

# **PRODUCER RESPONSIBILITY AND PRODUCT POLICY – POLAND**

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## **Sources of law:**

- The Environmental Protection Law Act (2001)

- The Act on waste (2001)
- The Act on packaging and packaging waste (2001)
- The Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit (2001)
- The Act on general safety of products (2000)
- The Act on chemical substances and preparations (2001)
- The Act on plant protection products (1995),
- The Act on biocidal products (2002)
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- The Act on the proceeding with ozone-depleting substances (2001)
- The Act on the ban to use products with asbestos (1997)
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## **Part A**

### **PRODUCERS RESPONSIBILITIES CONNECTED WITH WASTE PRODUCTS (Questions 1-5)**

#### **I. Introduction**

Polish regulations concerning the environmental protection impose on producers can be divided into the following two groups: general obligations imposed on producers concerning all products and special obligations imposed on producers of selected products, particularly packaging, which in their waste stage pose special risk to the environment.

*Obligations concerning all products* ensue from provisions of the Environmental Protection Law Act (2001, EPLA) which is the general legal act regulating these issues.

The Act demands to reduce at the manufacturing process<sup>1</sup>:

- using of substances and technical solutions which could have a negative impact on the environment after utilization of the product
- using of substances and technical solution which could make difficult:
  - o the disassembling of a product in order to remove its waste elements that require special treatment under provisions of the Act on waste
  - o or the use of parts of a product in a different product or their use for other purposes after the product reaches its waste stage.

Besides every product should bear information how to disassembly, reuse or disposal a product in an ecological safe way<sup>2</sup>. Placing on the market of products which do not meet the above mentioned requirements is forbidden<sup>3</sup>.

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<sup>1</sup> Art. 166 point 2 and 3 of the Environmental Protection Law Act.

<sup>2</sup> Art. 167 para. 1 point 3 of the Environmental Protection Law Act.

General obligation to reduce the generation of waste also arises out of the Act on waste (2001). According to article 5 point 1 of the Act on waste:

*Who undertakes activities that generate waste or activities which can generate waste, should plan, design and conduct them in such a way as to prevent the generation of waste or to reduce its amount and its negative impact on the environment during manufacturing of products, during their use and after their utilization.*

Detailed obligations concerning different kinds of waste products are limited to requirements arising out of the adaptation of Polish law to European law. Polish regulations do not provide for requirements to be met by producers in connection with waste products other than those provided for in Directive 94/92 (packaging and packaging waste) and Directive 91/157 (batteries). Provisions of Directive 2002/96 on waste electronic and electric equipment and Directive 2000/53 on end-of-life vehicles have not been transposed into Polish law yet. The draft of a relevant act on end-of-life vehicles has been drawn up and most probably it will be passed soon after necessary adjustments.

## II. PRODUCERS RESPONSIBILITIES CONNECTED WITH WASTE PRODUCTS

### 1. Packaging and packaging waste

#### Producer's obligations concerning packaging

*Producers and importers* Detailed obligations concerning packaging and packaging waste that are imposed on producers arise out of the Act on packaging and packaging waste (2001). The Act imposes obligations connected with packaging and waste packaging not only on producers of packaging - the same obligations apply to importers of packaging.

*Definition* Packaging shall mean all products made of any kinds of materials to be used for the containment, protection, handling, delivery and presentation of any and all kinds of goods, from raw materials to processed goods<sup>4</sup>. The Act concerns sales packaging, grouped packaging as well as transport packaging<sup>5</sup>.

*Requirements* According to provisions of the Act on packaging and packaging waste, producers and importers of packaging should reduce quantity and negative effect to environment of substances used to produce packaging and the generation of waste packaging in such a way that<sup>6</sup>:

- the volume and bulk of packaging were reduced to minimum
- packaging were designed in a way which simplifies their reuse, recycling or, if recycling is not possible, other form of recovery,
- packaging consisted of the least quantity of substances which create threat to human life or health and to the environment
- the established maximum content level of lead, cadmium, mercury and hexavalent cadmium in packaging was not be exceeded<sup>7</sup>.

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<sup>3</sup> Art. 171 of the Environmental Protection Law Act.

<sup>4</sup> Art. 3 para. 1 of the Act on packaging and packaging waste.

<sup>5</sup> Art. 3 para. 2 of the Act on packaging and packaging waste.

<sup>6</sup> Art. 5 para 1 of the Act on packaging and packaging waste.

<sup>7</sup> Ordinance of the Minister of Environment of 30<sup>th</sup> December, 2002.

In the case when producers or importers mark packaging, which is not obligatory, this mark should identify kinds of materials used for production of the packaging and possibility of reuse or recycling of packaging<sup>8</sup>.

This provisions are used to producers and importers of products in packaging accordingly.

*Requirements concerning packaging of particular products (substances)*, including their marking, are specified also in separate regulations (e.g. detailed requirements concerning packaging of dangerous substances and preparations, biocides or plant protection products).

*Take back obligation* Producer or wholesalers of products in packaging are obligated to take back at their expense reusable packaging from retailers<sup>9</sup>.

