At the end of November 2021, after a one-year hiatus, the Parliamentary Sub-Committee on Waste Management launched the preparation of the Bill On Waste Management for the second reading in Verkhovna Rada (the Parliament of Ukraine). This is the third attempt to move the Ukrainian legislation on waste management forward since 2014.

The importance of the Bill can hardly be overestimated. The Law on Waste enacted back in 1998 is no longer up to the challenges involved with modern waste management and requirements. Ukraine generates up to 300kg of waste per person per year. With a population of 41.3 million this equals 12.39 billion tons a year. Waste reduction provisions of the 1998 Law are ignored and about 94% of the waste is landfilled, creating a serious environmental problem for the country. In 2020, Ukraine managed to recycle and recover only 6.3% of solid household waste, while neighboring Poland recycles more than 33%. Domestic recycling businesses are forced to import salvage to use up their production capacities.

The Bill On Waste Management is supposed to implement new waste management practices based on the best EU standards, including producers’ responsibility for reduction of waste generated by their products (the so-called extended producer responsibility - EPR). It will tackle the problem of waste in general, minimize landfilling, increase re-use and recycling, attract investors and introduce modern waste management technologies.

Enactment of the Bill into law might also help solve the long-lasting conflict between recycling and waste recovery businesses and those businesses engaged in landfilling and waste incineration; a conflict which results in a low percentage of recycling and considerable landfilling of waste.

Can the Government of Ukraine Enact the New Waste Management Rules?

Despite the vast waste management agenda included in the Association Agreement with the EU entered into back in 2014, Ukraine has been failing to meet its international obligations in the field of waste management. Pursuant to the Association Agreement, and the Government’s implementation agenda approved in 2017, Ukraine was supposed to approximate its national legislation on waste to EU acquis by the end of 2018. Based on the principles of circular economy, EU acquis on waste policy requires that the waste be managed without endangering human health or the environment,
and targets increased levels of re-use and recycling of waste materials, including implementation of the EPR principle.

The necessity to adopt a new framework law on waste has been acknowledged in numerous program documents adopted by the Government of Ukraine. Even the National Security and Defense Council identified poor waste management and pollution as key threats to Ukraine’s national security. Nevertheless, legislators have not managed to adopt a respective law; indeed, two bills on the subject were defeated in previous Parliaments thanks to the “efforts” of businesses engaged in landfilling and waste incineration.

The current Bill on Waste Management therefore represents a third attempt to approximate Ukrainian legislation to EU acquis on waste. The Bill will establish a basic legal framework for the new system of waste management and will secure the adoption of sectoral laws dealing with various categories of waste (packaging waste, toxic waste, used batteries and accumulators, extractive industries’ waste, electronic and electrical equipment waste). Among other issues, it intends to cover:

- Restrictions for landfilling of waste;
- Hierarchy of waste (how different categories of waste are to be treated);
- Implementation of the EPR (businesses putting products on the market are responsible for recycling and reduction of waste generated by their products);
- Setting up new rules of the game for collecting, sorting, recycling, and recovering of waste;
- Launching recovery organizations – legal entities created by businesses to deal with the waste generated by their products.

The new Bill is supported by international businesses, most environmental NGOs, the European Union officials and the Government of Ukraine, except for crucial Ministries overseeing the reform. Having been adopted in the first reading back in July 2020, however, the Bill remains a long way from being adopted into the law.

The second reading has been postponed several times; the Sub-Committee’s debates have stalled; wording of the Bill is heavily criticized by the Ministry of Environmental Protection and Natural Resources, Ministry for Development of Communities and Territories, and local self-government for the following reasons:

- Vested interests of businesses engaged in landfilling of waste, production of alternative fuels by means of waste incineration;
- Conflicting powers of three national executive agencies named responsible for the waste management, namely the Ministry of Environmental Protection and Natural Resources, Ministry for the Development of Communities and Territories and the National Commission for State Regulation of Energy and Public Utilities;
- Conflicting powers of these three executive agencies and local governments embedded in the wording of the Bill;
- Unwillingness of local communities and officials representing local governments to accept the engagement of producers in dealing with waste generated by their products.
In summary, the current state of the play is very similar to those which saw the two previous bills on waste fail in the Parliament.

