfills are an even better solution, as in most cases, waste does not even reach them, but is dumped on riverbanks. It is worth pointing out that the situation is no better in many middle-income countries, for example, in India, where about 500 million people do not have access to regular waste management services; the situation in neighbouring Pakistan is similar. However, we do not need to look far from the V4 region, and we can also take Ukraine as an example: in Transcarpathia, approximately 200 villages do not have regular waste disposal services. This is one reason for regular river pollution, which has been repeatedly observed in the Hungarian stretch of Tisza.

Illegal waste disposal can be effectively countered in countries where a suitable framework is in place. This framework includes appropriate logistical and

5 | Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste
6 | Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives

infrastructural backgrounds, environmental awareness among citizens, and legislation.

It is important to note that even when the right framework is in place, there is not always a clear and continuous positive trend. A sensitive framework for combating illegal dumping must be carefully calibrated. There is a strong correlation between the quality and geographical location of existing infrastructure and service charges.

Research has shown that illegal dumping and waste management are mainly due to the lack of sufficient quality and quantity of waste management infrastructure. At the same time, it is also worth highlighting the fees charged to the public or to businesses for waste management services.

Public service aspects of waste management cannot be understood solely in market terms. Social and environmental aspects must also be considered in the management of municipal waste. Although municipal waste yards play an important role in separate waste collection, they also play a key role in combating illegal dumping. Therefore, it is important that gate fees for yards be set at a level that is accessible to the public. Therefore, municipalities or states must contribute to the financing of yard operations. In the long term, this is a worthwhile investment, in view of the enormous cost of cleaning up illegal waste.

Accessible and affordable waste management infrastructure alone is not the solution for tackling illegal dumping; increasing citizens' awareness of environmental issues is also essential for success in this area. Achieving these goals will require decades of work and effort; further, change in social habits will not occur overnight. However, tangible results can be observed in countries with conscious, systematic, and long-term communication efforts.

Finally, a legal framework is indispensable for the successful fight against illegal waste.

The creation of an appropriate legal framework that provides guidance and is easy to implement by economic operators and the public goes beyond sectoral legislation. Legal regulations must be grounded in reality, and real perpetrators and polluters must be punished and deterred.

4. The Waste Framework Directive

The EU Waste Framework Directive (hereinafter: WFD)[7] took a significant step towards the protection of the environment and human health, paying particular attention to dealing with hazardous materials during waste processing and returning recyclable materials to the supply chain. In previous systems, workers

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

and waste management environments have been exposed to significant risks owing to limited access to safety documentation.

In 2018, the EU introduced fundamental amendments to several laws regulating the handling of products in the European Economic Area (EEA). Among them, updating the EU WFD[8] stands out, as it affects all products sold in the EU, regardless of their manufacturing origin. This update works to move towards a single market and create a balanced business environment in the EU.

The aim of the EU is to make waste management more efficient and sustainable, thereby preventing damage to the environment and human health. The amendments introduced in 2018 aimed to curb illegal waste disposal, promote recycling and reuse, and tighten waste regulations.

4.1. Reduction of illegal waste dumping

Member States must do everything to prevent the growth of illegal waste dumps; one of the ways is to impose sanctions on them. Article 36 of the WFD (2008/98) states: (a) Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste. (b) Member States shall establish provisions on the penalties applicable to infringements of this directive and shall take all measures necessary to ensure that they are implemented. Penalties need to be effective, proportionate, and dissuasive.

Further defines in (33) of the WFD amendment (2018/851): Litter, whether in cities, on land, in rivers and seas, or elsewhere, exerts direct and indirect detrimental impacts on the environment, well-being of citizens, and the economy. Further, the costs of cleaning it present an unnecessary economic burden for society. Member States should take measures aimed at preventing all forms of abandonment, dumping, uncontrolled management, and other forms of waste disposal. Member States should also take measures to clean up the litter present in the environment, whether discarded wilfully or negligently, and irrespective of its source or size. Measures to prevent and reduce litter from key sources in natural and marine environments could consist of, *inter alia*, improvements in waste management infrastructure and practices, economic instruments, and awareness-raising campaigns. When considering a measure with restrictive effects on intra-union trade, member states should be able to demonstrate that it is adequate to attain the objective of preventing and reducing littering in the natural and marine environment, does not go beyond what is necessary to attain that objective, and does not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

8 | Directive (Eu) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste

4.2. The latest changes

The EU Commission proposed new amendments in 2023 to strengthen and accelerate action by the Union and member-states on the European Green Deal and the Circular Economy Action Plan. The proposal focuses on textile and food industries.

5. Czech regulations on illegal waste dumping

An illegal dumpsite may be defined as a site where waste is being discarded or collected despite the site not being designated for waste disposal or collection under relevant laws. Under Czech law, a waste management site (facility) is defined in § 14. of Act No. 541/2020 Coll., on Waste (hereinafter, the Waste Act). The Act defines 'illegally collected waste' as waste collected outside a designated waste management facility.[9]

Anyone who illegally establishes a landfill or deposits waste outside a designated area commits an offence under the Waste Act. Such conduct may constitute several types of offence. The following acts may be considered to be offences. (a) Disposal of waste outside a facility designated for management of that type and category of waste (b) Breach of the obligation to transfer waste in accordance with the waste management hierarchy to a facility or place designated by the municipality or to a waste dealer holding the relevant permit.

5.1. Legal obligations

In such cases, if the owner of the property learns about illegally dumped waste on their land, they are obliged to report this fact without undue delay to the concerned municipal office. When a municipal office learns about illegally dumped waste within its administrative district, it immediately attempts to identify its owner. If it is not possible to identify the person responsible for waste dumping (or if such a person has died), the municipal office will call on the owner of the land to eliminate the waste and hand it over to a waste treatment facility within 30 days of the call date.

In justified cases, the municipal office may set a longer deadline for the elimination of waste and its transfer to a waste treatment facility. It may also assist the landowner in the process.

If the landowner does not ensure the removal of waste and its handover to a waste treatment facility within 30 days from the date of delivery of the call, or within a longer stipulated period, the municipal office may: (a) Order the landowner

9 | Kanický 2022, 43.

to, at their own expense, secure a place where illegally dumped waste is located – in order to prevent further illegal dumping. (b) Secure waste that poses a threat to the environment by leaking harmful substances into the surrounding environment. (c) Remove the illegally dumped waste and hand it over to a waste treatment facility.

The landowner is not required to fulfil the obligation if they transfer the waste to a waste treatment facility at their own expense within 30 days of the date of the legal force of the decision imposing such obligation.

The person authorised by the municipal office is entitled to enter the land for the time necessary to secure or remove waste, and the landowner or user is obliged to allow and tolerate the securing or removal of waste.

5.2. The responsibility of authorities

In the Czech Republic, several institutions and organisations are involved in the management and control of illegally abandoned waste: (a) The Ministry of Environment – responsible for the development and implementation of environmental policies, including the management of illegal waste. (b) The Czech Environmental Inspectorate – responsible for monitoring compliance with environmental laws and regulations, including fighting illegal dumping. (c) the Police of the Czech Republic. (d) regional authorities. (e) municipal authorities of municipalities with extended competence. (f) municipal authorities.

5.3. Criminal law provisions

Unauthorised dumping may also cause environmental damage and endangerment under certain conditions.

Typically, this will be in case of hazardous waste landfills that leak environmentally damaging substances. A criminal offence is committed if the perpetrator, intentionally or through gross negligence, damages or endangers any component of the environment (water, soil, air, etc.) through dumping.

An offender's conduct must be more socially harmful than misdemeanours to constitute a criminal offence. Therefore, the damage to or endangerment of environmental components must be at a significant scale; for example, affecting a larger area or causing severe damage to human health, or death, or involving considerable cost in eliminating the consequences the landfill (minimum CZK 1000 000)[10].

10 | Zahálková 2022

5.4. Waste prevention programme

Waste prevention is an integral part of the transformation of a circular economy. It is expected to reduce the input of natural resources into the economy and make necessary efforts to collect waste to minimise illegal waste dumping and channel it into the circular economy.

In 2020, the Ministry of the Environment, Czech Republic, initiated the revision of the Waste Management Plan (hereinafter: WMP) in response to changes in EU legislation.

Regional authorities and the public were consulted in the revision of the WMP. Presentations and extensive discussions with key stakeholders in the waste management sector on the updated WMP draft were held at a session organised by the Waste Management Council. The document received internal and inter-ministerial comments.

Following these extensive consultations and revisions, the updated WMP in the Czech Republic entered the environmental impact assessment process in accordance with Act No. 100/2001 Coll. on Environmental Impact Assessment, as amended. It was subsequently approved by the government.

The process culminated in May 2022 when the government officially approved an updated Waste Management Plan in the Czech Republic.

5.4.1. 'Don't throw it away'

In the Czech Republic, outstanding examples of waste management include the 'Don't throw it away' initiative in Prague, where city dwellers can 'drop off' items that they no longer require but which can still be useful to others. The initiative has been running for more than 10 years with regular users and has saved more than 65 000 items from being discarded. The initiative has expanded to other Czech cities, such as Ostrava, also involving private companies who can use closed corporate 'Don't throw it away' portals for their employees.

As part of the initiative, 'Recycling Points' have also been set up in Prague's collection yards, where citizens can directly bring unneeded items without uploading them to the online portal. The Recycling Point operator accepts the donated items, captures their photographs, and posts them on the web portal. These items are offered first to the city's social services or other selected organisations and then to all users of the portal.[11]

11 | Cavallaro 2023

6. The tools for regulating illegal waste dumping in Poland

The Waste Act (Journal of Laws of 2022, Item 699) specifies regulations for acting against entities (or individuals) responsible for illegal dumping or waste storage.

The authority to force an entity that illegally dumped waste to remove it by means of administrative proceedings is bestowed upon the town mayor or regional director of environmental protection and, in the case of waste abandonment after the cessation of the activity, to the provincial marshal or district governor with jurisdiction over the place of the activity.

The proceedings conducted by the aforementioned authorities for the removal of illegally dumped waste are initiated pursuant to the provisions of the Act on Waste. These regulations indicate that waste holders are obliged to remove waste from places that are not intended for storage or warehousing, including waste abandoned after business operations. If the obligor fails to perform the aforementioned obligation, environmental authorities are obliged to issue a decision ordering waste removal and, if necessary, to conduct administrative enforcement proceedings.

However, when it is necessary to eliminate waste immediately because of threat to human life, health, or the environment, the competent authority shall take action to remove and manage the waste itself.

The authorities taking these actions are: (a) Regional director of environmental protection – in case of closed areas and properties owned by municipalities as landowners. (b) The authority competent to issue the decision – in case the obligation to remove waste has arisen in connection with the annulment, revocation, or expiration of a decision related to waste management. (c) The mayor or city president- in other cases.

In these cases, due to the nature of the case, the authority determines, in the form of administrative decision addressed to the waste holder, the scope and date of making available the land surface, facilities or other places where the waste is located, the scope and method of waste removal and the date of commencement and completion of activities.

6.1. Obligors

According to current national law, the holder is obliged to remove illegally dumped waste. In turn, the authorities of the territorial units are fully responsible for enforcing the removal of illegal waste dumped by the holder.

In addition, in 2019, the government introduced certain provisions into the national law. These stipulate that when it is necessary to remove waste immediately owing to a threat to human life and health or the environment, the competent authority of the territorial unit shall act to remove and manage the waste. The

individual responsible for illegal waste dumping is required to reimburse the authority of the territorial unit for the costs incurred in waste removal.

6.2. Authorities' responsibility in the elimination of illegal waste dumping

Several authorities in Poland are responsible for managing and controlling illegally abandoned waste. (a) The Environmental Inspectorate is responsible for monitoring compliance with Polish environmental laws and regulations, including combating illegal dumping. (b) Local municipalities and city inspectorates are responsible for managing and removing illegal waste generated in local areas. (c) The police are also involved in the fight against illegal waste and help identify and prosecute perpetrators. (d) The Ministry of Climate and Environment is responsible for developing and implementing environmental policies, including the management of illegal waste. (e) Environmental Agencies in different regions of Brazil are involved in managing and controlling illegal waste.

These agencies work together to effectively address the problem of illegal waste abandonment in Poland and ensure compliance with environmental rules and regulations.

Despite recent efforts to strengthen waste-processing oversight and penalties, illegal dumping practices have increased, aided by measures introduced during the pandemic.

Poland's Environmental Inspectorate has established a new unit to combat illegal dumping that identifies organised groups that dispose of waste illegally, often including materials sent for processing to other countries.

The new unit, comprising former police officers, utilises modern tools, such as satellite surveillance and drones, aiming to coordinate various services to eliminate illegally abandoned waste. One of the tasks of the new departments is to coordinate the work of various services: the environmental inspectorate, the prosecutor's office, the police, the national revenue office, and the road safety inspectorate.

6.3. Financing

Waste removal is implemented by the authority at its own expense, and reimbursement is demanded from the waste holder or obtained from the financial guarantee.

Moreover, financing waste removal from places not intended for this purpose is possible under the provisions of the Act of 27 April 2001 and the Environmental Protection Law (Journal of Laws of 2021, Item 1973, as amended). This provision enables local governments to conduct activities for the elimination of abandoned and illegally dumped waste.

The National Fund for Environmental Protection and Water Management has also launched a priority program addressed to regional directors of environmental protection, voivodeship marshals, commune heads, mayors or presidents of cities. It is entitled 'Removal of abandoned waste', and is aimed at reducing the threat to human life or the possibility thereof; moreover, financing the removal of waste from places not intended for this purpose is possible under the provisions of the Act of 27 April 2001 Environmental Protection Law (Journal of Laws of 2021, item 1973, as amended). This provision makes it easier for local governments to conduct activities for the removal of abandoned and illegally dumped waste.

6.4. Criminal law provisions on the behaviour of illegal waste abandonment

Regarding legal provisions pertaining to crimes in waste management, the Polish Penal Code (Article 183 of the Act of June 6, 1997, Journal of Laws of 2022, no. 1138, as amended) provides for a prison sentence of up to 10 years to be imposed on the perpetrator for: (a) causing the possibility of danger to human life or health or, (b) causing a reduction in the quality of water, air or land surface, or (c) causing damage to the plant or animal world (regardless of the amount of waste), or (d) importing from abroad, in violation of regulations, substances that endanger the environment, or (e) importing from abroad or exporting abroad, against the law, waste, or (f) allowing, against the obligation, the commission of the aforementioned acts.

For abandoning hazardous waste in a place not intended for storage or warehousing, the punishment is imprisonment for 2 to 12 years. If the aforementioned acts are unintentional, the perpetrators are subject to a fine, restriction of freedom, or imprisonment for up to five years.

6.5. Tools for detecting illegal landfills

6.5.1. Satellite monitoring

In Poland, the European Space Agency's (ESA) Sentinel and other satellites regularly provide images to help authorities monitor areas and identify possible illegal waste accumulation. This allows authorities to monitor areas remotely and respond quickly to potential problems.

6.5.2. Spatial Information Systems (hereinafter: GIS)

GIS can also be used in Poland to identify and analyse the illegal dumping of waste. These systems help authorities collect, analyse, and map data, which facilitate a better understanding of the information and more effective action.

7. The problem of illegal waste dumping in Hungary

The Fundamental Law of Hungary states in the National Declaration of Faith that *"we bear responsibility for our descendants, and, therefore, we shall protect the living conditions of future generations by careful use of our material, intellectual and natural resources"*. Article XXI – which is the specific article on environmental rights – states: *"(1) Hungary shall recognise and enforce the right of every person to a healthy environment. (2) Anyone who causes damage to the environment shall be obliged to restore it or bear the costs of restoration, as provided for by the Act. (3) No polluting waste shall be brought into Hungary for placement"*. The article contains a specific provision for waste management that is considered unusual in Europe. It states that *"it is prohibited to import polluting waste into the territory of Hungary for the purpose of disposal"*. This statement is controversial in its placement and worrisome because its concepts are incompatible with existing waste management legislation. The term 'disposal of waste' is not used in the WFD. Another problem is the use of the term 'polluter', which is not in line with standard waste management terminology.[12] However, this term refers to certain waste treatment processes. Pollution from these processes can only be assessed on a case-by-case basis, making the material scope of the provision nonspecific. Therefore, we conclude that this is a declaratory rather than normative provision.[13]

Bándi highlighted a similar issue in his study, stating that Par (3) was an unfortunate reference to the transboundary movement of waste. He suggested that the wording needs to be further clarified for future reference or, preferably, removed from Fundamental Law altogether.[14] Regarding this proposal, Szilágyi favoured a more precise wording of the basic law. He viewed the simple deletion of provisions as a retrograde step.[15]

Act CLXXXV of 2012 on Waste (hereafter, the Waste Act) transposed the provisions of the Framework Directive into Hungarian law. The difficulties of interpretation raised above have been alleviated by the 2013 amendment to the Waste Act, which states that *"hazardous waste destined for disposal, household waste destined for disposal and residues from the incineration of household waste may not be imported into Hungary"*, thus addressing the terminological and specificity issues mentioned above.[16]

According to Article 31 of the WA, waste may be disposed of only in designated or reserved places in a manner that does not endanger the environment.

12 | Hornyák & Lindl 2023, 37.
13 | Fodor 2012, 643.
14 | Bándi 2020, 17.
15 | Szilágyi 2021, 138.
16 | Hornyák & Lindl 2023, 37.

Thus, according to the terminology of § 61 (2), the definition of abandoned waste is *"waste deposited or abandoned on the property by another person without the consent of the property owner in uncontrolled circumstances"*.

7.1. Legal consequences of illegal dumping

Pursuant to WA Section 61 (2), the obligation to remove and treat waste deposited or abandoned on property by another person without the consent of the property owner under uncontrolled circumstances should be borne by the owner or former holder of the waste. Illegally abandoned waste must be eliminated within 30 days of the decision of the waste management authority imposing a fine and the obligation becoming final.

In cases where the owner or former holder is unknown, the obligation to clean up the abandoned waste shall, until proven otherwise, be borne by the owner of the property where the waste was deposited or abandoned.

Looking at the case law, as encoded in the above norms, it can be concluded that the obligation to eliminate illegally abandoned waste overwhelmingly falls on the owners of the property where the waste was deposited or abandoned. The resulting characteristics of the country's snapshot of illegal abandoned waste are inherent.

The person obliged to eliminate the abandoned waste as described above shall arrange for its removal from the property and shall provide proof of this to the competent body of the waste management authority by means of private documents of full probative value issued by the recipient or, in the case of hazardous waste, by means of a delivery note or receipt.

Upon receipt, the obligor will, without delay, forward the certificate to the waste management authority that issues the obligation. If the transferee does not hand over the certificate at the same time as delivery, the obligor shall immediately inform the waste management authority.

If the obligation is unsuccessful, the waste management authority shall, during the course of the enforcement procedure, ask the obligated party to comply voluntarily. If the obligor fails to comply, a procedural fine will be imposed. If waste is still found on the property, the waste management authority may remove it and charge obligatory costs. If the obligor is the owner of the property concerned and does not pay the costs of removal by the waste management authority, the latter may mortgage the property concerned up to the amount of the costs.

The unpaid waste management fine and the cost of waste removal charged to the obligor shall be considered public debt to be recovered through taxes in the enforcement procedure.

Overall, the statutory responsibility of property owners has increased; if the perpetrator is not known, the owner is obliged to eliminate any illegally placed or abandoned landfills on the property. If the owner fails to do so, the waste

management authority will remove it by official means and charge the property owner for the cost incurred, which, if not paid, may result in a mortgage being placed on the property. Waste management authorities have been allocated special funds by the government for this task, and following a public procurement procedure, they contract with a waste management company to remove illegal waste.

7.2. Obligors

7.2.1. Municipally owned real estate

The method of obligation for municipalities is also as described above, according to the WA § 61 (25).[17]

Depending on the outcome of the procedure, the municipality bears the full cost of cleaning up the waste on the grounds of municipal ownership. If the municipality fails to comply within the time limit, the decision is enforceable, and the body responsible for enforcement is the waste management authority. The unpaid waste management fine and the costs of waste removal incurred by the debtor in the enforcement procedure shall be considered public law liabilities to be recovered by way of taxes.

Thus, if the local authority does not comply with its obligation to eliminate waste, but has it removed, the cost is borne by the local authority as an enforcement cost, subject to successful recovery.

The legal environment has not led to the development of fining practices to enforce authority.

According to Municipal 'burden' under the WA Article 61 (24), the waste management authority shall mortgage the property in favour of the Hungarian State up to the amount of the claim and interest.[18]

7.2.2. Natural persons

In most cases, a natural person is the property owner(s) responsible for waste elimination. Due to the nature of the waste, the cost of doing so for 'long outstanding' cases exceeds the financial capacity of the natural person. Such cases have often been reported in the media. The fairness criterion (see below) provides appropriate relief.

The amendment to the Act, which came into force on 1 July 2023 provides the possibility of free waste transfer in waste yards of up to a maximum of 1 m3 once a

17 | If the municipality becomes aware of the waste, it immediately notifies the waste management authority and, within 30 days, the concession company or the concession subcontractor, arranges for the waste to be removed, certifies its removal to the authority and sends a statement of costs to the authority.

18 | The incidence of this is negligible, with only 3 cases reported nationally.

year to the obligated persons. This is a form of assistance to obligated parties, but is not expected for larger quantities of waste.

7.2.3. Fairness

Pursuant to Section 61 (24a) of the WA, the waste management authority may, in cases requiring special fairness, reduce or waive the debt with respect to the costs incurred in connection with the elimination of waste, or limit enforcement of the property specified in Section 61 (3), upon application by the obligor.

In the case of a natural person, a case requiring special fairness is one wherein payment of debt would seriously jeopardise the livelihood of obligors and their dependents or would impose a disproportionate burden. In the case of a non-natural person who is not primarily engaged in an economic activity, a case requiring special consideration is one in which the payment of debt would impose a serious and disproportionate burden on the obligors, which would jeopardise its primary activity.

In WA 61 (24b)–(24c), the law defines what are considered cases of special fairness, so the criterion to be considered may be broadly defined as the ratio between the obligor's income or budget and the cost of elimination.

A methodological guide is developed to ensure consistency in jurisprudence regarding fairness claims.

7.3. Authorities dealing with illegal dumping

In February 2020, the Hungarian government launched the Climate and Environmental Protection Action Plan (CEPAP), which focused on reducing the amount of waste, banning the most harmful plastic materials, promoting separate waste collection, implementing effective waste management, and eliminating illegally dumped or abandoned waste.

The CEPAP states that, to achieve this goal, the entire waste management sector must be subject to much stronger regulatory control.

First, CEPAP decided to establish waste management authorities (ministerial, national, and regional). With the entry into force of Government Decree 124/2021 (12.3.2021) on the designation of waste management authorities, the county government offices (regional waste management authorities) and the department designated by the Minister responsible for waste management (ministerial waste management authorities) were designated as waste management authorities for administrative matters.

In March 2021, with the creation of the Department of Environment, Nature Protection, and Waste Management within the county government offices, waste management authorities were accorded new responsibilities in the field of waste management.

As of 1 January 2017, environmental, natural protection, and waste management authorities were operational in county government offices. In March 2021, a new waste management authority was established that created a separate waste management department and doubled the number of posts. While waste management permits, records, and annual returns have been addressed previously, the change in legislation has strengthened their presence on the ground.

This has led to more effective eradication of illegal landfills in the country.

7.4. Waste management fines

The rules on the imposition of waste management fines on the amount of waste management fines and the method of their imposition and determination are laid down in Government Decree 271/2001 (XII. 21.) (hereafter, the Government Decree).

Under Articles 86 (10) and (11), waste management fines may also be imposed as on-the-spot fines. In this case, in addition to the waste management authority, the National Tax and Customs Board, police, notary, and authorised administrators of the professional disaster management body may also impose waste management fines in the form of on-the-spot fines, public area inspectors, nature conservation guards, field guards, mountain guards, state fish guards, members of the forestry authority performing law enforcement duties or authorised administrators, and food inspectors.

Currently, to determine the amount of fines for waste management, a Government Decree must be applied by the waste management authority and cooperating authorities according to Section 86 (11) of the WA.

There is no provision for on-the-spot fines for enforcement.

In the twenty-two years since Government Decree 271/2001 came into force, several amendments have been made to several WA provisions. Changes in the legal environment and economic conditions justified the revision of the existing provisions.

Currently, a new draft Decree on the amount, imposition, and method of determining on-site fines for waste management is still under consultation; this will replace the current Government Decree, thereby providing a solution to the above.

The new draft decree on fines retains the institution of the basic fine laid down in the Government Decree, but raises the amount per infringement. It maintains the method of calculating the waste management fine, but introduces a new formula according to which the amount of the fine is determined by multiplying the basic fine expressed in HUF by the quantity of waste expressed in tons and by a multiplier expressing the hazardousness. Thus, in addition to the basic fine for infringement, quantitative and qualitative criteria will influence the fines

to be paid. It establishes a fixed amount of fine per specific waste management infringement and introduces new offences. It lays down detailed rules applicable to the illegal dumping or abandonment of waste and introduces a new element on the conditions and procedures for imposing on-the-spot fines. The amount of fines was increased significantly.

The future goal of the Government Decree is to significantly increase the amount of waste management fines that can be determined and imposed based on the new calculation system, and to enable the concerned authorities to impose on-the-spot fines in the event of red-handed detection, thus realising the socio-political expectations set out in the CEPAP.

7.5. Criminal law provisions

Under Section 248 of the Criminal Code, individuals who unlawfully dispose of waste may face varying penalties depending on the category and severity of the offence. According to the law, those who engage in waste management activities without registration, notification, or proper authorisation, or conduct unlawful waste activities, can be punished with imprisonment for up to three years.

In the case of illegally deposited hazardous or significant amounts of waste, the severity of the penalties increases. Perpetrators may be imprisoned for one to five years for these crimes, and in the case of recidivism or aggravating factors, a sentence of two to eight years may be imposed.

For offences committed because of negligence, different categories are associated with varying degrees of imprisonment, ranging from one to three years.

Overall, illegal waste disposal is a punishable activity with significant legal consequences for the perpetrators.

7.6. Tools of dealing with illegally abandoned waste

7.6.1. 'Clean up the Country!' project

In the implementation of CEPAP, based on Government Decision 1598/2020 (IX.21.), the Ministry for Innovation and Technology announced the 'Clean up the Country!' project, which, with the cooperation of the state and municipalities, began to clean up the illegal waste accumulated over decades in forests, along rivers, railways, and roads.

7.6.2. WasteRadar

The project also created the WasteRadar app, which has been available since July 2020 for citizens to report illegally dumped waste throughout the country. Over the past year, the WasteRadar application has been developed further to

increase efficiency, making it easier for users to report and public authorities to manage.

Currently, the app has more than 30,000 registered users, with almost 50,000 notifications. The WasteRadar app has helped waste management authorities initiate official procedures based on WasteRadar data and public-interest reports.

7.6.3. Clean Country Programme

Government Decision 2309/2020 (non-public) on further measures necessary for the implementation of the Clean Country Program stipulated that, in 2021, the Prime Minister's Office had to make HUF 5 billion available in additional resources to finance the costs of the removal of illegal waste from the capital and county government offices.

Every year, the government subsidises the elimination of illegally abandoned waste, apart from the operating costs of waste management authorities included in the budget of the functional managing authority (Prime Minister's Office). In 2023, approximately HUF 3 billion were available to government agencies to eliminate illegally abandoned waste.

8. Illegal waste dumping in Slovakia

According to generally published information, hundreds of illegal landfills are set in Slovakia. Most waste is placed unlawfully in gardening settlements, along railways, etc.

'Illegal placement of waste', is regulated in Section 15 of Act No. 79/2015 Coll. on waste and amendments to certain acts.

Any natural or legal person may report the placement of waste on a property – in conflict with this Act – to the competent waste management administrative authority (the municipalities and waste management administrative authorities (District Offices) or the municipality in the territory where the property is located.

Once aware of illegally placed waste on their property, the owner, administrator, or tenant shall report this fact to the authorities.

The municipality and the waste management administrative authority shall inform each other of any notifications made under Paragraphs 1 and 2 within seven working days of the day of the announcement.

If the competent waste management administrative authority is not aware of any facts indicating a criminal offence, it shall commence the procedure to determine the person responsible by: (a) identifying the person responsible for the illegal placement of waste, (b) identifying whether the owner, administrator, or tenant of the property on which waste has been placed illegally has neglected the obligation

to take all measures to protect their property under a specific regulation[19], an obligation derived from a court decision[20], or whether they derived material or other gain from the placement of the waste if the actual perpetrator is not identified.

The person who illegally places waste is primarily responsible for eliminating the illegally abandoned waste.

