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Legal Bulletin



Environmental Law

Summary:

1. Instructions on using the information technology application Information Technology System securing the traceability of waste (“SIATD”), with a view to monitoring and checking the fairness of the transactions with packaging waste
2. Regulation impacting the activity of the organisations implementing the obligations on extended producer responsibility (“OIREP”)

Order No. 1595/2020 approving the Instructions on using the information technology application Information technology system securing the traceability of Waste (“SIATD”), with a view to monitoring and checking the fairness of the transactions with packaging waste within the system of extended producer responsibility

Order No. 1595/2020 was published in the Official Journal of Romania, Part I, No. 775 of 25 August 2020. The legislative act came into force on the date of its publication.

The legal ground for issuing the order is represented by the provisions of Article 10(8) and (9) of Government Emergency Ordinance No. 196/2005 regarding the Environmental Fund (“EGO No. 196/2005”) and Article II of Government Emergency Ordinance No. 50/2019, providing for the necessity to implement the SIATD technology application by the Environment Fund Administration (“AFM”).

The most important provisions of Order No. 1595/2020 may be summarized as follows:

1. SIATD is meant for the following categories of users:
 - a) organizations implementing the extended producer responsibility („OIREP”);
 - b) legal entities that manage the packaging waste whose net costs and/or collection/valorification/sorting/treatment/reporting costs are financed by the OIREP¹, namely:
 - (i) economic operators carrying out activities of collection, sanitation, sorting, treatment, intra-community development associations, administrative-territorial units;
 - (ii) economic operators carrying out recycling / valorification activities.
2. As of January 1, 2021, the use of SIATD application made available free of charge by AFM is mandatory.

The non-use of the SIATD application constitute a contravention and is sanctioned with a fine from 80,000 RON to 100,000 RON.²
3. Enrollment applications can be submitted to SIATD starting with 15 September 2020, based on the standard application provided under Annex no. 1 to the instructions of the Order No. 1595/2020. The access account generated to the users following the enrollment will allow such persons to access the functionalities of the platform (review, uploading, amending the documents regarding the management of packaging waste, transmission of requests, notifications etc.).³
4. SIATD is meant to allow the monitoring and verification, in real time, at the level of each accounting-financial and supporting document, of the transactions with packaging waste for each OIREP finances the costs provided under Law No. 249/2015 regarding the management of packaging and packaging generated waste („Law No. 249/2015”).
5. The data and information will be recorded in SIATD by the users as follows:
 - a) OIREP shall upload data regarding:
 - (i) its own capacity (identification data, activities authorised by way of the operating license / environment authorization, collecting and processing capacity, type of packaging which can be contracted, working points, including their GPD coordinates);

¹ To this end please see art. 10 para. (9) of the EGO No. 196/2005 and art. 2 para (2) of the Order No. 1595/2020.

² To this end please see art. 15, para. (5) of the EGO No. 196/2005.

³ Until the approval of the new enrollment application by AFM (in case the initial duration of the enrollment has expired), the access to the respective applicant to SIATD will be suspended.

- (ii) any of its contracting parties, among the categories listed in point 1, letter b) above (namely, data and number of contracts having as object the transactions with packaging waste, their validity and the identification data of the contracting parties; the quantities and type of waste estimated to be traded).
 - b) The legal persons mentioned in point 1, letter b) above shall upload in SIATD, before performing any operation for acquiring/ sale/ transport/ reception of packaging waste, information concerning:
 - (i) identification data of contracting parties and their coordinates;
 - (ii) quantities and type of packaging waste traded;
 - (iii) the OIREP for which they are performing the respective transaction;
 - (iv) the consignment note and information comprised in the invoice, such as series, number, issuance date, buyer and seller;
 - (v) photographs, from several angles, of the load and the means of transport loaded before the journey.
6. When initiating a waste transaction, the SIATD application will generate: (i) standard forms to be filled in with waste details by users⁴, and (ii) on each completed form a unique packaging waste transaction code, for each shipment / transaction with packaging waste registered in the platform.
- Subsequently, each user who takes over packaging waste for valorification/ recycling / treatment / resale has the obligation to confirm the net quantity and gross quantity of waste traded, by type of material, by validating the unique codes related to them within a maximum of 5 days from the date of receipt of the waste. In the situation where the reception of packaging waste is made before the enrollment of the legal entities provided in point 1, letter b) above, the 5 day's term is calculated from the date of enrollment on the SIATD platform.
- If the unique transaction code is not confirmed, the transaction is not taken into account for the fulfillment of the minimum valorification or incineration objectives in incineration plants with energy recovery and valorification through recycling.
7. OIREP will finance the costs provided in Law no. 249/2015 only after the confirmation in SIATD of the quantities of packaging waste received.

⁴ The form for loading - unloading non-hazardous waste provided in Annex No. 3 to Government Decision No. 1.061/ 008 on the transport of hazardous and non-hazardous waste in Romania; Annex No. VII "Information accompanying shipments of waste, referred to in Article 3 paragraphs (2) and (4)" to Commission Regulation (EC) No 1.379/2007 of 26 November 2007 amending Annexes IA, IB, VII and VIII to Regulation (EC) No 1.013/2006 of the European Parliament and of the Council on shipments of waste, to take account of technical progress and developments approved under the Basel Convention, where appropriate.

Order No. 1555/2020 amending and supplementing the Procedure for permitting, annually endorsing and withdrawing the right to operate of the organisations implementing the obligations on the extended liability of producer, approved by Order of the Vice Prime Minister, Minister of Environment, No. 1362/2018

Order No. 1555/2020 was published in Official Journal of Romania, Part I, No. 778 of 26 August 2020. The legislative act came into force on the date of its publication.

