

# °LEGAL ASPECTS REGARDING PREVENTION OF FOOD WASTE IN POLAND

## ASPECTOS LEGALES SOBRE LA PREVENCIÓN DEL DESPERDICIO DE ALIMENTOS EN POLONIA

Łukasz Mikołaj SOKOŁOWSKI<sup>1</sup>

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**SUMMARY:** I. Introduction. II. Regulations regarding prevention of food waste in Poland. 1. General legal framework concerning food waste in Poland. 2. Legislation that has been adopted so far. 3. The act on the prevention of food waste. III. Conclusions.

**SUMARIO:** I. Introducción. II. Reglamentos relativos a la prevención del desperdicio de alimentos en Polonia. 1. Marco legal general sobre el desperdicio de alimentos en Polonia. 2. Legislación que se ha adoptado hasta ahora. 3. La ley de prevención sobre el desperdicio de alimentos. III. Conclusiones.

**Abstract:** The subject of considerations in this article are Polish legal regulations on the prevention of food waste. Poland, in line with other Member States, adopted special legal instruments to solve this problem. The aim of this article is to try to assess these special national measures and, in particular, to answer the question whether they are sufficient.

Despite numerous reservations and a narrow normative scope, establishment of separate legal regulations in Poland deserves a positive assessment. They may be the beginning of a legislative path leading to the adoption of comprehensive solutions to prevent food waste in Poland. They should not be limited exclusively to the distribution stage and the products in the form of foodstuffs ready to be consumed. It is important that the future legislation takes into consideration the 'broad understanding' of food waste.

**Key words:** prevention of food waste; food security; food safety; food sovereignty; circular economy

**Resumen:** El tema que se estudia en este artículo son las regulaciones legales polacas sobre la prevención del desperdicio de alimentos. Polonia, al igual que otros Estados miembros, adoptó instrumentos legales especiales para resolver este problema. El objeto de este artículo es intentar evaluar estas medidas nacionales especiales y, en particular, responder a la pregunta de si son suficientes.

A pesar de las numerosas reservas y el limitado alcance normativo, el establecimiento de reglamentos legales específicos en Polonia merece una evaluación positiva. Dado que pueden ser el comienzo de un camino legislativo que lleve a la adopción de soluciones integrales para prevenir el desperdicio de alimentos en Polonia. Tengamos en cuenta que no deben limitarse exclusivamente a la etapa de distribución de los

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<sup>1</sup> Doctor of Law; Assistant Professor at the Faculty of Law and Administration of Adam Mickiewicz University in Poznań, Poland; attorney-at-law; [lukasz.sokolowski@amu.edu.pl](mailto:lukasz.sokolowski@amu.edu.pl), ORCID: 0000-0001-7391-7205.

productos en forma de alimentos listos para el consumo. Es importante que la futura legislación prevea un "análisis global" del desperdicio de alimentos.

**Palabras clave:** Prevención del desperdicio de alimentos; seguridad alimentaria; control alimentario, soberanía alimentaria, economía circular.

## I. INTRODUCTION

Prevention of food waste is one of the biggest contemporary challenges for the agriculture, Common Agricultural Policy and legislators. Every year around 1.3 billion tons of food is wasted worldwide, which accounts for almost one third of the total amount of manufactured foodstuffs<sup>2</sup>. Such an amount of foodstuffs would be enough to feed additional 2 billion people<sup>3</sup>. In the EU, around 89 million tons of food is wasted every year. It results from the fact that every EU citizen wastes 180 kg of foodstuffs per year on average<sup>4</sup>. Food waste occurs at every stage of the food chain, from field to table<sup>5</sup>, especially during production, distribution and consumption<sup>6</sup>. Households have the biggest share in food waste – it amounts to 53 percent of the total amount of wasted food<sup>7</sup>. Processing accounts for 19 percent, catering industry – 12 percent, production – 11 percent and distribution – 5 percent of wasted food<sup>8</sup>. As a result, valuable resources are wasted as well, including energy needed to: produce, transport and distribute food<sup>9</sup> as well as production space, time, labor, capital and greenhouse gas emissions.