*Special legal regime concerns packaging used for dangerous substances.* In spite of the fact that the problems of dangerous substances is regulated by the Act on chemical substances and preparations (2001), issues concerning packaging waste from such products are regulated by provisions of the Act on packaging and packaging waste<sup>10</sup>. The seller of dangerous substances is obligated to take a deposit in the amount defined by their producers (importers) ranging from 10% to 30% of their price and refund it upon the take back of their packaging. The obligation to take back such packaging from sellers rests with producers and importers of dangerous substances. In the case when a deposit collected for packaging cannot be refunded by the seller (brake or closing of business), the obligation to take back packaging used for dangerous substances and to refund the deposit is transferred onto the producer (importer).

In the event when the producer or the importer of dangerous substances manages packaging waste after these substances himself, he is obligated to have a permit for collecting, transporting, recovery or disposal of waste under the Act on waste<sup>11</sup>.

#### ***Obligations of retailers of products in packaging<sup>12</sup>:***

- sellers are obligated to inform users about packaging and packaging waste – with respect to the return and collection systems, recovery, the appropriate treatment of packaging waste and the meaning of packaging marking,
- retailers (commercial area exceeding 25m<sup>2</sup>) selling drinks in disposable packaging are obligated, except cases defined in the executory act, to offer similar products in reusable packaging
- retailers are obligated to take back reusable packaging - both returned and for exchange - for products that they have in their offer,
- retailers (commercial area exceeding 2500 m<sup>2</sup>) are obligated at their own expense to carry out selective collection of packaging waste after products in packaging which they have in their offer.

#### ***Consumers obligation<sup>13</sup>***

Users of dangerous substances are obliged to give back to retailers reusable packaging and packaging waste from that dangerous substances.

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<sup>8</sup> Art. 6 para. 1 and 2 of the Act on packaging and packaging waste.

<sup>9</sup> Art. 14a of the Act on packaging and packaging waste.

<sup>10</sup> Art. 10 and art. 16 of the Act on packaging and packaging waste.

<sup>11</sup> Art. 11 of the Act on packaging and packaging waste.

<sup>12</sup> Art. 12-16 of the Act on packaging and packaging waste.

<sup>13</sup> Art. 17 of the Act on packaging and packaging waste.

## 2. Accumulators

### *Producers' and importers' obligations concerning accumulators*

*Take back obligation* Similar obligations rest with producers and importers of lead-acid accumulators. They are obligated to take back spent accumulators from retailers and from other places, and transfer them for recycling<sup>14</sup>. They also have to attach to the product information on conditions and the mode of returning of spent accumulators, and on their own collection scheme centres<sup>15</sup>.

*Retailers* are obligated to take back spent accumulators upon sale of new ones or to collect deposits (30 zlotys) to be refunded when purchasers deliver spent accumulators within 30 days<sup>16</sup>. They also have to instruct buyers how to return spent accumulators and inform about the collection system of spent accumulators and refunding of deposits<sup>17</sup>. When the retailer cannot take back a spent accumulator or refund a deposit, the obligation to do it is transferred onto the producer or the importer of the accumulator<sup>18</sup>.

## 3. Obligation to ensure recovery and recycling (economic operators)

### *The level of recovery*

Producers and importers of products in packaging made of plastics, aluminium, sheet, paper or cardboard, glass, wood and textiles are obligated to ensure recovery of packaging waste, particularly through recycling<sup>19</sup>. Producers and importers are obligated to ensure the proper level of recovery of packaging waste, specified in percents of the total bulk of this type of waste place on the market.

The same obligation rests with other economic operators, specified in the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit<sup>20</sup> (e.g. market operators that pack products manufactured by others, market operators that place on the market products bearing their brands but manufactured for them by others, or market operators running of shops of the total commercial area exceeding 5000m<sup>2</sup> which sell products packed there).

Producers and importers of refrigerating machines and air-conditioning systems containing ozone-depleting substances (CFC and HCFC), producers of nickel-cadmium accumulators, galvanic cells and primary batteries, lubricating oils, gas discharge lamps and tyres are also obligated to ensure recovery through recycling of waste from those products<sup>21</sup>. The level of

<sup>14</sup> Art. 23 para.2 and 3 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>15</sup> Art. 23 para. 1 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>16</sup> Art. 20 paras. 1- 3 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>17</sup> Art. 21 para. 2 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>18</sup> Art. 23 para. 3 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>19</sup> Art. 3 para. 1 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>20</sup> Art. 3 para. 1 in connection with Art. 1 paras. 1a, 1b and 2 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>21</sup> Art. 3 para. 1 in connection with Art. 1 para. 3 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

recovery of this waste is also defined as a percentage of the total bulk (quantity) of this kind of waste placed on the market.

The level of recovery and recycling of the above defined waste will be increasing over the next years and is expected to have reached the target values for this kind of waste by the end of 2007.

*Reports and product fee* In order to enable the verification of the fulfilment of the obligation to ensure recovery and recycling, economic operators and waste recovery organization are obligated to keep relevant records and submit reports on the fulfilment of their obligations<sup>22</sup>.