In the procedure for determining the responsible person, if the competent waste management administrative authority discovers that the circumstances referred to the case as the owner neglected its obligation to take all measures to protect their property, it shall designate the owner of the property on which waste was placed illegally as the person liable to ensure the management of the illegally placed waste.

If such a person cannot be determined, the settlement in which the waste was placed is contrary to national law, in the case of municipal waste or construction waste of minor importance, or the district office.

Illegally abandoned waste must be eliminated within the deadline specified in the decision of the competent waste management authority.

8.1. Authorities' responsibility in the elimination of illegal waste dumping

The municipality and waste management administrative authority shall inform each other of any notifications of illegal placement of waste within seven working days of the announcement. If waste has been placed unlawfully in a water stream, coastal area, or floodplain, the recipient of the notification shall immediately inform the relevant water administrative authority of this fact.

Based on notifications from the natural or legal person, owner, administrator, or tenant of the property on which waste has been placed illegally, on its own initiative, or that of another administrative authority, the competent authority shall verify whether the extent of the illegal placement of waste is such that a criminal offence may have been committed, and issue an expert opinion.

If it is assumed that a criminal offence has been committed, the competent waste management administrative authority shall make a notification thereof in accordance with a specific regulation, and the procedure for determining the responsible person shall not commence.

If the competent waste management administrative authority is not aware of any facts suggesting that a criminal offence has been committed, it shall commence the procedure to determine the person responsible.

19 | Implementing Decree of the Slovak Occupational Safety Office No 59/1982 laying down the basic requirements for ensuring safety at work and safety of technical equipment, as amended. Implementing Decree of the Ministry of Labour, Social Affairs and Family of the Slovak Republic No 147/2013 laying down the details of ensuring health and safety in construction and related work and details of the professional qualifications for the performance of certain work activities.
20 | Civil Code.

8.2. Costs of the removal

The person who ensures the recovery or disposal of waste shall be entitled to the compensation for the costs incurred by the person responsible for the illegal placement of waste. If the person responsible cannot be determined, the costs of removal will be borne by the municipality or state (from the municipal or state budget).

Subsidies are available from the Environmental Protection Fund, and municipalities can obtain loans at favourable interest rates.

8.3. Criminal law provisions on the behaviour of unauthorised handling of waste

Act No. 300/2005 Coll. Criminal Code, in the framework of Criminal Offences against the Environment, regulates the body of the Criminal Offense Unauthorized Handling of Waste (Section 301 of the Criminal Code).

Unauthorised Handling of Waste is committed by any person who breaches binding legal regulations when handling waste.

8.4. Civil law practice of compensation for illegally abandoned waste

According to Section 415 of Act No. 40/1964, Coll. Civil Code, everyone is obliged to act in such a way that there is no damage to health, property, nature, or the environment because of their actions. Pursuant to Section 420 of the Civil Code, everyone is responsible for damage caused by a breach of legal obligation.

The injured party is entitled to compensation under national civil law and may take direct action against the perpetrator.

9. Illegal waste dumping in Slovenia

Slovenian regulations are based on Article 248 of the Environmental Protection Act and Article 10 of the Decree on Waste.

Article 248 of the Environmental Protection Act aims to regulate the management of discarded or abandoned waste, particularly on the land owned by the State or municipalities.

If the perpetrator cannot be identified or refuses to remove the waste, a competent inspector may order the public service provider to remove it.

Littering is an exception to this regulation.

The Waste Decree states that the primary objective is to minimise the negative environmental and health impacts of waste. It is important that waste management does not cause excessive pollution of the water, air, and soil. It is also necessary to avoid excessive exposure to noise and unpleasant odours. Adverse

effects should be minimised in areas requiring special protection, such as nature reserves. Waste management should consider the landscape and cultural heritage of the protected areas.

Another important aspect of this measure is the need for an approach that promotes waste prevention throughout the life cycle of products, including design, production, distribution, consumption, and use. To this end, sustainable and environmentally friendly practices should dominate the production and consumption processes, emphasising the importance of social and environmental responsibility throughout the product chain.

9.1. The cost of the removal

In the case of abandoned waste, particularly on land owned by the State or municipalities, the costs of the ordered removal of waste shall be borne by the State or respective municipality, and the perpetrator shall be required to reimburse them.

In the case of waste abandoned on the private property of a person owning immovable property, the owner of the property bears the removal costs, but may recover them from the perpetrator. The perpetrator identified by the police or during an inspection is liable to pay the costs, including interest.

9.2. Authorities in the elimination of illegal waste dumping

The following authorities function collaboratively to effectively manage the problem of illegally abandoned waste and ensure compliance with environmental rules and regulations in Slovenia: (a) The Ministry of the Environment, Climate, and Energy is responsible for the development and implementation of the country's environmental policies, including measures against illegal waste management. (b) Environmental and Energy Inspectorate is responsible for environmental inspections that monitor compliance with environmental laws and regulations, including the fight against illegal dumping of waste. (c) Local municipalities and municipal bodies may also be responsible for the management and cleaning up of illegal waste in their areas. (d) The Slovenian police and – in case of a fire hazard – the fire brigade are also involved in the fight against illegal waste.

9.3. Criminal law provisions

The regulation of illegal waste abandonment behaviour is based on Article 332 of the Criminal Code.

The regulations are violated when: (a) the release, emission, or intake of substances or ionising radiation into the air, soil, or water endangers the life of one or more persons or causes a risk of serious bodily harm or actual damage to the quality of air, soil, water, animals, or plants. (b) the collection, transport,

recovery, or disposal of waste, or control of such procedures or activities after terminating the operation of the waste disposal, whether by trade in waste or transmission, endangers the life of one or more persons or causes a risk of severe physical damage or actual damage to the quality of air, soil, water, animals, or plants.

If the act referred to is committed in a criminal society for the implementation of these acts, the perpetrator shall be punished by imprisonment from one to 12 years.

Slovenia has some of the harshest laws in the EU, with smuggling and illegal waste dumping punishable for up to 12 years in prison.[21]

9.4. Civil law practice of compensation for illegally abandoned waste

The Environmental Protection Act stipulates that, in the event of environmental damage, the perpetrator alone should cover the costs of all preventive or remedial measures.

In the field of civil law, the Code of Obligations, which contains general rules for all obligatory relationships, does not contain specific provisions regarding compensation for damage caused by illegally dumped waste. In case of damage caused by illegally dumped waste, the beneficiary could only claim reimbursement in accordance with the general rules of tort liability (he would have to prove the cause of the damage, causation, and responsibility).

9.5. A tool for detection illegally abandoned waste

Although Slovenia is a small country (20.273 sq. km.), several thousand illegal dumping sites are scattered throughout the country. More than 15,000 of these are already included in the Register of illegal dumping Sites (a project run by a national NGO), which is estimated to covers only 30-40% of the total.

In 2010, 7,000 dumping sites were cleaned, but new ones keep arising, or fresh dumping is observed on the cleaned sites. Most of the material in these landfills consists of construction and organic waste (approximately 85%), while 10% is municipal waste.[22]

The National Register of Wild Dumping Sites is an innovative tool that contributes to the regulation and unification of wild dumping sites across Slovenia. The register, with more than 15,000 wild dumping sites, is currently the largest collection demonstrating the state of illegal dumping in Brazil.[23]

21 | Investigate Europe – Authorities struggle to track Europe's Illegal waste trade, 2023
22 | Global Atlas of Environmental Justice – Illegal dumping sites, Slovenia, 2021
23 | National Register of Wild Dumping Sites, Slovenia

10. Summary

In the V4+ countries, illegal waste dumping remains a serious concern. Adapting to the challenges of the EU WFD, these countries attempted to implement the concept and sanctions for illegal waste dumping within their own legal environmental systems.

In accordance with the provisions of the WFD, member states not only used legal instruments against illegal waste dumping, but also developed various technical and social solutions to tackle the problem. The tools developed to detect illegal waste dumps include the use of satellite surveillance and GIS to help identify and locate illegal waste dumps.

Additionally, member states launched community and awareness-raising campaigns to draw public attention to the harmful effects of illegal waste dumping. Such initiatives create awareness about the importance of correct waste management in society by involving local communities.

The challenge is further aggravated by the fact that the problem of illegal waste dumping is growing dynamically, and member states must constantly adapt to dynamic environmental challenges to manage it effectively. The fight against illegal waste dumping is complex and multilevel, and member states must collaborate closely, using different tools and strategies, to effectively tackle the threat.

In summary, it is worthwhile to examine the differences between the regions within the EU. While V4+ countries focus mainly on the problem of illegal dumping through the EU WFD, Hornyák & Lindl shows that France, Spain, and Germany regulate the right to a healthy environment, mainly at the constitutional level. In France and Spain, the right to a healthy environment is enshrined directly, or in documents of constitutional value, whereas in Germany, this right is indirectly expressed through the State's responsibility for future generations.[24] In contrast, V4+ countries have developed practical solutions, such as technological and community initiatives to combat illegal dumping, highlighting the dynamic growth of the problem and the need for continuous adaptation.

10.1. Legislation on illegal waste dumping

The Czech Republic, Hungary, Poland, Slovakia, and Slovenia comprise legislations on illegal waste dumping under their national waste or environmental protection laws.

In the Czech Republic, the environmental police and local authorities play key controlling roles, whereas in Poland, environmental inspectorates lead the regulations.

24 | Hornyák & Lindl 2023, 44.

In Hungary, waste management authorities in county government offices, disaster management authorities, and the police are involved in the clean-up of illegal waste. In Slovakia, the national environmental inspectorate controls the rules, and local authorities are also involved. In addition to the legal framework, regulations have established rules for waste management in Slovenia, and public service providers are involved in the removal of illegal waste.

Together, these regulatory regimes reinforce the commitment of member states to effectively fight illegal waste and ensure strict compliance with environmental and health requirements. These measures aim to promote sustainable waste management and prevent illegal waste disposal.

10.2. Obligors and costs

Illegal dumping is often difficult to trace back to the perpetrator; therefore, the owner of the contaminated land is responsible for removing illegal waste. The owner can be a private individual, the state, or a local authority. The cost of eliminating illegal waste is usually borne by the owner of a site, which places a significant burden on individuals and communities. However, the Hungarian legal system introduced the principle of 'fairness', which allows for discretionary action by authorities in the case of disadvantaged landowners.

10.3. Criminal law provisions

V4+ countries have established strict criminal frameworks for illegal waste dumping.

In the Czech Republic, criminal prosecution for environmental damage and endangerment includes the dumping of hazardous waste. Intentional or grossly negligent abandonment of waste is a criminal offence that endangers or damages various environmental components, such as water, soil, and air. The scale of the offence is related to the damage to society; for example, in terms of the area covered or the seriousness of impact on human health or life.

Poland is also strict with regard to illegal waste management. Under the provisions of the Penal Code, severe penalties are imposed on those who leave hazardous waste in areas that are not designated for this purpose. Penalties can include up to 10 years of imprisonment.

Hungary also takes the issue of illegally dumped waste seriously. An amendment to the Penal Code in 2021 will issue severe prison sentences for those depositing hazardous or significant quantities of waste in unauthorised areas. Although

Hungarian criminal law is in line with the new EU Directive[25], some punishable acts are not clearly defined in the Hungarian Criminal Code. Moreover, the sanctions in the Hungarian Criminal Code did not always meet the requirements of the new directive.[26]

Slovakia regulates the criminal offence of unauthorised handling of waste and punishes anyone who breaks the mandatory legislation when handling waste. This includes unauthorised waste dumping, which incurs severe penalties.

Slovenia has particularly severe penalties for the illegal disposal of waste. The offences are regulated by Article 332 of the Criminal Code and punish those who discharge hazardous substances into the environment or collect, transport, recover, or treat waste illegally with up to 12 years of imprisonment. This is one of the strictest environmental laws in the European Union.

Overall, all V4+ countries apply strict penalties for illegal waste management, underlining their commitment to environmental and health protection.

10.4. Civil law practice

Two aspects of civil law practice appear in V4+ countries, wherein personal liability and compensation play prominent roles.

In the first case, Article 415 of the Civil Code of the Czech Republic stipulates that everyone is obliged to act such that their activities do not cause damage to health, property, nature, or the environment. Article 420 lays down the principle of liability to pay compensation for damages resulting from any infringement. The affected party is entitled to compensation under the national civil law and can take direct action against the offender.

In the second case, a law is set out in the Slovenian Environmental Protection Act, which states that in the event of environmental damage, the polluter is exclusively liable for the costs of any preventive or remedial measures. However, in civil law, the general rules of the Code of Obligations do not include specific provisions on the compensation for damage caused by illegally dumped waste. In such cases, the concerned party can only claim compensation in accordance with the general principles of liability for damages, which include proof of the cause of the damage, causation, and liability.

Both jurisprudences emphasise the importance of preventive measures to avoid damage and ensure the financial liability of persons responsible for the damage caused.

25 | Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC

26 | Udvarhelyi 2023, 169.

10.5. Good practices

V4+ countries are adopting innovative approaches to waste management to prioritise the environment. For example, the Czech Republic is transforming its economy into a circular one by adopting a new waste management plan under the Waste Reduction Program. The country's 'Don't throw it away' initiative allows city dwellers to drop off usable items and reduce unnecessary waste.

Poland uses satellite monitoring and geographic information systems to combat illegal waste accumulation. The Sentinel satellites of the European Space Agency provide regular images to authorities, allowing remote monitoring of areas and rapid identification of potential problems. Geographic information systems help collect and analyse data.

Hungary is acting against illegal waste with its 'Clean up the Country!' project and WasteRadar. Under the project, the country organises clean-ups to remove illegal waste accumulated in forests, along rivers, and roadsides. The WasteRadar application allows citizens to report illegally dumped waste, thereby contributing to efficient processing.

Slovenia uses the National Register of Illegal Waste Sites as a unique tool for identifying and registering illegal waste sites across the country. This systematic approach helps authorities assess the depth of the illegal waste problem and develop more effective measures. The V4+ countries are taking concerted action to ensure a sustainable future for environment and waste management.

10.6. Acknowledgements

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Advancing Circular Economy: Czech perspective[2]

Abstract

This article provides a comprehensive overview of the transition to a circular economy, focusing on the European Union's (EU) efforts and the Czech Republic's stance and actions. It elaborates on the urgent need to shift from a linear economy, which burdens Earth's resources and leads to substantial waste, to a more sustainable circular economy by 2050. The circular economy paradigm is seen as a fundamental shift in managing waste and resource use towards maintaining the value of products and materials for as long as possible and minimising waste generation. The article outlines the EU's initiatives, policies, and legislation to foster this transition, emphasising the critical role of member states in implementing specific measures. Several EU policies, like the Green Deal and the New Circular Economy Action Plan, aim to transform the economy from linear to circular, covering various waste streams and sectors. Particular attention is given to the Czech Republic's position and efforts. It delves into Czech waste legislation, policies related to the circular economy, and the nation's strategic documents like the State Environmental Policy 2030 and the Strategic Framework of the Circular Economy of the Czech Republic 2040; these aim to improve waste management, enhance material supply security, boost business competitiveness, and reduce fossil fuel consumption. The article also discusses the challenges and public opinion in the Czech Republic regarding environmental protection and the circular economy. Despite progress, factors such as inadequate use of economic instruments and public reluctance to pay more for sustainable products hinder a faster transition. Furthermore, the article reviews specific legal instruments, economic tools, and sectoral legislative acts contributing to circularity in the Czech Republic. In conclusion, while the Czech Republic and the EU have made strides towards a circular economy, the journey is ongoing. The transition promises long-term benefits like self-sufficiency, reduced greenhouse gases, and new job opportunities. The EU's role is crucial in this transition, as it sets legislative and policy frameworks that guide member states towards circularity. This article reflects the complexities and

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multifaceted nature of transitioning to a circular economy, highlighting the need for continued efforts, policy alignment, and societal support.
Keywords: Circular Economy, European Union, Czech Republic, Waste Management, Sustainability, Environmental Policy

1. Introduction

Waste generation is fundamentally linked with modern society and a consumer-driven economy. On average, each European produces around five tonnes of waste annually, of which only 38% is recycled.[3] Our prevalent lifestyle exerts a significant burden on Earth's resources. The dominant linear economy – where products are manufactured, used, and then discarded – detrimentally impacts the environment, particularly through landfill accumulation. It also leaves the European Union (EU) more vulnerable to third states, heightens dependence on external sources, and markedly influences the Union's economy. In response to this challenge, the EU is striving to adopt a novel perspective on product usage and lifecycle that envisages transitioning to a circular economy by the year 2050.[4]

The shift to a circular economy is often described as a paradigm shift in how we perceive waste generation and resource utilisation. Our current linear economy faces a significant barrier in the form of planetary boundaries[5] and limited natural resources. Therefore, championing and accelerating this paradigm shift is in line with our shared best interests.

However, it is important to note that conceptually, the circular economy is not self-sustaining or all-powerful; it requires active participation from society at large. Some scholars thus suggest a more cautious or conservative approach to the circular economy.[6]

In theory, for newly introduced legislation to be effective, it must align with societal demands for regulation of certain topics or issues. While this might work in individual countries, within the EU – a collection of diverse states – this poses considerable challenges due to their varied economic, societal, and cultural backgrounds. Nonetheless, EU institutions could use Eurobarometer surveys to understand and address societal needs. Notably, recent environmental surveys related to the circular economy show increasing concern about waste accumulation. These surveys indicate that 46% of respondents view the growing amount of waste as a significant environmental issue.[7]

3 | European Commission 2024
4 | European Parliament 2021.
5 | Richardson et al. 2023, 1–2.
6 | Corvellec, Stowell & Johansson 2022.
7 | Eurobarometer 2020, 8.

Waste generation is fundamentally linked to our economic systems and lifestyle, particularly consumerism. Regarding this, almost 68% of Europeans acknowledge that their consumption habits negatively affect the environment both in the EU and globally.[8] Among a dozen potential strategies to tackle environmental issues, the preferred ones involve changing our consumption patterns and revamping our production and trade practices.[9] Nearly 70% of Europeans believe that decisions to protect the environment should be taken collectively within the EU,[10] and a significant majority (83%) agree that EU environmental legislation is vital for safeguarding the environment in member states.[11] When considering a specific waste category – clothing – 88% of Europeans support the idea that garments should be crafted to endure longer.[12] However, concurrently, nearly half of the population advocates for the availability of clothing at the lowest possible cost, irrespective of the environmental consequences.[13]

To conclude, Europeans are eager to protect the environment and acknowledge the need for a shift in the consumer-driven economy. However, their willingness to adopt such changes wanes when faced with rising costs. In terms of endorsing new EU regulatory measures, the surveys conducted indicate a widespread societal call for improved environmental protection and a move towards a more sustainable and circular economy.

The Czech populace shows, to some extent, a mixed attitude towards environmental protection and the principles of a circular economy. They recognise the necessity for stronger environmental safeguards, especially concerning waste generation – particularly in textile production.[14] There is also a broad consensus on the issue of climate change, its origins, and the pressing need for mitigation.[15] Typically, Czech citizens support recycling, strive to reduce unnecessary waste (like single-use plastics and excessive packaging), save food and energy, and promote longer-lasting products.[16] However, there is also a noticeable indifference to environmental information.[17] Many fear that strategies aimed at combating climate change might adversely affect the economy.[18] Consequently, there is a tendency to prioritise cost considerations over environmental impact.[19]

In short, data suggest that Czech citizens generally support environmental protection and some aspects of the circular economy, yet evince a noticeable

8 | Ibid. 14.
9 | Ibid. 18.
10 | Ibid. 27.
11 | Ibid. 28.
12 | Ibid. 30.
13 | Ibid. 32.
14 | Stem 2022
15 | Stem 2021
16 | The Office of the Government 2022, 10.
17 | Stem 2020a
18 | Stem 2020b
19 | Stem 2022

reluctance towards measures that are financially demanding and potentially detrimental. Overall, however, while there is a clear need for legislative initiatives to encourage a shift towards a circular economy, according to Politico's 2018 circular economy rankings, the Czech Republic somewhat unexpectedly secured the fourth position among EU member states.[20] Consequently, Czech policies and legislation contributing to the shift towards a circular economy merit examination.

Within the EU, waste legislation is extensively harmonised. Thus, this article will initially scrutinise the EU's waste policies and legislation related to the circular economy. Subsequently, it will explore the Czech Republic's waste policies and legislation in this area. These analyses are instrumental in addressing this article's objective of ascertaining whether the Czech Republic is on its way to implementing all of the EU's obligations that stem from the Union's secondary legislation pertaining to the shift to a circular economy by addressing the research question: Is Czechia on track to transform its linear economy into a circular economy in accordance with EU legislation?

Methodologically, this article focuses on analytical and descriptive jurisprudence, supplemented with critical analysis in some sections. The analytical jurisprudence involves a systematic analysis of legal texts and documents related to the transition to a circular economy at both the EU level and specifically in the Czech Republic. This article focuses on the fundamental EU policies and legislative frameworks that support the transition to a circular economy, including the Circular Economy Action Plan, the Green Deal, and specific legislative acts like the Waste Framework Directive (WFD). It further focuses on national legislation and policy, with a detailed analysis of Czech legislation and strategic documents, such as the State Environmental Policy (SEP) 2030, the Strategic Framework for the Circular Economy of the Czech Republic 2040, and other relevant laws and regulations. However, given that legislation in the field of the circular economy is continuously evolving and there is limited specific literature, the article primarily employs a descriptive approach. This includes describing the current state of policies and legislation without attempting extensive quantitative analysis or modelling.

In some sections, a critical approach is used to evaluate the effectiveness of current legislative and policy measures. This analysis includes challenges and barriers –identification and critical assessment of the challenges the Czech Republic faces in implementing the circular economy, such as public opinion, economic instruments, and legislative shortcomings. Additionally, it includes an analysis of the Czech public's attitudes towards environmental issues and the circular economy based on surveys and studies such as Eurobarometer and various national surveys.

The article commences with an analysis of several pivotal EU policies on the circular economy. These include the inaugural Circular Economy Action Plan

20 | Hervey 2018

(2015), which established the foundational principles of the circular economy, and the Green Deal, notable for its critical role as a precursor to subsequent legislative developments. Furthermore, the updated Circular Economy Action Plan (2020) is examined in detail. Typically, such policies and strategies set the stage for specific legislative enactments. Accordingly, this section scrutinises particular provisions of EU waste legislation, including directives and regulations, with a focus on their alignment with circular economy principles.

The latter part of the article turns to Czech waste legislation, employing a methodological approach akin to that of the initial section. This entails a detailed analysis of the Strategic Framework of the Circular Economy (SFCE) of the Czech Republic 2040 and pertinent legislation, including Act No. 541/2020 Coll. on waste, Act No. 542/2020 Coll. on end-of-life products, Act No. 243/2022 Coll. on reducing the environmental impact of selected plastic products (Single-use Plastics Act), Act No. 477/2001 Coll. on packaging waste, and Act No. 134/2016 Coll. on public procurement. Additionally, the article discusses the involvement of the Organisation for Economic Co-operation and Development (OECD) in assisting the Czech Ministry of the Environment in examining critical sectors and concerns within the waste management domain.

Even though there is a plethora of literature about general waste management[21] or literature about specific topics such as inspections in waste management[22] or the circularity of specific waste streams such as biogenic waste,[23] the lack of relevant legal literature on the circular economy must be underscored. This article completely omits the international background to the circular economy (for that see Snopková T. Müllerová (ed.) 2022, 545-546).

2. The EU Legal Background

In recent years, the EU has committed itself to facilitating the shift from a linear to a circular economy, as is reflected in a variety of legal instruments, primarily consisting of policies, strategies, and secondary legislation.

2.1. Circular Economy in EU Policies

EU policies not only provide a general legal framework for waste management but also regulate specific waste streams, such as Batteries and Accumulators, Biodegradable Waste, Construction and Demolition Waste, End-of-Life Vehicles, Landfill Waste, Mining Waste, Packaging Waste, Polychlorinated Biphenyls and Terphenyls,

21 | Jančářová et al. 2015, 450–476 or Langlet & Mahmoudi 2016, 283–308.
22 | Vomáčka 2019, 2–6.
23 | Vehlow, Bergfeldt, Visser & Wilén 2007, 130–139.

Restrictions on Hazardous Substances in Electrical and Electronic Equipment, Sewage Sludge, Ships, Waste containing POPs, Waste Oil, Waste Shipments, and Waste from Electrical and Electronic Equipment.

Elements of the circular economy are embedded within each policy. A particularly comprehensive policy establishing the foundation for the circular economy is the initial Circular Economy Action Plan, titled 'Closing the Loop – An EU Action Plan for the Circular Economy'.[24]

2.1.1. Action Plan for the Circular Economy

The Action Plan encompasses 54 initiatives intended to accelerate the shift from a linear to a circular economy. These introduced and subsequently adopted measures were designed to span the entire product lifecycle from production to consumption. Key proposals included the following: allocating over €650 million in funding under Horizon 2020 and €5.5 billion from structural funds; initiatives to diminish food waste through a standard measurement methodology, enhanced date marking, and tools aligned with global Sustainable Development Goals to halve food waste by 2030; the development of quality standards for secondary raw materials to bolster operator confidence within the single market; measures in the Ecodesign Working Plan for 2015–2017 to enhance the reparability, durability, and recyclability of products as well as energy efficiency; a revised Regulation on Fertilisers, promoting the recognition of organic and waste-based fertilisers in the single market and supporting the role of bio-nutrients; a comprehensive strategy on plastics within the circular economy, addressing recyclability, biodegradability, hazardous substances in plastics, and the Sustainable Development Goals aim of substantially reducing marine litter; and a series of initiatives on water reuse, including a legislative proposal setting minimum requirements for wastewater reuse.[25]

The initiative evolved into numerous Circular Economy Packages, encompassing revisions to key legal frameworks. The proposed amendments addressed, among other aspects, waste management and recycling. These included the following: a universal EU target to recycle 65% of municipal waste by 2030; an analogous goal for recycling 75% of packaging waste by the same year; a binding directive to curtail landfills to a maximum of 10% of municipal waste by 2030; a prohibition on the landfilling of separately collected waste; the encouragement of fiscal measures to deter landfilling; refined and augmented definitions, alongside harmonised methodologies for calculating recycling rates across the EU; definitive actions to foster reuse and promote industrial symbiosis by transforming the

24 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: Closing the loop – An EU action plan for the Circular Economy, COM/2015/0614 final.
25 | European Commission 2015.

by-product of one industry into a raw material for another; and financial incentives for manufacturers to introduce more environmentally friendly products into the market and support recovery and recycling schemes, for instance, those concerning packaging, batteries, and electronic equipment.[26]

Upon the adoption of the European Green Deal strategy, several crucial elements of waste legislation had already been enacted. These included the revised Regulation on Fertilisers, the Directive on Single-use Plastics, and 10 eco-design implementing regulations.

2.1.2. European Green Deal

Whilst the European Green Deal, commonly referred to as the Green Deal, stands as the principal strategy for rendering the EU climate-neutral, it concurrently encompasses policies relevant to the circular economy. The European Commission posits that transitioning to a circular economy will conserve resources, thereby reducing the dependency on imports. Additionally, product designs adhering to circular economy principles, as well as a circular product lifecycle, are likely to exhibit a reduced carbon emission footprint.

New Industrial Strategy for Europe

Nevertheless, within the scope of the Green Deal, additional actions and measures have also incorporated remarks pertaining to the circular economy, at least to some extent. A notable example is the New Industrial Strategy for Europe.[27] This strategy acknowledges the ongoing transformation of European industry, driven by new and disruptive technologies and the increasing pressure on natural resources, prompting a shift towards more circular resource utilisation in manufacturing processes.

Chapter 3.4, entitled 'Building a More Circular Economy', is expressly dedicated to this subject. The chapter succinctly elucidates the necessity of transitioning to a circular economy and its potential benefits, such as mitigating environmental impacts and generating new employment opportunities across the EU. Proposed initiatives under the action plan encompass a universal charger, a Circular Electronics Initiative, sustainability prerequisites for batteries, and innovative approaches in the textile sector. Furthermore, the action plan emphasises consumer empowerment, aiming to fortify their market position, notably through the 'Right to Repair' initiative.

26 | Ibid.
27 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: A New Industrial Strategy for Europe, COM/2020/102 final.

In more specific terms, this action has spawned several distinct initiatives that have subsequently been converted into legislation, policies, or strategies. These encompass the Circular Economy Action Plan, promulgated concurrently with this strategy, inclusive of a new sustainable product policy framework, a New Regulatory Framework for Sustainable Batteries, an EU Strategy for Textiles, the Circular Electronics Initiative, and measures to enable consumers to assume a proactive role in the circular economy through enhanced product information and fortified consumer rights.