This is a global problem, but it requires prevention at the regional and even local level. Despite growing social awareness which results in local initiatives that are to limit food waste and its effects as well as entrepreneurs' actions aimed at optimization of their operation, it seems that in order to effectively prevent food waste there is a need for the legislator's intervention.

The EU law lacks separate regulations regarding prevention of food waste. However, observing negative consequences of this problem and the need for a change, on 28 June 2016 the Agriculture and Fisheries Council adopted conclusions on food

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<sup>2</sup> <http://www.europarl.europa.eu/news/pl/headlines/society/20170505STO73528/marnowanie-zywnosci-w-ue-miliony-ton-jedzenia-do-kosza-infografika> (access: 15 May 2020).

<sup>3</sup> HAJDAS M., 'Innowacje marketingowe a problem marnowania żywności', *Handel wewnętrzny*, 2018, issue 2, p. 179.

<sup>4</sup> *Food waste: causes, impacts and proposals*, 2012, <https://www.barillacfn.com/m/publications/food-waste-causes-impact-proposals.pdf>, p. 10 (access: 15 May 2020).

<sup>5</sup> MACCIONI G., *Spreco alimentare e sviluppo sostenibile*, in: BUDZINOWSKI R. ed., *XV World Congress of Agricultural Law. Contemporary challenges of Agricultural Law: among Globalization, Regionalization and Locality*, Poznań 2018, p. 439.

<sup>6</sup> Ibidem, p. 439.

<sup>7</sup> <http://www.europarl.europa.eu/news/pl/headlines/society/20170505STO73528/marnowanie-zywnosci-w-ue-miliony-ton-jedzenia-do-kosza-infografika> (access: 15 May 2020).

<sup>8</sup> *Fusions. Estimates of European food waste levels. Reducing food waste through social innovation*, Stockholm 2016, p. 4, <https://www.eu-fusions.org/phocadownload/Publications/Estimates%20of%20European%20food%20waste%20levels.pdf> (access: 15 May 2020).

<sup>9</sup> DĄBROWSKA A., JANOŚ-KRESŁO M., 'Marnowanie żywności jako problem społeczny', *Handel wewnętrzny*, 2013, issue 4, p. 11.

losses and food waste<sup>10</sup> in which it set out a series of initiatives to reduce waste and losses in the future. The Council also appealed to the Member States and the Commission to, among other things, improve monitoring and data collection to better understand the problem and to focus on preventing food waste and losses and enhancing the use of biomass in future EU legislation as well as facilitate the donation of unsold food products to charities<sup>11</sup>.

In 2016 the European Commission set up the EU Platform on Food Losses and Food Waste. Its aim is to support the EU in implementation of the sustainable development goals. The Platform brings together Member States and all actors of the food chain to help determine measures needed to achieve the sustainable development goals on food waste and share best practices and results achieved<sup>12</sup>. Within the EU Platform on Food Losses and Food Waste there are a few subgroups: subgroup on food donation, subgroup on food waste measurement, subgroup on action and implementation and subgroup on date marking and food waste prevention<sup>13</sup>. As a result of the Platform's works, the EU adopted guidelines on food donation in 2017<sup>14</sup> and guidelines for the feed use of food no longer intended for human consumption on 16 April 2018<sup>15</sup>.