In case of failure to reach the required levels of waste recovery and recycling, economic operators are obligated to pay a product fee the amount of which depends on the balance between the reached and required levels of recovery and recycling of the given kind of waste<sup>23</sup>. On the other hand when they reach a higher recovery level they can credit the surplus towards the following year<sup>24</sup>. The product fee is calculated separately for each kind of waste according to fixed rates. In case of failure to fulfil the obligation to pay the product fee, its amount is decided upon by the competent environmental protection authorities<sup>25</sup>.

*Funds*<sup>26</sup> Means from product fees are adequately distributed among commune and voivodeship funds for the environmental protection, and the National Environmental Protection and Water Management Fund which uses the means to finance any actions serving the purpose of recovery and recycling of packaging waste and waste from spent accumulators, batteries, refrigerating machines, air-conditioning systems, tyres, gas discharge lamps and lubricating oils, as well as to finance ecologic education concerning selective collection and recycling of waste.

*Managing of waste* In the case when the manufacturer or the importer obligated to ensure the fixed level of recovery and recycling carries out this obligation himself, he is obligated to comply with all relevant regulations, mainly arising out of the Act on waste. In particular, in cases specified there it is necessary to obtain permits to produce, recover, collect or transport waste. Recovery or disposal may take place only in places designated for this purpose in accordance with regulations concerning spatial development, in special installations or machines which meet specific requirements<sup>27</sup>. As regards the recovery of lubricating oils, they should be recovered through refining to remove impurities and to oxidize additives contained in them to obtain base oils<sup>28</sup>. Disposal of ozone-depleting substances contained in refrigerating machines and air-conditioning systems must be carried out in such a way as to

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<sup>22</sup> Art. 10, art. 11, art. 15 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit. The obligations of producers and importers of packaging to submit yearly reports on the amount of manufactured and imported packaging are also useful (Art. 7 of the Act on packaging and packaging waste).

<sup>23</sup> Art. 12 para. 2 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>24</sup> Art. 11a of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>25</sup> Art. 17 para. 1 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>26</sup> Art. 27-36 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>27</sup> Art. 13 para. 1 of the Act on waste.

<sup>28</sup> Art. 39 para. 1 of the Act on waste.

prevent their emission to the environment<sup>29</sup>. It is forbidden to dump refrigerating machines or air-conditioning systems containing ozone-depleting substances in landfills<sup>30</sup>.

#### **4. Transfer of obligation to ensure recovery and recycling onto waste recovery organizations**

Economic operators obligated to ensure recovery and recycling may transfer by contract this obligation onto waste recovery organizations<sup>31</sup>. Such organizations can only have the form of joint-stock companies and carry out activities exclusively in the scope of organization, management and managing enterprises connected with waste recovery and recycling, and ecologic education<sup>32</sup>. Until now 31 waste recovery organizations have been registered. Shares of such companies must be inscribed shares, and each company's share capital must amount to at least 1mln zlotys (EUR 215 000) paid in cash before registration<sup>33</sup>. This requirement aims at eliminating possibility of avoiding obligation to pay the product fee through the transfer of the obligation to ensure waste recovery and recycling onto entities which are not able to meet this obligation.

There are no special regulations modifying generally binding rules of competition protection that would apply to waste recovery organizations. Therefore, all regulations concerning competition protection including control of concentration, ban of agreements restricting competition and misuse of the dominant position as defined in the Act on competition and consumers' protection are applicable to waste recovery organizations. No case concerning application of provisions of competition protection to waste recovery organizations has been a subject of decisions of courts of higher instances.

An economic operator or a waste recovery organization can contract a third party to perform particular activities connected with recovery and recycling.

#### **5. Obligations of manufacturers and importers of vehicles provided for in the draft act on recycling of end-of-life vehicles**

At present there are no binding regulations providing for any special obligations of manufacturers of vehicles connected with end-of-life vehicles. However, there has been drawn up a draft of the relevant act which is to be passed by the Parliament shortly and which will come into force within the next few months. The draft act provides for an obligation to deliver end-of-life vehicles to specialized disassembly garages. Producers and importers of vehicle will be obligated to set up a network of collection centres of end-of-life vehicles throughout the country. They are also to be obligated to provide information to managers of disassembly garages concerning ways of disassembling of vehicles, location of dangerous substances and parts, and testing methods for parts designed for reuse. Producers and importers of vehicles are to be obligated to ensure appropriate waste recovery and recycling levels or to pay the product fee according to the same principles as producers and importers of some products, products in packaging and of packaging. Regulations enabling transfer

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<sup>29</sup> Art. 20 para. 2 of the Act on proceeding with ozone-depleting substances.

<sup>30</sup> Art. 22 para. 1 of the Act on proceeding with ozone-depleting substances.

<sup>31</sup> Art. 4 para. 1 i 2 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>32</sup> Art. 5 paras. 1 and 2 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

<sup>33</sup> Art. 6 paras. 1 and 2 of the Act on manufacturers' obligations concerning management of some categories of waste and on the product fee and the deposit.

under an agreement of obligation to ensure appropriate recovery and recycling levels onto a waste recovery organization will also apply.