Besides the aforementioned section of the document that pertains to the circular economy, the remainder of the text includes only a few mentions of the circular economy, which are primarily cursory remarks. For instance, the first and second chapters briefly mention the circular approach and industry, yet they do not elaborate further on this topic. Specifically, in Chapter 3.3. (Supporting Industry Towards Climate Neutrality), the text states: '*The European Green Deal sets the objective of creating new markets for climate-neutral and circular products, such as steel, cement, and basic chemicals*'. Subsequently, the focus shifts more towards sustainability rather than circularity. While sustainability and circularity are interconnected, they are not synonymous. The Commission appears to conflate these terms at certain points in the document.

In addition to the New Industrial Strategy for Europe, several other policies, which at least in part target circularity, include the EU Chemicals Strategy for Sustainability,[28] the EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil',[29] and measures fostering a sustainable blue economy within the EU,[30] among others. Notably, the remainder of the policies, actions, and initiatives are proposed under the New Circular Economy Action Plan.

2.1.3. New Circular Economy Action Plan

In March 2022, the Commission proposed a successor to the 2015 EU action plan for the circular economy – the New Circular Economy Action Plan (CEAP). Adopted as part of the Green Deal, this plan seeks to reduce the pressure on natural resources, contributing to sustainable development and job creation. The Commission notes that this transition is essential for meeting the EU's 2050 climate neutrality goal and addressing biodiversity loss.

The CEAP outlines various measures covering the entire product lifecycle. It focuses on product design, supports circular economy practices, promotes sustainable consumption, and aims to decrease waste while keeping resources within the EU economy for as long as possible. In essence, it includes objectives to

28 | European Commission 2020
29 | European Commission 2021a
30 | European Commission 2021b

make sustainable products standard in the EU; empower consumers and public buyers; concentrate on sectors with high resource use and potential for circularity like electronics, ICT, batteries, vehicles, packaging, plastics, textiles, construction, buildings, food, water, and nutrients; reduce waste; support circularity for people, regions, and cities; and lead international efforts on the circular economy.[31]

These overarching goals are translated into 35 specific actions covering areas such as a sustainable product policy framework, key product value chains, and reducing waste and enhancing value, alongside crosscutting actions.[32]

The CAE delineates the legislative and policy frameworks necessary for the transition to a circular economy. The second chapter emphasises the importance of a sustainable product policy framework, aiming to ensure that products in the EU market are durable, easily reusable, repairable, and recyclable, and maximally utilise recycled materials over primary raw ones. The CAEP pinpoints key sectors where targeted actions can significantly influence sustainability, including electronics and ICT, batteries and vehicles, packaging, plastics, textiles, construction, buildings, and food. For each sector, the CAEP specifies the unique challenges and delineates the EU's strategies to address them, focusing on waste reduction and maximising the lifespan of products and materials through improved waste management, curbing overconsumption, and enhancing recycling processes.

Moreover, the CAEP proposes actions transcending various sectors and product lifecycles, such as endorsing circular processes in production, bolstering the role of consumers, and aiming for reduced waste generation. The plan articulates the EU's ambition to lead globally in the circular economy and integrates circularity principles into its external policies. The final section of the CAEP provides indicators and methodologies to monitor the progress of this transition, constituting essential tools to gauge the effectiveness of implemented measures and the EU's trajectory towards complete circularity.

Since the introduction of the CEAP, various new strategies, initiatives, and legal measures have been proposed; these include the following: a regulation on sustainable batteries, updates to rules on persistent organic pollutants (POPs) in waste, new regulations for waste shipments, the Ecodesign for Sustainable Products Regulation, an EU strategy for sustainable and circular textiles, a revised Construction Products Regulation, initiatives to support consumers in the green transition, revisions to the Industrial Emissions Directive and EU rules on Packaging and Packaging Waste, directives on green claims, common rules to encourage repair of goods, and a regulation to prevent pellet losses and reduce microplastics pollution.[33]

31 | European Commission 2024
32 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A New Circular Economy Action Plan For a cleaner and more competitive Europe, COM/2020/98 final.
33 | European Commission 2024

In 2023, the Commission published a revision of the Circular Economy Monitoring Framework, marking a critical stride towards a more circular economy. This revision highlights that, although certain measures have been implemented, the anticipated shifts have not entirely materialised. Specifically, the rate of secondary material usage has not escalated as expected and packaging waste volumes continue to rise, indicating that the economy retains a predominantly linear character. Moreover, despite advancements in resource efficiency within production, the consumption of raw materials remains substantially high. On a positive note, these efficiency improvements have led to a 25% reduction in greenhouse gas emissions. Regrettably, this progress is somewhat offset by a 4% increase in the carbon footprint attributed to overconsumption.[34]

2.2. Proposed and Adopted Legislation

Following the initial Action Plan for the Circular Economy and the introduction of the Circular Economy Action Plan (CAEP), the Commission has tabled a series of proposals and amendments to directives and regulations aimed at accelerating the transition to a circular economy.

Under the auspices of the CAEP, these substantial legislative measures have been enacted or are currently in the proposal stage:

Notably, a comprehensive new regulation on batteries has superseded the previous directive, Regulation (EU) 2023/1542 concerning batteries and waste batteries.[35] The Commission published new delegated regulations, thus amending Regulation (EU) 2019/1021 on POPs.[36]

Alongside existing legislation, numerous proposals for new legislative measures are currently in the adoption process.[37] Several of these proposals are pivotal to advancing waste management and recycling efforts. For instance, there is a forthcoming regulation on waste shipments, particularly targeting textile shipments.[38] Additionally, the Commission has proposed a new regulation on eco-design for sustainable products, intended to supersede the current eco-design directive and establish a comprehensive framework for eco-design requirements inclusive of textiles.[39] This transition from directive to regulation reflects a broader

34 | Directorate-General for Environment 2023.
35 | Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, OJ 2023 L 191.
36 | Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on POPs, OJ 2019 L 169.
37 | In the legislative process at the time of publishing this article.
38 | Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056, COM/2021/709 final.
39 | Proposal for a Regulation of the European Parliament and of the Council, establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, COM/2022/142 final.

trend within EU legislation, further exemplified by the proposed packaging and packaging waste regulation,[40] which has three core objectives: diminishing packaging waste, enhancing recycling efforts, and curtailing the demand for primary resources, while fostering a market for secondary materials. Furthermore, a proposal is on the table to establish harmonised conditions for the marketing of construction products.[41] Another proposal with an industrial focus pertains to industrial emissions,[42] and the final proposal under discussion seeks to regulate plastic pellets.[43]

One particular proposal that notably emphasises consumer interests is the proposed directive aimed at empowering consumers in the green transition, offering enhanced protection against unfair practices and improved information.[44] This proposed directive seeks to amend both the Consumer Rights Directive[45] and the Unfair Commercial Practices Directive.[46] Additionally, this directive is further supported by a complementary proposal—the Green Claims Directive, which aims to ensure accurate environmental claims.[47] The final proposal focusing on consumer rights pertains to the Right to Repair Directive, advocating for consumers' ability to repair their products.[48]

It is evident from this analysis of EU policies and legislation on the circular economy that the EU is progressing towards embracing a circular economy model.

40 | Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC, COM/2022/677 final.

41 | Proposal for a Regulation of the European Parliament and of the Council, laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020, and repealing Regulation (EU) 305/2011, COM/2022/144 final.

42 | Proposal for a Directive of the European Parliament and of the Council, amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, COM/2022/156 final/3.

43 | Proposal for a Regulation of the European Parliament and of the Council on preventing plastic pellet losses to reduce microplastic pollution, COM/2023/645 final.

44 | Proposal for a Directive of the European Parliament and of the Council, amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, COM/2022/143 final.

45 | Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ 2011 L 304.

46 | Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC and Directives 97/7/EC, 98/27/EC, and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, OJ 2005 L 149.

47 | Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims, COM/2023/166 final.

48 | Proposal for a Directive of the European Parliament and of the Council on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828, COM/2023/155 final.

This perspective is reinforced by the findings of Hartley, van Santen, and Kircherr[49]. They not only offered several recommendations for EU policies but also highlighted the crucial role of Member States. The authors' recommendations include expanding circular procurement; further adopting circular design standards and norms at the EU level; altering taxes on circular economy-based products; creating eco-industrial parks; liberalising waste trading; initiating a circular economy marketing and promotion campaign; and establishing a global material flow accounting database.[50] Some of these recommendations are specifically targeted at Member States, such as the implementation of taxes or the creation of specialised eco-parks.

3. Circularity in the Czech Republic

The Czech legal framework encompasses extensive regulations pertaining to waste management. Nonetheless, in terms of the circular economy, the legal landscape remains somewhat fragmented. The general foundation of circular economy principles is articulated across a range of policy documents, stakeholder announcements, and commentary. Conversely, specific obligations aimed at facilitating a transition towards sustainable waste management, and thereby a more circular economy, are embedded within the existing waste legislation.

3.1. Czech Policies on the Circular Economy

Czech policies form the bedrock for new waste legislation, specific initiatives, and measures. However, as the Czech Republic is an EU Member State, it is important to acknowledge that newly proposed national legislation is significantly influenced by EU directives and regulations.

The policies can be categorised into a few groups. The primary group includes policies with a direct focus on the circular economy and its enactment. The secondary group comprises policies that tangentially relate to the circular economy but with a distinct principal focus.

The first category encompasses a handful of policies and one action plan – the Strategic Framework of the Circular Economy of the Czech Republic 2040[51] – and the subsequent action plan – Action Plan Circular Czech Republic 2040 for the period 2022 – 2027,[52] and includes the SEP 2030, with an outlook to 2050,[53] the

49 | Hartley, van Santen & Kircherr 2020, 3–6.
50 | Ibid.
51 | Ministry of the Environment 2021a
52 | Ministry of the Environment 2022
53 | Ministry of the Environment 2021b

Secondary Raw Materials Policy of the Czech Republic for the period 2019–2022,[54] and the Waste Management Plan of the Czech Republic for the period 2015–2024 (the transition to a circular economy is one of the strategic objectives).[55]

The second category consists of broader policies and strategies. These documents often reference the circular economy and its necessity and potential advantages. Examples include the Strategic Framework Czech Republic 2030 (objective 9.3—Increasing energy and material efficiency of the economy), [56] raw materials policies of the Czech Republic in terms of mineral raw materials and their resources,[57] and many more policies and strategies.[58]

The State Environmental Policy 2030, with an outlook to 2050

Per the SEP formulated by the Ministry of the Environment, the Czech Republic faces notable challenges that may impede the transition to a circular economy. A primary challenge is the material intensity prevalent in the economy, which saw a 42.7% decline between 2000 and 2018 but remains above the EU average by 27.5%. Waste generation has been on the rise since 2009 (currently at 3555.7 Kg per capita), with nearly half of the municipal waste being directed to landfills. Conversely, material recovery stands at 83.4%, with 69.6% of packaging waste being effectively recovered.[59]

Embracing the circular economy is a central focus of the SEP. To achieve this, the policy outlines strategic and specific objectives that further elaborate and support this principal aim.

The SEP posits that *a circular economy guarantees efficient management of raw materials, products, and waste*. This is arguably more a statement than a tangible objective, but it can be seen more as an overarching aim than a precise target. The SEP suggests that eco-design is crucial in the transition to a circular economy owing to its role in the product lifecycle. Additionally, setting appropriate legislative frameworks for the recycling and reuse of materials is another key transition aspect.[60] Intriguingly, the SEP also notes the bioeconomy's relation to waste management and its potential to reduce greenhouse gases, though it does not clarify the connection between the circular economy and the bioeconomy.

The policy acknowledges EU and UN policies and legislation[61] and asserts that *the state administration supports a waste management hierarchy, where waste*

54 | Ministry of Industry and Trade 2019
55 | Ministry of the Environment 2014
56 | The Office of the Government 2016
57 | Ministry of Industry and Trade 2017.
58 | Chapter 3, Table 2 (Strategies, plans, policies of the Czech Republic related to the circular economy) of the SFCE of the Czech Republic 2040. Ministry of the Environment 2021a.
59 | Ministry of the Environment 2021b, 13.
60 | Ibid. 68.
61 | Ibid. 69.

prevention is preferred over material recovery and recycling, recycling over energy recovery of waste, and energy recovery of waste before disposal by landfilling.[62]

Within its strategic objectives, the SEP includes a specific goal: *The material intensity of the economy is decreasing*. It recognises the Czech Republic's heavy reliance on industrial and manufacturing processes that consume raw materials, some of which are domestically sourced. Thus, utilising secondary raw materials is considered an opportunity to reduce both domestic extraction and importation from third countries.[63]

The SEP recognises the current challenges in adopting secondary materials in Czechia due to technological limitations. Nevertheless, it advocates for enhanced support for the secondary raw materials market, encouraging sustainable public procurement, exploring tax reductions for recycling activities, and reassessing taxes and fees on primary or low-quality materials.[64] Essentially, Czechia is to be encouraged to favour the use of secondary raw materials where feasible.

The second specific objective – *Waste prevention efforts are maximised* – is closely linked with extended producer responsibility and eco-labelling. However, this section of the SEP suggests a shift in the environmental burden from the state to consumers and their choices. It notes that eco-labelled products are not widely sought by Czech consumers, who, owing to targeted marketing strategies promoting fast fashion and oversized packaging, often struggle to make environmentally conscious decisions.[65]

Another concern is consumer packaging and packaging used in transport given the significant amount of waste generated. Additionally, the reduction of food waste is highlighted as a priority.[66]

The specific objective outlines several measures for adoption. These include the following: limiting food waste through increased use of gastro-waste; prioritising reusable packaging and packaging-free retail options; bolstering the infrastructure for processing and using secondary raw materials; encouraging consumer and industry interest in recycled products by expanding the range of certified products and services (eco-labelling); advocating for responsible public procurement across all areas of public administration; promoting low-waste and innovative production technologies; and focusing on processes that replace primary raw materials with secondary ones.[67]

The final specific objective for transitioning to a circular economy is *The waste management hierarchy is fully observed*. The objective is primarily focusing on reducing or ceasing waste generation. Despite high recycling rates, recovered

62 | Ibid. 68.
63 | Ibid. 69.
64 | Ibid.
65 | Ibid. 70.
66 | Ibid. 71.
67 | Ibid. 71.

material remains insufficient. The policy highlights construction waste as a notable source of waste, much of which does not re-enter the production cycle, presenting a significant challenge as it constitutes the largest share of waste streams.[68]

Landfilling also represents a major issue, with nearly half of the waste ending up in landfills. This situation presents a substantial opportunity to enhance recycling processes and material recovery within the Czech Republic, which would aid in meeting EU legislative targets (limiting municipal waste landfilling to no more than 10% by 2035).[69]

To meet these specific objectives, various measures are proposed, such as increasing municipal waste material recovery; reducing municipal waste production; encouraging farmers to utilise compost from biodegradable waste; advocating for energy recovery from non-recyclable waste in line with the waste management hierarchy and comprehensive environmental protection; establishing environmentally effective infrastructure and networks for waste conversion and processing; and increasing landfilling fees in accordance with the principles and goals of the waste management hierarchy.[70]

Waste Management Plan of the Czech Republic for the period 2015–2024

The plan contains several strategic aims pertaining to the circular economy. These include the prevention of waste and decreases in waste production, the sustainable development of society, and a transition to a circular economy. One of the supportive measures of the shift to a circular economy is to reduce landfilling and increase the reuse and recycling of waste. Therefore, there is a pressure on Member States to limit and ultimately ban landfilling (see below).

The plan sets a goal of a gradual decrease over the years in the landfilling of communal waste from the current level of 46% of all communal waste being landfilled[71] to zero or close to zero. However, there appears to be a discrepancy in the official numbers. For example, the Waste Management Plan states that 45% of all communal waste was landfilled in 2016, but Eurostat claims that it was 50%.[72] This difference can be found in the figures for every year beginning from 2009. Of course, this might stem from the use of different calculation methods by each institution, yielding different numbers. The issue is that the generation of communal waste has been gradually increasing over the years and will continue increasing in the future,[73] which will place recycling efforts (and Czechia) in a difficult position

68 | Ibid. 72.
69 | Ibid. 72.
70 | Ibid. 73.
71 | Ministry of the Environment 2014, 19.
72 | Vilamova et al. 2019, 369.
73 | Ministry of the Environment 2014, 49.

because it will be necessary to maximise recycling efforts to ensure compliance with EU legislation on landfilling.

On a positive note, Czechia is on the right track in its goals for package recycling and reuse of 65% and 70%, respectively, in 2019. The final percentages were 71.5% and 75.5%.[74] This positive trend is acknowledged by historic numbers.[75]

Secondary Raw Materials Policy of the Czech Republic for the period 2019–2022 (updated July 2019)

The Secondary Raw Materials Policy (SRMP), devised by the Ministry of Industry and Trade and revised in 2019, aligns with EU circular economy policies and targets 10 sources of secondary materials: metals, paper, plastics, glass, construction and demolition materials, by-products of energy production, end-of-life vehicles, waste electrical and electronic equipment, used tires and waste rubber, and discarded batteries and accumulators.[76] For each category, the SRMP identifies potential measures to enhance circularity rates.

Additionally, the policy highlights promising materials for future circular economy applications. Textiles, for example, represent a significant opportunity; almost 90% of textile waste is currently unutilised and holds potential for use in the textile, construction, or manufacturing industries.[77] Other promising sectors include mining waste and critical raw materials from used electronic devices and other electronic waste;[78] recovering the latter in particular could reduce reliance on imports and associated costs, and achieving self-sufficiency in this area could also lessen financial support to regimes in extracting countries. Lastly, the policy considers the bioeconomy, primarily focusing on reducing the consumption of primary resources, an area where the bioeconomy can significantly contribute.[79]

The SRMP outlines five strategic objectives aimed at facilitating the transition to a circular economy[80]: (1) Increase Self-Sufficiency: Boost the Czech Republic's ability to rely on its own raw material sources by substituting primary resources with secondary alternatives. (2) Support Innovation and Development: Foster innovation and nurture the growth of the circular economy within the business sector. (3) Promote the Use of Secondary Raw Materials: Champion the adoption of secondary raw materials to decrease the material and energy intensity of industrial production. (4) Intensively Support Education and Awareness: Vigorously enhance education and raise awareness regarding the circular economy. (5) Update

74 | Ibid. 27.
75 | Vilamova et al. 2019, 369.
76 | Ministry of Industry and Trade 2019, 25.
77 | Ibid. 50.
78 | Ibid. 51.
79 | Ibid. 52.
80 | Ibid. 53.

Statistical Findings: Consistently refresh statistical data related to secondary raw materials to effectively track and evaluate the advances in the circular economy.

Each strategic objective is underpinned by specific aims. Additionally, the policy delineates particular legal instruments designated to actualise these specific objectives.[81]

Strategic Framework of the Circular Economy of the Czech Republic 2040 and Action Plan Circular Czech Republic 2040 for the period 2022–2027

In December 2021, the Czech Government ratified the Circular Czech Republic 2040 SFCE, devised by the Ministry of the Environment. Noteworthily, the framework was formulated based on an OECD analysis (Towards a national strategic framework for the circular economy in the Czech Republic[82]) with assistance from The Directorate-General for Structural Reform Support (DG Reform)

This framework represents the Czech Republic's inaugural comprehensive strategy for the circular economy. Its objective is to sustain the value of products, materials, and resources within the economic cycle for an extended period and reintegrate them into the production cycle at the end of their lifecycle while working to minimise waste generation.

The vision of Circular Czech Republic is to cultivate a society where the circular economy yields significant environmental, economic, and social advantages. Circular Czech Republic 2040 aims to bolster the economy's competitiveness and technological sophistication, enhance raw material supply security and resilience to external shocks, foster a sustainable societal framework, and generate new employment opportunities.

The SFCE delineates three primary categories, which are subdivided into 10 focal areas: Life cycle/value chains (Products and design, Consumption and consumers; Waste management), Sectors/systems (Industry, raw materials, construction, energy; Bioeconomy and food; Circular cities and infrastructure; Water), and Horizontal initiatives (Research, development, and innovation; Education and knowledge; Economic instruments).[83]

Essential points in the SFCE introduce measures and initiatives aimed at transitioning the Czech Republic to a more circular economy:

Enhancing incentives for designing and manufacturing circular products; increasing emphasis on consumers, who play a pivotal role in preventing waste and can be motivated to choose more circular products; sharpening the focus of waste management on waste prevention and bolstering recycling rates; realising the potential of the bioeconomy to advance a circular economy; leveraging the

81 | Ibid. Chapter 9.
82 | OECD 2021.
83 | Ministry of the Environment 2021a, 45.

circular economy's ability to diminish landfill use and promote secondary raw materials; strengthening the synergy between research, innovation, digitisation, and the shift to a circular economy; prioritising effective education and knowledge dissemination to quicken the transition to a circular economy; implementing circular water management practices; and encouraging cities and municipalities to become hubs for circular solutions and incorporate secondary raw materials in infrastructure projects. [84]

The Action Plan Circular Czech Republic 2040 for 2022–2027 (APC), as per the Environmental Implementation Review 2022 Country Report—Czechia—is a much-anticipated document actualising the SFCE.[85] The APC outlines strategies for attaining the strategic and specific objectives and the types of measures stipulated in the SFCE. It details selected measures across 10 focal areas from the SFCE in the form of activity cards to be executed over the next six years, focusing on the development of the Czech Republic's circular economy.[86]

The APC's activities and tasks concentrate on product design, production, consumption phases, and horizontal measures related to the product life cycle, research, innovation, digitisation, education, knowledge and awareness in the circular economy, economic instruments, the bioeconomy and food, industry, raw materials, and construction. It also addresses challenges in plastics, textiles, and municipal waste management.[87] Each activity outlines specific tasks, the responsible ministry, funding sources, and deadlines.[88]

3.2. Specific Legal Instruments for the Promotion of Circularity in Czechia

As highlighted in earlier sections, the entire waste management legal framework is extensively harmonised and, in certain aspects, even unified. Additionally, Czechia has not been particularly proactive in terms of environmental ambitions and has tended to adopt EU legislation with minimal zeal. Consequently, the objectives, goals, and targets introducing minimum standards in EU legislation are typically mirrored in the Czech legislative approach.

The principal legislative document in Czechia regarding waste management is Act No. 541/2020 Coll., on waste (Waste Act). In its introductory section, the Act declares its aim to accomplish certain objectives pertinent to the circular

84 | Ibid. 6–11.
85 | Part 1, Chapter 1. Commission Staff Working Document: Environmental Implementation Review 2022 Country Report – CZECHIA Accompanying the document communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions Environmental Implementation Review 2022: Turning the tide through environmental compliance, SWD/2022/264 final.
86 | Ministry of the Environment 2022, 3.
87 | Ibid. 3–4.
88 | Ibid. Annex No. 6 – Action cards.

economy.[89] The objectives are the direct implementation of Article 11(2)(c-e) of the WFD: *"by 2025/2030/2035, the preparing for reuse and the recycling of municipal waste shall be increased to a minimum of 55/60/65% by weight"*, and of Article 5(5) of the landfill directive: *"Member States shall take the necessary measures to ensure that by 2035 the amount of municipal waste landfilled is reduced to 10% or less of the total amount of municipal waste generated (by weight)"*.

Moreover, the Act incorporates a waste management hierarchy, a matter fundamental to the circular economy, as outlined in Article 4(1) of the WFD.[90]

The waste management hierarchy is one of the core principles stated in waste legislation. The first step of the hierarchy is the prevention of waste. This principle is further reinforced in S. 12(1) of the Waste Act, which states, "*Everyone is required to prevent, and to reduce the quantity and hazardous properties of waste in their activities"*.

Although this obligation is adhered to within various industry sectors,[91] the situation differs within the consumer sector. Consumers typically rely on producers and distributors to introduce eco-friendly or sustainable products, and even then, their motivation is primarily driven by prices. The issue at hand is how the EU and Member States can motivate consumers to behave more in line with the waste management hierarchy. This could be achieved through various motivational instruments, especially economic ones, such as a levy on fast fashion products,[92] or by imposing additional regulatory requirements on producers and distributors.

Another direct implementation (Article 11(5) of the WFD) pertains to the reuse and recycling of municipal waste. However, the Waste Act sets a higher final target: *"The municipality is obliged to ensure that separately collected recyclable components of municipal waste account for at least 60% in the calendar year 2025 and subsequent years, at least 65% in the calendar year 2030 and subsequent years, and at least 70% in the calendar year 2035 and subsequent years of the total amount of municipal waste generated in that calendar year'*.[93] Furthermore, *'municipalities are obliged to designate sites for the separate collection of at least hazardous waste, paper, plastics, glass, metals, bio-waste, edible oils, fats, and, from 1 January 2025, textiles"*.[94]

Another example of adhering to the waste hierarchy, specifically the preventive step,[95] is the requirement for municipalities to provide sites for bio-waste (composting sites). This requirement will help reduce the amount of waste sent to landfills. Bio-waste can be treated as biodegradable municipal waste and used as

89 | S. 1(1) of the Waste Act.
90 | Ibid. S. 3(2).
91 | Snopková 2022, 561.
92 | Louis 2024.
93 | S. 59(3) of the Waste Act.
94 | Ibid. S. 59(2).
95 | Snopková 2022, 561.

a resource in biogas stations, thereby aiding Czechia in achieving more renewable energy sources.[96]

The waste legal framework is supplemented by specific acts that govern individual waste streams, including Act No. 542/2020 Coll., on end-of-life products; Act No. 243/2022 Coll., on reducing the environmental impact of selected plastic products (the Single-use Plastics Act); and Act No. 477/2001 Coll., on packaging waste.

The End-of-life Products Act oversees particular streams of used electrical equipment, batteries or accumulators, tyres, and end-of-life vehicles. This Act enacts relevant EU legislation and introduces extended producer responsibility, encompassing obligations like take-back systems and awareness-raising activities.[97] The core concept is that consumers should have the opportunity to return used products at no cost and have access to numerous take-back locations.

Furthermore, this Act prescribes specific collection targets for used products.[98] Set for the years 2022 and beyond, these include a 65% target for all waste electronic equipment, 45% for portable waste batteries and accumulators, and 80% for all tyres.

Different categories of waste electronic equipment[99] and tyres[100] have varied reuse rates. Additionally, the Act specifies minimum recycling rates for batteries and accumulators.[101]

The Packaging Waste Act, implementing the Packaging Directive, also establishes precise targets for recycling and reuse. It categorises several types of packaging waste: paper and cardboard, glass, plastic, iron, aluminium, wood, and consumer packaging. Each category has individual recycling and reuse targets that incrementally rise each year.[102] Like the End-of-life Products Act, the Packaging Waste Act delineates extended producer responsibility.

The final Act encompassed within the waste legislative framework is the Single-use Plastics Act, which represents the transposition of the Single-use Plastics Directive and refrains from setting forth any additional or more stringent targets or objectives.

Economic instruments

In addition to administrative legal instruments that establish specific targets and objectives, Czech legislation employs economic tools as incentives. The landfill fee is a crucial disincentive in waste management.[103] The Waste Act categorises waste

96 | Ibid. 562 and 565.
97 | End-of-life Products Act, S. 12 *et seq*.
98 | Ibid. Annex No. 2.
99 | Ibid. Annex No. 3.
100 | Ibid. Annex No. 7.
101 | Ibid. Annex No. 5.
102 | Packaging Waste Act, Annex No. 3.
103 | Waste Act, S. 103 *et seq*.

into several types: recoverable, residual, hazardous, selected technological, and redevelopment.[104] The fee is set to progressively increase until 2030 for recoverable waste (approximately € 75 per metric ton) and residual waste (about € 32.4 per metric ton). For other waste types, the fee remains constant. However, the fee's effectiveness is somewhat limited owing to statutory exemptions for municipalities until 2029,[105] where if the municipal waste volume remains constant, the municipality pays € 20.3 per metric ton. Another fiscal tool aimed at reducing landfill use and encouraging recycling, thereby facilitating the shift to a circular economy, is the municipal waste management system, which allows municipalities to motivate residents to recycle more.[106]

Additionally, a financial incentive is linked to the ecological disposal of end-of-life vehicles. Vehicle scrapyard operators may apply for a grant administered by the National Programme Environment for the ecological disposal of car wrecks.[107] However, there is no legal entitlement to the grant; it is awarded at the Programme's discretion. Nonetheless, operators are required to accept end-of-life vehicles at no charge, with some even offering a reward for leaving the scrap vehicle with them.[108]

However, there is no significant VAT reduction for circular material or conversely a higher VAT for linear products.[109]

The Supreme Audit Office has noted that despite EU funds contributing to a reduction in landfilled waste, waste production has not decreased, and landfilling still accounts for nearly 48% of waste management, with no marked improvement in waste recycling and recovery.[110]

This challenge indicates that landfill fees are not set at a level sufficient to motivate waste producers, either municipalities or private entities. The fees should be set at a level that strongly incentivises producers to avoid landfilling. Nonetheless, this negative economic instrument should be accompanied by a positive one, particularly for municipalities, rewarding a high percentage of recycled or reused materials in their respective areas.