Amendment of EU legislation on waste is also to contribute to the prevention of food waste. It must be emphasized in particular that the Directive on waste has been amended<sup>16</sup>. The EU legislator not only introduces a new definition of food waste which is all food that has become waste<sup>17</sup>, but also calls Member States to undertake actions to reduce food losses at every stage of the supply chain, monitor the level of food waste and file reports on their progress<sup>18</sup>. The EU legislator obliges Member States to take measures to prevent waste generation which shall at least promote and support sustainable production and consumption models, encourage to design, manufacturing and use of products that are resource-efficient, reduce the generation of food waste in primary production, processing and manufacturing, in retail and other distribution of food, in restaurants and food services as well as in households and encourage food donation and other forms of food redistribution, prioritizing human use over animal feed and the reprocessing into non-food products<sup>19</sup>. This Directive shall be implemented by 5

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<sup>10</sup> Conclusions of the Council of the European Union of 28 June 2016 'Food losses and food waste', <http://data.consilium.europa.eu/doc/document/ST-10730-2016-INIT/en/pdf> (access: 15 May 2020).

<sup>11</sup> <https://www.consilium.europa.eu/en/policies/food-losses-waste/> (access: 15 May 2020).

<sup>12</sup> [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_16\\_3989](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_3989) (access: 15 May 2020).

<sup>13</sup> The government's approach towards the Senate's bill on the prevention of food waste (form no 2431), p. 3.

<sup>14</sup> Commission notice - EU guidelines on food donation, OJ C 361, 25.10.2017, p. 1-29.

<sup>15</sup> Commission notice - Guidelines for the feed use of food no longer intended for human consumption, OJ C 133, 16.4.2018, p. 2-18.

<sup>16</sup> See 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, p. 109-140.

<sup>17</sup> See art. 1 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, p. 109-140.

<sup>18</sup> Cf. Food losses and food waste: assessment of progress made on the implementation of June 2016 Council conclusions - Information from the Presidency and the Commission - Exchange of views, p. 4, <http://data.consilium.europa.eu/doc/document/ST-6659-2018-INIT/en/pdf> (access: 15 May 2020).

<sup>19</sup> See art. 1 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, p. 109-140.

July 2020, but so far only a few Member States, including France, Latvia, Austria and Romania<sup>20</sup> have done it.

Considering the above-mentioned information, it could be concluded that the EU has initiated the process of development of legal framework for reduction and prevention of food waste. It must be pointed out that the law of some Member States includes detailed regulations on the prevention of food waste. The first country to implement special legal instruments to reduce food waste was France<sup>21</sup>. Regulations in this respect have been also adopted in Italy<sup>22</sup>, Belgium<sup>23</sup> and the Czech Republic<sup>24</sup>. They include, among other things, charges for not donating unsold food (France), tax allowances (Italy), the possibility to donate food that is past the date of minimum durability to charity (Belgium) and the obligation to donate unsold food (Czech Republic). In Poland efforts to regulate this matter have resulted in adoption of the act on the prevention of food waste which came into effect on 18 September 2019<sup>25</sup>.

The subject under consideration in this article are Polish regulations regarding prevention of food waste. The aim of this article is to try to assess these special national measures and, in particular, to answer the question whether they are sufficient.

## II. REGULATIONS REGARDING PREVENTION OF FOOD WASTE IN POLAND

### 1. General legal framework concerning food waste in Poland

According to Eurostat data from 2006, around 9 million tons of food are wasted in Poland every year. In terms of the level of food waste per resident, Poland is ranked 5<sup>th</sup> in the EU (235 kg/person/year)<sup>26</sup>. However, there are no detailed and current estimates in Poland as to the scale of food waste. So far, no detailed information has been gathered as to the scale of food waste at individual stages or data regarding food donation to charity. Lack of reliable statistics may have also contributed to the fact that prevention of food waste has not been comprehensively regulated by the Polish law so far.

However, it must be emphasized that Poland has established statutory conditions to undertake actions to prevent the problem of food waste which entails far-reaching consequences, not only ethical, but primarily social, economic and environmental ones. Such actions are a sign of social responsibility whose co-existence

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<sup>20</sup> Cf. <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex%3A32018L0851>, (access: 15 May 2020).