## **6. Effectiveness of regulations concerning producers responsibilities connected with waste products**

The above described regulations, particularly ones concerning packaging and packaging waste and obligation to ensure appropriate recovery and recycling levels, have been in force for two years. According to data published by the Ministry of the Environment roughly one fourth of packaging placed on the Polish market underwent recycling in 2002. Recovery levels fixed for 2002 were reached. However, they were relatively low. Due to their significant increase a greater effort on obligated producers' and importers' part will be required to reach them in the next few years. The higher level of recycling will require the development of a system of selective collection of waste. At present an obstacle to the development of recycling is the lack of possibility to acquire a greater amount of segregated waste.

The system of the product fee and the possibility to transfer obligation to ensure waste recovery and recycling onto waste recovery organizations seems to function effectively from the economic perspective, because these organizations ensure waste recovery at prices which are lower than product fees. This bespeaks healthy competition between different waste recovery organizations. Consequently, revenues of environmental protection funds from product fees are significantly lower than planned – in 2002 they amounted to 11,7 mln zlotys as compared to the planned 100 mln zlotys<sup>34</sup>.

### **III. Summary of the part one (questions 1 - 5)**

- 1) Polish regulations provide for producers' responsibilities connected with waste products which arise out of the requirements of European law. Directive on end-of-life vehicles and directive concerning waste electronic and electric equipment have not been implemented into Polish law yet.
- 2) Regulations include different legal tools:
  - both classical law and order provisions, such as the obligation to use technologies that produce limited amount of waste and enable its recycling, to mark packaging and products properly or to take back packaging waste or some waste products, and
  - financial tools that have more flexible nature, such as a deposit fee or the possibility to transfer by contract the obligation to ensure the appropriate level of recovery and recycling onto waste recovery organizations, which possibility is combined with the product fee to be paid in the event of failure to reach the fixed level of recovery.
- 3) The above mentioned obligations rest not only with producers but also with importers of products. In some instances they also concern wholesalers and retailers.
- 4) Producers can transfer by contract their obligations to ensure the appropriate level of waste recovery and recycling onto waste recovery organizations. The latter are companies – independent market operators whose shareholders do not have to be the producers who are obligated to ensure recovery.

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<sup>34</sup> Recycling of packaging. Rzeczpospolita No 268 of 18th Nov., 2003, supplement Ochrona Środowiska XVIII

- 5) Basing on available data it is possible to assess the effectiveness of regulations concerning producers' obligation to ensure waste recovery and recycling. Their goals (low-level ones) have been achieved in the last few years. Information on the subject comes from reports, published, for instance, by the Ministry of the Environment, which producers (waste recovery organizations) are obligated to submit. There are no data available concerning the preventing of waste production, which would enable the assessment of the effectiveness of regulations. The obligations regarding waste products, imposed on producers, are unavoidably connected with expenses. In the case of the obligation to ensure appropriate levels of waste recovery, the possibility to transfer it onto waste recovery organizations and competition between them promotes the most effective ways of waste recovery.

## **Part B**

### **PRODUCT POLICY (questions 6-10)**

#### **I. The strategic documents (question 6)**

There are some strategic documents which deal with the issue of limiting negative impact of products on the environment and human health - both of general and sectorial nature. The Strategy of Changes in Production and Consumption Patterns, the National Ecologic Policy for 2003-2006 taking into consideration prospects for 2007-2010 and the National Waste Management Plan will be discussed as examples.

##### ***1. The Strategy of Changes in Production and Consumption Patterns<sup>35</sup>***

The strategy was adopted by the Government in October 2003 and can be treated as the first step to prepare a complex policy document relating to the Integrated Product Policy.

The Strategy indicates a low effectiveness of the natural resources management, a large share of highly material- and energy-consuming industries in the national economy, and waste, the emission of greenhouse gases and chemical substances as threats to the achievement of sustainable production and consumption. It proposes “such changes of the patterns of production and consumption which would enable the sustainable economic growth with parallel decrease of negative impact on the environment”.

The strategy notes, among other things, what follows:

- the need to consider the prevention principle and the polluter pays principle in every kind of activity for the benefit of the sustainable production and consumption,
- the need to increase manufacturers' liability for environmental effects,
- the need of ecologic education (common pro-ecologic initiatives of the private and the public sectors) in the scope of using environment management systems; spreading the system of products certification and marking; the strategy emphasises the important need of ecologic education in the area of packaging waste,
- the need to support pro-ecologic initiatives,
- the need to reduce energy consumption, through e.g. the production and the use of ecologic fuels and means of transportation or the use of renewable energy.

##### ***2. The National Ecologic Policy for 2003 - 2006 taking into consideration prospects for 2007-2010<sup>36</sup>***

In accordance with an assumption that was adopted in this document, the realization of the State ecologic policy, considering the principles of sustainable growth,

“should be carried out by changing of the model of production and consumption, lowering of the material-, water-, energy- consumption of the economy, using of the best available technologies and good management practices, and only then through

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<sup>35</sup> This information is prepared on the basis of the summary of the Strategy which is published on the internet page of the Ministry of Economy

[http://www.mpips.gov.pl/wiadomosci\\_szczegoly.php?nr=2717&id\\_doc=2717&dokument=2717www](http://www.mpips.gov.pl/wiadomosci_szczegoly.php?nr=2717&id_doc=2717&dokument=2717www).

