

## AMENDMENTS TO THE GENERAL REGIME OF WASTE MANAGEMENT

### PUBLIC LAW

**Decree-Law no. 73/2011**, published on June 17, sets forth a **third amendment to the General Regime of Waste Management (“RGGR”)**, set out in Decree-Law no. 178/2006, of September 5, and implements Directive 2008/98/EC of the European Parliament and of the Council, of November 19.

Among the various amendments brought by this Decree-Law, we firstly highlight the **redefinition of some of the RGGR’s basic legal concepts**. The legislator intended to clarify concepts such as *waste*, *prevention* or *re-use* and aimed at distinguishing more clearly the notions of *waste recovery* and *waste disposal*. Furthermore, **new legal concepts were introduced**, such as *preliminary storage*, *dealer* or *broker*.

Secondly, we underline the changes regarding the **principle of waste hierarchy**. According to this principle, policies and legislations on waste obey to a certain priority order with regard to waste prevention and management options. This Decree-Law replaces the former list of priorities - 1) to prevent; 2) to recycle; 3) to dispose (in a decreasing order of priorities) – by the following list: 1) prevention and reduction; 2) preparing for re-use; 3) recycling; 4) other recovery; 5) disposal.

In addition, **in case of waste stream, the RGGR now allows for the aforementioned order of priorities not to be followed**, provided that such choices are justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

We also highlight the enactment of a new provision that **expressly recognizes the principle of extended producer responsibility**. This principle allocates,

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*Changes regarding the principle  
of waste hierarchy*

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wholly or partly, physically or financially, on the producer the responsibility for environmental impacts and for the generation of waste resulting from the production process and subsequent use of the respective products, as well as for its management when it attains its final stage of life. For that purpose, the producer may be obliged to promote alterations in the conception of the product. However, it should be stressed that the application of this principle depends on the technical feasibility and economic viability, on the overall environmental, human health and social impacts, as well as on the respect for the proper functioning of the internal market.

Finally, we point out the addition of a new chapter to the RGGR, named *By-products and end-of-waste status*. According to its first provision, **a substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be qualified as ‘by-product and not waste’**, provided that the following conditions are met: a) further use of the substance or object is certain; b) the substance or object can be used directly without any further processing other than normal industrial practice; c) the substance or object is produced as an integral part of a production process; and d) the substance or object fulfils the relevant product, environmental and health protection requirements and will not lead to overall adverse environmental or human health impacts, in view of the subsequent specific use.

Interested parties may request, individually or through sector-based associations, the National Waste Authority (*Autoridade Nacional dos Resíduos* - “ANR”) for a certain substance or product to be qualified as ‘by-product’. The law establishes that such requests are to be decided within 90 days.

The second provision that forms part of this new chapter concerns the *end-of-waste status*, which is applicable to certain waste when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with four conditions set out in this Decree-Law: a) the substance or object is commonly used for specific purposes; b) a market or demand exists for such a substance or object; c) the substance or object fulfils the



*Recognition of the principle  
of extended producer  
responsibility*

technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and d) the use of the substance or object will not lead to overall adverse environmental or human health impacts. Should the criteria not be established on community level, the *end-of-waste status* may be decided with regard to certain waste, in accordance with criteria which are determined in an ordinance that is issued by the member of the Government responsible for environment based on a proposal from the ANR and taking into account the applicable jurisprudence.

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