<sup>21</sup> LOI n° 2016-138 du 11 février 2016 relative à la lutte contre le gaspillage alimentaire, JORF n°0036 du 12 février 2016 texte n° 2.

<sup>22</sup> LEŚKIEWICZ K., 'Prawne aspekty przeciwdziałania marnowaniu żywności', *Przegląd Prawa Rolnego*, 2015, issue 2, p. 127. See Legge 19 agosto 2016, n. 166 Disposizioni concernenti la donazione e la distribuzione di prodotti alimentari e farmaceutici a fini di solidarietà sociale e per la limitazione degli sprechi, GU Serie Generale n.202 del 30.08.2016.

<sup>23</sup> Justification to the bill on the prevention of food waste. Evaluation of the effects of the regulation, form 263, p. 4, hereinafter referred to as: Justification to the bill... Evaluation of the effects of the regulation.

<sup>24</sup> Zákon č. 180/2016 Sb., kterým se mění zákon č. 110/1997 Sb., o potravinách a tabákových výrobcích a o změně a doplnění některých souvisejících zákonů, ve znění pozdějších předpisů, a další související zákony.

<sup>25</sup> Act of 19 July 2019 on the prevention of food waste, Journal of Laws of 2019, item 1680, hereinafter referred to as: the act.

<sup>26</sup> Justification to the bill... Evaluation of the effects of the regulation, s. 4.

with the laws of economics is assumed by the concept of social market economy <sup>27</sup>, which constitutes the foundation of the Polish economic system in accordance with art. 20 of the Polish Constitution<sup>28</sup>.

Art. 5 of the Polish Constitution stipulates that Poland shall follow the sustainable development rule. According to the Constitutional Tribunal, the principles of sustainable development include not only environmental protection or development of spatial order, but also proper care for social and civilization development related to the need to build the infrastructure essential for the life of humans and individual communities, including civilization needs<sup>29</sup>. The goal of sustainable development is to maintain the environment in a condition that will enable the contemporary and future generations to use it and at the same time maintain the continuity of environmental processes and biodiversity, including all levels: genes, species, landscape and ecosystem<sup>30</sup>.

It must be also emphasized that the Polish Constitution imposes the obligation to take care of the environment on both public authorities and each and every citizen. Under art. 74 of the Polish Constitution, public authorities are obliged to pursue a policy that guarantees environmental security to the contemporary and future generations. Art. 86 of the Polish Constitution, in turn, stipulates that everybody is obliged to take care of the environment and is responsible for the deterioration thereof that they cause. As it is emphasized in literature, the obligation to take care of the environment consists not only in refraining from actions that may harm the environment, but also in being active, counteracting or preventing harmful influence on the environment and pursuing actions whose aim is to restore environmental balance<sup>31</sup>.

## **2. Legislation that has been adopted so far**

It must be pointed out that until recently there have been no statutory regulations that would impose any obligations regarding prevention of food waste on the actors of the food chain. The only solution were changes of tax regulations that did not really constitute support systems, but only partially liquidated the previous excessive and unproportionate limitations.

As of 1 January 2009 producers' donations of foodstuffs, excluding alcoholic beverages with alcohol content above 1.2 percent and alcoholic beverages being a combination of beer and alcohol with alcohol content above 0.5 percent, have been exempted from VAT, provided that they are addressed at public service organizations<sup>32</sup>

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<sup>27</sup> Cf. BILIŃSKI M., ŻURAWIK A., in: HAUSER R., NIEWIADOMSKI Z., WRÓBEL A. (eds.), *Publiczne prawo gospodarcze. System Prawa Administracyjnego*, volume 8A, Warsaw 2018, s. 464.

<sup>28</sup> The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws no 78, item 483 as amended, hereinafter referred to as the Polish Constitution.

<sup>29</sup> See: verdict of the Constitutional Tribunal of 6 June 2006, File No. K 23/05.

