1. Overview of the legal situation

By amending the Act on Maintaining Cleanliness and Order in Municipalities1 (Municipal Waste Act for short), it became mandatory in Poland from 1 January 2012 for municipal waste to be surrendered to public waste management authorities. The amending Act2 containing these provisions was passed by Polish legislators on 1 July 2011, after many years of debate.3 The most important amendments and the consequences resulting from them are described in this article.

The background to the legislative procedure was the transformation of Community requirements, such as the Waste Framework Directive4 – for which the deadline for transposition ended on 12 December 2010 – or the Landfill Directive5. Despite passing the amending Act, Poland was unable to avoid infringement proceedings being initiated by the European Commission due to the late transposition of the Framework Directive. On 27 March 2012, the European Commission requested the European Court of Justice to impose a daily fine of EUR 67,314 on Poland for missing the deadline for completing the transposition of the Waste Framework Directive.6

Polish legislators first passed legislation on dealing with waste in 1980.7 From 1996, the Municipal Waste Act was the special law that laid down requirements concerning the disposal of municipal waste.8 This law, which has now been extensively amended, contains numerous references to the Waste Act, which came into effect on 1 October 2001 and has

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2 Law amending the Municipal Waste Act of 1 July 2011, No. 152, Item 152.
3 Regarding the procedure, refer to Schäfer/Kapsa, Neue rechtliche Rahmenbedingungen für die Siedlungsabfallentsorgung in Polen, MuA 2011, p. 535 ff.
since been amended several times\(^9\), the provisions of which are not explained in further detail in the following.\(^{10}\)

On 15 March 2011, the Polish Ministry of Environment presented the first draft of a new Waste Act, the purpose of which was also to transpose the Waste Framework Directive. This draft has been with the Standing Committee of the Polish Council of Ministers for scrutiny since 5 July 2011.\(^{11}\) This draft law will not change the side-by-side existence of the Waste Act and the Municipal Waste Act.

### 2. New rules for municipal waste management and its implementation

The duties of municipalities, property owners and waste disposal contractors are determined by the amended Municipal Waste Act. These obligations include setting up municipal waste management and making sure it works, which in Poland – as in Germany – is incumbent upon municipalities within the framework of services of general interest. For many of these municipalities, it was impossible to fulfil this task because up to 31 December 2011 – unlike in Germany – there was no public duty for municipal waste to be surrendered. In the past, each individual property owner decided whether and on which terms waste would be given to a private waste disposal contractor or to public waste management authorities.\(^{12}\)

Nevertheless, municipalities had to ensure that municipal waste was collected separately, picked up and treated and disposed of in accordance with statutory requirements.\(^{13}\) Owing to the lack of the steady waste streams required, inadequate levels of investment were made in new waste treatment and waste disposal facilities. Consequently, Poland has a lot of catching up to do. According to statements by the Ministry of Regional Development, amongst other things, investments in waste incineration or waste treatment plants made during the 2007 – 2013 period of funding can be expected to receive subsidies – mainly from Community funding – covering more than 60 % of the total investment costs.\(^{14}\)

The aim of the new regulation is to achieve a more efficient separate collection of waste at the source, to reduce the volume of primarily biodegradable waste, previously intended for landfilling, to increase the number of state-of-the-art treatment and disposal facilities and to stamp out fly-tipping. On the basis of the amendment to the act, the Polish market for municipal waste management offers not only municipalities but also (internationally operating) waste disposal companies or plant designers and engineers a great deal of potential.\(^{15}\)

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\(^{10}\) For more detailed information on the Waste Act, refer to Schäfer (fn. 7), p. 102 ff.; op. cit., AbfallR 2009, p. 137 (138 ff.); op. cit./Kapsa, ReSource 3/2010, p. 34 (35 ff.).


\(^{12}\) For further details, refer to Schäfer (fn 7), p. 198 ff.


\(^{15}\) Trend research GmbH, MuA 5/2011, p. 229 ff.
Municipalities’ duties

The municipalities maintain cleanliness and order in their area and create the conditions necessary for this (Article 3 of the Municipal Waste Act). Consequently, they organise the separate collection and disposal of municipal waste, they ensure that local treatment and disposal facilities are set up and operated, and they monitor all parties involved in the process.

The municipalities analyse waste-related data on a yearly basis, and pass on this information to the competent voivodeship authority by March of the next year – for the first time in 2013.\textsuperscript{16} The aim is to ensure compliance with national legally determined targets for recycling and recovery, as well as the minimisation of biodegradable waste in residual waste (see below).