Associated acts

Elements of circularity are present in various specific or sectoral legislative acts, such as Act No. 134/2016 Coll., on public procurement. Public entities have the option to engage in environmentally responsible procurement. The Act stipulates

104 | Ibid. Annex No. 9.
105 | Waste Act, S. 157.
106 | Ibid. S. 59.
107 | The National Programme Environment 2024
108 | S. 108(1)(b) of the End-of-life Products Act.
109 | Hartley, van Santen & Kircherr 2020, 4.
110 | The Supreme Audit Office 2022.

that if the contracting authority opts for this approach, it must consider aspects like the environmental impact; sustainable development; and the life cycle of the supply, service, or work, among other environmentally pertinent factors associated with the public contract.[111] While the Act does not directly reference the circular economy or waste generation, it targets sustainable development and life cycle considerations fundamental to the circular economy concept and is in line with general recommendations for the circular economy shift.[112]

A primary challenge in Czechia today involves the reuse of construction waste materials. Given the significantly greater volume of waste from construction than from other streams, new projects should be designed with circularity principles in mind. This encompasses using secondary materials during construction and planning for the dismantling, deconstruction, and subsequent reuse or recycling of materials (as also indicated in Regulation (EU) No. 305/2011[113]).[114] However, the practice of selective demolition is not entrenched in current legislation, leaving it to the building authority to set specific conditions in the construction/demolition permit.

In 2018, the Ministry of the Environment issued methodological instructions for the management and disposal of construction and demolition waste.[115] The guidance notes that inert construction waste must be sorted and then processed. It recommends categorising materials like concrete and reinforced concrete, brickwork (containing bricks, mortar, or concrete residues), ceramics, excavated soil and aggregate, asphalt bushes, and milled asphalt layers.[116]

While not all construction waste is reusable, recovered material can be used in accordance with Czech Technical Norms (ČSN EN), ensuring the legal use of secondary raw materials in construction projects.[117]

Nevertheless, the decision to use reclaimed construction material remains at the discretion of the builder. Moreover, any reused material must meet the product requirements (under Regulation (EU) No. 305/2011 or government regulation No. 163/2002 Coll.) to be commercially viable.[118] This requirement could create administrative hurdles for potential traders and market entry.

Construction or demolition of buildings is a practical process in which reused or recovered materials can be utilised (as stated above). However, Act No. 283/2021 Coll., the Building Act, offers an additional process that can help bolster the shift

111 | Public Procurement Act, S. 28(1)(q).
112 | Hartley, van Santen & Kircherr 2020, 4.
113 | Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, OJ 2011 L 88.
114 | Skopan 2018, 44.
115 | Ministry for the Environment 2018
116 | Skopan 2018, 45.
117 | Ibid. 46.
118 | Simkova 2018, 50.

to a circular economy – spatial planning. This is also a weak point in the legal framework because, to develop a circular economy, robust infrastructure must be in place. The infrastructure can only be built if spatial plans allow it. The problem is that spatial planning is largely dependent on political consensus within municipalities. If there is no infrastructure, or if its development is subject to the whims and fancies of local politicians, it does not provide certainty for investors,[119] thus making it more challenging for the economy to shift to a more circular approach.

4. Conclusion

The EU aspires to achieve complete circularity by 2050, supported by a range of policies and legislation. Nonetheless, the primary responsibility rests with Member States, as they are tasked with introducing specific measures to facilitate the transition to a circular economy.[120]

According to Politico's 2018 ranking, Czechia appears to be progressing towards a circular economy. However, fully realising this transition may be difficult given Czechia's predominantly industrialised economy and the increasing volume of waste generation.

This article has provided a comprehensive overview of the transition to a circular economy through two analyses. The first, conducted at the EU level, focused on various policies and strategies implemented around the time of the Green Deal's adoption. The current and leading strategy is the New Circular Economy Action Plan, adopted in 2022, forming the foundation for future legislation. The EU's commitment to shifting from a linear to a circular economy is profound, evident in the legal transition from directives to regulations, aiming for uniformity across the EU. EU waste legislation also endeavours to encompass a wide array of waste streams, promoting circularity in these sectors.

In Czechia, multiple strategic documents and policies address the circular economy. The SEP 2030, looking ahead to 2050, provides a fundamental framework incorporating circularity elements. A pivotal document is the Secondary Raw Materials Policy of the Czech Republic for 2019–2022. Given the substantial challenges Czechia faces in construction waste generation, recycling, and potential reuse, this policy introduces specific measures to encourage the use of secondary raw materials.[121] The primary policy document is the SFCE of the Czech Republic 2040, complemented by the APC. This framework's key objectives include enhancing waste management, positively impacting national climate and other environmental targets, enhancing material supply security, reducing reliance on non-EU

119 | Snopková 2022, 566
120 | For the comparative regulation of new and old member states, see Hornyák-Lindt 2023, 31–48.
121 | For the distinction between reuse and recycling, see Olajos 2016, 91–102.

material sources, boosting business competitiveness, and decreasing fossil fuel consumption.

Various Czech policies and EU legislations have been transposed and are currently enacted through several acts: Act No. 541/2020 Coll., on waste; Act No. 542/2020 Coll., on end-of-life products; Act No. 243/2022 Coll., on reducing the environmental impact of selected plastic products (Single-use Plastics Act); and Act No. 477/2001 Coll., on packaging waste. Additionally, circularity aspects are integrated into construction and public procurement legislation.

While it appears that the Czech Republic is steadily advancing towards a circular economy (notably, in the last decade, the volume of landfilled waste has decreased and the recycling and reuse of products have increased), the progression is constrained by several factors. Legislatively, this includes an insufficient application of economic tools (particularly landfill fees) and a general hesitancy among consumers to pay more for sustainable products.[122]

The article aimed to determine whether the Czech Republic is on track to fulfil all of the EU's secondary legislative obligations related to transitioning to a circular economy and posed the research question: Is Czechia on track to transform its linear economy into a circular economy in accordance with EU legislation? The answer to the question is yes. However, a complete shift to a circular economy is still not in sight, and our analysis and comparison of EU and Czech legislation shows that Czechia has a long way to go.

In particular, Czechia has adopted all necessary EU legislation and established national policies to aid this transition. Nevertheless, despite policies and legislation that predate the Green Deal and New Circular Economy Action Plan, overall advances have been modest. Expectations are optimistic regarding recent implementations of policies and legislation, yet specific outcomes and data have yet to be reported. Several issues are delaying a rapid shift to a circular economy, including the gradual increase in waste generation, insufficient infrastructure for recycling and reuse of materials, inadequately set landfill fees, and most importantly, consumers' reluctance to pay higher prices for more sustainable products. These setbacks collectively make the complete transition to a circular economy a challenging endeavour.

In summary, the shift towards a circular economy promises long-term advantages (such as increased self-sufficiency, reduced greenhouse gases, and job creation). Nonetheless, the EU's role in this transition remains fundamental, with its new legislative measures compelling manufacturers to consider circularity in their products (e.g. design, common chargers, right to repair) and urging Member States to reassess their national waste policies to align more closely with circularity principles.

122 | On Polish legislation on environmental protection, including the circular economy, see Ledwon 2023, 100–114.

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Vojtěch VOMÁČKA[1]

Desperate, Determined, Dumped: Fight against illegal waste treatment in the Czech Republic[2]

Abstract

This article delves into the Czech Republic's intricate legal framework and ongoing struggle in combating the pernicious issue of illegal waste dumping. From outlining the most pressing challenges plaguing the nation's waste management system, emphasising the burgeoning quantity of waste imported from other countries, to dissecting the cornerstone legislative instruments enshrined within the 2020 Waste Act, it describes specific instances of illicit waste management practices, focusing on cross-border waste shipments – a notorious breeding ground for such transgressions. It explores the modus operandi of these perpetrators, the requisite inspection protocols, and pertinent case laws, highlighting the disconcertingly low number of criminal prosecutions stemming from illegal waste dumping. However, a glimmer of hope emerges as the government acknowledges the gravity of the situation and embarks on initiatives to foster enhanced cooperation between administrative and criminal authorities.
Keywords: Czech Republic, waste management, transboundary shipment, administrative sanctions, criminal proceedings, inspections

1. Introduction

The spectre of inadequate waste management looms large over the Czech Republic, with excessive reliance on landfilling of municipal waste posing the most critical challenge. In its 2023 early warning report, the European Commission assessed the nation's performance in waste management and its trajectory toward achieving the ambitious recycling targets set for 2025 and the crucial landfill objective set for

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2035. Although the report acknowledged that the Czech Republic is demonstrably on track to meet the goal of 55% preparation for reuse and recycling of municipal waste by 2025, alongside a laudable 65% recycling target for all packaging waste, concerns were expressed over the material-specific target for aluminium. More concerning was the nation's significant distance from achieving the objective of limiting municipal waste landfilling to a maximum of 10% by 2035.[3]

Illegal waste dumping is an issue involving a distinct set of complexities. As subsequent sections will elucidate, this domain is rife with instances of malfeasance perpetrated by industrial operators and the abhorrent practice of waste disposal without the requisite permits. Particularly disconcerting is the growing influx of waste from foreign sources into the Czech Republic. To illustrate this point, data from 2021 reveal an alarming statistic – over 166 thousand tonnes of plastic waste were imported during that year. This trend indicates a worrisome rise in waste imports, while exports concurrently show a concerning decline.[4]

The increasing influx of waste into the Czech Republic could be attributed to multifaceted reasons. One of the significant contributing factors is the transformation of plastic waste into a problematic material following the initial restrictions and subsequent complete ban on its import by China.[5] Notably, the risk associated with waste imports is demonstrably lower in cases where waste can be incinerated. Such waste is primarily imported for use in cement plants equipped with permits for co-incineration; these facilities are obligated to adhere to stringent environmental guidelines governing waste incineration practices. Notwithstanding, the Czech Republic currently lacks the necessary infrastructure for the effective recovery of, for instance, discarded plastic materials, necessitating continued reliance on landfilling for this particular waste stream. Consequently, indigenous plastic waste is inevitably pushed toward landfills, resulting in a disproportionately high quantity of plastic disposed in them due to the influx of imported waste. While landfill fees are demonstrably on the rise, they remain significantly lower compared to those levied in neighbouring countries and elsewhere within the European Union.

Furthermore, 'sham recovery' practices posing enormous risk have emerged in recent times. In such nefarious schemes, waste is ostensibly imported for recovery purposes, but in actuality, it is diverted to clandestine warehouses for backfilling or for directly depositing it in landfills. It is highly likely that the imported waste remains entirely unutilised within the Czech Republic. Even more alarming is the possibility that the Czech Republic is becoming, or has already become, a prime target for organised crime groups seeking to import waste for the sole purpose of dumping or further illicit disposal.[6]

3 | European Commission, 2023
4 | Ritchie, 2022
5 | See Trang et al. 2021
6 | See Government of the Czech Republic. Resolution of 5 October 2020 No. 984, Strategy for the Prevention and Combating of Waste Crime for the period 2021-2023.

In this article, a comprehensive exploration of the legal framework governing waste management within the Czech Republic is conducted, dissecting the (a) complexities surrounding illegal waste management practices, (b) implementation of robust control mechanisms, and (c) imposition of effective sanctions.

2. Legislative framework

The legislative framework governing waste management in the Czech Republic is a relatively recent introduction implemented after the political transformation of 1989. Since its inception, substantial changes have been introduced, primarily to conform to the European Union (EU) directives and to address the practical realities encountered during its application. Despite discussions and attempts in the 1990s and the early 2000s,[7] a unified code of environmental law is yet to be adopted. Consequently, environmental regulations remain fragmented, dispersed across numerous legislative instruments, including those specific to waste management.

The legislative landscape for waste management has been progressively shaped by the enactment of four distinct Waste Acts – in 1991, 1997, 2001, and most recently, in 2020. These core legislative instruments are bolstered by the enforcement of government regulations and decrees issued by the Ministry of the Environment. Collectively, they establish the fundamental principles and obligations pertaining to waste treatment.

The nascent Waste Act of 1991 (Act No. 238/1991 Coll.) laid the foundation for the legal regime governing waste management within the Czech Republic (then Czechoslovakia). Its adoption coincided with the initial phase of development of Czech environmental law, a period marked by a rapid succession of key legislations between 1991 and 1992. This era witnessed the introduction of the Environment Act (No. 17/1992 Coll.), the Nature and Landscape Protection Act (No. 114/1992 Coll.), and the Air Protection Act (No. 309/1991 Coll.). Notably, this period also saw the adoption of a new Constitution that prominently emphasised environmental protection.[8]

The 1997 Waste Act (Act No. 125/1997 Coll.) superseded the 1991 Act and coincided with the enactment of other significant statutes, including the Act on Access to Environmental Information (Act No. 123/1998 Coll.), the Forest Act (Act No. 289/1995 Coll.), and the Act on Protection of the Ozone Layer (Act No. 86/1995 Coll.), among others.[9] However, the 1997 Act proved to have shortcomings that hampered its effectiveness in practice. These flaws were primarily due the absence of robust

7 | See Kružíková & Petržílek, 2005
8 | See Židek, 2021
9 | See Kružíková & Mezřický, 2005, 209.

economic instruments for municipal waste management and the omission of waste management programmes as a cornerstone tool at all administrative levels. Subsequent amendments proved inadequate in addressing these fundamental issues. The 1997 Act also fell short of achieving full compatibility with the EU directives, considering that the Czech Republic aspired to join the EU at the time. While some EU requirements, such as waste prevention and prioritising waste recovery over disposal, were addressed superficially, others, such as permissions for waste management facilities, were inadequately incorporated. Besides, the Act neglected to enshrine certain crucial EU directives, including those concerning waste management plans, segregated treatment of specific waste streams, and mandatory, regular inspection of waste handlers.

The year 2001 marked a turning point with a new Waste Act (Act No. 185/2001 Coll.) introduced alongside the regulations implemented. This legislative overhaul aimed to achieve full harmonisation with EU waste management directives. Alignments were made to complementary legislations in related areas, including air protection, public health, agriculture, chemicals, and water protection. A significant departure from prior legislation was the introduction of revised definitions for waste recovery and disposal concepts. The former, broad concept of waste disposal was replaced by the more specific and nuanced concept of waste treatment, encompassing both recovery and disposal operations. The adoption of a new waste classification system, aligned with the EU waste catalogue, emerged as a critical unifying element in the national waste management framework.

Prior to the 2001 Waste Act, the Czech Republic lacked the requisite professional infrastructure to support the administration of waste management practices at a level comparable to that of developed nations. To address this gap, the introduction of the new Act brought in increased staffing within various institutions, including the Ministry of Health, State Health Institute, regional health stations tasked with public health surveillance and risk assessment, regional and district administrative bodies, and specialist and information centres like the Czech Ecological Institute, Research Institute of Water Management, and the Czech Hydrometeorological Institute. Notably, the Czech Environmental Inspectorate responsible for waste management saw a significant increase in personnel.

The year 2001 witnessed a confluence of significant legislative developments with wider environmental implications. The Act on Environmental Impact Assessment (Act No. 100/2001 Coll.) supplanted the preceding regulation (Act No. 244/1992 Coll.), consolidating the EU requirements for conducting environmental impact assessments (EIAs) and strategic environmental assessments within a single legislative framework. Nevertheless, the EIA process remains distinct from the permitting procedures. If an EIA is deemed necessary for a waste management project, a binding opinion is issued for the permitting procedures under the Waste Act or the integrated permit (IPPC) applicable to large industrial facilities. This process also affords participatory rights to the concerned public. In instances

where an EIA is not required, affected individuals can still participate under the general provisions for administrative participation outlined in the Administrative Code (Act No. 500/2004 Coll.). However, the latter route excludes participation by environmental non-governmental organisations.

Following the 2001 Act, the year 2002 saw the introduction of the modern Integrated Prevention and Pollution Control Act (IPPC Act, No. 76/2002 Coll.). This legislation established a single permit system for large industrial installations, consolidating individual operating permits into a single decision, encompassing air protection, waste management, and water protection concerns. The Act mandates the application of best available techniques to achieve maximum environmental protection. This legislation was amended to comply with the requirements of the 2010 Industrial Emissions Directive (2010/75/EU) and remains in force even now, after two decades. Currently, approximately 2,000 installations in the Czech Republic, including 428 waste management facilities, operate under the IPPC regime.[10]

The year 2003 ushered in administrative justice system reforms. The establishment of the Supreme Administrative Court finally fulfilled a longstanding constitutional obligation dating to 1993, when the new Constitution envisioned such a court, but its actual creation was delayed by a decade. Since administrative courts adjudicate the majority of cases related to waste management and ensure uniformity in administrative decision-making, this development represented a significant step forward in enforcing waste and environmental legislation more broadly. Furthermore, unlike civil or criminal courts, all decisions rendered by administrative courts are freely accessible online, allowing waste management facility operators to remain apprised of the evolving interpretation of relevant legal obligations.

3. The imperatives of the 2020 Waste Act

The 2001 Waste Act, burdened by successive amendments, had morphed into a convoluted and opaque legal instrument. Furthermore, it no longer harmonised with the evolving legislative and technical requirements of both the EU and the Czech Republic itself. In fact, the 2016 overhaul of the general Czech offence legislation created significant discrepancies in the area of enforcement and administrative liability.

To address these shortcomings, the Czech Republic enacted a new Waste Act (Act No. 541/2020 Coll.) in 2020, which came into force on 1 January 2021. This Act serves as the cornerstone legislation for waste management, complemented by Act No. 542/2020 Coll., governing the management of end-of-life products, and Act No.

10 | See the database of appliances: Ministry of the Environment of the Czech Republic, 2024

477/2001 Coll., which regulates packaging waste. The overarching objectives and measures for achieving them are outlined within the national Waste Management Plan and corresponding regional plans.

Concurrent with the development of the 2020 Waste Act, the Czech government formulated and adopted the Strategy for the Prevention and Combating of Waste Crime for the period 2021-2023 (2020 Strategy).[11] This strategic document defines targeted measures to prevent and combat waste-related crime, while identifying the needs of relevant stakeholders, particularly the authorities responsible for environmental law enforcement. The 2020 Strategy prioritises enhancing the capacity of these administrative bodies to address waste-related crime. Its core objectives are to a) foster closer collaboration between environmental enforcement authorities in the waste management sector; b) equip environmental law enforcement authorities with more specialised knowledge and skills pertaining to waste management issues; c) refine the Czech legal framework governing waste management; and d) raise public awareness of waste-related issues. The 2020 Strategy employs a task-oriented approach, assigning each initiative to a specific entity and establishing clear timeframes for completion of a task.

The 2020 Waste Act demonstrably prioritises the principles underpinning the circular economy to a greater extent than did its predecessor. However, it is important to note that the Act's scope excludes certain materials (such as uncontaminated soil)[12] and specific waste categories. Nevertheless, materials excluded from the Act's purview are still legally classified as waste – wastewater being a prime example. Section 4(4) of the Act establishes a specific procedure for resolving any ambiguity regarding the classification of a particular material.

The 2020 Waste Act introduces several noteworthy changes compared to the previous legislation, including: (a) Waste Management Taxes: It establishes new regulations for both landfill tax and municipal waste tax. (b) End-of-Waste Status: It defines clearer procedures for determining when waste can be reclassified as a non-waste material. (c) Permit Reviews and Time Limits: It mandates periodic reviews of permits for operating waste management facilities and may impose time limitations on such permits. (d) Waste Trading Regulations: It makes waste trading a separate activity requiring permission.

The 2020 Waste Act specifically addresses the concerning issue of illegally deposited waste, often referred to as 'black dumps'. Despite existing measures, such as camera traps, prohibition signages, and relatively harsh penalties, apprehending perpetrators remains a challenge.[13] The Act introduces a new procedure

11 | Government by Resolution No. 984 of 5 October 2020.
12 | Section 2(3) of the 2020 Waste Act.
13 | Hanák & Vodička 2024, 167.

for identifying those responsible for illegally dumped waste and ensuring its removal to a designated waste management facility.[14]

Significant changes pertaining to waste collection are implemented under this Act. Operators of waste collection facilities are now obligated to install and maintain CCTV systems for a specified period, and the regulations governing mobile waste collection have been considerably tightened. These measures are specifically designed to curb metal-related crime. Data compiled by the Czech Republic Police, Union of Towns and Municipalities, and the Railway Infrastructure Administration reveal widespread criminal activity involving the purchase of stolen metal objects as waste.[15] Frequently targeted items include commemorative plaques, religious artefacts, and public utility or industrial equipment components (e.g. mass transit infrastructure, traffic signages, public space and road fixtures, and energy, water, or sewage facilities). Despite existing prohibitions on purchasing such items from individuals, the crime rate remains stubbornly high. Mandatory CCTV recordings introduced at waste management facilities are a valuable tool for enforcement, and the recordings play a crucial role in proving the specific timeframe of waste receipt at the facility, potentially revealing discrepancies between the documented arrival date and the actual duration of waste storage on-site. Additionally, CCTV systems offer a preventative benefit, potentially enhancing security for operators of metal waste collection and processing facilities.

The Ministry of the Environment has outlined plans to implement mandatory textile waste collection starting 2025. This proposed legislation, if adopted, would require waste producers to participate in cost-sharing arrangements with municipalities for collection services. However, the current legal framework mandates only the establishment of collection points, without requiring actual recycling efforts. The proposed mandatory textile recycling initiative is part of a broader legislative discourse, encompassing the implementation of PET (polyethylene terephthalate) bottle recycling laws scheduled to come into force in 2025. This plan envisions the creation of convenient collection points, facilitating returns through retail stores, gas stations, and even online platforms.

However, implementing EU regulations concerning waste management effectively continues to be a key challenge for the Czech Republic. Deficiencies in this

14 | If a landowner becomes aware of illegal concentrated waste deposited on his or her land, he or she is obliged to notify, without undue delay, the municipal authority of the municipality with extended jurisdiction in whose administrative district the waste is deposited. Depending on the action taken by the municipal authority, the owner is then obliged to (a) secure the place where the illegal concentrated waste is located at his or her own expense against further deposition of waste, (b) allow the entry of a person authorised by the municipal authority to ensure that the pollutants do not escape into the surrounding environment, or (c) allow removal of the waste. The landowner is, therefore, not obliged to remove the waste himself. The municipal authority must try to identify the owner of the waste. See Hanák & Vodička 2024, 168–169; Kanický 2022, 46–48.

15 | See Government of the Czech Republic. Resolution of 29 July 2015 No. 611, Comprehensive solution to the problem of negative phenomena in metal waste redemption in the Czech Republic.

area have not escaped the notice of the European Commission, which has initiated and continues to pursue several infringement proceedings against the Czech Republic. Currently, five active procedures are underway, including one concerning urban wastewater treatment and another related to radioactive waste. These ongoing proceedings highlight the critical need for the Czech Republic to address shortcomings in its waste management practices and ensuring their compliance with the EU directives.[16]

4. The shadowy persistence of illegal waste dumping in the Czech Republic

Illegal waste dumping in the Czech Republic manifests in a multitude of ways. Often, seemingly minor transgressions occur within otherwise legitimate waste management facilities. These include lapses in waste sorting due to employee negligence, failure to properly register and report on waste activities, or neglect in equipping hazardous waste sites with the necessary identification sheets. Furthermore, inaccurate or incomplete data entry regarding hazardous waste shipments can further complicate the process of identifying and exposing such irregularities, especially within complex operations.

Landfills, the predominant method of waste disposal in the Czech Republic, exemplify this complexity. These facilities often function as regional hubs for comprehensive waste management, encompassing activities such as collection, sorting, storage, composting, and alternative fuel production, alongside landfilling itself. The sheer scale and multifaceted nature of these operations can make it difficult to pinpoint and address minor breaches of regulations.

The spectrum of illegal practices extends far beyond minor administrative oversights. More serious transgressions include misclassification of waste, improper labelling of hazardous materials, and even handling specific hazardous waste types without a permit. A particularly concerning area is the management of medical waste, where insufficient domestic thermal treatment capacity poses a risk. This shortage, exacerbated by the volume of waste generated during the COVID-19 pandemic, has led to a rise in the illegal handling of infectious medical waste from healthcare facilities, testing centres, and laboratories.

Financial gain serves as a significant driver for many illegal dumping practices. Operators often seek to bypass landfill or incineration fees, thereby reducing disposal and transport costs. In some instances, the motivation is simply an aversion to navigating the administrative procedures required to obtain permits for landscaping or backfilling activities from the relevant authorities.

16 | Procedure No. INFR(2016)2141, INFR(2018)2025, INFR(2022)2017, INFR(2023)2145, INFR(2023)0125.

Large-scale illegal dumping typically involves transporting waste to abandoned facilities, such as disused warehouses, agricultural buildings, or industrial sheds. These sites become repositories for the dumped waste, with no prospect of proper treatment, potentially leading to surrounding areas becoming contaminated with hazardous substances. Examples include the illegal deposit of construction and demolition waste, unauthorised landscaping practices, and large-scale backfilling activities associated with construction projects, including transport infrastructure and utility networks.

The Czech Environmental Inspectorate spearheads official efforts to combat illegal waste dumping. Their 2022 annual report[17] details a robust inspection regime, encompassing over 3,000 waste management inspections, a significant portion of which were unplanned responses to public complaints. The Inspectorate's Waste Management and Chemical Safety Unit processed over 600 complaints in a single year, leading to the initiation of proceedings for illegal activities and the issuance of sanctions. In 374 cases, the inspectors took part in inspections under the IPPC Act. Altogether, 708 proceedings for illegal activities were initiated, and 702 decisions to impose sanctions were issued. The largest number of proceedings fell under the scope of the Waste Act (398 proceedings), while 101 proceedings were initiated in the Chemicals Act. A total of 689 penalty decisions came into force in 2022. Corrective measures were imposed in seven cases. Fines imposed in 2022 reached a record high, exceeding 42 million Czech Koruna (CZK) (approximately EUR 1.7 million). The total amount of fines was 20% higher than that in 2021, but 25% more decisions were issued than in the previous year. The highest final fines imposed were CZK 2 million (approximately EUR 80,000) for breaches of the Waste Act.

The ever-evolving nature of illegal activities is pushing the official authorities to update their technologies and inspection methods. For example, in the case of some landfills, aerial surveys have been conducted by the Inspectorate using drones and detailed aerial photographs to locate and accurately measure the active area of a landfill. The aerial photographs also determine the overlapped (inactive) part of the landfill, the elevation (metres above sea level) of the landfill body for comparison with the permitted elevation marks. The data processed form an important basis for the offence proceedings.[18]

The 2020 Waste Act distributes the competence in the exercise of the state administration among several authorities: the Ministry of the Environment, the Inspectorate, customs authorities, police, regional authorities, and municipal authorities. This impacts the enforcement of legal requirements. In particular, the regional authorities control how legal entities and natural persons engaged in business comply with the provisions of legislation and decisions in all areas

17 | Czech Environmental Inspectorate 2023
18 | Ibid.

covered by the Waste Act, except in areas where the municipal authority is competent to carry out controls. However, the same competence is also vested with the Inspectorate, which acts as a general inspection body with a wide remit in environmental protection. If infringements on regulations other than waste regulations are found, the competence to carry out controls extends to, for example, building authorities or municipal authorities. As a result, individual cases can be dealt with by several different administrative authorities, or by administrative authorities and the police, provided the overlap between administrative and criminal liability is not excluded.

If all the administrative authorities are competent, they do not need to follow a hierarchy in dealing with illegal waste dumping. Arguably, a breach of law should be dealt with at the local level by an authority closest to the substantive dimension of the activity. For example, building authorities are best suited to consider demolition works or landscaping. The Inspectorate or the municipality may step in, but they both lack the relevant experience and knowledge of construction rules.