<sup>30</sup> Cf. BANASZAK B., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2012, SIP Legalis, comments to Article 5.

<sup>31</sup> Cf. B. BANASZAK B., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2012, SIP Legalis, comments to Article 86.

<sup>32</sup> Under the act of 24 April 2003 on public benefit and volunteer work, Journal of Laws of 2003, No 96, item 873 as amended.

to support the charity actions these organizations hold<sup>33</sup>. As of 1 October 2013 a similar exemption has also applied to donations made by other actors of the food chain<sup>34</sup>.

Apart from the above-mentioned premises for application of the exemption, the legislator also foresees a formal condition which assumes that the donator must have documents confirming the donation to a public service organization to support exclusively its charity actions<sup>35</sup>. The act does not specify the character of these documents; it is only important that they confirm the above-mentioned circumstances. The method of drawing up of documentation of these circumstances as well as who shall specify the purpose of a donation raises a number of doubts, both practical and theoretical.

Under current regulations, the purpose of a donation shall be specified by the donator. As a result, from the viewpoint of application of tax exemption to a given donation, it should not be important how the public service organizations later use the received foodstuffs<sup>36</sup>. However, the legal construction applied by the legislator raises doubts as to whether the donator may be obliged to correct the settlement if the beneficiary uses the food for other purposes<sup>37</sup>.

Thus, the above-mentioned tax allowances included in the Polish law are not a sufficient regulation in terms of the prevention of food waste. It must be emphasized that VAT deduction applies to food utilization as well<sup>38</sup>.

### 3. The act on the prevention of food waste

The act on the prevention of food waste that has been recently adopted in Poland includes a number of obligations for food business operators. The act provides a legal definition of food waste as withdrawal from distribution of foodstuffs that meet the requirements of the food law, in particular because of the use-by date or the date of minimum durability that are about to expire or because of the flaws of appearance of these foodstuffs or their packaging and their designation for utilization as waste<sup>39</sup>.

Even though the EU legislation lacks a harmonized definition of ‘food waste’<sup>40</sup>, the statutory definition corresponds to the common perception of this problem that the European Parliament emphasized in the resolution ‘How to avoid food wastage: strategies for a more efficient food chain in the EU’<sup>41</sup>. The Parliament appealed to the Commission to submit a legislative proposal including a definition of this notion<sup>42</sup> and emphasized that ‘food waste’ may be understood in different ways, adding that in common understanding it means foodstuffs discarded outside the agricultural and food

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<sup>33</sup> See art. 1 point 34.a) of the act of 7 November 2008 amending the Value Added Tax Act and some other acts, Journal of Laws of 2008, No 209, item 1320.

<sup>34</sup> Art. 1 sec. 1 point a) of the act of 26 July 2013 amending the Value Added Tax Act and some other acts, Journal of Laws of 2013, item 1027.

<sup>35</sup> See art. 43 sec. 12 of the Value Added Tax Act of 11 March 2004, Journal of Laws of 2020, item 106 as amended.

<sup>36</sup> See NOWAK-FARA A., in: MICHALIK T., *VAT. Komentarz.*, Warsaw 2019, p. 769 et seq.

<sup>37</sup> Ibidem, p. 769 et seq.

<sup>38</sup> See Justification to the bill... Evaluation of the effects of the regulation, p. 2.

<sup>39</sup> See art. 2 sec. 1 of the act.

<sup>40</sup> MACCIONI G., *Spreco alimentare. Regole e limiti nella transizione verso modelli agroalimentari sostenibili*, Torino 2018, p. 1.

<sup>41</sup> European Parliament resolution of 19 January 2012 on how to avoid food wastage: strategies for a more efficient food chain in the EU, OJ C 227E, 6.8.2013, p. 25-32.