<sup>36</sup> This document comes from December, 2002 and it updates and specifies in details the II National Environmental Policy developed in the year 2000 and accepted by the Sejm in the year 2001. The new requirements arising out of new Environmental Protection Law Act (2001) and The Sixth Environment Action Program were taken into account.

[http://www.mos.gov.pl/1materialy\\_informacyjne/raporty\\_opracowania/polityka\\_ekologiczna\\_2003\\_2006.pdf](http://www.mos.gov.pl/1materialy_informacyjne/raporty_opracowania/polityka_ekologiczna_2003_2006.pdf)

typical and traditional protective measures such as gas purification, sewage treatment and waste disposal”.

Chapter I entitled: *“Goals and tasks of system character”* provides for a *“general activation of the market for the benefit of the environment”* which is to result, among other things, in the broadening of the market for pro-ecologic products, reusable products, products obtained from recycling and raw materials recovered from waste. According to the NEP this is to be achieved through different measures, including:

- public administration showing preference for pro-ecologic products when purchasing goods and services (the document provides for yearly drawing up of a list of pro-ecologic goods and constant increase of purchasing of such goods),
- taking into account ecologic criteria during public tenders,
- influencing consumers’ attitudes by ensuring that consumers have an easy access to information on ecologic values of products through marking products with eco-signs and providing information on their harmfulness to the environment throughout their life-cycle (manufacturing process, distribution, use, waste stage) as well as developing criteria of granting eco- signs to a greater number of product groups,
- taking economic measures conducive to the development of the environment-friendly products (e.g. ecologic funds),
- promoting the environmental management scheme (EMAS).

Chapter II entitled: *“Preservation of natural heritage and rational utilization of natural resources”*, which concerns issues connected with the preservation of nature, soils, forests, biodiversity, provides, among other things, for the following actions:

- using such production methods in agriculture which comply with the Act on ecologic agriculture,
- introducing risk assessment procedures for pesticides,
- taking actions which support search for and application of substitutes of minerals, fulfilling criteria of ecologic and economic effectiveness,
- continuing actions aiming at implementing the biological safety system (GMO) in Poland.

Chapter III entitled: *“Sustainable utilization of raw materials, materials, water and energy”* defines activities aiming at increasing of the effectiveness of utilization of raw materials, materials, water and energy through different actions including<sup>37</sup>:

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<sup>37</sup> The II National Environmental Policy (see note 36) indicates that:

*“Reduction of material-intensity and waste-generation in production processes is one of the major objectives of the environmental policy as it is one of the ways to implement the principle of pollution prevention at source, which additionally allows to achieve economic benefits such as lower production outlays and as a consequence leads to the reduction of citizen’s share in costs of the use of environmental resources and environmental protection”.*

As a medium-term objectives (by 2010) II NEP indicates:

- *“reduction in material-intensity and waste-generation of production (...)”;*
- *“wide practical implementation of voluntary agreements with the industry concerning programmes for material-intensity and waste-generation reduction in production processes (...)”.*
- *cease of production and use or reduction in use of hazardous substances and materials, under regulations of the EU directives and provisions of international law (containing heavy metals, persistent organic pollutants, and substances depleting ozone layer) (...);*
- *wide promotion of product life-cycle assessments (following an example of environmental impact assessments (...))”.*

Source: [http://www.mos.gov.pl/mos/publikac/II\\_PEP\\_english.doc](http://www.mos.gov.pl/mos/publikac/II_PEP_english.doc)

- introducing an obligation to assess life-cycles of selected products, and
- implementing a system of recycling of a specified category of end-of-life vehicles.

Chapter IV entitled: *“The environment and human health. Further improvement of the quality of the environment and ecologic safety”*, defines what must be done in the field of waste management, chemical substances management and limitation of noise in the environment. These goals can also be attained with the use of product related tools, such as:

- taking proper actions concerning treatment of end-of-life vehicles,
- introducing a system of chemical substances management which complies with the direction of the EC policy in this scope, including creating of bases for the replacement of dangerous substances with safer ones,
- manufacturing of machines and equipment producing less noise.

**3. The National Waste Management Plan<sup>38</sup>** is an example of sectorial strategic document. The Plan indicates further development of manufacturers’ responsibilities in the scope of achieving minimum levels of recovery and recycling of specified products; placing on the market products meeting ecologic requirements concerning their process of production, storage, and suitability for recovery and recycling; minimizing the quantity and harmfulness of dangerous waste through designing products considering ecologic requirements.

4. The above mentioned product related tools are mostly enumerated in *“Instructions concerning the rules and the scope of issues of the environment protection to be considered in sectorial programmes”* (2003). This document indicates how to integrate environmental aspects/requirements into such areas as power industry, different industrial branches, transport, agriculture, forestry, tourism, health protection, defensive system, architecture.

## **II. Products as the subject of environmental regulations - the chosen aspects (questions 7-9)**

### **1. Act on general safety of products (2000) as compared to the environmental requirements concerning products**

The Act allows the introduction of only such products which, when used properly and in accordance with their appropriation, do not constitute danger to human safety, life and health.