The competence of the municipalities to deal with illegal waste dumping is often disputed by the inspected entities, but as the courts have suggested, if a municipality 'has any suspicion that waste is being disposed of in violation of the Waste Act within its territorial jurisdiction, it may, of course, carry out an inspection aimed at confirming or refuting this suspicion'.[19] According to the courts, municipalities conduct inspections 'with a view to the careful exercise of waste management administration which contributes to the protection of the environment'.[20]

Similarly, when waste management is carried out following a decision issued by the building authority, the inspected parties may dispute the authority of the building authority, or, vice versa, the Inspectorate. In such cases, the courts have held that *"the building authority's inspection powers and the scope of those powers derive from the Construction Act and do not exclude the powers of other inspection bodies, provided that they are exercised within the limits of their statutory powers."*[21]

The nature of waste or waste management must in some cases be addressed by the tax authorities as well, particularly in the context of tax obligations and the conditions for granting subsidies.[22]

19 | Judgement of the SAC of 16 March 2016, No. 2 As 249/2015-36.
20 | Ibid.
21 | Judgement of the SAC of 20 November 2003, No. 5 A 73/2002-34. See also, the judgements of the SAC of 22 May 2008, No. 2 As 28/2007-94, and of 19 March 2009, No. 6 As 68/2007-74.
22 | The first category includes, for example, the judgement of 7 January 2015, No. 1 Afs 148/2014-32, in which the SAC considered a decision on the tax assessment of an entrepreneur who suspiciously reported zero stocks of unused textiles on the date of discontinuation of business activities. The entrepreneur claimed that the material of the stock had deteriorated during floods and that the stock had been stored as waste. However, according to the Court, he did not provide sufficient

Such shared and overlapping competence is not always practical and may even undermine the effective enforcement of waste management requirements. For instance, it may result in excessive burden as the administrative bodies need to notify each other and coordinate their actions. This is not an easy task. For example, no general procedure has been defined for informing law enforcement agencies about violation of law that may give rise to a suspicion that a crime has been committed, although state agencies are obliged, pursuant to Sec. 8(1) of the Criminal Code (Act No. 40/2009 Coll.), to immediately inform a public prosecutor or the police of a criminal offence.

Furthermore, shared competence seems to weaken the ability to implement and enforce the environmental liability established by the EU Directive 2004/35/EC, which has been implemented in the Czech Republic by the Environmental Liability Act (No. 167/2008 Coll.). Administrative authorities tend to follow traditional rules on administrative measures and sanctions instead of the cross-sectoral concept of environmental liability, which is completely ignored country-wide. Therefore, for example, none of the cases of illegal management of fallout or wastewater discharge have been sanctioned as environmental damage, and the state has not fined large operators to pay compensation for environmental damage even in the most serious cases.[23]

Consequently, such actions of perpetrators are considered from the perspective of preventing air pollution and not under waste management. Such activities may include unauthorised burning of waste on open fires or using inappropriate equipment or boilers and similar containers. Eventually, the perpetrators may escape punishment entirely or partially in areas where competence is exclusive.

Besides specific legislation from other fields of environmental law, exclusive competence applies to even some aspects of illegal waste dumping. For example, the 2020 Waste Act addresses the management of illegal concentration of waste in relation to the owners of the land, an aspect that had been completely overlooked in the previous law. Following the new rules, larger municipalities have been provided competence to deal with small-scale illegal dumps. Complaints about these illegal dumps are subsequently referred by the Inspectorate to the municipalities as they fall outside the competence of the Inspectorate.

evidence of the disposal of the stock in question as unusable waste. The second category includes, for example, the judgement of 18 July 2013, No. 1 Afs 54/2013-36, wherein the beneficiary of a subsidy violated the conditions of the subsidy by, *inter alia*, depositing construction waste on the landscaping works carried out in the vicinity of a rental hall without the permission of the subsidy provider. Although the SAC concluded that the judgement of the first instance court was partially unreviewable, it ruled that the tax administrator was entitled to carry out a tax audit in addition to the audit of the grant provider and verify the facts that occurred before the payment of the funds. This is significant because, as the Court added, in some situations, the recipient of the subsidy may claim payment of funds awarded on the basis of fraudulent documentary evidence or by projecting a state of affairs contrary to the facts.

23 | See Sobotka 2014, 130.

5. The murky waters of transboundary waste shipments

The stricter regulations imposed by the 2020 Waste Act have demonstrably incentivised the use of domestically generated waste over imported waste in the Czech Republic. However, this has not entirely eliminated the threat of illegal waste shipments. The majority of waste entering the country originates from Germany and Austria, with a recent uptick in imports from Italy. A particularly concerning instance involved the illegal importation of hazardous waste from Poland.

After a period of relative calm, environmental inspectors are now grappling with a significant rise in waste imports from neighbouring countries. Customs officials have intercepted hundreds of tonnes of plastic waste. Operation Plast, for instance, resulted in the seizure of 17 trucks carrying a combined total of approximately 400 tonnes of misclassified waste.[24] The true scale of illegal waste dumping in the Czech Republic is likely far greater, as the authorities lack the capacity to monitor all shipments. The Inspectorate is continuously engaged in addressing numerous sites containing illegally imported waste.

The modus operandi of these illegal import operations is often depressingly straightforward. A foreign truck deposits a significant quantity of mixed, malodorous waste, typically a non-recyclable blend of plastics heavily contaminated with other materials, such as soiled paper, at a disused industrial facility or storage hall. This waste closely resembles the residue of municipal waste collection. Subsequent to the initial truckload, others often follow in quick succession. Once the illegal nature of the waste is discovered, a chaotic scramble ensues to establish responsibility for its transportation and removal. The party legally obliged to remove the waste frequently proves impossible to locate. Furthermore, the absence of detailed information regarding the origin of the waste can complicate efforts to return it to the country of dispatch.

Europol's observations on the perpetrators of illegal waste trafficking are particularly insightful. While large-scale operations may involve mafia-like structures, Europol also identifies the involvement of smaller organisations that collaborate with legitimate businesses operating in financial services, import/export, and metal recycling sectors.[25] One such instance involved a company acting as a waste consignee that repeatedly participated in the illegal transboundary movement of several thousand tonnes of rubber and plastic waste from Germany. This waste was destined for a facility incapable of processing it in the required manner. The company was further sanctioned for other breaches of waste legislation, including the submission of inaccurate and incomplete facility reports. The company was initially fined CZK 350,000 (approximately EUR

24 | See Customs Administration of the Czech Republic, 2019
25 | Europol, 2011

14,000), which was subsequently reduced to CZK 300,000 (approximately EUR 12,000) on appeal in 2022.[26]

The Inspectorate employs preventative measures to intercept foreign waste before it is dumped. These include mandatory, scheduled inspections of waste trading establishments. Customs authorities also conduct regular road checks, focusing particularly on former border crossing points. The Ministry of the Environment fosters international cooperation and strives to strengthen collaboration among the Inspectorate, customs authorities, law enforcement agencies, and the judiciary. Despite these efforts, the Czech authorities continue to face significant challenges in tackling this crime.

The Court of Justice of the European Union (CJEU) has also addressed the issue of transboundary waste shipments concerning the Czech Republic, albeit in a case focused on the export of materials. Case C-399/17 Commission v Czech Republic centred on a substance known as TPS-NOLO (or Geobal) that had been shipped from the Czech Republic to Poland. The Czech government argued that the substance did not constitute waste because it was registered under the REACH Regulation (Regulation No 1907/2006) and utilised as fuel. The CJEU ultimately ruled that the Commission had failed to demonstrate that the shipment in question comprised waste, and therefore did not qualify as an illegal shipment under the relevant regulation. The CJEU further noted that while the mixture may have been incorrectly registered under the REACH Regulation, this did not definitively confirm its status as waste. The Court emphasised that the registration of a substance under the REACH Regulation is a relevant factor when determining whether a substance has ceased to be waste, but it is not a definitive indicator.[27] The CJEU concluded that the relevant circumstances for assessing whether the shipped mixture constituted waste are those prevailing at the time of shipment, not before or after that date.

6. The scrutinising eye: Inspections in combating illegal waste disposal

The illegal accumulation and mismanagement of waste poses a significant financial and environmental burden. It consumes vast quantities of manpower and financial resources for collection and remediation, while simultaneously endangering wildlife and public health. Implementing effective controls and inspections serves as a cornerstone strategy not only to deter illegal dumping but also to penalise such transgressions and prevent further environmental degradation.

The initiation of an inspection hinges on a suspected instance of illegal waste management. The SAC established that such a suspicion can arise from various

26 | Czech Environmental Inspectorate, 2023

27 | See also the CJEU Case C-358/11 Lapin luonnonsuojelupiiri.

sources. Complaints lodged by citizens regarding recurring odours of burning materials[28] or a municipal authority's concerns about a suspected scrapyard operating within its jurisdiction can both trigger inspections.[29] Inspections can also be conducted on a random basis,[30] and specific legislation, such as the IPPC regime, mandates compulsory periodic inspections.

Prior notification of an inspection is not a requirement. The SAC emphasises the importance of surprise inspections, 'so that the inspected person cannot frustrate the purpose of the inspection'[31] in particular by 'quickly 'retouching' the actual state of affairs before it is discovered, and thus avoiding a possible sanction foreseen by law'.[32] This could involve hastily altering the actual state of affairs to evade potential legal repercussions, such as swiftly 'tidying up' the waste site before its discovery.[33] The potential manipulation extends to falsifying records associated with waste management.[34] In essence, unannounced inspections are essential to ensure the integrity of the evidence collected during the inspection process.

The Inspectorate's personnel are presumed to possess the necessary expertise to assess the nature of the waste under scrutiny.[35] Therefore, engaging external specialists is generally not considered necessary. If an inspected party contests the characterisation of the waste on the grounds of insufficient expertise, such objections may be dismissed if the waste's properties are readily apparent even to a layperson.[36]

Professionalism and proportionality are paramount during inspections. Inspectors are not obligated to provide a meticulous description of the inspected material if a general or approximate description adequately conveys its nature (e.g. demolition waste,[37] stabiliser,[38] or distillation stillage[39]). Similarly, if the

28 | See the judgement of the SAC of 28 March 2018, No. 6 As 91/2017-32.
29 | Judgement of the SAC of 16 March 2016, no. 2 As 249/2015-36.
30 | See, for example, the judgement of the SAC of 24 January 2014, no. 5 As 112/2012-44.
31 | Judgements of the SAC of 21 October 2010, No. 9 As 46/2010-97, of 2 March 2017, No. 7 As 237/2016-40.
32 | Judgement of the SAC of 27 September 2006, No. 2 As 50/2005-53.
33 | Judgement of the SAC of 23 February 2012, No. 1 As 3/2012-34.
34 | Judgement of the SAC of 8 January 2004, No. 6 A 99/2002-52.
35 | See the judgement of the SAC of 31 July 2014, No. 6 As 93/2014-33.
36 | See, for example, the judgement of the SAC of 24 January 2014, No. 5 As 112/2012-44: *"If the complainant claims that this state of affairs is only temporary and that the vehicles will be able to participate in road traffic again, this claim is completely unreliable and obviously purposeful with regard to the state of the 'vehicles'. This assessment of the condition of the 'vehicles' at the complainant's facility (establishment) does not even require specialist knowledge in view of their condition, since it must be obvious even to a layman that the corroded body shell without engine, steering wheel, wheels, seats, etc. is not fit for any kind of operation and cannot be 'repaired' or 'made operational."*
37 | See the judgement of the SAC of 19 March 2009, No. 6 As 68/2007-74.
38 | See the judgement of the SAC of 8 January 2004, No. 6 A 99/2002-52.
39 | See the judgement of the SAC of 23 February 2011, No. 7 As 6/2011-63: *"...none of the terms 'distillation stills', or 'stills from the production of alcohol by distillation', etc. could, in the present case, lead to any confusion or contradiction in the definition of the subject-matter of the proceedings. The Regional Authority did not define the subject-matter of the proceedings merely by the words 'distillation stills' but*

inspected party submits statements or documents that serve as sufficient primary evidence, additional empirical measurements of the waste are not required.[40] However, inconclusive records make it impossible to definitively determine the waste quantity or retrospectively verify its handling in accordance with relevant regulations.[41]

The SAC determined that for substantial quantities of controlled material, a calculated weight estimate,[42] along with a well-founded approximation of the quantity, suffices if it is appropriately documented.[43] The exact weight of the waste may not be established, but a general characterisation is deemed sufficient from a practical standpoint, considering the potentially vast size and weight of waste piles, which often amount to tens of thousands of tonnes and tens of metres in dimension. Conversely, the precise location of the land where the waste is handled is of critical importance. As the SAC highlighted in a 2018 judgement, *"the importance of the precise marking of the site is reinforced by the fact that the obligation set out in Section 12(2) of the Waste Act is breached if waste is managed in facilities that are not designated for this purpose under the Waste Act."*[44]

On-site sample collection can be crucial to the inspection outcome. Without proper analysis, the properties of the material under examination cannot be determined easily. Ideally, the administrative authorities' legal reasoning regarding the inspected party's actions should be grounded in such analysis.[45]

For mixed materials, the properties requiring inspection vary across locations. Therefore, specific sampling sites hold particular significance, especially when identifying hazardous substances that influence the level of any potential fines. The inspection is not mandated to employ completely random sampling but can leverage its experience regarding the typical locations of hazardous substances

by 'distillation stills which are a by-product of the production of alcohol'. It is clear from the foregoing that it is the distillate which is a by-product of the production of alcohol which is at issue. Moreover, the inspection report of 1 March 2007 describes and photographically documents the process of creating these stills, and the connection between the initiation of the administrative procedure in question and this inspection is more than obvious."

40 | See the judgement of the SAC of 17 April 2015, No. 4 As 236/2014-85.

41 | See the judgement of the Municipal Court in Prague of 29 March 2018, No. 6 A 186/2014-50.

42 | See the judgement of SAC of 9 August 2018, No. 9 As 277/2017-28.

43 | See the judgement of the SAC of 10 February 2016, No. 3 As 103/2015-69.

44 | Judgement of the SAC of 24 January 2018, No. 2 As 325/2017-39.

45 | See the judgement of the SAC of 23 February 2017, No. 6 As 6/2017-105: *„However, the administrative authorities did not offer the necessary reasoning here either, and it is the complainant who is trying to fill in the gaps in the reasoning of their decision in the cassation complaint. It is only here that the reasoning appears that the landscaping on parcel no. 1854/1, 1854/2, and 1854/3 is illegal because it fundamentally deviates from the declared purpose, i.e., that the builder established a construction waste dump in place of the motocross track, which is also reflected in the material composition of the embankment (the builder himself declared in the documentation for the individual building consents that the soil would not be contaminated by waste or debris or large stones). However, not even a hint of such a consideration is noted in the contested administrative decisions, let alone that it was supported, for example, by probes into the body of the landscaping in order to assess its composition. Similarly, as regards the exceeding of the agreed amount of landscaping, no reasoning is contained in the contested administrative decisions."*

within the waste pile to strategically select sampling points. The onus falls on the inspected party to refute the accuracy of the sampling. This would involve convincingly demonstrating, with concrete evidence, that the sampling occurred in entirely different locations than from where the material was extracted.[46] However, samples of only a portion of non-homogeneous material may not be conclusive in establishing the overall nature of the waste.[47]

7. A two-pronged approach: Criminal and administrative liability for waste mismanagement

The Czech Republic's legal framework regarding unauthorised waste management carves out a distinct distinction between criminal and administrative liability. While the former is narrowly defined, adhering closely to the requirements of the EU Environmental Crime Directive (2008/99/EC), the latter approach casts a wider net, encompassing a diverse range of transgressions outlined within the Waste Act. Notably, judicial interpretations of waste management obligations tend to be expansive, offering limited room for offenders to exploit legal loopholes. For instance, a recent court case concerning the mandatory on-site sorting of waste established that the absence of specific legislative dictates regarding the number or placement of designated bins does not absolve the waste producer from liability for non-compliance.[48]

The principal apparatus for imposing **administrative penalties** for regulatory offences is enshrined in Act No. 250/2016 Coll., commonly known as the Offence Act. This Act serves as a foundational framework for administrative penalties and is applied subsidiarily to specific legislation that defines particular offences. The

46 | Judgement of the SAC of 25 March 2015, No. 6 As 149/2013-41: "*The SAC therefore considers that taking samples from areas with a higher concentration of presumably non-hazardous material could not in any way affect the legitimacy of the finding of the ČIŽP that, according to the result of the analysis, there were other places in the haul where material containing supercritical amounts of the monitored elements or compounds were lying.*" In this case, a total of 66 subsamples were taken from 21.000 tonnes of waste generated from the reconstruction of tracks and switches.

47 | This conclusion follows from the judgement of 28 June 2007, No. 4 As 87/2006-81, in which the SAC dealt with the fine imposed for piling construction waste on various plots of land. The complainant argued, among other things, that everyone was obliged to use the waste in the first place before disposing of it, which he did, and therefore he should have been given a commendation for using the waste as construction material. The court, however, concluded that this was an illegal dumping of waste. On the nature of the material, the SAC stated: "*However, on the facts found, the plaintiff had not only taken over stones from V, but also rubble. However, no sample was taken of that material and, given that the waste material in question was not homogeneous, it is necessary to agree with the defendant that even a sample of part of that rubble would not have been indicative of the characteristics of the stored waste material as a whole and that, given the nature of the waste in question (not homogeneous), no expert opinion could be objective.*"

48 | See the judgement of the SAC Court of 19 October 2023, No. 4 As 317/2022-49.

2020 Waste Act then elaborates on the individual elements constituting these offences.

Consider the scenario of illegal waste trafficking. According to Section 117(1)(s) of the 2020 Waste Act, a natural person commits an offence by failing to comply with the stipulated conditions outlined in Regulation No. 1013/2006 or Sections 49, 51, or 52(1) of the aforementioned Act if involved in a transboundary transportation of waste. The potential penalty for such an offence for a natural person can reach CZK 1,000,000 (approximately EUR 40,000). In contrast, legal persons or natural persons engaged in business activities who breach the conditions set forth in a decision issued by the Ministry of the Environment pursuant to Regulation No. 1013/2006, or the relevant sections of the 2020 Waste Act, during a transboundary waste shipment fall under Section 121(2)(m) of the Act and face potential fines of up to CZK 25,000,000 (approximately EUR 1 million).

These transgressions are all adjudicated by the Inspectorate, acting as the competent administrative authority. The responsibility for collecting and enforcing the imposed fines is on the customs office. It should be noted, however, that the imposition of an administrative penalty may be waived if the statutory conditions are met, as follows from Sec. 125 of the 2020 Waste Act: the offender must ensure that (a) the consequences of the infringement are eliminated, (b) factual measures are taken to prevent the continuation or renewal of the unlawful situation, and (c) the imposition of an administrative penalty would be disproportionately harsh in view of the cost of the measures taken.

Section 116 of the 2020 Waste Act empowers authorities to impose remedial measures in instances of non-compliance with the obligations stipulated in Regulation No. 1013/2006 and the Act itself. Unlike previous legislation, these measures can be implemented without the imposition of a fine. The designated timeframe for executing the remedial measures is reasonable. Specific examples of such measures, as outlined in Section 116(1)(a) to (d) of the Act, include securing waste against leakage, deterioration, or theft. Additionally, Section 116(1)(e) provides a catch-all clause for the administrative authority, allowing them to impose 'other appropriate measures' to prevent negative environmental or human health impacts, ensure adequate environmental or human health protection, and facilitate monitoring of the imposed measures' implementation.

The 2020 Waste Act introduces a novel provision concerning the legal succession of obligations arising from imposed remedial measures. However, it precludes the imposition of such measures based on legal succession on a non-entrepreneurial natural person. Furthermore, the administrative authority conducting proceedings on the remedial measure is obligated to promptly inform other relevant administrative authorities with the jurisdiction to impose the remedial measure or an administrative penalty related to the measure.

Criminal liability for unauthorised disposal of waste set in Sec. 298 of the Criminal Code (Act No. 40/2009 Coll.) focuses on two types of behaviour: (1)

Violation of other legal regulations governing waste management by transporting waste across state borders without notification or consent of the competent public authority, or providing false or grossly distorted information or withholding material information in such a notification or request for consent or in the accompanying documents;[49] and (2) Violation of other legal regulations governing waste management, even negligence, by disposing of waste or depositing, transporting, or otherwise handling waste, and thereby causing damage to or endangering the environment, the cost of which is significant.[50] The perpetrator in both cases may be a non-entrepreneurial natural person, an entrepreneurial natural person, a natural person representing a legal person, or a legal person.

In the first case, the criminal shall be punished by imprisonment for up to one year or by prohibition of activity; in the second case the criminal shall be punished by imprisonment for up to two years or by prohibition of activity. More severe penalties can be imposed if other conditions are met. The offender shall be sentenced to imprisonment for a term of six months to three years or to prohibition of activity if (a) he commits the offence as a member of an organised group, (b) he obtains a substantial benefit for himself or another by such an act, or (c) he commits such an act repeatedly. The offender shall be liable to a term of imprisonment of between one and five years or to a fine if he or she (a) obtains a large benefit for himself or herself or for another by committing the offence, or (b) where such an act relates to hazardous waste.

Waste is also associated with petty crime due to its availability and interest value. Paper picking from containers is common, most often, from freely accessible municipal waste containers, less often from containers of other generators, as these are usually located on fenced property or inside buildings. Recently, an increase in textile waste (used clothing) and electrical equipment containers have been noted, even though these containers are better secured (more difficult to access their contents), often leading to serious health consequences. Sometimes the collection container itself is stolen. It is not rare for the container to be damaged or the lock securing it to be destroyed. Another case is of setting fire to a container, which is more an act of vandalism. In practice, these cases are usually dealt with as misdemeanours, as they do not cause damage exceeding CZK 10.000 (approximately EUR 400).[51]

49 | Criminal liability for waste trafficking does not depend on the quantity or type of waste, which is a welcome difference from the previous legislation that applied only to hazardous waste.
50 | The costs are significant: at least CZK 1.000.000 (approximately EUR 40.000) according to Section 138 of the Criminal Code.
51 | Hanák 2024, 171–172.

8. The paradox of sanctioning in waste mismanagement cases

An analysis of criminal proceedings involving waste-related violations handled by prosecutors between 2012 and 2021 reveals a meagre total of 19 cases reaching law enforcement agencies and potentially reaching the courts.[52]

A closer examination, however, paints a more concerning picture. Only three instances of illegal waste management have resulted in criminal convictions over this ten-year period. These convictions involved: (1) A legal entity establishing an illegal dump containing oil-contaminated waste, leading to soil pollution (penalty: an eight-year ban on waste disposal of any kind). (2) A legal entity responsible for the unlawful deposit of demolition and construction waste, including landfill waste and asbestos, and for damaging a watercourse (penalty: forfeiture of the land on which the landfill was situated). (3) A natural person who illegally dumped waste on a former landfill site, incurring the cost of removal (approximately EUR 285,000) and receiving a suspended ten-month prison sentence (suspended for 18 months).

The remaining cases expose further shortcomings. Five are stuck in the initial stages of criminal proceedings, with investigations or preparatory actions yet to be completed. One case involving the unauthorised handling and improper storage of hazardous waste, with leakage of hazardous substances into the environment and a remediation cost of approximately EUR 4 million, is currently in the prosecution phase. Two cases are undergoing retrial: one involving individuals who failed to secure waste during building demolition, and another concerning an individual's attempt to illegally export used tyres from the Czech Republic to Guinea-Bissau via Hamburg, without proper notification. Five cases were ultimately dropped due to unidentified perpetrators or insufficient evidence.

Interestingly, one case resulted in an acquittal – that of a municipal mayor and a commercial company director accused of operating an illegal waste dump. In another instance, the police redirected the case to the Inspectorate for consideration as an administrative offence (the case concerned the establishment of an unauthorised landfill on someone else's property).

Two cases stand out for their lack of apparent connection to waste management: one concerns a general environmental damage and endangerment offence (though the perpetrator's actions involved violating the Air Protection Act), while the other pertains to herbicide spraying on maize and wheat crops (dropped by the police).

The vast majority of waste-related violations are addressed by administrative authorities through the imposition of administrative penalties. However, this does not equate to a perception of leniency. A substantial administrative fine can be

52 | Strategy 2020, Annex II.

viewed as considerably harsher than, for instance, a suspended prison sentence handed down by a criminal court. Additionally, penalties for the criminal offence of illegal waste disposal are demonstrably lower compared to those for other property crimes. For example, illegal waste importation resulting in a gain exceeding CZK 5 million (approximately EUR 200,000) attracts a prison sentence of one to five years. In contrast, theft, embezzlement, or fraud with the same financial gain can lead to a ten-year imprisonment term.

An imbalance between sanctions imposed in an infringement or administrative procedure and in criminal proceedings has been identified by the 2020 Strategy: the sanctions imposed in the criminal proceedings are disproportionately low compared to the sanctions imposed in the infringement or administrative procedure, which makes them more acceptable for an offender; this lacks any logic in respect to the position and importance of the criminal proceedings within the Czech legal system.

While administrative authorities hold the power to reduce fines upon imposing them, this option is rarely exercised. Setting fines for misdemeanours falls within the realm of administrative discretion. Judicial review of such discretionary power by the courts is only possible if the administrative authority has exceeded the statutory limits of this discretion, deviated from them, or abused its power. Consequently, substituting judicial discretion for administrative discretion is feasible only if the imposed fine is manifestly disproportionate. Courts, therefore, lack broad scope in assessing the simple proportionality of the imposed sanction.[53]

Perpetrators often argue that the imposed fine is disproportionate. However, such claims lose weight when the fine amount falls within the range of hundreds of thousands of Czech crowns (usually between EUR 6,000 and 20,000), considering that the legislation allows for significantly higher fines (up to EUR 2 million).[54] In such cases, it is sufficient for the administrative authority to provide adequate and clear reasoning for the imposed fine amount, along with a commentary on the potential liquidating nature of the fine.[55]

Case law suggests that objections based on the commonality of the waste's use[56] or the absence of an environmental threat do not justify a fine reduction. The actual occurrence of environmental damage or threat is not a prerequisite.[57] Notably, long-term neglect of obligations (adherence to operational rules, maintaining continuous records, waste reporting, truthful information provision in

53 | See judgements of the SAC of 7 November 2019, No. 1 As 63/2019 33, and of 14 December 2020, No. 4 As 230/2020-45.
54 | See the judgement of the Municipal Court in Prague of 28 April 2023, No. 3 A 120/2020-67.
55 | See the judgement of the SAC of 23 March 2023, No 9 As 76/2021-26, or the judgement of the Municipal Court in Prague of 31 August 2023, No. 17 A 97/2022-38.
56 | See the judgement of the SAC of 23 March 2023, No 9 As 76/2021-26.
57 | See the judgement of the SAC of 11 August 2016, No 10 As 123/2016-90.

transboundary shipments) may be deemed severe and factored into the imposed sanction amount.[58]

The obligation to consider the personal and financial circumstances of the offender falls on the administrative authority only if it is clear from the information provided by the offender and the amount of the fine that can be imposed could be of a liquidating nature. Otherwise, the administrative authorities do not need to consider the personal circumstances of the offender.[59] The onus is therefore on the offender to prove his financial circumstances, even more so if he considers that the amount of the fine has a significant impact on his budget or future activities.[60]

9. Conclusion: A web of challenges in combating illegal waste management

The Czech Republic finds itself at the forefront of the fight against illegal waste management, particularly in the face of a growing influx of waste from abroad. This escalating struggle exposes vulnerabilities within the law enforcement system, characterised by a lack of structured and regular information exchange between various administrative and police authorities. The absence of a permanent inter-agency team further exacerbates these issues, hindering the exchange of information on specific cases and leading to inconsistencies between administrative and criminal sanctions. The fragmented nature of waste-related matters, with numerous agencies involved, creates additional challenges. While nascent efforts have been made toward establishing efficient cooperation, they remain underdeveloped.

Crucially, the competencies related to waste management, such as authorisation, control, imposing corrective measures, and punishment, are dispersed across a multitude of bodies. This fragmented structure can create situations where, for instance, the authority empowered to order remediation lacks the budget to do so, rendering certain remedies unlikely to be implemented when necessary.

Establishing connections at the local level between the various bodies, such as the Inspectorate, other administrative authorities, and the police, is of paramount importance. Additionally, a system for information and feedback sharing between investigative units needs to be established. Joint inspections specifically targeting illicit cross-border waste movement would be a crucial step in tackling these problems comprehensively.

Furthermore, sentences for the criminal offence of waste misuse are demonstrably lower compared to those for other property crimes. Neither criminal

58 | See the judgement of the Municipal Court in Prague of 14 September 2023, No. 6 A 4/2023-54.
59 | See the resolution of the extended chamber of the SAC of 20 April 2010, No. 1 As 9/2008-133.
60 | See the judgement of the Municipal Court in Prague of 28 April 2023, No. 17 A 108/2022-44.

nor administrative law appears to have a well-developed remedial function. The limited number of criminal cases surrounding illegal waste disposal has resulted in a dearth of established case law. Consequently, a lack of clear guidance on issues such as the distinction between administrative offences and criminal acts is another drawback. This low volume of criminal cases also translates to a lack of specialised or experienced prosecutors dedicated to these issues.

Finally, the situation in the Czech Republic underscores the significant influence of regional[61] and global waste management trends on the fight against illegal dumping.[62] Even developed nations can be substantially affected by these broader dynamics.