Setting up and operating waste treatment plants

The municipalities shall set up and operate local plants to treat non-hazardous municipal waste (Article 3a of the Municipal Waste Act). A decree, a draft of which was presented to the European Commission for notification in May 2012, intends to standardise the requirements for setting up and operating plants such as those for the mechanical-biological treatment of mixed municipal waste.\textsuperscript{17}

Polish legislators have left it up to the municipalities whether they shall determine the constructor and/or operator of the plant within a tender under the Public Procurement Act or in compliance with the requirements of the PPP Act\textsuperscript{19} or the Concessions Act\textsuperscript{20}. In addition, municipalities may realise and operate the plants themselves or jointly with other municipalities in municipal undertakings (Article 3 Section 2 No. 2 of the Municipal Waste Act), for example, if no private operators can be found.

Existing treatment plants and those currently under construction or at the planning stage are classified as regional plants or other plants. Only plants categorised as regional plants may accept, treat and dispose of non-hazardous municipal waste in the future. Traditional sorting plants, plants for the production of substitute fuels, and so on, are routinely classified as other plants and must procure their input in competition with other providers.

In order to gain the status of a regional plant, individual treatment and disposal facilities must have been included in the respective voivodeship’s waste management plan. They must also possess treatment or disposal capacities for a minimum of 120,000 residents and must meet the requirements of the Environmental Protection Act\textsuperscript{21} concerning the best technology available. In addition, these plants must carry out thermal waste treatment or the mechanical-biological treatment of mixed municipal waste with the recovery of recyclable substances or the treatment of selectively collected green waste or other bio-waste (and the associated production of fertilisers) or the landfilling of waste from mechanical-biological treatment and waste from sorting activities. Only regional plants can be sure of receiving appropriate waste streams in the future.

\textsuperscript{16} As an administrative region, a voivodeship is the highest-level territorial unit in Poland.

\textsuperscript{17} EUWID Recycling und Entsorgung, No. 25.2012, p. 34.

\textsuperscript{18} Public Procurement Act of 29 January 2004, Dz. U. No. 19, Item 177.


\textsuperscript{20} The Act on Concessions for Construction Works or Services (Concessions Act for short) of 9 January 2009, Dz. U. No. 19, Item 101.

\textsuperscript{21} Environmental Protection Act of 27 April 2001, Dz. U. No. 62, Item 627.
In addition, the waste management plan provides information about so-called disposal regions within individual or several voivodships. In accordance with the proximity principle, which is recognised throughout Europe, untreated municipal waste shall be disposed of in the disposal region in which it was produced.

The updating of waste management plans was to be decided upon by the competent bodies of the respective voivodship by 1 July 2012 and published accordingly. Initial assessments of the plans of all 16 voivodships in Poland yielded 87 disposal regions, 291 regional plants and 523 other plants. Divided into individual plant types, 215 sorting plants for mixed municipal waste, 62 sorting plants for waste from selective collection, 212 composting plants for green waste and bio-waste, 150 mechanical-biological treatment plants and 16 waste incineration plants are envisaged. The construction of several comparable plants is planned in several disposal regions, which will have an effect on price competition.

In accordance with the Waste Act, the voivodships are responsible for setting up and operating plants to treat and dispose of hazardous municipal waste.

**Minimum requirements for the recycling, recovery and landfilling of biodegradable municipal waste**

The aim of setting up and operating further treatment and disposal facilities and by expanding the separate collection of waste is to ensure that Poland will meet the recycling and recovery rates laid down in Article 10 Section 2 of the Waste Framework Directive in the future. The figures set in Article 3b of the Municipal Waste Act constitute a great challenge for Poland and its municipalities. So far, the country is one of the Member States with the highest landfill rates (5th place out of 27 EU Member States).

Targets for reducing the volume of biodegradable municipal waste previously intended for landfill are standardised in Article 3c of the Municipal Waste Act. In the Treaty of Accession to the EU, Poland committed to limit the landfilling of such waste by 31 December 2010, meaning that since then, no more than 75% of the total weight of biodegradable municipal waste in relation to the weight in 1995 may be landfilled. In the future, greater quantities shall undergo thermal or other treatment processes. Only then, and with a more systematic separation of waste at the source, can the proportion of biodegradable waste in residual waste be reduced to the legally permissible quantity of 54.25 kg per resident by 2020 (35% of the proportion in relation to the weight in 1995).