<sup>42</sup> Ibidem, point 15.



chain for economic or esthetic reasons or because of soon to be expired use-by date that are still perfectly fit for human consumption, but are liquidated and utilized because of lack of possible alternative use, which causes negative external effects in terms of environmental impact, economic costs and lack of revenues for companies<sup>43</sup>.

The common understanding of food waste refers only to the final stages of the food chain. However, while taking action to prevent this problem, it is essential to take into consideration food waste in a broader perspective that includes also the stage of production planning, the use of byproducts from the process of food manufacturing or processing as well as foodstuffs that are not fit for human consumption or whose use-by date or the date of minimum durability have expired, regardless of whether the products are actually dangerous, which can be used for other economic purposes, e.g. as an energy source or animal feed.

A broad definition of this issue shall include limitation of losses that occur in the entire food chain. 'Food losses' are defined in literature as a decrease in edible food mass resulting from mismanagement, errors and irregularities of processes such as: agricultural production, harvesting, processing, transportation or storage<sup>44</sup>. They occur at the initial stages of the food chain, while at its final stages food waste in a narrow understanding is observed. Food waste also means wasting of resources used in food production such as raw materials, water, fertilizers and fuel. The European Economic and Social Committee emphasizes the need for a broad definition of food waste with reference to the food and drinks sector, insisting that it also means wastage of resources used for the production of food<sup>45</sup>.

Narrowing down of the legal definition in the act on the prevention of food waste has consequences in terms of the normative scope of the new regulation. Unfortunately, it is limited exclusively to the distribution sector and specifies the obligations of food sellers to prevent food waste. They only regard food business operators within sales of foodstuffs in retail or wholesale units larger than 250 sq. m in which revenues from sales of foodstuffs account for at least 50 percent of revenues from sales of all goods. However, for the first two years after the act comes into effect, these obligations will only regard food business operators within sales of food in at least one retail or wholesale unit larger than 400 sq. m. It means that the obligations under the act are addressed exclusively at distributors whose share in food waste in the EU amounts to only 5 percent<sup>46</sup>. The regulations do not include all actors of the food chain, primarily those – which is important – whose share in food waste is the biggest<sup>47</sup>.

The first obligation of distributors is to conclude an agreement with a non-governmental organization regarding food donation for social purposes. The food shall be used in this organization's public services: social aid, including support for families and people in a difficult situation as well as equalization of opportunities of these

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<sup>43</sup> Ibidem, point 14.

<sup>44</sup> MARSZAŁEK A., 'Czy możliwe jest przezwyciężenie problemu marnotrawstwa żywności?', *Nierówności Społeczne a Wzrost Gospodarczy*, 2018, issue 2, p. 474.

<sup>45</sup> Opinion of the European Economic and Social Committee on 'An EU Industrial Policy for the Food and Drinks Sector', OJ C 332, 8.10.2015, p. 28-35, point 4.4.3.

<sup>46</sup> *Fusions. Estimates of European food waste levels. Reducing food waste through social innovation*, Stockholm 2016, p. 4, <https://www.fusions.org/phocadownload/Publications/Estimates%20of%20European%20food%20waste%20levels.pdf> (access: 15 May 2020).

<sup>47</sup> <http://www.europarl.europa.eu/news/pl/headlines/society/20170505STO73528/marnowanie-zywnosci-w-ue-miliony-ton-jedzenia-do-kosza-infografika> (access: 15 May 2020).

families and individuals; support for families and foster care system; charity actions, especially consisting in donation of food to people in need or organization of group catering facilities for people in need.

This agreement shall regard donation of food that meets the requirements of the food law, but is not intended for sales, especially because of the flaws of appearance of this food or its packaging, excluding alcoholic beverages with alcohol content above 1.2 percent and alcoholic beverages being a combination of beer and alcohol with alcohol content above 0.5 percent. The agreement shall be deemed null and void unless concluded in writing or electronically and it shall in particular include provisions on: the time and method of donation of food to the non-governmental organization and the type of food donated to the non-governmental organization; division of the costs of food distribution and pick-up between the parties of the agreement; situations in which the non-governmental organization may resign or refuse to pick up food; duration of the agreement and parties' liability for failure to keep the terms of the agreement, including terms of notice.

