



FEAD Position Paper on the 7th Environmental Action Programme (7th EAP)

28 June 2012

FEAD welcomes the work of the European Commission regarding the preparation of the 7th Environmental Action Programme. Our members are grateful for the opportunity to present our observations.

1. Priorities and Objectives

- Homogeneous transposition, enforcement and implementation of existing legislation

EU waste legislation has brought immense gains in achieving more sustainability in some Member States. However, FEAD members notice that there is still a huge disparity among Member States when it comes to the enforcement of EU waste legislation. Different definitions of the same terms at national level (e.g. "municipal waste" can include commercial waste or not, according to the MS) result in different bases for drawing up statistics, that are therefore not comparable. We reason that there is huge potential for improving both the common understanding of policies and the cooperation among the authorities of the different countries and regions in the future.

The five-stage waste hierarchy set out in the Waste Framework Directive lays the foundation for a European recycling society. Further progress towards a resource-efficient economy and a recycling society can only be made if the right economic and regulatory framework conditions are in place. FEAD calls upon the EC to live up to its role as guardian of the integrity of the treaties and to work towards uniform implementation of the existing European waste legislation in the Member States.

There is a good case for prioritising the enforcement of waste law in the next EAP, as non-implementation of waste law poses serious dangers to human health, the environment and general welfare. The recent Commission Communication on *Improving the delivery of benefits from EU environment measures* points out that full implementation of waste legislation will generate 400,000 jobs and cut costs by €72 billion annually. Another study of 2011 estimated similar figures and stressed that the impact of non-implementation would include increased GHG emissions, loss of value of recyclable materials and increase use of primary raw materials. As we believe that the 6th EAP has not achieved the goal of decoupling waste generation from economic growth, we would like to seize the opportunity of the 7th EAP to give more thought to the issue of implementation, compliance and enforcement.

- Implementation and Enforcement in the Internal Market

FEAD members deal with 60% of household and more 75% of industrial waste, either as subcontractors of public waste management authorities or on the basis of direct contracts with waste owners. This shows that there is a market and competition for waste management. This applies in particular for separately collected, recoverable waste, which, according to the Waste Framework Directive (2008/98/EC), is not part of the package of tasks entrusted to the Member States. In its Communication *European framework for state aid in the form of public service*

compensation (2011), the Commission makes it clear that the management of separately collected wastes for recovery does not constitute a Service of General Economic Interest. The recovery of secondary raw materials from waste is increasingly superseding the disposal of waste. Environment-friendly treatment methods, accompanied by measures aiming at further reducing landfilling of waste, have virtually eliminated the potential dangers of waste management to human health and the environment. Waste management has become a modern business sector, to which the fundamental European freedoms should apply without exception, especially the freedom to provide services and the free movement of goods, while ensuring the respect of the Waste Shipment Regulation, and for which a market based on fair competition has to be guaranteed. Finally, innovation and progress can only flourish where competition creates incentives for them to develop further. This is impeded by preferential treatment and subsidisation of publicly controlled market participants, preventing better and more cost-effective suppliers from prevailing. FEAD expressly calls for a level playing field for private and public waste management undertakings and facilities in the market. This includes in particular fair public procurement legislation without loopholes and without privileges for cooperative ventures between public authorities, equal VAT treatment between public and private enterprises, and consistent application of competition rules.

In a recent report by former chair of EP ENVI Committee, Ms Jackson, which the Institute for European Environmental Policy published, the recent developments of handling compliance issues at EU level were mentioned. One fifth of all active cases are related to environmental legislation. Instruments such as the central registry of complaints (CHAP) and the EU Pilot scheme have limitations and in our view need to be reinforced. FEAD strongly advocates that the Commission creates stronger instruments that can address deficiencies and non-compliance with EU legislation in national draft laws, before they enter into force. Another important point is that the different Directorates General within the European Commission should cooperate more effectively and be better coordinated when it comes to legal cases that fall within the remit of more than one of them.

- Illegal Shipments

15% of all transport movements within the EU include waste. Greater focus is needed on the illegal shipment of waste under the label of “re-use”. Very often this waste is shipped to third countries, where the waste is dumped or not treated in conformity with European waste legislation. Although there are efforts for cooperative enforcement of inspections from most MS, the Commission still allows to some MS not to participate in them.

European waste management companies have invested in human resources and infrastructure to treat waste in accordance with strict European regulations. Bypassing these high treatment standards through the unlawful shipment and dumping of waste must be prevented.

