

Łukasz Mikołaj Sokołowski

*Adam Mickiewicz University, Poznań, Poland*

*Some critical comments on the new Polish Act on Counteracting Food Waste<sup>1</sup>*

Even though EU legislation lacks separate regulations on food waste prevention, some Member States have adopted special legal solutions that are to prevent food waste. Poland adopted the Act on prevention of food waste<sup>2</sup> in 2019. It establishes a number of obligations for food companies regarding sales of foodstuff in retail or wholesale facilities larger than 250 sq. m in which revenues from foodstuff sales account for at least 50 percent of overall revenues.

The first obligation of distributors is to conclude an agreement with a non-governmental organization regarding food donation for social purposes. 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. 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. 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>3</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

---

<sup>1</sup> For more on this see among others: Ł.M. Sokołowski, *The Act on Counteracting Food Waste – an attempt of its evaluation*, "Przegląd Prawa Rolnego" 2019, nr 2, s. 167-181; Ł.M. Sokołowski, *Legal aspects regarding prevention of food waste in Poland*, "Revista de Estudios Jurídicos" 2020, nr 20, s. 462-472.

<sup>2</sup> Act of 19 July 2019 Act on counteracting food waste (Journal of Laws, item 1680 as amended).

<sup>3</sup> See Justification to the bill on the prevention of food waste. Evaluation of the effects of the regulation, p. 6.

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>4</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 organizations with which they have concluded agreements to donate food for social purposes free of charge. The organization shall allocate the funds from this charge to performing of specific public services. The basis to calculate the charge is 90 percent 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>5</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 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>6</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

---

<sup>4</sup> See Justification to the bill on the prevention of food waste. Evaluation of the effects of the regulation, p. 7.

<sup>5</sup> See Justification to the bill on the prevention of food waste. Evaluation of the effects of the regulation, p. 6.

<sup>6</sup> See Justification to the bill on the prevention of food waste. Evaluation of the effects of the regulation, p. 7.

are not obliged to conclude agreements. However, the issue of how to prove that conclusion of such an agreement was impossible may raise doubts.

Despite numerous reservations to the Act on prevention of food waste, in particular its small normative scope – the obligations are addressed only at distributors whose share in food waste in the EU amounts to only 5 percent<sup>7</sup> – the fact that the legislator noticed the problem must be appreciated. The actions that have been undertaken may be the first step towards introduction of comprehensive solutions; they are also a sign that the legislator is aiming at food sovereignty which is also based on circular economy.

---

<sup>7</sup> Å. Stenmarck., C. Jensen, T. Quested, G. Moates, *Fusions. Estimates of European food waste levels*, IVL Swedish Environmental Research Institute, 2016, p. 4.