The obligation to conclude an agreement may raise doubts. In particular, it must be emphasized that the act ignores the issue of food donation for non-food purposes and donation of food whose date of minimum durability has expired which is still fit for consumption. It means that the act neglects the broadly-discussed issue of a ban on selling food whose date of minimum durability has expired<sup>48</sup>. It must be also emphasized that the legislator imposes an obligation to conclude agreements on distributors, but not on public service organizations. Moreover, the fact that the legislator specified what shall be included in the agreement, but did not list the obligations of non-governmental organizations in the act may make the conclusion of agreements more difficult. In order to avoid entering into additional commitments, non-governmental organizations may refuse to conclude agreements with food distributors. The parties' freedom in terms of specification of division of costs between the distributor and the non-governmental organization may also be a problematic issue<sup>49</sup>. Considering the fact that non-governmental organizations have limited funds, conclusion of food donation agreements may depend on whether the stores can incur the majority of costs.

Another obligation is to hold educational and informative campaigns on rational food management and prevention of food waste in stores at least once a year, for two subsequent weeks, on every day of operation. The campaigns shall be organized by food sellers together with non-governmental organizations they have concluded agreements with, which is a good solution. Food sellers have a much bigger influence on consumers, while non-governmental organizations may lack experience in holding of such campaigns<sup>50</sup>. Unfortunately, the scope and minimum costs to incur in relation to implementation of this task have not been specified, which may end up in these campaigns being ostensible.

Food business operators, as specified in the act, are also obliged to incur charges for wasting of food. These charges are in fact a form of financial sanction that is calculated as the product of rate and mass of wasted food (PLN 0.1 per 1 kg of wasted food). The legislator decided that the operators should calculate the amount of this charge on their own and transfer it to the bank account of the non-governmental

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<sup>48</sup> See more: LEŚKIEWICZ K., op. cit, p. 123.

<sup>49</sup> See Justification to the bill... Evaluation of the effects of the regulation, p. 6.

<sup>50</sup> Ibidem, p. 7.



organizations with which they have concluded agreements to donate food for social purposes free of charge. The charge shall be calculated at the end of the calendar year and paid by 30 April of the subsequent calendar year. The organization shall allocate the funds from this charge to performing of specific public services<sup>51</sup>.

If a given food seller has not concluded an agreement with a non-governmental organization, they shall transfer the charge to the bank account of the Provincial Fund for Environmental Protection and Water Management of the province in which they operate. The funds from this charge can be allocated to actions that promote the prevention of food waste.

The basis to calculate the charge is 90 percent (80 percent in the first year after the act comes into effect) of the mass of wasted food. On the one hand, this solution seems fair as it includes the situations – impossible to eliminate completely – when even despite proper performance of statutory obligations, it is necessary to utilize food<sup>52</sup>. On the other hand, it must be emphasized that the act does not specify what to do with the food that is not fit for donation or will not be picked up by a non-governmental organization. It may be doubtful whether it is even a basis to calculate charges.

The charge shall be reduced by the costs incurred by food sellers for the organization of educational and informative campaigns (no more than 20 percent of funds from the charge) and the costs of execution of the agreement for food donation free of charge that the food seller has incurred, especially the costs of transportation and distribution of food. The distributor is not obliged to pay if the charge is lower than PLN 300. Information on the charge due or the value of food donated to non-governmental organizations for social purposes shall be included in the food seller's financial statement and on their website.

The legislator also specified additional reporting obligations. The food seller shall file an annual report on wasted food, including data on the total mass of food wasted in the previous calendar year as well as the level of charge due and the amount that shall be paid to the Fund. The Provincial Fund for Environmental Protection and Water Management, in turn, is obliged to file an annual report to the Chief Inspectorate of Environmental Protection, including information on the total mass of food wasted by food sellers in the previous calendar year and the total amount of due and paid charge along with the list of food sellers that have filed reports.