- Firstly, there is a very strong lobby from both Ukrainian businesses, state agencies and local governments to keep the environmental taxes for landfilling of waste low and to introduce an alternative environmental tax. Thus, Ukrainian owners of landfills and incineration facilities are not willing to engage in the EPR as they fear losing out financially.

- Secondly, governmental agencies and local governments, on their part, are reluctant to lose revenues paid as fees for collection and treatment of household waste. Introduction of the EPR will change the entire system of fee payments and local authorities will have much to lose in terms of their significant influence as collectors of fees, while municipal waste collecting enterprises might lose their monopolistic position.

- Finally, local governments authorities’ ignorance on the EPR, circular economy, and sustainability also takes its toll.

How are businesses responding?

Despite the existing legal vacuum and uncertainties with the Bill On Waste Management, Ukrainian businesses are doing their best to implement modern waste management approaches in Ukraine. Producers of goods generating waste and businesses engaged in sorting and recycling of waste all over the country have launched pilot projects focused on collection, sorting, recycling of solid household waste (paper, glass, metal, and plastic), toxic waste (pesticides packaging), used batteries, electric and electronic equipment.

In May 2021, 11 international companies producing goods in packaging officially declared an intention to create a packaging recovery organization (PRO) which would deal with collection, sorting, recycling, and recovery of packaging waste on behalf of its members. The initiative aims to:

- Build a system of collecting packaging waste in Ukraine;
- Increase recycling rates for packaging waste and reduce the volume of landfilled packaging waste;
- Educate consumers in sustainable treatment of waste;
- Stimulate the development of a new economic sector dealing with waste management.

In fact, the initiative will launch EPR as it stands in the EU states; producers of goods in packaging will demonstrate their social responsibility for the entire lifecycle of packaging. Participants of the initiative made it clear that the PRO would be launched regardless of the existing legal vacuum and would be open for other businesses willing to join. Such a declaration seems to be very ambitious and poses certain risks for the initiative’s success, namely:

- Non-adoption of the new Law On Waste Management creates a situation when the EPR principle as such remains unknown in Ukrainian law;
- Without the Law On Waste Management and sectoral legislation on packaging waste other producers of goods in packaging will have no incentives to join the PRO;
- Uncertainties with the legal status of the PRO (legal form, aim, membership);
- Taxation issues (in the EU countries PROs are normally non-for-profit legal entities with a special status). Absence of the framework law on waste (and preferably a sectoral Law On
Packaging and Packaging Waste) poses a risk that PRO activities may be heavily taxed based on the existing requirements of the Ukrainian Tax Code;

- Local authorities’ co-operation with PRO will depend on their good will, given the absence of mandatory rules of the game (Law On Waste Management is supposed to establish those);

- It is still possible that the Bill On Waste Management could be revised in a way that will make landfilling or incineration of waste cheaper compared to EPR. In simple terms, the PRO may end up with no waste to work with.

Key Takeaways

- It is very unlikely that the Bill on Waste Management will be enacted into the new Framework Law on Waste within the next twelve months. The lack of support on the part of two key ministries, and local governments cannot be ignored;

- Legal vacuum on the issue of producers’ liability for recovering waste created by their products will further frustrate the implementation of circular economy principles such as the EPR or hierarchy of waste. Businesses willing to create recovery organizations will face numerous difficulties brought by the lack of special legislation;

- Existing regional pilot projects will continue to cover only a small share of waste generated in Ukraine, and will be unable to grow nationally;

- Landfilling of waste will continue to grow; both legitimate and illegal landfills will thrive and Ukraine will continue to face heavy environmental pollution caused by waste;

- Even if the new framework Law On Waste is to be adopted, it will not automatically solve all of the existing problems. The new law will need an efficient enforcement mechanism and pro-active position of businesses interested in the implementation of the EPR model. Otherwise, the fate of the new law may mirror that of the 1998 Law On Waste and remain only a declaration.

###

If you would like to schedule a discussion of this paper, please contact:
Oleksiy Kononov, Advisor at o.kononov@areterapa.com

Aretera

Aretera is a leading independent public affairs advisory firm operating across Central & Eastern Europe, Turkey, Ukraine, Central Asia and a growing number of global emerging markets. We advise a wide range of leading multi-national corporations, providing counsel on all aspects of public policy, public affairs and reputation management.

www.areterapa.com