Failure to comply with these requirements will lead to hefty fines being imposed on municipalities (Article 9x ff. of the Municipal Waste Act) on the basis of EU sanctions threatened upon Poland due to non-fulfilment of the provisions contained in the Landfill Directive, the deadline for transposition of which expired on 31 December 2010.

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22 Authors’ calculation based on the waste management plans published online by the individual voivodships.

23 See Article 16b of the Waste Act.


27 See Article 16a No. 4 of the Waste Act.

28 For more detailed information, refer to Schäfer/Kapsa, ReSource 04/2010, p. 26 ff.
Property owners’ duty to surrender and liability to charges

Non-commercial property owners and building managers are obliged by law to surrender their waste, making them part of the municipal disposal system. The respective municipal waste disposal statutes must be adapted to the amended legal specifications and appropriate cost regimes issued by 1 January 2013 at the latest. In addition, the statutes determine the regular waste collection rhythm. It cannot be assumed that standard stipulations will be contained in the statutes across Poland and that the municipal disposal system will be introduced area-wide at the same time due to the different local circumstances. When the statutes enter into force, at the latest, however, on 1 July 2013, according to the law, owners will be indemnified from their previous contractual obligations and burden of proof.29

The aim of the introduced duty to surrender waste is, amongst other things, to ensure municipal waste disposal throughout the country by providing the necessary funding. The disposal fees include the costs of the collection, recovery and disposal of municipal waste, the construction and operation of recycling centres for their separate collection, and general administration costs. The costs resulting from disposal are analysed annually by the municipal council, which also sets the waste disposal fee – if necessary, every year. The respective municipality is entitled to the revenue generated by these fees. Whilst setting the fees in municipalities with more than 10,000 inhabitants appears to be a manageable task, the impact of the waste incineration plants yet to be constructed, for example, is not yet foreseeable, and is therefore a sensitive issue.

Tendering waste disposal services

According to Article 6c of the Municipal Waste Act, municipalities are obliged to organise a municipal waste collection and disposal system by 30 June 2013.

In accordance with Article 6d of the Municipal Waste Act, the collection of municipal waste shall be subject to compulsory tendering. A municipality with more than 10,000 inhabitants can be divided into different sectors by resolution of the municipal council. Each sector must then be tendered separately. The subject of the tender may be only the collection or the acceptance and treatment of waste. In the event of individual contract awards, in the first case mentioned the selected waste collectors are obliged to transport the municipal waste to the treatment plant selected by the municipality (following the appropriate tendering procedure). Within the meaning of competitive municipal waste management, it can be assumed that waste disposal services at the municipal level will be awarded and performed on a centralised basis. In view of the complexity and length of the associated procedures, in particular passing the respective statutes and preparing appropriate tender documents, implementation on the ground by the aforementioned deadline constitutes a challenge to many municipalities.

Municipal waste disposal contractors in which municipalities have a stake may in future only collect and transport municipal waste provided that they have participated in a tender implemented in accordance with the specifications of the Public Procurement Act and are awarded the public contract within this procedure. In order to be able to participate in tenders, municipal undertakings must be converted into private companies.

There are also fears that the large number of small private waste disposal contractors currently active on the market will shrink drastically because of the new regulations. The reason for this is that municipalities will award long-term, extensive contracts for the collection and disposal of waste. Consequently, small market participants will be compelled to join forces in order to participate in tenders and be awarded such municipal contracts.

Requirements for waste disposal contractors

The Act introduces further requirements for commercial waste disposal contractors that collect and dispose of municipal waste. To date, these waste disposal contractors – with the exception of municipal undertakings – have required authorisation from the municipality to perform municipal waste disposal services. The amended law no longer contains specifications for such authorisation and instead refers in Article 9a Section 1 of the Municipal Waste Act to the Act on Freedom of Economic Activity.30

Since 1 January 2012, however, these companies have been obliged to register beforehand with the municipality’s Register for the execution of municipal waste disposal services. The aim of this registration, effected upon submission of a relevant application, is to ensure entrepreneurial freedom in the disposal area. Companies in possession of a licence for waste services in accordance with the old version of the law must register by 1 January 2013 at the latest.