When a product does not meet safety requirements (it is dangerous for consumers), proper control measures can be applied with respect to the producer, including the obligation to take necessary action to make the product comply with the relevant requirements or the obligation to withdraw the product from the market, among others.

Where special regulations concerning products safety were established down, e.g. including those concerning the environmental protection, the product must also meet these requirements. Compliance of the product with ‘special regulations’ does not exclude the possibility to use control measures when the product is dangerous for consumers.

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<sup>38</sup> Resolution from 29<sup>th</sup> October 2003 of the Council of Ministry on National Waste Management Plan (M.P. 2003 Nr 11, poz. 159).

Although the application of control measures defined in the Act aims at the ensuring of protection to consumers, it can indirectly contribute to the environmental protection, particularly when ‘environmental requirements’ serve not only the purpose of the environmental protection but also human health (e.g. the requirement to mark chemical substances).

## 2. General provisions – the Environmental Protection Law Act (EPLA)

The Environmental Protection Law Act (2001), which for the whole legislation regarding the environmental protection, plays the role of both the general and the basic act, in its section entitled: “*Counteracting pollution*” contains general legal regulations concerning product safety.

Within the meaning of the Act a product is a substance, energy, an installation, equipment or any other object or its part which is placed on the market. Regulations concerning ‘products, ‘substances’ and ‘equipment and installations’ are discussed in separate chapters.

### 2.1 Requirements concerning products (Art. 166-172 of EPLA)

a) Producers’ obligations at the product manufacturing stage include the following obligations:

- firstly, the obligation to reduce the consumption of substances or energy,
- secondly, the obligation to reduce the use of substances or technical solutions that could have adverse effects on the environment during utilization of the product and when it becomes waste,
- thirdly, the obligation to reduce the use of substances and technical solution which could make difficult:
  - the disassembling of a product in order to remove its waste elements that require special treatment under provisions of the Act on waste
  - or the use of parts of a product in a different product or their use for other purposes after the product reaches its waste stage.

The competent body can define in an executory act detailed requirements in order to have the obligations fulfilled, including: **a)** requirements concerning particular products or groups of products; **b)** kinds of substances which should be used for manufacturing of products or those the use of which is forbidden; **c)** permitted technical solutions and qualities of products (e.g. emission standards, contents of substances, ban of some substances, features and parameters of products).

The following requirements have already been defined:

- qualitative requirements for some liquid fuels (e.g. sulphur content in some diesel fuels (light diesel fuel ), heating oils, heavy heating oils – with respect to the latter Poland has negotiated a four-year transitional period),
- requirements to be met by batteries and accumulators which are manufactured and placed on the market concerning: a) mercury, cadmium and lead content, b) marking of batteries and accumulators as well as machines with batteries, c) solutions enabling

simple removal of a battery from the machine; moreover a symbol of the selective collection, recycling and a chemical symbol have been specified<sup>39</sup>,

- requirements concerning the reduction of the use of substances that have an adverse effect on the environment after their utilization (regarding the admissible content of phosphates in detergents and cleaning agents and of lead in gas discharge lamps, and fixing the minimum biodegradability level of some anionic and non-ionic surfactants contained in some products at 80%).

*b) The obligation to attach to the product information concerning<sup>40</sup>:* a) the consumption of fuels or materials, b) the size of emission connected with the product use, and c) the way of use, disassembly, reuse and disposal safe for the environment.

This information should also be available and easy to obtain at products points of sale.

Administrative authorities are to prepare free of charge annual specifications of selected products available on the market which will enable consumers to get more information on products.

*c) A particular obligation to attach information to disposable plastic plates and cutlery* about their adverse effect on the environment. This obligation can be broadened to other products.

*d) Special requirements* concerning packaging (see Part A).

## **2.2. Requirements concerning substances (Art. 158-165 of the EPLA)**

Within the meaning of the Act substances are “chemical elements, their compounds, mixtures, and solutions occurring in the environment or resulting from man’s activities”.

Regulations contained in the chapter on substances constitute a part of a large section of legal regulations concerning approach to chemical substances. As regards chemical substances and genetically modified organisms, the Act refers to special regulations.

The Act lays down a general principle in accordance with which a manufactured, utilized or transported substance may be emitted into the environment solely to the extent which is necessary in connection with the character of conducted activities for/in which it is used.

*Substances – the obligation of appropriate packing and marking.* Each substance placed on the market must be packed in the way protecting it from accidental release into the environment, it must carry information on dangers arising from its release into the environment and on procedures in the case of its accidental release when it can cause pollution.

*Substances constituting special threat* (asbestos, PCB, and other defined in executory act of the Ministry of the Environment of 9<sup>th</sup> December, 2003 ). With respect to substances which are particularly dangerous or products containing such substances, the Act introduces a special legal regime:

- firstly, the ban to place them on the market or reuse them, except for cases specified in special regulations (e.g. Act on the ban to use products with asbestos),
- secondly, the obligation to apply particular protective measures when using, transporting or eliminating these substances,

<sup>39</sup> This regulation will come into force on the date of Poland’s accession to the EU.

<sup>40</sup> This provision was introduced to the EPLA in its last amendment of October 2003 r. and it enables the implementation of Directive 1999/94/UE. Currently an executory act which would specify which products are covered by the above mentioned obligations and the detailed way of their fulfillment is missing.