The ground for issuing the Order No. 1555/2020, specified in the Approval Reports related to the drafts of this order published on the website of the Ministry of Environment in the past year, was that it was intended to clarify aspects concerning:

- the activity of the economic operators opting for the fulfilment of the obligations of extended liability of producer via OIREP; and
- the categories of costs which are eligible to be recovered from said operators.

However, such reports fail to detail the aspects subject to amendment within Order No. 1555/2020.

The most important provisions of Order No. 1555/2020 may be summarized as follows:

1. Regulating certain new obligations incumbent upon OIREP with a view to securing transparency of activity by:
 - a) posting on the homepage of their own website, directly or by means of a link, the contracted quantity of packaging by types of materials, for which they implement the obligations on the extended liability of producer and which become waste in the municipal flow, and updating the information on a quarterly basis;
 - b) implementing a secured link with a view to reporting to the shareholders and to the economic operators for which they undertook liability the value of the amounts which do have as object the financing of costs with the management of packaging waste paid to third parties; also, the information available in such link should be made available to the Supervisory Commission, upon request of the latter;
2. Amendments concerning the activities which may be conducted by any OIREP holding an operating licence, as follows:
 - a) the OIREP's possibility to collaborate with:

- (i) the notified and/or registered economic operators who take over used /waste packaging from the population, either directly or from collection points / sorting stations; as well as with
- (ii) the economic operators collectors authorised which take over used /waste packaging from the hotel industry, the food services, especially the units that organize events, prepare and serve food and drinks,

by concluding agreements for including the packaging waste quantities managed by such operators for fulfilling the valorification and recycling targets.

- b) covering, as a matter of priority⁵, the net costs for the packaging waste managed through the sanitation service, within the limit of the packaging quantities which became waste in the municipal flow taken over under agreement from the responsible economic operators, based on the “allocation”.

Such concept is defined under Annex No. 4 to the order as *“directly proportional allocation to the organisations implementing the obligations on the extended liability of producer, by the local public authorities or authorised inter-community development associations, as applicable, of the packaging waste quantities resulting within the geographical area in which the organisations conduct their activity”*.

- c) replacing the business activity with packaging waste from municipal waste from Article 17(q)(vi) and indicating instead the activity of taking-over via third parties of the packaging waste from municipal waste, provided under Article 16(9)(h) of Law No. 249/2015, for which OIREP covered the management costs according to Law No. 249/2015, for the purpose of valorification by the authorised economic operators;

3. Amendments concerning the costs which OIREP is entitled to include in the financial contributions charged to economic operators for which it fulfils the obligations on the extended liability of producer, as follows:

- a) regulating the possibility of including the reporting and collecting costs of the economic operators specified under point 2(a) above;
- b) removing the threshold of RON 40/ton ancillary to the costs of promoting public awareness-raising and education campaigns carried on by OIREP together with the local public authorities or with the inter-community development associations, as applicable;

⁵ Through the agreements, partnerships or other forms of collaboration concluded with the local public authorities or with the authorised inter-community development associations, as applicable.

At the same time, it is provided that such costs shall also include “*pilot projects meant to foster separate collection, reuse and recycling, directly pro rata to the quantities of packaging for which they have the obligation to cover the net costs, including bags, bins, containers, and/or other digital systems generating, measuring, processing or storing information on the management and monitoring of the waste quantities, such as packaging which became waste in the municipal flow*”.

- c) removing the threshold of RON 3/ton related to the costs of promoting public and economic operators awareness-raising and education campaigns carried on by OIREP together with the central public authority for environment protection; such costs shall be covered “*within the limit of the quantities of packaging for which OIREP implements the extended liability of producer*”;
4. Regulating the “*grid system*” set forth under Article 26(3) of Law No. 249/2015 having as object the assessment of the extent to which OIREP has fulfilled its obligations for the purpose of the annual endorsement.⁶

According to the amendments brought by Order No. 1555/2020:

- a) the grid system is detailed under Appendix No. 1 to the order by reference to OIREP’s obligations and the score related to each obligation described within such grid.
- b) OIREP’s operating right shall be withdrawn if, in the annual endorsement, OIREP: (i) fails to score at least 80 points, following the application of the above grid, or (ii) it fails to provide the documents required for conducting the annual assessment;
- c) the decision to withdraw the licence should be posted by OIREP on its own website, in a visible spot, whilst OIREP’s reauthorisation may be sought subsequent to the expiry of a 12-month period as of the withdrawal of the operating right.

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⁶ At the same time, the content of the minimum information which are to be included in the annual activity report of OIREP has been amended.

Editors

Environmental Law and Permitting are two of the niche practice areas of Romanian and EU law in which Țuca Zbârcea & Asociații's attorneys have gained unique expertise by handling some of the most complex projects undertaken so far in Romania in the mining sector, energy and oil & gas, as well as in the steel industry. Our services cover all procedural steps to be undertaken before the competent authorities (city halls, local environmental authorities, Ministry of Environment, Water and Forests, etc.) in relation to complex procedures such as IPPC, BAT, environmental impact assessment procedures, issuance of city planning certificates, public debates and environmental organisations, cross border environmental procedures, etc. Also, our services include advice on the environmental aspects of projects such as mergers and acquisitions, partnerships, long term exploitation contracts etc., and drafting and negotiating environmental agreements for the separation of environmental liabilities, both historical and forthcoming.



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