Non-governmental organizations also have additional information duties. They are obliged to submit to food sellers annual written information on the use of funds from the charge, in particular information on the amounts allocated to cover administrative costs. Non-governmental organizations shall also file to the Chief Inspectorate of Environmental Protection an annual written report on the way the donated food has been managed, including in particular information on the mass of food received from food sellers and the mass of food that has been handed over to people in need along with the list of food sellers who donated the food.

The fact that the legislator included reporting obligations in the act is a positive thing. There is no reliable information on the actual level of food waste in Poland and the data that are presented to the public opinion are only estimates<sup>53</sup>.

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<sup>51</sup> In the scope specified in art.2 point 2 of the act.

<sup>52</sup> See Justification to the bill..., p. 6.

<sup>53</sup> See Justification to the bill... Evaluation of the effects of the regulation, p. 1.

The legislator also specified the rules of imposing administrative fines for failure to fulfill statutory obligations. These fines are not particularly severe (for failure to conclude an agreement for donation of food for social purposes free of charge with a non-governmental organization the fine amounts to PLN 5,000 and for failure to pay or failure to pay in full or on time the charge – from PLN 500 to 10,000) and that is why they may not be an efficient measure of general prevention. It has been signaled already at the stage of proceeding of the bill that the amount of the charge shall be based on economic analysis and the fine for non-compliance with the regulations shall not be smaller than the cost of fulfilment of the statutory obligations<sup>54</sup>.

It must be also pointed out that the fine for failure to conclude an agreement shall not be imposed if the food seller proves that it was impossible to conclude an agreement for donation of food for social purposes free of charge with a non-governmental organization in the district in which they operate. This solution seems justified, considering that non-governmental organizations are not obliged to conclude agreements. However, the issue of how to prove that conclusion of such an agreement was impossible may raise doubts.

### III. CONCLUSIONS

The above considerations provoke a conclusion that currently there are no sufficient legal solutions – neither in the EU nor in Poland – that would enable efficient prevention of food waste. It is important that at the EU level we can observe a process of development of future policies and legal frameworks for actions to limit and eliminate this problem and some Member States adopt separate regulations regarding prevention of food waste. Poland is one of the first countries that adopted such special regulations.

However, the Polish act on the prevention of food waste raises numerous doubts. They regard primarily the narrow normative scope, problems with interpretation of regulations and efficiency of the adopted instruments. The legislator did not foresee any instruments of support for entities that take action to prevent food waste, including only a few normative obligations. Apart from that, somehow independently, amendments are made to legal regulations regarding tax law or waste management that contribute to the fight with this problem. It seems, then, that the Polish legislator's actions are not coordinated and there is no idea at the moment of how to solve the problem comprehensively.

The problem of food waste shall be solved comprehensively and the adopted legal instruments shall not be limited exclusively to the distribution stage and to foodstuffs of full value that are fit for consumption. For this reason, further actions of the Polish legislator seem necessary. Partial limitation of the ban on selling food past its date of minimum durability shall be reconsidered. The original bill assumed a change of the Polish regulations that would make it possible to market foodstuffs past their date of minimum durability specified by the minister of health only for the purposes of charity, in group catering facilities. For these products maximum dates before which they shall be consumed were to be specified. Unfortunately, an amendment made at the legislative stage removed these provisions from the bill.

However, it must be emphasized that the fact that the legislator acknowledged the problem and – even only partially – regulated the prevention of food waste deserves

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<sup>54</sup> Ibidem, p. 7.

a positive assessment. These actions may be the first steps to introduce comprehensive solutions and at the same time they constitute a signal that the legislator wants to ensure food sovereignty based also on circular economy.

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