61 | For legislation on a similar situation in Slovakia, see: Maslen, 2023, pp. 73–90.
62 | On trends in environmental criminal law in the European Union, which is also adopting global trends, see: Udvarhelyi, 2023, pp. 159–170.

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Marcin WIELEC[1]

Legal regulations and sanctions related to the illegal dumping of waste in Polish environmental law[2]

Abstract

This paper concerns legal regulations and sanctions regarding the illegal dumping of waste in environmental law in Poland. First, introductory remarks are presented, including an outline of the status of Poland's implementation of EU instruments through national law. This section of the paper concludes with an overview of the basic legal acts that are applicable in Poland, to illustrate the legal spectrum of this topic (related administrative law norms and certain criminal and civil law rules). Second, considerations regarding permits for the transportation and processing of waste are discussed; this section includes relevant administrative provisions applicable in Poland. Third, legal regulations concerning administrative control are presented; in particular, this section pays special attention to control in the context of issuing permits as well as field inspections independent of this process. Fourth, civil liability is addressed. Fifth, provisions of criminal law are discussed, including penal code provisions, extra code provisions, and provisions related to administrative fines. Finally, the paper concludes with a concise summary.

Keywords: illegal dumping, waste, environmental law, criminal law, Poland

1. Introduction

Poland, as a Member State of the European Union (EU), is obliged to implement EU directives issued by EU institutions. Neither Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain

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Directives (Directive 2008/98/EC),[3] nor Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (Directive 2018/851), are exceptions to this.[4] In the case of both directives, Poland has adopted appropriate legal measures to transpose EU provisions in national law.

Concerning Directive 2008/98/EC, Poland introduced a number of legal acts aimed at amending the national law to comply with the EU standards envisaged in this secondary piece of EU legislation. In terms of the 12 December 2010 deadline set in Directive 2008/98/EC, Poland adopted the following national legal acts: (1) The Act of 11 May 2001 on Packaging and Packaging Waste;[5] (2) Regulation of the Minister of the Environment of 9 July 2007 on the necessary scope of information covered by the obligation to collect and process, as well as the method of maintaining the central and voivodship database on waste generation and management;[6] (3) The Act of 27 April 2001 – Environmental Protection Law;[7] (4) Regulation of the Minister of the Environment of 4 November 2008 on the requirements for conducting measurements of emission levels and measurements of water intake volume;[8] (5) Regulation of the Minister of the Environment of 8 December 2010 regarding the templates of documents used for waste records;[9] (6) Regulation of the Minister of the Environment of 8 December 2010 on the scope of information and templates of forms used for the preparation and submission of aggregated sets of waste data;[10] (7) The Act of 27 April 2001 on Waste;[11] (8) The Act of 1 July 2011, amending the Act on Maintaining Cleanliness and Order in Communes and Certain Other Acts;[12] (9) The Act of 24 November 2017, amending the Act on Waste Management and Certain Other Acts;[13] (10) The Act of 19 July 2019, amending the Act on Maintaining Cleanliness and Order in Communes and Certain Other Acts.[14]

In relation to Directive 2018/851, Poland introduced a series of legislative instruments aimed at amending national law to comply with the requirements set out in the directive. In this legal act, the deadline for transposition was set for 5 July 2020. In this context, in Poland, as part of the implementation of EU law,

3 | Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008), 3–30.
4 | Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (OJ L 150, 14.6.2018), 109–140.
5 | Official publication: Journal of Laws; Number: 2001/63/638; Publication date: 2001-06-22.
6 | Official publication: Journal of Laws; Number: 2007/133/930; Publication date: 2007-07-24.
7 | Official publication: Journal of Laws; Number: 2008/25/150; Publication date: 2008-02-15.
8 | Official publication: Journal of Laws; Number: 2008/206/1291; Publication date: 2008-11-21.
9 | Official publication: Journal of Laws; Number: 2010/249/1673; Publication date: 2010-12-28.
10 | Official publication: Journal of Laws; Number: 2010/249/1674; Publication date: 2010-12-28.
11 | Official publication: Journal of Laws; Number: 2010/185/1243; Publication date: 2001-06-20.
12 | Official publication: Journal of Laws; Number: 2011/152/897; Publication date: 2011-07-25.
13 | Official publication: Journal of Laws; Number: 2017/2422; Publication date: 2017-12-22.
14 | Official publication: Journal of Laws; Number: 2017/2422; Publication date: 2019-08-22.

the following national legal acts were adopted: (1) Regulation of the Minister of Economy of 5 October 2015, regarding the detailed procedures for handling waste oils;[15] (2) The Act of 11 May 2001, on the obligations of entrepreneurs in the field of management of certain waste and product fee;[16] (3) The Act of 19 July 2019 on the prevention of food waste;[17] (4) The Act of 14 December 2012 on waste (the Waste Act);[18] (5) The Act of 13 June 2013 on packaging and packaging waste management;[19] (6) The Act of 11 September 2015 on waste electrical and electronic equipment;[20] (7) The Act of 24 April 2009 on batteries and accumulators;[21] (8) The Act of 20 January 2005 on the recycling of end-of-life vehicles;[22] (9) The Act of 13 September 1996 on maintaining cleanliness and order in municipalities;[23] (10) Regulation of the Minister of Climate and Environment of 3 August 2021, on the method of calculating the levels of preparation for the reuse and recycling of municipal waste;[24] (11) The Act of 17 November 2021, amending the Act on Waste and certain other acts;[25] (12) Announcement of the Marshal of the Sejm of the Republic of Poland dated 14 October 2021, regarding the publication of the consolidated text of the Act – The Code of Offences;[26] (13) Announcement of the Marshal of the Sejm of the Republic of Poland dated 15 July 2020, regarding the publication of the consolidated text of the Act – The Penal Code (PC).[27]

However, in the context of the titular issue and the aim of this paper, the most important legal acts are, first, the Waste Act, and second, the Act of 6 June 1997 – PC.[28] Both acts contain legal regulations relevant to outlining the appropriate legal framework concerning the illegal dumping of waste in environmental law in Poland. Civil liability is only briefly mentioned, with the most important related act being the Civil Code of 23 April 1964 (CC).[29] Together, these acts reflect the legal spectrum on this topic (i.e. related administrative law norms and certain criminal and civil law rules[30]).

15 | Official publication: Journal of Laws; Number: 2015/1694; Publication date: 2015-10-23.
16 | Official publication: Journal of Laws; Number: 2018/1932; Publication date: 2018-10-09.
17 | Official publication: Journal of Laws; Number: 2019/1680; Publication date: 2019-09-03
18 | Official publication: Journal of Laws; Number: 2020/797; Publication date: 2013-01-08.
19 | Official publication: Journal of Laws; Number: 2020/1114; Publication date: 2013-08-06.
20 | Official publication: Journal of Laws; Number: 2019/1895; Publication date: 2015-10-23
21 | Official publication: Journal of Laws; Number: 2019/521; Publication date: 2009-05-28
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26 | Official publication: Journal of Laws; Number: 2021/2008; Publication date: 2021-11-05.
27 | Official publication: Journal of Laws; Number: 2020/1444; Publication date: 2020-08-25.
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29 | Official publication: Journal of Laws; Number: 1964/16/93; Publication date: 1964-05-18.
30 | Hornyák & Lindt 2023, 31–48; Csák 2014, 5–21.

2. Permits for transporting and processing waste

In Poland, the Waste Act provides the relevant legal regulations for permits regarding waste transportation and processing. In this regard, Chapter 6 (collection and transportation of waste), Chapter 7 (storage of waste), Chapter 8 (disposal of waste), Chapter 9 (transfer of waste and transfer of responsibility for waste management), and Chapter 10 (waste processing in installations and devices) in Section II of the Waste Act as well as Chapter 1 in Section IV of the Act, are significant.

Specifically, Chapter 6 in Section II of the Waste Act pertains to the collection and transportation of waste. Art. 23 of the Waste Act imposes an obligation for the selective collection of waste and prohibits the collection of certain types of waste outside the place in which the waste was generated unless authorised by the authorities for safety or continuity of collection. Art. 24 of the Waste Act defines the rules for waste transportation, including the transport of hazardous goods, and the obligation to indicate the destination and the holder of the waste. In case of violations during transportation, the vehicle may be detained by various authorities, and outstanding fees are subject to enforcement. Art. 24a outlines the procedure for detaining a vehicle with waste, including waste storage locations, cost responsibility, and procedures for the non-collection of the vehicle. Art. 24b imposes an obligation to dispose of waste on the entity conducting waste transportation in the case of a failure to determine the responsible entity.[31]

Chapter 7 in Section II of the Waste Act concerns the storage of waste. According to Art. 25, waste storage must comply with environmental protection and human safety requirements. This is particularly important due to the chemical and physical properties of the waste and their potential hazards. Storage must take place on premises to which the waste holder has legal access and may only be conducted as part of waste generation, collection, or processing. Further, waste may only be stored for a specified period based on its intended use. Waste intended for landfilling may be stored for a maximum of one year before being transported to a landfill. Other waste may be stored only for a period justified by technological or organisational processes, but not exceeding 3 years. Art. 25 also specifies obligations regarding the operation of a monitoring system for waste storage sites. Waste holders are required to maintain a surveillance system that allows images to be stored for one month and must provide these images upon request to environmental supervision authorities, courts, and police, among others; additionally, for certain types of waste, waste holders must ensure that the provincial environmental inspector has real-time access to these images. These provisions do not

31 | Marszelewski 2014, 77–100; Danecka & Radecki, 2022; Karpus 2013; Mostowska 2014; Polak 2022; Judgment of the Provincial Administrative Court in Cracow of 3 October 2023, ref. no. III SA/Kr 689/23; Judgment of the Provincial Administrative Court in Kielce of 9 March 2023, ref. no. I SA/Ke 2/23; Judgment of the Provincial Administrative Court in Gliwice of 17 May 2022, ref. II SA/Gl 402/22.

apply to certain types of waste specified in Annex 2a of the Act or recognised as non-flammable. Additionally, the minister responsible for the climate may specify more detailed requirements for waste storage and the duration of storage, taking into account the properties of the waste and recommendations for environmental and public health protection.[32]

Chapter 8 in Section II of the Waste Act discusses waste disposal issues. According to Art. 26, waste holders are obliged to immediately remove waste from places that not intended for waste disposal or storage. Failure to comply with this obligation may result in public authorities imposing the obligation to remove the waste on the waste holder or removing and managing the waste (if it poses a threat to human life, health, or the environment). In cases where the waste holder does not hold the legal title to the property where the waste is located, the owner of the property is obliged to allow the waste holder – or, if necessary, the enforcement authority – to remove the waste. The competent authority may demand reimbursement of the costs incurred for waste removal from the waste holder responsible for its management. If the waste holder fails to respond within 14 days from the date of receipt of the request, the competent authority may impose an obligation to reimburse the costs and a penalty for the delay. Art. 26a regulates situations where immediate waste removal is necessary due to a threat to life, health, or the environment. In such cases, the competent authority may take action to remove and manage the waste, and the waste holder bears the costs of these actions. However, the waste holder is entitled to be reimbursed for the costs incurred if they promptly fulfil the obligations imposed on them by the supervisory authorities.[33]

Chapter 9 in Section II of the Waste Act pertains to the transfer of waste and the transfer of responsibility for its management. According to Art. 27, waste producers are obligated to independently manage waste, but they may delegate this task to other entities that possess the necessary permits or concessions. If

32 | Górski 2021; Raguszewska 2019, 43–53; Judgment of the Supreme Administrative Court of 20 July 2023, ref. no. III OSK 544/22; Judgment of the Provincial Administrative Court in Gliwice of 3 June 2022, ref. no. II SA/Gl 300/22; Judgment of the Provincial Administrative Court in Cracow of 22 September 2016, ref. no. II SA/Kr 748/16; Judgment of the Provincial Administrative Court in Cracow of 15 July 2016, ref. II SA/Kr 623/16; Judgment of the Provincial Administrative Court in Cracow of 20 October 2015, ref. II SA/Kr 587/15.

33 | Trzcińska 2015; Rakoczy 2016, 9–26; Judecki 2017, 4; Judgment of the Provincial Administrative Court in Poznań of 10 August 2023, ref. no. II SA/Po 920/22; Judgment of the Provincial Administrative Court in Szczecin of 20 July 2023, ref. no. II SA/Sz 200/23; Judgment of the Supreme Administrative Court of 11 July 2023, ref. no. III OSK 6649/21; Judgement of the Provincial Administrative Court in Gliwice of 4 July 2023, ref. no. II SA/Gl 1163/22; Judgement of the Provincial Administrative Court in Rzeszów of 24 May 2023, ref. II SA/Rz 1571/22; Judgment by the Provincial Administrative Court in Lublin of 13 April 2023, ref. no. II SA/Lu 889/22; Judgment by the Provincial Administrative Court in Warsaw of 24 March 2023, ref. no. IV SA/Wa 2605/22; Judgment by the Supreme Administrative Court of 21 February 2023, ref. III OSK 1873/21; Judgment by the Regional Administrative Court in Cracow of 24 January 2023, ref. no. II SA/Kr 1056/22; Judgment by the Regional Administrative Court in Bydgoszcz of 11 January 2023, ref. no. II SA/Bd 760/22.

a waste producer transfers waste to another waste holder who has the required permits or concessions, responsibility for waste management is transferred to the subsequent waste holder when the transfer occurs. However, if the original waste producer cannot be identified after the transfer of waste, the current or previous waste holder is held responsible for the waste. A producer of hazardous waste is exempt from responsibility for waste management when it is transferred for final recovery or disposal by the waste holder conducting such a process. Notably, waste sellers or brokers do not assume responsibility for waste management if they are not the holders of such waste. Art. 28 discusses the transfer of responsibility for waste among producers who share common premises. According to this article, responsibility for waste may be transferred to one of the producers or to the lessee of the premises if this is established by a written agreement.[34]

Chapter 10 in Section II of the Waste Act discusses the processing of waste in installations and devices, as well as exceptions to the prohibition on processing waste outside of these places. According to Art. 29, waste is processed exclusively in installations or devices. These installations and devices must meet environmental protection requirements and ensure that waste is processed in accordance with the law. Art. 29a imposes an obligation to transfer unsegregated (mixed) municipal waste to a municipal installation. The entity receiving municipal waste from property owners must transfer this waste to the appropriate municipal installation, which will ensure its processing. The same applies to waste producers from the mechanical-biological treatment process and residues from municipal waste sorting. Art. 30 prohibits processing waste outside of installations or devices, with certain exceptions. Recovery outside of these places is possible for certain types of waste and recovery processes, provided it does not pose a threat to the environment or human health and is carried out in accordance with regulations. Art. 31 regulates the procedure for obtaining a permit for waste incineration outside of installations or devices. The Marshal of the voivodeship or the regional director of environmental protection may issue such a permit if incineration in installations is not possible for safety reasons. An application for such a permit must contain detailed information about the type of waste, quantity, incineration location, and incineration method. The permit specifies the conditions of incineration and its duration. Additionally, the incineration of accumulated plant residues outside of

34 | Modrzejewski 2018; Raguszewska 2019, 43–53; Judgment of the Supreme Administrative Court of 18 July 2023, ref. no. III OSK 2561/21; Judgment of the Provincial Administrative Court in Lublin of 13 April 2023, ref. no. II SA/Lu 690/22; Judgment of the Provincial Administrative Court in Lublin of 13 April 2023, ref. no. II SA/Lu 889/22; Judgment of the Supreme Administrative Court of 20 December 2022, ref. III OSK 1455/21; Judgment of the Provincial Administrative Court in Warsaw of 21 April 2021, ref. no. IV SA/Wa 2661/20; Judgment of the Provincial Administrative Court in Warsaw of 26 March 2021, ref. no. IV SA/Wa 713/20; Judgment of the Supreme Administrative Court of 17 December 2019, ref. no. II OSK 3236/18.

installations and devices is permitted, unless they are subject to mandatory selective collection.[35]

Chapter I in Section IV of the Waste Act concerns permits for waste collection and processing. According to Art. 41, permits are necessary to carry out waste collection and processing. These permits are issued by the competent authorities where the waste collection or processing is located. The competent authority is the voivode (for undertakings that may significantly affect the environment under the Act of 3 October 2008 on access to environmental information and its protection, public participation in environmental protection, and environmental impact assessments; for waste other than hazardous waste subjected to a recovery process involving the filling of adversely transformed land, if the total amount of waste deposited in the excavation or landfill is not less than 10 mg per day or the total capacity of the excavation or landfill is not less than 25,000 mg; for municipal installations; for issuing a waste collection permit for an area in which the maximum total mass of all types of waste stored during the year exceeds 3000 mg) and the county governor (in other cases). Meanwhile, the regional director of environmental protection is the competent authority responsible for issuing permits for waste collection and processing in enclosed areas. Activities requiring a permit for waste collection and a permit for waste processing may, at the request of the waste holder, be covered by a single permit. Notably, a competent authority must typically consult the mayor or president of the relevant city to issue a waste collection or processing permit; however, this requirement does not apply when the city president has the rights of a county and is the competent authority responsible for the permit. Further, if the city mayor or president does not provide their opinion on the permit within two weeks, then the competent authority can assume that their evaluation is positive.[36]

3. Administrative control

In Poland, the relevant legal regulation regarding administrative control (in the context of the titular issue) is in the Waste Act. Particular attention should be

35 | Dubiński 2016, 30–39; Dubiński 2013, 78–87; Judgment of the Supreme Administrative Court of 24 January 2023, ref. no. III OSK 6614/21; Judgment of the Supreme Administrative Court of 18 January 2022, ref. no. III OSK 4565/21; Judgment of the Supreme Administrative Court of 18 May 2021, ref. no. III OSK 450/21; Judgment of the Supreme Administrative Court of 29 October 2019, ref. no. II OSK 3032/17; Judgment of the Supreme Administrative Court of 5 March 2019, ref. no. II OSK 961/17.

36 | Gruszecki 2020, 99–112; Marszelewski 2014, 77–100; Dubiński 2013, 78–87; Radecki 2016, 51–64; Dubiński 2016, 30–39; Judgment of the Supreme Administrative Court of 28 March 2023, ref. no. III OSK 7230/21; Judgment of the Provincial Administrative Court in Gdańsk of 18 May 2022, ref. no. II SA/Gd 530/21; Judgment of the Provincial Administrative Court in Lublin of 21 September 2021, ref. no. II SA/Lu 275/21; Judgment of the Provincial Administrative Court in Łódź of 26 August 2021, ref. no. II SA/Łd 209/21.

paid to Art. 41a of the Waste Act, which concerns the inspection of places and facilities intended for waste processing or storage in Poland. The process of obtaining permits, such as a waste collection permit, a waste processing permit, or a waste generation permit, involves inspection by appropriate authorities. In the case of inspections conducted by the voivode's inspector for environmental protection, a representative of the relevant authority also participates. The results of the inspections aim to verify whether the facilities or waste storage sites meet the requirements specified in environmental protection regulations. Similarly, inspections conducted by the district (municipal) commander of the State Fire Service assess compliance with fire protection regulations and the conditions specified in fire safety plans. The authority responsible for requesting an inspection submits necessary documentation, such as applications and fire safety plans, to ensure the inspection is properly conducted. If the inspection result is negative, the competent authority may refuse to issue permits. However, permits may still be issued despite a negative result if the lack of a permit does not pose a threat to life, health, or the environment. Furthermore, significant changes in permits are subject to similar inspection procedures. There are also exceptions to the inspection rules for specific facilities and non-combustible waste.[37]

Additionally, in light of the provisions of the Act of 20 July 1991 on Environmental Protection Inspection (the EPI Act),[38] inspections can be carried out in the field. These inspections, both in individual agricultural holdings and large production farms, can be either planned or unplanned. Planned inspections are conducted in step with the annual plan for EPI activities, while unplanned ones are carried out based on requests from public administrative entities as well as in response to complaints and interventions regarding environmental pollution or the suspicion of such pollution, serious incidents, or to prevent a crime or misdemeanour. Meanwhile, inspections of entrepreneurs are carried out in accordance with the principles set out in the Act of 6 March 2018 – Entrepreneurship Law.[39] In accordance with the provisions of the EPI Act, the competent authority of the Environmental Protection Inspection may issue a decision based on the results of the inspection ex officio to order the removal of irregularities identified during the inspection within a specified period or establish the obligation to pay a specified fee.[40]

37 | Danecka & Radecki 2022; Dubiński 2016, 30–39; Judgment of the Supreme Administrative Court of 22 March 2022, ref. no. II GSK 79/22.
38 | Official publication: Journal of Laws; Number: 1991/77/335; Publication date: 1991-08-29.
39 | Official publication: Journal of Laws; Number: 2018/646; Publication date: 2018-03-30.
40 | Radecki 2020; Barczak 2020; Gruszecki 2014, 16–26; Judgment of the Provincial Administrative Court in Krakow of 27 October 2017, ref. no. II SA/Kr 1050/17; Decision of the Provincial Administrative Court in Krakow of 31 October 2007, ref. no. II SA/Kr 948/07.

4. Civil law

In terms of civil liability in the context of this paper, standard principles apply (civil liability based on general principles). This means that the Waste Act does not contain specific legal provisions regarding civil liability and, accordingly, appropriate legal norms from the CC[41] are applied.

5. Penal law

In Poland, criminal law related to the illegal dumping of waste is found not only in the PC but also in the Waste Act. This legislative practice is not unique and also applies in other areas of law. The PC regulates the most important and serious prohibited acts, and their classification is based on threats to legally protected goods. However, prohibited acts under the PC are not sectoral or focused on specialised aspects. If there is a need for such a regulation, the Polish legislature includes it in a dedicated law addressing the sectoral or specialised issue. Through this approach, Poland avoids the casuistry of the PC. Nevertheless, it is important to note that criminal provisions are not found only in the PC; for example, the Waste Act also includes such provisions (as well as provisions regarding administrative fines).

5.1. Penal Code Law

In the PC, three significant types of provisions are useful to note for our purposes; those concerning: the improper handling of waste, the improper handling of radioactive material, and the neglect of protective equipment. According to Art. 183 of the PC (the improper handling of waste), individuals who, against the provisions of law, stock, dispose of, process, collect, recycle, neutralise, or transport waste or substances in such conditions or in such a manner that they may threaten human life or health; reduce water, air or land quality; or destroy plant or animal life, will be subject to the penalty of deprivation of liberty for 1 to 10 years. Further, individuals who, against the provisions of law, import substances threatening the environment; import or export waste; or, in defiance of a duty, allow such acts, are also subject to the same penalty. Meanwhile, individuals who import or export dangerous waste without the required notification or licence or against its conditions are subject to the penalty of deprivation of liberty for 2 to 12 years. The same penalty applies to individuals who abandon dangerous waste in a location that has not been designated for the storage or stocking of such waste. However, if the perpetrator of the above-mentioned actions acts unintentionally, he is subject to

41 | Wiśniewski 2018; Tanajewska 2023; Lutkiewicz-Rucińska 2023.

a fine, the penalty of the limitation of liberty, or the penalty of the deprivation of liberty for up to 5 years.[42]

According to Art. 184 of the PC (improper handling of radioactive material), individuals who produce, process, transport, import, export, accumulate, stock, store, possess, make use of, employ, dispose of, abandon, or leave without a proper protection nuclear material or another source of ionising radiation in such conditions or in such a manner that they may threaten the life or health of a person; substantially decrease water, air, or land quality; or substantially destroy plant or animal life, will be subject to the penalty of deprivation of liberty for 3 months to 5 years. The same penalty applies to individuals who, in defiance of a duty, allow such acts. However, if the perpetrator of the act specified in Art. 184 of the Polish PC acts unintentionally, they are subject to a fine, restriction of liberty, or imprisonment for up to 2 years.[43]

According to Art. 186 of the PC (lack of care for protective devices), individuals who, in defiance of a duty, do not properly maintain or employ devices protecting water, air, or land from pollution or protecting against radioactive contamination or ionising radiation, will be subject to a fine, restriction of liberty, or imprisonment for 3 months to 5 years. Further, individuals who, in defiance of a duty, permit the use of a building structure or a group of building structures without legally required devices will be subject to the same penalty. However, if the perpetrator of the act referred to in Art. 186 acts unintentionally, he will be subject to a fine or the penalty of limitation of liberty.[44]

5.2. Extra-Code Penal Law

As noted above, the Waste Act also contains criminal provisions. Their placement in the act indicates that it is dealing with non-codified criminal law. First, it includes managing waste in a manner that endangers human life and health or the environment. Second, it involves a breach of the principle of proximity – the province's area. Third, it violates the obligation to process waste in a manner that does not endanger human life or health or the environment. Fourth, it breaches the waste collection conditions for entities conducting unprofessional waste collection activities. Fifth, it is waste management contrary to the information reported to the register of entities introducing products, products in packaging, and waste management. Sixth, it breaches the obligation to submit an application for registration

42 | Trybus 2023, 73–85; Szwejkowska & Zębek 2014, 64–74; Padrak & Solan,ű 2010, 61–68; Radecki 2001, 17–37; Radecki 2000, 5; Judgment of the Court of Appeal in Wrocław of 21 September 2017, ref. no. II AKa 236/17; Judgment of the Supreme Court of 11 October 2016, ref. no. V KK 204/16.
43 | Szwejkowska & Zębek 2014, 64–74; Łukaszewicz & Ostapa 2001, 54–75; Wala et al. 2022.
44 | Danecka & Radecki 2022, 324–352; Danecka & Radecki 2022, 189–236; Szwejkowska & Zębek 2014, 64–74; Padrak & Solan 2010, 61–68; Judgment of the Supreme Court of 9 October 2020, ref. no. V KK 402/19.

in the register of entities introducing products, products in packaging, and waste management. Seventh, it breaches the obligation to have the required documents during waste transport, the obligation to store and provide waste record documents, or the obligation to enter data into the Database of Products and Packaging and Waste Management. Eighth, it breaches reporting obligations. Ninth, it violates the prohibitions related to dealing with PCB (i.e. polychlorinated biphenyls, polychlorinated triphenyls, monomethyl tetrachlorodiphenyl methane, monomethyl dichlorodiphenyl methane, monomethyl dibromodiphenyl methane, and mixtures containing any of these substances in a total weight concentration exceeding 0.005%). Tenth, it violates the prohibition on mixing waste oils. Eleventh, it violates prohibitions and orders regarding the processing of medical and veterinary waste. Twelfth, it violates the requirements for transferring municipal sewage sludge. Thirteenth, it violates the conditions for the application of municipal sewage sludge. Fourteenth, it breaches the obligation to store tests of municipal sewage sludge and the soils on which these sludges are to be applied, as well as information on the doses of this sludge that may be applied to individual soils. Fifteenth, it breaches the prohibition on the disposal of waste from the production processes of titanium dioxide and from the processing of such waste into the sea. Sixteenth, it breaches the requirements for accepting waste at a metal waste collection point. Seventeenth, it breaches the conditions for operating a waste disposal site. Eighteenth, it breaches the obligation to employ a person holding a certificate confirming qualifications in waste management. Nineteenth, it breaches the obligation for the thermal conversion of waste in a waste incineration plant or waste co-incineration plant. Finally, it breaches the conditions for accepting waste at a waste incineration plant or waste co-incineration plant.[45]

According to Art. 171 of the Waste Act (conducting waste management in a manner that endangers human life and health and the environment), anyone who conducts waste management contrary to the obligation specified in the Waste Act (specifically in Art. 16) shall be subject to imprisonment or a fine. According to Art. 172 (violation of the principle of proximity – voivodeship area), anyone who, contrary to the provisions of the Waste Act, applies municipal sewage sludge or disposes of infectious medical waste or infectious veterinary waste outside the voivodeship area in which the waste is generated shall be subject to imprisonment or a fine. The same penalty applies to anyone who, contrary to the provisions of the Waste Act, brings such waste generated outside the area of that voivodeship into the voivodeship area for the purposes mentioned above.

According to Art. 176 of the Waste Act (violation of the obligation to conduct waste processing in a manner that does not pose a threat to human life or health and the environment), anyone who, contrary to the provisions of the Waste Act,

45 | Danecka & Radecki 2022; Karpus 2013; Górski 2021.

processes waste in a manner that does not ensure that such processes do not endanger human life or health and the environment, shall be subject to imprisonment or a fine. The same penalty applies to anyone who, contrary to the provisions of the Waste Act, processes waste in a manner that does not ensure that the waste generated from such processes does not pose a threat to human life or health and the environment.

According to Art. 177 of the Waste Act (violation of the conditions for waste collection by an entity conducting non-professional waste collection activities), anyone who collects waste without having concluded a contract (Art. 45(2)) shall be subject to imprisonment or a fine.

