



FEAD position on a potential legislative initiative on concessions

In some member states concessions are considered as an interesting tool to involve the private waste management sector in the improvement of services of general economic interest across Europe.

FEAD, the European Federation of Waste Management and Environmental Services, and its member associations consider that there is a distinction between concessions and public service contracts. We therefore expect the Commission and Member States to ensure that public authorities do not misapply this distinction, a matter on which there is useful jurisprudence.

As there are Directives on procurement in place (2004/18/EC and 2004/17/EC), FEAD members advocate for a vigorous enforcement of the existing legislation instead of drafting new one. How these directives are implemented in each Member States (through contracts or concessions) is a matter of subsidiarity and should be decided at Member States level.

The elaboration of one single cross-sectoral directive on service concessions at European level will create enormous difficulties given the different historical background, market structures, types of activities and sector specificities in the Member States, which have been handled previously with a sector-like approach (e.g. Regulation (EC) N° 1370/ 2007 on public passenger transport services by rail and by road).

FEAD members consider that the current framework on concessions is sufficient and are not convinced of the need to change EU law in this regard. We would strongly recommend the Commission not to proceed with the elaboration of a directive on service concessions.

FEAD therefore strongly suggests the European Commission to clarify the following points in a Communication:

- 1) In order to avoid legal uncertainty and lack of transparency, clear provisions on the publication in the EU Official Journal of the notice concerning service concessions need to be developed (cf. article 58 of Directive 2004/18/EC). This clarification will provide the basis for a potential further development of the model of concessions.
- 2) The selection of the concessionaire needs to be based on strict, objective and transparent criteria.
- 3) Based on the results of the on-going impact assessment, clarification on the delineation between public service contracts and concessions should be provided (given that the nature of public service contracts is different from concessions, e.g. flexibility over long-term performance).
- 4) Additionally, the Communication should clearly stipulate that service concessions should not be used to extend the operational cooperation between public entities contrary to the principle of fair competition.

FEAD is the European Federation representing the European waste management industry. FEAD's members are national waste management associations covering 20 Member States. They have an approximate 60% share in the household waste market and handle more than 75% of industrial and commercial waste in Europe. Their combined annual turnover is approximately € 54 billion.

FEAD represents about 3000 companies with activities in all forms of waste management. These companies employ over 295000 people who operate around 1800 recycling and sorting centres, 1100 composting sites, 260 waste-to-energy plants and 1100 controlled landfills. They play an important role in the determination of the best environmental option for waste management problems.