- thirdly, the order to eliminate them gradually and in connection with it the obligation to report.

### ***2.3. Requirements concerning installations and equipment (Art. 141-157 of the EPLA)***

The subject of the chapter on installations and equipment basically deals with requirements regarding such a way of operating them which is defined by the environmental quality standards, emission standards, adequate technologies, the use of fuels, raw materials and materials ensuring the reduction of their negative effect on the environment.

*Equipment.* The Act permits the introduction of restrictions with respect to the utilization of equipment or installations (products) producing noise through the statutory prohibition to use equipment or installations in specified areas or the possibility to limit the time of utilizing equipment producing noise which has a negative impact on the environment under local regulations.

*Means of transportation.* With respect to means of transportation (equipment) the Act refers to a special regulation, namely to the Traffic Law Act. The Act stipulates that vehicles should be constructed, equipped and maintained in such a way as to ensure their least possible negative impact on the environment. Fulfilment of requirements (technical conditions) laid down in regulations, including “environmental” requirements (e.g. concerning emission of noxious substances, noise) is confirmed by a certificate of homologation. The Act also contains regulations concerning the proceeding with end-of-life vehicles. An end-of-life vehicle must be deleted from the register on its owner’s application in the case when it is, for example, transferred to a vehicles utilization company for utilization or to a scrap collection centre indicated by the relevant voivode.

### ***2.4. Financial and legal measures (Art. 283 of EPLA)***

The Environmental Protection Law Act contains recommendations to differentiate rates of public levies, taking into account goals serving the purposes of the protection of the environment. This concerns, for example, rates of excise tax on some petrol, diesel fuels and biofuels, which due to their contents are more environment-friendly.

### ***2.5. Advertising (Art. 80 of EPLA)***

Advertising or a different type of promotion of goods or services should not contain information promoting such a consumption model which is contradictory to the principles of the environment protection and sustainable growth. In particular it should not use images of wild nature to promote products or services which have negative impact on the natural environment.

## **3. Special regulations – selected examples**

### ***3.1. Chemical substances and preparations***

The Act on chemical substances and preparations (2001) introduces a legal regime concerning conditions, bans and restrictions concerning the use of chemical substances or placing these substances on the market. The aim of this is to prevent their noxious effect to human health or the environment.

The act does not apply to pharmaceutical agents, food, animal feed, plant protection products, cosmetics, stupefacients, ammunition, medical goods, fertilizers, unless the special regulations state otherwise.

The way of proceeding with chemical substances and preparations depends on their category – the act provides for different treatment of new substances, existing substances, and dangerous substances and preparations.

#### *Bans*

When competent authorities find out that the production, trade or use of a substance creates an unjustified risk for human health or the environment they can, by way of executory act, define restrictions, bans or conditions:

- a. of production, trade or use of that substance and preparations
- b. or of placing on the market products containing these substances or preparations.

They also can do that when this arise out of international agreement.

At the same time when the international agreement require it the production, trade, and use of dangerous substance need permission.

### **3.2. Plant protection products**

Pursuant to the binding Act on plant protection products (1995), only such plant protection products can be marketed and used which, when used properly and in accordance with their purpose, do not constitute hazard to the environment, and human and animal health. The use of active substances in plant protection products is forbidden or restricted in the scope defined in the executory act. Admission to the market must be granted by the Minister of Agriculture. Plant protection products that can be marketed and used are classified according to their toxicity as very toxic, toxic, noxious and other. They must be properly packed and labeled (include directions for use).

Packing of plant protection products and trading in them requires a permit and must be carried out by persons with proper qualifications.

#### *Bans*

- in the case of danger to human and animal life or the environment, the voivode by way of a regulation can forbid or restrict the use of plant protection products, or make it conditional upon the fulfillment of certain terms for a specified time;
- with respect to plants grown in the protected zones of water intakes, national parks, and sanctuaries one can use exclusively such plant protection products the use of which is not forbidden in those zones and areas.

On 18<sup>th</sup> December, 2003 there was passed a new act on the protection of cultivated plants which adapts Polish legislation regarding the protection of cultivated plants and the marketing and use of plant protection products to the legislation in the EU. The act will come into force on the day of Poland's accession to the EU.

### **3.3. Biocidal products**

The Act on biocidal products (2002) introduces regulations enabling the prevention of hazards to human and animal health and the environment which could result from the use of biocidal products and the ensuring of the efficacy of biocidal products.

Biocidal products are divided into categories and groups by their purpose and scope of application. The Minister of Health prepares a specification of active substances which are allowed to be used in biocidal products. An active substance designed to be used in biocidal products can be marketed if it is included in the specification, has been classified, packed and marked in accordance with regulations concerning chemical substances and preparations.

Only such biocidal products are permitted on the market which are covered by a permit or a temporary permit (a biocidal product containing active substances not enumerated in the specification) or which have been entered into the register of biocidal products (biocidal products constituting minor hazard). Permits concerning biocidal products classified as toxic, very toxic, carcinogenic, mutagenic or having harmful effect on reproductiveness should define the scope in which they can be marketed and used excluding their common sale or use.