According to Art. 178 of the Waste Act (mismanagement of waste contrary to the information reported to the register of entities introducing products, products in packaging, and managing waste), anyone who mismanages waste contrary to the information reported to the register (Art. 52) shall be subject to imprisonment or a fine.

According to Art. 179 of the Waste Act (violation of the obligation to submit an application for entry into the register of entities introducing products, products in packaging, and managing waste), anyone who, contrary to the provisions of the Waste Act, fails to submit an application for entry into the register, a change in entry in the register, or removal from the register or who submits an application inconsistent with the real situation shall be subject to imprisonment or a fine.

According to Art. 180 of the Waste Act (violation of the obligation to have required documents during waste transport, obligation to keep and provide waste records, or obligation to enter data into the Waste Database), anyone who fails to fulfil their obligations regarding possession, during waste transport, of the confirmation generated from the Waste Database (Art. 69(1a)) or possession, during municipal waste transport, of the confirmation generated from the Waste Database (Art. 71a(3)) shall be subject to a fine. The same penalty applies to those who do not keep, provide, or submit, for a specified period, the required documents and all data as required by the Waste Act (Art. 72(1)). The same penalty also applies to those who, contrary to the obligation, do not enter or do not enter in a timely manner into the Waste Database the information contained in the waste records prepared in the specified form (Articles 67(7), (10), and (11)).

According to Art. 180a of the Waste Act (violation of reporting obligations), anyone who, contrary to the obligation (Art. 76), fails to submit a report, shall be subject to a fine.

According to Art. 181 of the Waste Act (violation of prohibitions regarding PCB handling), anyone who, contrary to the provisions of the Waste Act, subjects PCB to recovery or incineration on ships, shall be subject to imprisonment or a fine.

According to Art. 182 of the Waste Act (violation of the prohibition on mixing waste oils), anyone who, contrary to the provisions of the Waste Act, mixes waste oils with other hazardous wastes (including those containing PCB) during their

collection or storage when the level of specified substances in the waste oils exceeds permissible values shall be subject to imprisonment or a fine.

According to Art. 183 of the Waste Act (violation of prohibitions and orders regarding the treatment of medical and veterinary waste), anyone who recovers medical and veterinary waste when such recovery is impermissible under the Waste Act or disposes of such waste in a way that violates the provisions of the Waste Act shall be subject to imprisonment or a fine. The same penalty applies to those who, contrary to the Waste Act, dispose of infectious medical waste or infectious veterinary waste by co-incineration.

According to Art. 184 of the Waste Act (violation of requirements for transferring municipal sewage sludge), anyone other than the producer of municipal sewage sludge who transfers municipal sewage sludge for land application to the surface owner shall be subject to imprisonment or a fine. The same penalty applies to those who, contrary to the provisions of the Waste Act, do not notify the voivodeship inspector of environmental protection of the intention to transfer municipal sewage sludge to the surface owner where these sludges are to be applied.

The same penalty applies to the producer of municipal sewage sludge who, contrary to the provisions of the Waste Act, does not subject municipal sewage sludge and the soils on which they are to be applied to testing before their use, nor do they provide information on the doses of sludge and the results of the tests along with the municipal sewage sludge.

According to Art. 186 of the Waste Act (violation of the obligation to keep records of tests of municipal sewage sludge and soils on which these sludges are to be used, as well as information on the doses of this sludge that can be used on individual soils), anyone who owns a land surface and fails to keep the test results or information required by the Waste Act shall be subject to imprisonment or a fine.

According to Art. 187 of the Waste Act (violation of the prohibition of disposal, consisting of discharging into the sea, including placing on the seabed, waste from the production processes of titanium dioxide and from the processing of such waste), anyone who, contrary to the provisions of the Waste Act, disposes of waste originating from the production processes of titanium dioxide or disposes of the products of the processing of such waste by discharging it into the sea, including placing it on the seabed, shall be subject to imprisonment or a fine.

According to Art. 188 of the Waste Act (violation of the requirements for accepting waste at a metal waste collection point), anyone operating a metal waste collection point who accepts non-packaging metal waste from food products without confirming the identity of the person delivering the waste, without completing the metal waste acceptance form, or without completing the metal waste acceptance form correctly shall be subject to imprisonment or a fine.

According to Art. 189 of the Waste Act (violation of the conditions for operating a waste landfill), anyone managing a waste landfill who accepts waste for storage for which the basic waste characteristic has not been prepared (Art. 110 (2)) or for

which a compliance test has not been conducted (Art. 113 (1)) when required shall be subject to imprisonment or a fine. The same penalty applies to anyone who is in charge of a waste landfill and fails to fulfil the obligations incumbent upon them regarding: (1) verification (Art. 114 (2)); (2) sampling and storing samples of waste delivered for storage at the waste landfill (Art. 115 (1)); (3) determining the mass of waste accepted for storage (Art. 119 (1)); (4) verifying the compliance of the accepted waste with the data contained in the waste transfer note or documents required for international waste movement (Art. 119 (2)); (5) checking the containers and certificates required for storing metallic mercury waste (Art. 119 (3) of the Waste Act); (6) refusing to accept waste for storage at the waste disposal site in cases (Art. 120 (1) of the Waste Act); (7) ensuring selective waste storage (Art. 121 (1) of the Waste Act) stored at the waste disposal site, taking into account the condition specified in the Waste Act (Art. 121 (2)); (8) monitoring the waste disposal site (Art. 124 (4)); (9) transferring the results of monitoring of the waste disposal site to the provincial inspector of environmental protection (Art. 124 (5)); (10) maintaining and operating the waste disposal site in a manner ensuring proper functioning of the technical equipment constituting the facility's infrastructure and compliance with sanitary, safety, hygiene, fire protection, and environmental protection requirements, in accordance with the waste disposal site operation manual and the decision approving this manual (Art. 135 (2)); (11) notifying the voivodeship inspector of environmental protection or the state provincial sanitary inspector of observed changes in parameters detected at the waste disposal site (Art. 138); (12) storing documents, based on which a report on generated waste and waste management is prepared, until the closure of the waste disposal site, and transferring these documents to the next waste disposal site manager or the land owner (Art. 78 (2) and (3)); or (13) ceasing to accept waste for disposal at the waste disposal site or its designated part upon obtaining consent to close the waste disposal site or its designated part (Art. 146 (1)), or a decision to close the waste disposal site or its designated part (Art. 148 (3)).

According to Art. 190 of the Waste Act (violation of the obligation to employ a person holding a certificate confirming qualifications in waste management), anyone who employs, contrary to the provisions of the Waste Act, a person without a certificate confirming qualifications in waste management appropriate to the conducted waste disposal process as a manager of a waste disposal site, waste incineration plant, or waste co-incineration plant, is subject to imprisonment or a fine.

According to Art. 191 of the Waste Act (violation of the obligation to thermally process waste in a waste incineration plant or co-incineration plant), anyone who, contrary to the regulations of the Waste Act, thermally processes waste outside of a waste incineration plant or co-incineration plant is subject to imprisonment or a fine.

According to Art. 192 of the Waste Act (violation of the conditions for accepting waste for incineration in a waste incineration plant or co-incineration plant), anyone managing a waste incineration plant or co-incineration plant who accepts waste for thermal processing without determining the mass of the waste or verifying the conformity of the waste with the data contained in the documents (Art. 160 (2) (2)) or who accepts hazardous waste for thermal processing without familiarising themselves with the waste description or collecting or storing samples of such waste (Art. 160 (3)) is subject to imprisonment or a fine.

According to Art. 193 of the Waste Act, adjudication in cases referred to in Articles 171 to 192 shall be carried out according to the rules and procedures specified in the Act of 24 August 2001 – the Code of Petty Offenses Procedure. This is crucial because it indicates that the penal provisions do not provide for crimes but petty offences. This means that the Waste Act penalises prohibited acts, which generally weigh less and have fewer social consequences than crimes.[46]

5.3. Administrative Fines

The Waste Act also includes provisions regarding administrative fines. It is important to note that in Poland, an entity can be held liable for violating both criminal and administrative provisions simultaneously; indeed, an entity may be considered to violate both types of provisions by performing a single act. In terms of administrative responsibility, relevant legal norms are found in Articles 194 to 202 of the Waste Act.[47] These norms include prerequisites for imposing administrative fines as well as administrative fines for waste transporters that fail to deliver waste or that transport waste without permission or registration; administrative fines for district governors who fail to establish a designated area for parking vehicles

46 | Doroszewska 2016, 16–30; Smarzewski 2013, 61–87; Banasik 2005, 87–91.

47 | Górski 2021; Danecka & Radecki 2022; Karpus 2013; Fleszer 2022, 89–100; Judgment by the Provincial Administrative Court in Warsaw of 30 October 2023, ref. no. IV SA/Wa 1270/23; Judgment by the Supreme Administrative Court of 24 March 2023, ref. no. III OSK 7164/21; Judgment by the Supreme Administrative Court of 21 February 2023, ref. III OSK 7601/21; Judgment by the Supreme Administrative Court of 20 December 2022, ref. no. III OSK 1594/21; Judgment by the Provincial Administrative Court in Warsaw of 4 January 2022, ref. IV SA/Wa; Judgment by the Supreme Administrative Court of 28 April 2021, ref. no. III OSK 309/21; Judgment by the Provincial Administrative Court in Warsaw of 15 April 2021, ref. no. IV SA/Wa 2716/20; Judgment by the Provincial Administrative Court in Warsaw of 26 March 2021, ref. no. IV SA/Wa 2567/20; Judgment by the Provincial Administrative Court in Warsaw of 26 March 2021, ref. no. IV SA/Wa 2568/20; Judgment of the Provincial Administrative Court in Warsaw of 19 March 2021, ref. no. IV SA/Wa 2461/20; Judgment of the Provincial Administrative Court in Warsaw of 18 March 2021, ref. no. VIII SA/Wa 815/20; Judgment of the Provincial Administrative Court in Warsaw of 8 March 2021, ref. no. IV SA/Wa 2686/20; Judgment of the Provincial Administrative Court in Warsaw of 11 February 2020, ref. IV SA/Wa 2679/19; Judgment of the Provincial Administrative Court in Warsaw of 20 March 2019, ref. no. IV SA/Wa 3101/18; Judgment of the Provincial Administrative Court in Warsaw of 19 April 2018, ref. no. IV SA/Wa 133/18; Judgment of the Supreme Administrative Court of 20 October 2017, ref. no. II OSK 288/16; Judgment of the Supreme Administrative Court of 20 October 2017, ref. no. II OSK 1795/16.

detained with waste; the basis on which the provincial inspector of environmental protection can impose administrative fines; the substantive and territorial jurisdiction in which administrative fines can be imposed; the legal basis for the explanatory proceedings of the provincial inspector of environmental protection; the elements of the decision regarding whether to impose administrative fines; the directive for determining the amount of administrative fines; and the method by which the administrative fines will be paid.

According to Art. 194 of the Waste Act (conditions for imposing an administrative monetary penalty), an administrative monetary penalty is imposed for: (1) changing the classification of hazardous waste to non-hazardous waste (Art. 5 of the Waste Act), by diluting or mixing it with other waste, substances, or materials, leading to a reduction in the initial concentration of hazardous substances to a level lower than the level specified for hazardous waste; (2) mixing different types of hazardous waste; mixing hazardous waste with non-hazardous waste; mixing hazardous waste with substances, materials, or objects, including diluting substances (Art. 21(1)), or mixing such waste (Art. 21(2)); (3) transporting waste in a way that violates the requirements provided for in the Waste Act; (4) storing waste in a manner inconsistent with the requirements provided for in the Waste Act; (5) failing to implement a visual control system for monitoring the location of waste storage or disposal, or operating such a system in a way that violates the provisions of the Waste Act; (6) transferring waste generated in the mechanical-biological treatment process of unsorted (mixed) municipal waste or residues from municipal waste sorting, intended for disposal, to a municipal facility in a way that violates the provisions of the Waste Act; (7) collecting waste in a way that violates the prohibitions in the Waste Act (Art. 23 (2)); (8) commissioning the performance of waste management obligations to entities that have not obtained the required decisions or registrations, contrary to the provisions of the Waste Act; (9) failing to maintain security for claims contrary to the obligation (Art. 48a (11)), or failure to submit an application to change the form or amount of security for claims (Art. 48a (8)); (10) conducting business without the required entry in the register; (11) failing to include the registration number on documents prepared in connection with the conducted activity, contrary to the obligation (Art. 63); (12) failing to keep records of waste or keeping such records in an untimely manner or not in accordance with the actual state; (13) discharging waste oils into waters, soil, or land in a way that violates the prohibitions (Art. 93) of the Waste Act; (14) diluting or preparing mixtures of waste with each other or with other substances or objects (Art. 122 (3)); (15) extracting waste contrary to the provisions of the Waste Act; (16) transferring selectively collected waste for thermal treatment in preparation for reuse or recycling, contrary to the obligation specified in the Waste Act; and (17) transferring non-segregated (mixed) municipal waste for thermal treatment contrary to the provisions of the Waste Act.

According to Art. 194 of the Waste Act, the administrative fine for the aforementioned violations is not less than 1000 PLN and cannot exceed 1,000,000 PLN. Additionally, an administrative fine is imposed for collecting or processing waste without the required permit (Art. 41). The fine cannot be less than 1000 PLN and cannot exceed 1,000,000 PLN. An administrative fine is also imposed for waste management contrary to the obtained permit (Art. 41). The fine cannot be less than 1000 PLN and cannot exceed 1,000,000 PLN.

According to Art. 194b of the Waste Act, an administrative fine is imposed for the non-delivery of waste by the waste transporter (Art. 24 (4)) to the waste holder or the designated waste destination indicated by the waste transport service provider. In this case, the fine cannot be less than 1000 PLN and cannot exceed 100,000 PLN.

According to Art. 195 of the Waste Act (administrative fine for transporting waste without permission or registration), anyone who transports waste without obtaining a permit for waste transport or registration in the register, contrary to the obligation (Art. 233 (2)), is subject to an administrative fine ranging from 2000 to 10,000 PLN.

According to Art. 195a (administrative fine for failure by the county governor to establish a place for parking vehicles with waste), the county governor who, contrary to the obligation (Art. 24a (4)), fails to establish a location meeting the conditions for storing waste, is subject to an administrative fine ranging from 10,000 to 100,000 PLN. Such an administrative fine is imposed at the end of each year in which the specified obligation has not been fulfilled.

According to Art. 195b of the Waste Act (administrative fine for failure to designate a place for parking vehicles with waste), an authority that, contrary to the obligation (Art. 24a (3)), fails to designate, in the provincial waste management plan, a location meeting the conditions for storage, is subject to an administrative fine ranging from 10,000 to 100,000 PLN.

According to Art. 195c of the Waste Act (imposition of administrative fines by the provincial environmental protection inspector), the fines referred to in Articles 195a and 195b of the Waste Act are imposed by the provincial environmental protection inspector and are determined by taking into account the number and severity of the identified irregularities and the obligations violated by the authority.

According to Art. 196 of the Waste Act (subject matter and territorial jurisdiction for imposing administrative fines), the administrative fine is imposed based on the decision of the competent provincial environmental protection inspector based on the place in which the waste was generated or managed.

According to Art. 197 of the Waste Act (explanatory proceedings of the provincial environmental protection inspector), the provincial inspector of environmental protection determines the violation based on inspections, including measurements taken during them or by other means; measurements and tests conducted by the entity obliged to perform such measurements and tests; and

notifications made accordingly by the Marshal of the voivodeship, regional director of environmental protection, or the minister responsible for climate affairs.

According to Art. 198 of the Waste Act (elements of the decision imposing an administrative fine), decisions regarding whether to impose an administrative fine are related to the type of violation, the day of its determination, and the amount of the fine. Further, according to Art. 199 of the Waste Act (directive on determining the amount of the administrative fine), when determining the amount of the administrative fine, the voivodeship inspector of environmental protection takes into account the type of violation and its impact on human life and health as well as the environment, the duration of the violation, the scale of the activity conducted, and the potential consequences of the violation, as well as their magnitude. Additionally, according to Art. 201 of the Waste Act (method of payment of the administrative fine), the administrative fine must be paid within 14 days from the day on which the decision on imposing the administrative fine is finalised. The fine must be paid to a separate bank account owned by the relevant voivodeship inspector of environmental protection. After each quarter, the revenues from administrative fines are transferred by the voivodeship inspector of environmental protection to the bank account of the National Fund for Environmental Protection and Water Management by the end of the next month.

6. Conclusions

This paper explored legal regulations and sanctions related to the illegal dumping of waste in Polish environmental law (including related administrative law norms and certain criminal and civil law rules). The above discussion leads to the following conclusions: (1) Poland has adequately implemented EU solutions (Directive 2008/98/EC; Directive 2018/851) by adopting many legal acts. (2) The administrative provisions in the Waste Act concerning permits for the transport and processing of waste appear to be appropriately constructed. This regulation should also be evaluated positively. (3) Administrative and legal control provisions appear to be incomplete in the Waste Act. The Waste Act should also include detailed provisions regarding on-site inspections; currently, it is necessary to refer to the EPI Act. (4) The legal provisions governing legal liability are inadequate. The general application of the general principles of civil liability to matters related to the titular issue are insufficient. It is necessary to introduce comprehensive and detailed legal regulations with a civil law character to the Waste Act. For example, legal regulations that replace the application of the general principles of civil liability should be introduced into the Waste Act. (5) Polish criminal laws, both those in the PC and the Waste Act, as well as those providing for administrative fines, should be assessed positively – this type of legal regulation deserves praise and should serve as a model.

In conclusion, the issue of the illegal dumping of waste in environmental law is crucial and should be managed across multiple levels (criminal, administrative, and civil) with appropriate and responsible legal regulations. In Poland, the Waste Act offers appropriate legal provisions for the criminal dimensions of this problem. However, the same cannot be said for the administrative dimension, particularly regarding control; this dimension requires further amendment. Moreover, specific provisions are also lacking for civil liability.

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Elżbieta ZĘBEK[1]

Legal provisions for the facilitation of the transition to a circular economy in the Polish legal system[2]

Abstract

The transition to a circular economy (CE) is a priority objective for European Union (EU) Member States. Specifically, this goal is stated in the 8th Environmental Action Programme (which outlines a programme until 2030), the European Green Deal, European Commission communications, and the Waste Framework Directive 2008/98/EC as amended by Directive 2018/851. As a member of the EU, Poland is obliged to align its waste management practices with the CE; this work is reflected in legislative changes related to waste, packaging, and the municipal maintenance of cleanliness and order. This article presents the legal status of the transition to a CE in Poland, including the established legal instruments. The Polish legal system has developed measures to protect the environment, life, and human health by preventing and reducing waste and improving the efficiency of raw material use. Waste management is consistent with the waste hierarchy, with a focus on maximising recovery (material and organic recycling, energy recovery), an extended producer responsibility system, and strict requirements for recovery and recycling rates, with a particular focus on plastic packaging. In Poland, the CE Roadmap—which includes a legislative toolkit on sustainable industrial production, sustainable consumption, bioeconomy, new business models, and CE implementation and monitoring – has been developed for the transformation toward a CE. Poland's priorities in this regard include: (1) innovation, strengthening cooperation between industry and the scientific sector, resulting in the implementation of innovative solutions in the economy; (2) creating a European market for secondary raw materials, where their movement would be easier; (3) ensuring the high quality of secondary raw materials that results from sustainable production and consumption; and (4) developing the service sector.

Keywords: environmental law, circular economy, waste management, legal instruments, transition, waste recovery

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1. Introduction

Proper waste management has become a highly topical environmental, resource, and energy-related issue in the European Union (EU). Inadequate waste management contributes to adverse global climate change, depleting resources and polluting the environment. The EU's overriding objective should therefore be to reduce the mass of waste produced and the costs of waste recovery and disposal, as reflected in the changes to the European Green Deal strategy and related policies. Moving toward a circular economy (CE) is a sure solution to these problems. Introduced by David Pearce in 1990,[3] the CE concept is based on four irrelated economic functions of the environment. The environment provides not only utility values, but also a resource base and economic benefits, as well as an essential life support system.[4] A CE is a regenerative system that contains resources, waste, energy emissions, and leakage, which must be minimised by slowing down, closing, and narrowing material and energy loops.[5] The introduction of a CE is expected to reduce waste, support reuse, and close production chains. Therefore, this approach is suitable for achieving environmental objectives.

The transition to a CE is now one of the EU's environmental priorities. However, this requires strengthening the three 'pillars' of the system, including environmental benefits, cost savings from reduced demand for natural resources, and economic benefits of creating new markets.[6] Member States must implement the EU's Plan for a Closed Circle Economy developed in 2015,[7] which is divided into sections on production, consumption, waste management, and recycling.[8] Further, the CE is also an appropriate model to implement in the context of the Sustainable Development Goals set out in the 2030 Agenda for Sustainable Development – especially given Goal 13 (take urgent action to combat climate change and its effects).[9] In the EU, the transition to a CE is currently one of the leading objectives included in the 8th Environmental Action Programme[10] (EAP; this programme outlines a plan until 2030). This programme sets out a framework comprising six priority objectives, the third of which is specifically about moving toward a regenerative growth model, decoupling economic growth from resource use

3 | Pearce and Turner 1990, 112–113.
4 | Andersen, 2007, 133–140.
5 | Murray, Skene & Haynes, 2015, 379–380; See also: Geissdoerfer et al. 2017, 758.
6 | Taranic, Behrens & Topi, 2016.
7 | European Commission, Closing the Loop. An EU Action Plan for the Circular Economy Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2015)614/2.
8 | Moraga et al. 2019, 455; See also: Elia, Gnoni & Tornese 2017, 2745.
9 | Resolution adopted by the UN General Assembly on 25 September 2015, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1.
10 | Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030, OJ L 114, 12.4.2022.

and environmental degradation, and accelerating the transition to a CE. Notably, the 8th EAP is based on the 2019 European Green Deal (EGD),[11] a growth strategy that aims to transform the EU into a fair and prosperous society with a modern, resource-efficient, and competitive economy; achieve zero greenhouse gas emissions by 2050; and decouple economic growth from the use of natural resources.[12] The EGD situates the CE as a useful tool for accomplishing these aims. In fact, the transformation of the economy toward sustainability is based on objectives such as mobilising the industrial sector toward a clean, closed-loop economy.[13] Put differently, a CE[14] can support the objectives of the EGD.

More specifically, a CE is a production and consumption model that involves sharing, borrowing, reusing, repairing, refurbishing, and recycling existing materials and products for as long as possible to lengthen their life cycles. In practice, this means minimising waste. At the end of the product life cycle, raw materials and waste should remain in the economy through recycling. Notably, they can be successfully reused to create additional value. In addition, a CE is a regenerative system in which resource use, waste, energy emissions, and leakage are minimised by slowing down, closing, and narrowing material and energy loops. The aim is to reduce waste, reuse products, and close production chains. This approach is suitable for achieving environmental objectives.[15] Along these lines, the CE model is a basic strategy for transforming existing production and consumption patterns toward more environmentally friendly ones. The key areas here are the reduction of resource consumption, the increase in the reuse of resources, and the recovery of resources. Broadly, it is important to decouple economic growth and environmental degradation; that is, it is necessary to decouple resources (to use fewer resources per unit of economic output [GDP]) and impact (reduce the environmental impact of all resources used).[16]

To achieve the EU's goal of a CE, changes must be made to the Waste Framework Directive 2008/98/EC[17] (WFD), especially in relation to its requirements for planning such infrastructure systems. The CE should be closely linked to the efficiency of resource productivity and waste production.[18] In line with the proximity principle of the WFD, an integrated and adequate waste management

11 | European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM(2019) 640 final.
12 | Wolf et al. 2021, 102.
13 | For more, please see: Paleari 2022; Schunz 2022.
14 | European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Closing the loop – An EU action plan for the Circular Economy, COM(2015) 614 final.
15 | See footnote no. 3.
16 | Głowacki et al. 2019, 168; Karpus 2023, 4–5.
17 | Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ EU 312, 2008 (WFD).
18 | Robaina, Villar & Pereira 2020, 12567; Domenech & Bahn-Walkowiak 2019, 12–13.

system should be established at the national level.[19] In addition, the system should be designed to enable the whole community to become self-sufficient in waste disposal and recovery. The EU's legal tool to support the transition to a CE is the Waste Package, which includes the amendment of six waste management directives.[20] However, the effectiveness of the implementation of this concept is determined by the applicable legislative, technical, and organisational solutions in waste management, especially with regard to the closure and 'sealing' of this system.[21] The need to achieve a CE is also mentioned in the context of packaging waste management in Directive 2018/252,[22] which sets out measures to prevent the generation of packaging waste and to reuse, recycle, and otherwise recover packaging waste, thereby reducing its final disposal, in order to support the transition to a CE. The issue of plastics in the EU is also being addressed in the European Strategy for Plastics in a Closed Economy (COM(2018) 28 final).[23] This strategy sets out a vision for a new plastics economy in Europe. In particular, an intelligent, innovative, and sustainable plastics sector that fully recognises the need for reuse, repair,[24] and recycling in design and manufacturing will increase economic growth and employment in Europe and reduce the EU's greenhouse gas emissions and dependence on imported fossil fuels. Increasing the durability of plastics and, in turn, plastic products can allow for reuse and high-quality recycling. By 2030, all plastic packaging placed on the EU market should be cost-effectively reused or recycled.

The new action plan for the CE sets out actions for a cleaner and more competitive Europe (COM(2020) 98 final).[25] The aim of this plan is to accelerate the transformational change required by the EGD, while building on the CE activities implemented since 2015. The plan will ensure that the regulatory framework is streamlined and adapted to a sustainable future and that it maximises the new opportunities arising from the transition, while minimising the burden on citizens and businesses. It sets out a series of interlinking initiatives to create a robust and coherent product policy framework that makes sustainable products, services, and business models the norm and changes consumption patterns to prevent waste. This policy framework will be introduced gradually, with priority given to key product value chains. Further measures will be introduced to reduce waste and ensure that the EU has a well-functioning internal market for high-quality

19 | WFD, Art. 16.
20 | Wilts and von Gries 2015, 168.
21 | For more, please see: Zębek & Zięty 2022
22 | Directive 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste, OJ L 150, 14.6.2018.
23 | European Commission, A European Strategy for Plastics in a Circular Economy, COM(2018) 28 final.
24 | See: Terryn 2019, 872; Turiel 2021, 587; Zoll 2019, 149–155.
25 | European Commission, A new Circular Economy Action Plan for a cleaner and more competitive Europe, COM (2020) 98 final.

secondary raw materials. Further, the EU's ability to take responsibility for its waste will also increase.

In Poland, these objectives are pursued through the implementation of EU provisions and regulations into national waste management and environmental legislation, including the Waste Act of 2012 (WL),[26] the Packaging and Packaging Waste Act (PPWA),[27] and the Act on Maintaining Cleanliness and Order in Communes of 1996 (MCOC),[28] among others. This article presents the legal status of the transition to a CE in Poland and related established legal instruments.