The obligations to be complied with by waste disposal contractors are determined by Article 9d to 9i of the Municipal Waste Act, decrees yet to be passed by the Ministry of Environment and municipal waste disposal statutes. Of crucial importance is the requirement to transport collected separated municipal waste to disposal facilities that recover or dispose of it in compliance with the waste hierarchy laid down in the Waste Act (or in the Waste Framework Directive). Collected mixed waste shall be transported to the nearest treatment plant. In addition, it is incumbent upon the companies to meet quarterly reporting requirements, explained in detail in the Act, which had to be met for the first time by 30 April 2012.

Monitoring and surveillance

Economic regulatory instruments that aim to monitor and survey the system were introduced to the amended Municipal Waste Act. There shall be a threat of an administrative fine if requirements of the Act – for example, the aforementioned reporting requirements – are breached. This form of sanction cannot be equated to a fine, which is regulated separately in Article 10 of the Municipal Waste Act. In fact, an administrative fine is of an administrative nature and is set by the competent authority (mayor or voidvodship environmental protection inspector) within the framework of surveillance.31 The fact that this sanction amount is set irrespective of the actual avoidance costs often leads to it appearing more sensible to the party concerned from an economic point of view to pay the set administrative fine than to comply with requirements.

3. Conclusions for business practice

As is the case in many European countries, Poland's municipalities are now responsible for deciding how to manage municipal waste streams. This new legal situation, described above, will have a drastic effect on local waste disposal structures.

In individual cases, it will be difficult to forecast the consequences of introducing the public duty to surrender waste and of ensuring the treatment of municipal waste in appropriate plants on both private and municipal waste disposal contractors (both waste collectors and plant operators), on the price development and disposal quality. It is conceivable that the new system will favour logistically and financially strong private companies that are able to employ their resources to reorganise municipal waste management. On the one hand, this could lead to consolidation processes amongst disposers and plant operators.

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31 For more detailed information, refer to Schäfer (fn 7), p. 57 ff.
On the other hand, it cannot be foreseen how the new regulations will affect the desired new investments in modern privately run waste treatment plants. It seems probable that municipalities will tender the collection or the treatment and disposal of municipal waste separately. In the tender conditions they can specify one or more regional plants as preferential municipal waste treatment or disposal facilities in which the waste is then to be treated or disposed. In the event of several regional plants being operated by companies from both the private and the public sector in individual disposal regions, plants constructed by the public sector may be given preferential treatment this way.

According to the updated waste management plans of the 16 voivodships, 74 waste treatment plants are currently being built and a further 234 are at the planning stage. They are expected to be commissioned after 2013. The cost effectiveness of these plants – some of which will be realised as PPP or concessions projects – depends on securing the waste streams required to operate them. If a joint call for tender for the collection and treatment of municipal waste is issued, it is assumed that waste disposal contractors that have their own regional plants are more likely to be awarded contracts. However, only a small number of market participants would benefit from this.

It is furthermore doubtful whether modern waste incineration plants (so-called last treatment level regional plants) will indeed be constructed, the construction of which has been at the planning stage and the subject of loud debate for many years. At present, it seems as though only five of the eleven planned projects (Poznan, Szczecin, Bydgoszcz, Bialystok and Cracow) will be constructed with EU funds.

According to the Polish Ministry of Environment, the new municipal waste disposal system should be up and running by 1 July 2013 (at the latest) to meet European requirements. By then, not only the appropriate implementing regulations such as the new mechanical-biological treatment plants decree mentioned above will have to be passed – the municipal disposal statutes will also have to be adapted to the new statutory requirements. In addition, tenders for the awarding of municipal waste disposal services and the corresponding contracts will have to be concluded because any previous agreements will then no longer be valid. It remains to be seen whether the timeframe required to do this is too short. What is certain is that this is the only way to ensure an appropriate waste input for plants.

In addition to the problem described above, municipalities are facing further challenges, such as having to set waste disposal fees. All system costs shall be included in the calculation, even though their basis cannot yet be fully determined at present. This is also the case for the low fee to be set in the event of separate waste collection. It remains to be seen whether citizens will be influenced by this and will consequently produce less waste and separate waste fractions produced more effectively.

One thing is for sure: the current situation of municipal waste management in Poland is anything but pleasing. It therefore remains to be seen whether the planned legal amendments will indeed lead to a positive development and whether all market participants will make use of their opportunities.

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33 The result of research carried out by the authors following the scrutiny of waste management plans published online by the individual voivodships.


35 Cf. also trend research GmbH, MuA 5/2011, p. 229 ff.