Biocidal products placed on the market must be packed, classified and marked in accordance with regulations of the Act on chemical substances and preparations and provisions of this act (e.g. marking cannot be misleading and use terms like: “biocidal products of low risk” or “harmless”; marking should include instructions how to proceed safely with waste products and packaging waste, and information about each special hazard to the environment).

### ***3.4. GMO products***

The Act on GMOs (2001) lays down legal bases for undertaking and carrying out any possible activities with the use of genetically modified organisms: a) the contained use of GMOs, b) the deliberate release into the environment of GMOs for other purpose than placing on the market, c) placing on the market GMO products (i.e. GMO or every product containing or consisting of GMO(s) or their part or combinations), d) import and transit of GMO products.

The approach to GMOs provided for in the Act bases on the precautionary principle what is reflected in the legal regime of the approach to GMOs introduced by the Act – the Act provides for initial control of every intended operation involving GMOs to be combined with different types of ongoing controls and mechanisms of response to every risk change during the conducted operation. The control is exercised by the public authorities, users of GMOs and the public at large.

Human health and the environment are the criteria of such control. The Act on GMO introduces the main rule of a case by case risk assessment prior to every intended operation involving GMOs and, depending on the results, the rule of adequate measures to be taken in order to prevent possible risk.

Due to regulatory method that was laid down in the Community law, the Act on GMOs is a regulation of the horizontal type to be applied parallel to sectorial regulations, which at present concern exclusively food and pharmaceutical agents.

### ***3.5. Ozone-depleting substances***

The Act on the proceeding with ozone-depleting substances (2001) enables control on the proceeding with ozone-depleting substances and goods containing them through setting up bans and restrictions concerning their production, trade and use, and exercising control on compliance with bans.

The Act realizes obligations arising from the Vienna Convention and the Montreal Protocol. It also makes it possible to introduce and use the system of control which complies with the Community legislation.

### **3.6. Products containing asbestos**

The Act on the ban to use products with asbestos (1997) bans:

- the placing on the market of asbestos and products containing it,
- the manufacturing of such products
- the trading in asbestos and products containing it.

Exceptions, justified by the absence of technological possibilities to use other products, concern only such products which are listed in the “ specification of products that can be manufactured and admitted to the Polish customs area” (three kinds currently). Within the scope defined by executory regulations, the Act imposes the obligations regarding the safe use of products containing asbestos and their disposal.

### **3.7. Fuels**

#### ***Act on the system of monitoring and control of the quality of liquid fuels (2003)***

The act aim to protect of human health and the environment. It lays down qualitative requirements for liquid fuels (benzines and diesel fuels) permitting temporary derogations from these requirements in the case of extraordinary events occurring on the market which result in the change of conditions of supplying petroleum and its products (a “temporary derogation” shall require the Commission’s permission from the day of Poland’s accession to the EU). Marketing of fuels which do not meet these requirements is forbidden

The legislator does not take advantage of the possibility to lay down stricter requirements with respect to fuels used in sensitive areas from the perspective of the environment protection<sup>41</sup>.

The Act contains a base for the creation of the System of Monitoring and Control of the quality of liquid fuels. The goal of the “system” is to control the quality of fuels placed on the market, and to gather and to process relevant information regarding the above. The System shall cover over 7 thousand petrol stations in Poland<sup>42</sup>. It will be financed with budgetary means.

### **3.8. Biocomponents used in liquid fuels and liquid biofuels**

According to the provisions of the Act on biocomponents used in liquid fuels and liquid biofuels (2003), their producers are obligated to use biocomponents in liquid fuels and biofuels in amounts defined by the Council of Ministry. The minimum amounts of particular biocomponents which producers are obligated to place on the market as components of liquid fuels and biofuels is fixed as a percent of the general amount of fuels placed on the market. The legislator assumes that the share of biocomponents in the total amount of marketed fuels will increase yearly.

Liquid biofuels placed on the market must be sold from separate petrol pumps bearing special signage.

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<sup>41</sup> See: Grounds for the draft Act on biocomponents used in liquid fuels and liquid biofuels: [http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/1010/\\$file/1010.PDF](http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/1010/$file/1010.PDF); p. 28.

<sup>42</sup> See: Grounds for the draft Act on biocomponents used in liquid fuels and liquid biofuels: [http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/1010/\\$file/1010.PDF](http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/1010/$file/1010.PDF); p. 13.

#### **4. Public access to information on products**

There are different legal instruments which enable the public to exercise their right to information on products, such as:

- Eco-sign
- The certification of ecological products
- The way of advertising products
- Labelling and marking products. e.g.:
  - o GMO products;
  - o biocidal products - marking cannot be misleading and use terms like: “biocidal products of low risk” or “harmless”; marking should include instructions how to proceed safely with waste products and packaging waste, and information about each a special hazard to the environment);
  - o selling liquid biofuels from separate petrol pumps bearing special signage;
  - o the obligation to attach to some products information concerning:
    - the consumption of fuels or materials,
    - the size of emission connected with a product use,
    - the way of use, disassembly, reuse and disposal of a product which is safe for the environment;
- Registers accessible to the public (e.g. register of GMO products which have already been placed on the market).