2. Considering Poland's waste management principles and legal instruments in the context of a circular economy

2.1. Basic principles of waste management

In Poland, the transition to a CE is particularly evident in the 2012 Waste Act, especially after the regulatory changes introduced by the Act of 17 November 2021.[29] This Act highlights the need to adapt CE guidelines in waste management. Notably, it sets out measures to protect the environment, life, and human health by preventing and reducing waste and its negative impacts, by reducing the overall impact of resource use, and by improving the efficiency of such use to give rise to a closed-loop economy.[30] Section II of the Act lays down general principles for waste management to protect human life and health and the environment. Specifically, it establishes that waste management shall not: (a) cause danger to water, air, soil, plants, or animals; (b) cause nuisance through noises or odours; or (c) negatively affect the landscape or places of special interest, including cultural and natural sites.[31] Key to this is the waste hierarchy, which establishes that waste should be managed in the following order: (1) waste prevention, (2) preparation for reuse, (3) recycling, (4) other recovery operations, and (5) disposal.[32] To prevent waste, measures should be taken to reduce: (a) the quantity of waste, including by reusing or extending the life of the product; (b) the negative environmental and human health impacts of the waste generated; and (c) the content of hazardous substances in materials and products.[33] Prevention of waste shall include at least: (1) promoting

26 | Waste Law of 14 December 2012, consolidated text LJ of 2023, items 1587, 1597 (WL).
27 | Act of 13 June 2013 on packaging and packaging waste management, consolidated text LJ of 2023, items 1658, 1852 (PPWA).
28 | Act of 13 September 1996 r. on maintaining cleanliness and order in communes, consolidated text LJ of 2023, items 1469, 1852 (MCOC).
29 | Act of 17 November 2021 r. amending the Waste Act and certain other acts, LJ of 2021, item 2151.
30 | WL, Art. 1.
31 | Ibid. Art. 16.
32 | Ibid. Art. 17. For more, please see: Zębek 2018, 235.
33 | Ibid. Art. 3(33)

and supporting sustainable production and consumption patterns; (2) encouraging the design, production, and use of products that are resource-efficient, durable, repairable, reusable, and upgradable, and not artificially shortening the life cycle of products; (3) encouraging the reuse of products and the establishment of systems promoting their repair and reuse, especially for electrical and electronic equipment, textiles, furniture, packaging, and building materials and products; (4) promoting the availability of spare parts, manuals, technical information or other tools, hardware, or software that enable the repair and reuse of products without impairing their quality and safety, as long as this does not infringe upon intellectual property rights; (5) the reduction of waste generation in processes linked to industrial production, mineral extraction from deposits, manufacturing, construction, or demolition, considering the best available techniques; (6) reducing the generation of food waste in primary production, processing, and manufacturing; food retail and other distribution entities; food services, and households; (7) encouraging food donations and other forms of food redistribution, prioritising human use over reprocessing for animal feed or non-food products; (8) promoting the reduction of the content of hazardous substances in materials and products; (9) reducing the generation of waste, particularly that which is not suitable for preparation for reuse or recycling; (10) identifying products that are major sources of litter, especially in terrestrial and marine environments, and taking action to prevent and reduce the generation of waste from these products; (11) seeking to prevent the generation and release of waste into the marine environment; (12) developing and supporting information campaigns to raise awareness of waste prevention and littering.[34]

Notably, the principle of prevention is closely linked to the principle of waste precaution and of comprehensiveness, which considers the eventual significant reduction of waste. Thus, the aim of this principle is also to reduce the amount of waste and its toxicity in production processes and finished products. However, despite the use of recycling methods, waste management processes generate residual waste. Consequently, the principles of waste management need to be modified to make maximum use of this residual waste, which is what the CE aims to do.[35]

According to this hierarchy, waste management is mainly focused on waste recovery. In legal terms, the primary outcome of recovery is that the waste serves a useful purpose by replacing other materials that would otherwise be used to fulfil a function, or by which waste is prepared to fulfil such a function in a particular facility or in the economy.[36] Preliminary recovery is the preparation of waste for reuse involving checking, cleaning, or repair, whereby products or parts of products that have previously become waste are prepared so that they can be reused

34 | Ibid. Art. 19a.
35 | Korzeniowski 2014, 212.
36 | WL, Art. 3(14)

without any other pre-processing activity.[37] Mechanical-biological treatment methods for mixed municipal waste can be applied to some of the waste that is collected here.

The next stage of waste recovery is recycling; in this stage, waste is reprocessed into products, materials, or substances used for their original purpose or other purposes. Recycling also includes the reprocessing of organic material (organic recycling) but does not include energy recovery and reprocessing into materials to be used as fuels or for earthworks.[38] Organic recycling consists of the aerobic treatment of waste (including composting) or the anaerobic treatment of waste (involving biological decomposition under controlled conditions using micro-organisms, resulting in the production of organic matter or methane). It should be mentioned that landfilling is not considered organic recycling. Polish legislation in the context of CE also distinguishes material recovery, which involves reprocessing waste into materials that can be used as fuels or other means of energy production. This recovery includes preparation for reuse, recycling, and earthworks.[39] Finally, energy recovery through the thermal treatment of waste is also distinguished.[40] The last step in the waste hierarchy is disposal, which should only apply to non-recoverable waste; it is carried out by thermal waste treatment or landfilling. According to the proximity principle, taking into account the waste hierarchy, waste is treated first at the place where it is generated.[41]

An additional legal tool in the transition to a CE is the option of the loss of status. This is because certain types of waste cease to be waste if, as a result of recycling or other recovery operations, they fulfil the following relevant requirements: (a) an object or substance used for a specific purpose, (b) an object or substance for which a market or demand exists, (c) an object or substance that fulfils the technical requirements for its use for the specific purpose and meets the requirements set out in the legislation applicable to the object or substance concerned and the standards applicable to the product (especially chemicals), (d) the use of the object or substance does not lead to detrimental effects on life, human health, or the environment.[42]

2.2. Waste management obligations of public authorities and enterprises

Legislation on waste management has laid down appropriate rules. It also imposes many obligations on waste holders. For example, waste holders must ensure the proper planning, design, and implementation of activities that generate waste,

37 | Ibid. Art. 3(22)
38 | Ibid. Art. 3(23)
39 | Ibid. Art. 3(15a)
40 | Ibid. Art. 3(15)
41 | Ibid. Art. 20.
42 | Ibid. Art. 14.

including production methods or forms of service, raw materials, and materials that primarily prevent or reduce waste and its negative impacts on human life and health and the environment. This applies to all stages during the manufacturing of a product.[43] Waste that has not been prevented shall be recovered as a priority by the waste holder; specifically, 'recovery' is the first stage of preparation for reuse or recycling by the holder of the waste or, where this is not technically possible or justified on environmental or economic grounds, other recovery operations. If necessary to ensure recovery, the waste holder shall remove hazardous substances, mixtures, and components from the hazardous waste before or during recovery. Further, the waste holder shall dispose of waste that cannot be recovered. The only type of waste that should be stored is waste that cannot be disposed of by other means. Disposal shall be provided for waste from which recoverable waste has previously been separated out.[44] In waste management, the institution of extended producer responsibility (EPR) plays an important role, significantly changing the subjective scope of responsibility for waste. This has far-reaching implications for the specific part of waste law dealing with the rationalisation of waste management and not just the general principles of environmental law.[45] The transition to a CE, therefore, challenges businesses to prevent waste, use by-products directly, use renewable energy sources, and offer products that can be easily repaired, refurbished, or modified and thus reused. The range of activities implemented by companies includes: (1) sustainable business models based on CE principles, (2) eco-design practices, and (3) eco-innovation.[46]

The Polish legal system also imposes certain obligations on public administrations regarding recycling. Public authorities are obliged to take all measures to promote reuse or to prepare for the reuse of waste; in particular, they must encourage the establishment of reuse and repair networks and provide economic incentives. In addition, public finance entities shall apply the criteria for the reuse or preparation for reuse of waste when awarding public contracts.[47] To adapt the CE in Poland, the 1996 Act on Maintaining Cleanliness and Order in Municipalities established an appropriate system of selective waste collection, including paper, metals, plastics, glass, multi-material packaging waste, and biowaste, which is recycled. In addition, separated fractions from mixed municipal waste are recovered at municipal facilities. This involves the installation of the treatment of non-segregated (mixed) municipal waste or residues from the processing of such waste as per the requirements of the best available technique. Specifically, this involves: (1) the mechanical-biological processing of mixed municipal waste and its

43 | Ibid. Art. 18.
44 | For more information on waste management methods, please see: Zębek & Raczkowski 2014; Zębek, Szwejkowska & Raczkowski 2015, 652–658.
45 | See: Karpus 2021, 111–126.
46 | Pichlak 2018, 338; Pink & Wojnarowska 2020, 125–128; Gralak 2021, 32.
47 | WL, Art. 19.

separation from fractions suitable in whole or in part for recovery, or (2) the storage of waste generated in the process of the mechanical and biological processing of mixed municipal waste and of residues from the sorting of municipal waste.[48]

There is also an obligation on municipalities to achieve appropriate levels of waste recovery and recycling. Specifically, municipalities are required to achieve the following levels of preparing for reuse and recycling of municipal waste: 35% in 2023, 45% in 2024, 55% in 2025, 56% in 2026, 57% in 2027, 58% in 2028, 59% in 2029, 60% in 2030, 61% in 2031, 62% in 2032, 63% in 2033, 64% in 2034, and 65% in 2035 and beyond. In addition, they are obliged not to exceed a landfill level of 30% from 2025–2029, 20% from 2030–2034 and 10% from 2035 onwards.[49]

In the transition to the CE, packaging waste management is an important issue. Indeed, the Packaging and Packaging Waste Management Act of 2013 sets out the obligations of businesses introducing, supplying, distributing, and exporting packaging waste and packaged products as well as those recovering and recycling packaging waste. The purpose of the Act is to reduce the quantity and environmental harmfulness of materials and substances contained in packaging and packaging waste at the production, marketing, distribution, and processing stages, especially through the manufacturing of clean products and the use of clean technologies. The Act sets out the requirements to be met by packaging placed on the market, principles for packaging recovery organisations, and principles for handling packaging and packaging waste.[50] Plastic packaging, such as oxo-degradable plastic shopping bags, are subject to special regulations.[51] The producer of packaging is obliged to limit the quantity and negative environmental impact of substances used for the production of packaging and the packaging waste generated to ensure that (1) packaging does not contain harmful substances in quantities that pose a risk to the product, the environment, or human health and (2) the maximum sum of lead, cadmium, mercury, and hexavalent chromium in the packaging does not exceed 100 mg/kg. Additionally, the producer is also obliged to reduce the volume and negative environmental impact of substances used in the production of packaging and packaging waste. In doing so, it must ensure that the volume and weight of the packaging are reduced to the minimum necessary to fulfil the function of the packaging and ensure the safety of the product, taking into account the expectations of the user. Furthermore, it should market packaging designed and manufactured in such a way that it can be reused and then recycled, if reuse is not possible, or recovered by means other than recycling if recycling is not possible.[52]

Reusable packaging waste should be recovered under conditions that meet the health and safety requirements for recyclable packaging. Packaging subjected

48 | Ibid. Art. 35(6)
49 | MCOC, Art. 3b.
50 | PPWA, Art. 1.
51 | Ibid. Art. 8a.
52 | Ibid. Art. 11.

to specific types of recovery must meet the following requirements: (1) regarding recycling, the packaging must have been manufactured in such a way that a certain percentage by weight of the material from which the packaging is made can be recycled; (2) regarding composting, the packaging must have a biodegradability level that does not impede separate collection of such bio-packaging, composting processes, or other operations to which they are submitted; (3) regarding biodegradability, the packaging must have the capacity to decompose physically, chemically, thermally, and biologically and the ultimate decomposition of the resulting compost into carbon dioxide, biomass, and water must be ensured; (4) regarding energy, the packaging have a minimum lower calorific value to optimise energy recovery.[53]

In Poland, there is a niche market for bio-based packaging, including compostable packaging. It is estimated that in 2018, the share of biodegradable packaging was only 2%. There is a need to support the development of bio-packaging supply chains to strengthen the potential and competitiveness of Polish companies on the international and global market. Bio-packaging supply chains are mainly co-produced by suppliers of natural raw materials and biopolymers, producers and distributors of bio-packaging, producers of finished products, and consumers.[54]

Notably, Polish law introduced requirements for producers of beverage packaging; that is, producers of disposable plastic bottles of three litres or less. Specifically, these producers must ensure that such packaging, including plastic caps and lids, contains at least: (1) from 2025, 25% recycled plastic if the main component is polyethylene terephthalate; (2) from 2030, 30% recycled plastic.[55]

3. Considering Poland's system of legal and economic waste management instruments in the context of a circular economy

3.1. Legal instruments of waste management

Polish legislation has established legal instruments to implement the previously described principles and hierarchy of waste management and to ensure that waste is handled in accordance with environmental law. These include: (a) waste management plans, (b) a waste collection and treatment permit and registration system, and (c) a waste evidence system. Waste management plans are intended to achieve the objectives set out in environmental policy and decouple the trend in the growth of waste generation and its impact on the environment from the trend in national economic growth. In addition, these plans support the implementation

53 | Ibid. Art. 12.
54 | Brzeziński et al. 2022, 27–28.
55 | PPWA, Art. 14a.

of the waste hierarchy and the principle of self-sufficiency and proximity, as well as the creation and maintenance of an integrated and sufficient network of waste management facilities in the country, meeting the requirements of environmental protection.[56] These plans cover waste generated in the area at national and provincial levels, including municipal waste, biodegradable waste, packaging waste, and hazardous waste. They also include the previously described waste prevention measures. Further, the plans contain analyses of the current state of waste management in the area, including information on: (1) waste types, quantities, and sources; (2) waste subjected to particular recovery and disposal processes; (3) waste management problems, such as existing waste collection systems and measures to improve their functioning, measures to prevent the placement of recyclable waste in landfills, and rates of municipal waste going to energy recovery processes; (4) waste management policies, including the technologies and methods planned for their implementation; measures to improve (from an environmental point of view) the preparation for the reuse, recycling, and non-recycling recovery and disposal of waste; measures to encourage the separate collection of biowaste for composting, digestion, or other treatment that offers a high level of environmental protection; and the use of environmentally safe materials produced from biowaste capable of protecting human life and health and the environment.[57]

Other legal instruments include waste collection and treatment permits, which have a rationing function. This rationing enables the stable regulation of waste handling; in particular, the primary function of these instruments should be the prevention of waste. The implementation of the preventive function of legal instruments in waste management should also be the result of a comprehensive approach to waste management designed to significantly reduce waste.[58] Another form instrument is registration, which applies to entities that: (a) introduce products and packaged products, (b) operate retail or wholesale units where plastic shopping bags are offered, (c) manage waste, and (d) are entrepreneurs.[59] These entities are also obliged to report on their products, packaging, and management of related waste in their annual reports.[60] It is also worth mentioning that waste holders are obligated to keep separate quantitative and qualitative records for each type of waste.[61]

The transformation of the CE is also already visible in Polish jurisprudence, particularly with judgements in relation to inappropriate methods of waste management, which, according to the guidelines of this system, should be aimed at

56 | WL, Art. 34.
57 | Ibid. Art. 35.
58 | Korzeniowski 2014, 27.
59 | WL, Art. 49.
60 | Ibid. Art. 77.
61 | Ibid. Art. 66. See: Zębek 2018, 258–260.

reuse (i.e. the recovery and recycling of waste). The judgements allege that there are insufficient preparatory processes for the recovery of waste; for example, glass cullet cannot be classified as recycling, making it impossible to classify the cullet as a recycling material.[62] Another case concerns waste treatment facilities (for recovery and disposal) that do not meet the technical requirements for methods of preparing waste for recovery and do not follow the waste hierarchy, such as facilities for the separation of secondary raw materials from selective collection and packaging from trade and industry, as well as associated infrastructure. The waste treatment hierarchy assumes that there are higher-level waste treatment options (waste prevention, preparation for reuse, recycling) and management options (which are subordinate to the higher treatment options). Subsequent waste treatments must be compatible (non-contradictory) with the higher treatment options in the hierarchy and designed to achieve the objectives of the CE model.[63]

3.2. Financial waste management instruments

Economic and other instruments are used to create incentives for the waste hierarchy. Examples of economic instruments and other measures to encourage the waste hierarchy are set out in the WL. These include: (1) charges for and restrictions on the use of landfill and incineration to encourage waste prevention and recycling, retaining landfill as the least desirable waste management method; (2) proportionate waste levy schemes on waste generators based on the actual amount of waste generated and designed to encourage the separation of recyclable waste at the source and the reduction of mixed waste; (3) tax incentives for free product donations, especially food donations; (4) EPR schemes for different types of waste and measures to improve their efficiency, profitability, and management. This system is established to ensure that producers of products, including packaged products, are financially and organisationally responsible at the life cycle stage of the product when it becomes waste; (5) deposit return schemes and other measures to encourage the efficient collection of used products and materials; (6) sustainable public procurement to encourage better waste management and the use of recycled products and materials; (7) the gradual removal of surcharges incompatible with the waste hierarchy; (8) the use of fiscal or other measures to promote the use of products and materials prepared for reuse or recycling; (9) encouraging research and innovation on advanced recycling and product remanufacturing technologies; (10) the use of the best available waste treatment techniques; (11) economic incentives for local

62 | Judgment of the Provincial Administrative Court in Warsaw, IV SA/Wa 857/21, LEX no. 3318691.
63 | Judgment of the Provincial Administrative Court in Warsaw, IV SA/Wa 1816/20, LEX no. 3161881; Judgment of the Supreme Administrative Court, II OSK 2525/17, LEX no. 2739886.

and provincial government bodies, especially to promote waste prevention and the expansion of separate collection systems, without promoting landfilling and incineration.[64]

4. Legislative and organisational measures involved in the transition to a circular economy in Poland

In Poland, the Roadmap for Transformation to a Circular Economy[65] was adopted in 2019. This plan includes a set of tools to create conditions for the implementation of the new economic model. Notably, the tools are not only legislative. The plan is one of the projects of the Strategy for Responsible Development, which contains five chapters:

Chapter 1, 'Sustainable industrial production', is intended to draw attention to the important role of industry in the Polish economy and to new opportunities for its development. Indeed, there is great potential for improvement in Poland with regard to the management of industrial waste, especially from mining and quarrying, industrial processing, and energy production and supply. Conducting production activities that generate less waste and managing as much industrial waste from these activities as possible in other production processes and sectors of the economy can significantly increase the profitability of production in Poland and reduce its negative impact on the environment. Also highlighted here is the aspect of EPR, an approach that obliges the producer to collect and manage the waste generated from the same products it puts on the market. This chapter also analyses the Environmental Life Cycle Assessment, an approach to assessing the environmental impact of a product or business activity.

Chapter 2, 'Sustainable consumption', shows how much potential there is in this historically overlooked stage of the life cycle. Sustainable consumption is a style of consumption that satisfies basic human needs while minimising the use of natural resources and reducing waste and emissions. Measures aimed at consumers as part of the CE transition include ensuring the availability of repair and spare parts information, better enforcement of warranties, eliminating false claims about environmental impact, or determining the maximum shelf life of a product without harming the consumer or the environment. This framework analyses three aspects: (1) Municipal waste: the framework outlines that the creation of an economy that fully realises the CE approach will require intensified efforts to prevent the generation of and manage as much municipal waste as possible through recycling. The latter requires that waste be collected separately and is of good quality (the quality of municipal waste consists in particular of its

64 | WL, Annex 4a.
65 | Resolution 136/2019.

cleanliness, understood as not being contaminated with other types of waste); (2) Food waste: the framework assumes that the separate collection of food waste and its management in facilities suitable for this purpose is an essential part of waste management; (3) Education: the framework cites education as crucial for the success of the transition toward the CE.

Chapter 3, 'Bioeconomy', deals with the management of renewable raw materials, which hold great potential in Poland. The circular bioeconomy is the biological cycle in the economy. Notably, the biological cycle is one of the two pillars of the CE, along with the technological cycle. In the CE, the biological cycle is related to the management of renewable resources (so-called 'biomass') throughout their life cycle; that is, across their processing, the production of goods (e.g. food, feed, bioenergy), the sale of goods, the use phase, and the management of biowaste. The bioeconomy provides the basis for the functioning of the primary sector of the economy, which consists of agriculture, forestry, and fisheries, as well as many secondary sectors, including food, feed, forestry and wood, pulp and paper, pharmaceuticals, textiles, furniture, construction, biotechnology, cosmetics, fuel, and organic recycling industries. The CE Roadmap focuses, on the one hand, on general actions to create conditions for the development of the bioeconomy in Poland. On the other hand, it focuses on actions related to the development of the bioeconomy in selected areas; that is, in the creation of local value chains, in industry, and in the energy sector.

Chapter 4, 'New business models', identifies opportunities to re-engineer the ways in which different market players operate based on the idea of the CE. The transformation toward the CE requires a re-engineering of the operating model of virtually all market participants, including businesses, public institutions, and consumers. The corporate business model consists of the following elements: key partners/suppliers, key activities, key resources, customer relationships, distribution channels, customer segmentation, costs, and revenues.

Chapter 5 'Monitoring system', deals with the implementation and monitoring of the CE. Monitoring the CE is a major challenge due to the complexity of the CE concept itself; specifically, the CE encompasses policies across many different areas and their interdependencies and has a multidimensional impact on national socio-economic development. Therefore, the CE Roadmap specifically outlines an action for developing a conceptual approach to such monitoring in Poland. The activities detailed in this chapter are shown in Table 1.

Table 1. Actions for the responsible development strategy

Chapter	Activities
Sustainable industrial production	**Management of waste from mining, processing, and energy industries** – Analyse the potential of and proposals for legislative changes to increase the economic use of combustion by-products; – Provide guidelines for Waste-Free Coal Power Generation to minimise the environmental nuisance associated with coal mining and the generation of electricity and heat from coal combustion; – Conduct feasibility study for the creation of a dedicated platform for recyclable materials; – Analyse the potential for opening up and utilising waste heaps from the processing and extractive industries and of the morphological composition of extractive waste and the possibilities of its utilisation in individual branches of Polish industry, as well as proposing legislative changes on this basis. **EPR** – Review the regulations on packaging, end-of-life vehicles, waste electrical and electronic equipment, tyres, batteries and accumulators, and lubricating oils and lubricating preparations; additionally, the development of proposals to amend Polish regulations to bring them in line with the requirements of EU law and steer their transformation toward the CE; – Analyse strengths, weaknesses, opportunities, and threats in EPR control and reporting and develop proposals to address deficiencies in this area; – Conduct awareness campaign on the benefits of EPR for business image. **Life Cycle Environmental Assessment** – Develop information and education material on calculating the environmental impact of products and economic activities, based on methodologies developed by the European Commission (i.e. Product Environmental Footprint Category Rules and Organisation Environmental Footprint Sector Rules)
Sustainable consumption	**Municipal waste** – Monitor the effectiveness and efficiency of current regulations and develop recommendations for adapting and amending national municipal waste legislation; – Prepare proposals for hazardous waste legislation; – Identify all municipal waste streams, including post-consumer waste, not yet accounted for but of economic importance and related to achieving recovery and recycling targets in waste management; – Food waste – Conduct information campaign to raise awareness among consumers and producers on how to prevent food waste; – Develop a concept for distribution mechanisms and appropriate handling of products with a minimum shelf life; – Develop a concept for a system of incentives and obligations for entrepreneurs to counter food waste; – Conduct periodic statistical studies on the scale, structure, and direction of food waste processes in Poland. – Education – Develop a concept for a government information platform on CE; – Conduct a public campaign on sustainable consumption patterns.

Chapter	Activities
Bioeconomy	**Key actions in the area of creating conditions for the development of the bioeconomy** – Establish a permanent team among heads of departments from ministries responsible for particular areas of the bioeconomy and appoint a coordinator of this team, define directions for bioeconomy development, supervise the implementation of tasks in particular areas, and improve the flow of information between ministries; – Review existing regulations and create uniform requirements/standards for biomass; – Analyse biomass supply potential at national and regional levels, preceded by the development of an appropriate methodology; – Identify research, development, and innovation priorities for the development of the bioeconomy in Poland. **Activities in the area of building local value chains and the raw material base** – Feasibility study for the creation and development of local biorefineries; – Awareness campaign for farmers to increase their knowledge and guide them toward CE. – Activities in the field of energy – Conduct information campaign on the principle of biomass cascading; – Analyse barriers to the use of advanced biofuels in transport. **Activities in the area of industry** – Conduct information campaign on products made from biomass; – Establish norms and standards for specific categories of biomass products; – Develop a concept for an information platform on the current quantity, quality, location, and source (agriculture, forestry, fisheries, biowaste, biomass); – Establish a working group with entrepreneurs to develop a concept and create a bio-economic development cluster.
New business models	**To create the right conditions for CE business models, the following activities are proposed:** – Analyse the feasibility of changes to the tax system that would enable CE business models to become more competitive; – Develop a proposal for the legal regulation of the sharing and co-sharing of immovable and movable property, especially in relation to the regular short-term rental of vacant residential space and the carriage of persons; – Analyse the feasibility of introducing reporting and inspection concessions for entities applying environmental standards (e.g. EU Eco-label, EMAS, ISO) and entities in the Polish Register of Cleaner Production and Responsible Entrepreneurship; – Develop proposals for changes in public procurement law; – Develop a concept for an ecosystem of support for businesses based on CE business models; – Develop guidelines for enhancing the role of CE in economic clusters for the circulation of raw materials and waste from specific industries, including process industries; – Establish a connected automated driving focal point for road transport automation; – Develop a concept for the creation of a nationwide multi-industry online platform for product lending and the sharing of low-frequency products; – Establish a national intelligent specialisation for CE; – Develop a system of incentives for universities to introduce CE issues into research and teaching programmes;

Chapter	Activities
Implementation and monitoring of the CE	– Implement the 'oto-CE' project (Gospostrateg). The aim of the 'oto-CE' project is to develop two methodologies to assess progress in the transformation toward CE in Poland and to evaluate the impact of CE on socio-economic development at the meso-economic (regional) and macro-economic (national economy) levels.

The state of Poland's transition to a CE can be analysed using the monitoring indicators proposed by the European Commission,[66] which can be grouped into the following four areas: (1) production and consumption, (2) waste management, (3) secondary raw materials, and (4) competitiveness and innovation. This analysis shows that the Polish economy is among the top ten EU economies that consider indicators for municipal waste generation per capita in the EU, such as the circular material use indicator, which is defined as the ratio of circular material use to domestic material consumption, the amount of private investment in the CE sector, and the number of jobs in these sectors relative to total jobs.[67]

5. Conclusions

The CE concept assumes that all parts of the production chain – products, materials, and raw materials – should remain in circulation for as long as possible. Waste generation should be kept to a minimum. Therefore, the transition to a CE model requires appropriate measures to be taken at all stages of a product's life cycle, starting with the acquisition of raw materials, through design, production, consumption, to waste collection and management. The implementation of the CE concept is not possible without organisational, process, and product innovation. The transition to a closed-loop economy is currently a priority objective for EU Member States, including Poland. In line with the 8th EAP and the guidelines within it, the EGD, the communications of the European Commission, and the amendments to the WFD by Directive 2008/98/EC, Poland is adapting its waste management principles[68] to strive for the maximum use of raw materials while limiting the amount of waste generated. This is reflected in regulatory changes to a number of acts, especially the Act on Waste, Packaging, and the Maintenance of Cleanliness and Order in Municipalities (the overall aim of which is to move toward a CE). An analysis of this legislation shows that measures have been developed to protect the environment and human life and health by preventing and reducing waste (thus reducing its negative impacts) and improving the efficiency of environmental resource use (thus reducing the demand for these resources). Management

66 | European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the Circular Economy Action Plan, COM(2019) 190 final.
67 | Kulczycka 2018, 85.
68 | See also: Hopej-Malinowska 2023, 25–28; Bándi 2022, 18–73; Olajos & Mercz 2022, 79–82.

then becomes resource efficient and promotes the protection of environmental elements in terms of both quantity and quality. In particular, waste management must align with the waste hierarchy set out in the WFD, which aims to maximise recovery (material recycling, organic recycling, energy recovery), leaving only waste fractions that cannot be recovered for disposal. The loss of waste status has also been introduced for those fractions that are recycled and, at the same time, become secondary raw materials for further use, thus helping maintain an appropriate level of recovery.

Another aspect favouring the transition to a CE is the commitment of public administrations and economic operators to take appropriate measures in this direction. This applies in particular to the introduction of an effective selective waste collection system and the establishment of mixed municipal waste treatment facilities aimed at separating and preparing waste for recovery. In this way, the recycling of materials and organic substances takes place via two routes, that is, from selectively collected and non-segregated waste, which increases the efficiency of the system. In addition, an EPR system has been introduced for different types of waste along with legal and economic measures to prevent waste and improve its efficiency and management. Legislative measures include the promotion of sustainable production and consumption patterns, the use of sustainably repairable products, and other incentives. In particular, Polish legislation has focused on the recovery of plastic waste to reduce the amount of plastic microbeads in the environment. This issue is currently being widely analysed, particularly in relation to microplastics entering surface and groundwater, which is often a source of drinking water. However, the system needs to strengthen the management of biodegradable litter. In addition, both local authorities and operators are required to achieve appropriate levels of recovery and recycling, which will be increased over the years. Supporting instruments for the implementation of the CE are waste management planning, a system of permits for waste generation, collection and processing, and record keeping and reporting.

Finally, Poland has developed a roadmap for the transformation to a CE, which includes a set of legislative and organisational tools to create conditions for the implementation of the new economic model. These measures target activities in sustainable industrial production, sustainable consumption, the bioeconomy, new business models, and the implementation and monitoring of the CE. Poland's priorities within the CE include: (1) innovation and strengthening cooperation between industry and the scientific sector to facilitate the implementation of innovative solutions in the economy; (2) creating a European market for secondary raw materials to facilitate their movement; (3) ensuring high-quality secondary raw materials resulting from sustainable production and consumption; and (4) developing the services sector. When assessing Poland's legislative and organisational activities for the transition to the CE, they should be considered at a high level and in line with EU guidelines. This is evidenced by the fact that the Polish

economy is among the top ten EU economies in terms of CE monitoring indicators. In the coming years, this can significantly contribute to creating a resource-efficient economy and reducing the amount of waste generated. Ultimately, this will enhance the sustainability and protection of environmental resources, which will undoubtedly have an impact quality of life and economic development.

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