FEAD believes that the main action to combat illegal shipments is to ensure consistent inspection and control procedures (e.g. by increasing the number of inspectors and inspections of potentially unlawful shipments). This is a key element, necessary to guarantee proper application of the Waste Shipments Regulation. In this regard, FEAD supports the increased activities of IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law) to ensure that sufficient resources are allocated to enforce this Regulation. We call for the development of waste inspection criteria. Although there will be costs attached to further inspections, the cost of illegal shipments should be factored in as well.

- The creation of an inspection authority

The idea of the creation of a European Waste Agency has met huge resistance among Member States and does not currently seem feasible. A recent study carried out for the European

Commission, entitled *Implementing EU Waste Legislation for Green Growth*, recommended that the European Environment Agency be given extended competencies to monitor waste law implementation. To date, the EEA has a limited role and in order to gain enforcement capacity there would be a need for a revision of its statutes. As the situation realistically shows today, it would also be very difficult for the Commission to monitor the compliance of waste law in all 27 MS. Therefore, there is a need for an alternative, which in our view the 7th EAP should propose.

2. Policy Instruments

Throughout the 6th EAP, it became noticeable that its main policy instruments have focused on end-of-pipe solutions, primarily on the waste management end of the value chain. Policy instruments designed to close the economic/waste cycle have to be further developed based on the principles of resource efficiency, as stated in the 6th EAP, the SCP Action Plan and in the Thematic Strategies on Waste Prevention and Recycling and on the Sustainable Use of Natural Resources, as well as in the Resource Efficiency Roadmap.

Existing legislative instruments provide a good basis. However, improvements are needed in order to achieve enhanced focus. For example, there are no concrete targets relating to resource efficiency in place yet.

There is a role for market based instruments, so long as they are created in such a way as to promote the use of secondary raw materials. Those should be subject to a prior robust impact assessment. The European Commission should consider requesting the MS to introduce reduced VATs for secondary raw materials. Furthermore, eco-labels identifying recycled material content of products should be developed. In addition, an extension of the Ecodesign Directive to cover material resource efficiency of key products should be envisaged, together with a proper definition of “quality recycling”. In parallel, a serious review of EU and national statistics systems should be made (Eurostat statistics rely on heterogeneous national classifications and are therefore neither reliable nor comparable). FEAD also supports the development of Extended Producer Responsibility schemes, where they are not sufficiently developed, with particular focus given to individual producer responsibility, as a way of ensuring that producers are made accountable for the design of the products. We trust that the 7th EAP will help put into place the different positive measures outlined in the Resource Efficiency Roadmap, as this Roadmap does not have a proper legal basis, such as that which could be achieved through the 7th EAP.

3. Better Regulation and Policy-Making Process

- Comitology

To simplify the implementation of existing legislation, FEAD welcomes in certain cases technical adaptations, which are made through the Committee procedure (i.e. implementing and delegated acts). However, we would like to stress that technical adaptations are complex. Overall, they should lead to better quality of the existing legislation. We therefore deem it necessary to ensure transparency and industry involvement in this process.

- Impact assessments

In order to ensure that the right legislation comes into place, there is a need for correct impact assessments. Furthermore, it would appear to FEAD that the results of impact assessments are not always taken into account when a political decision on the societal, environmental and economic disadvantages of a piece of legislation is made.

- Revision process of existing legislation

The revision of existing legislation should not take place before the legislation reaches its implementation deadline, as it has been done in the past (e.g. IPPC Directive and new Industrial Emissions Directive).

- Stakeholder consultations

Deadlines for the submission of responses are often too short. This may be detrimental to the quality of the consultation process. Moreover, the European Commission does not always appear to pay sufficient attention to the responses, which may express a strong and reasoned opposition to the proposed alternatives. Finally, public consultations should be more transparent, as the results are made public only in some cases.

4. Reorientation of Structural Funds towards Public-Private Partnerships (PPP)

FEAD supports the goal of further developing Europe to a recycling society. The Waste Framework Directive (2008/98/EC), which is still not transposed in some Member States, stipulates the five-step hierarchy and sets recycling rates, which the new Member States in particular are dramatically far from achieving. Further boosting the recycling rates is also central in recent EU strategies and reports.

The current work of the European Parliament's Regional Development Committee on the report on the Common Provisions Regulation (CPR) for European Funds represents a once in a decade opportunity to start implementing a greener and more innovative Cohesion Policy, oriented towards job creation. Therefore we welcome the fact that the waste sector is included as an ex-ante conditionality in the proposed CPR regulation, as it guarantees that the waste hierarchy of the WFD is taken into account when EU funding is awarded to waste management projects. We hope that this principle will also be maintained in the final regulation. FEAD calls for a clear link between granting EU funds and proper implementation. There should be no more funding of MS and no repayment of funds through MS which do not comply with the Waste Legislative Acquis.

Conclusion

In order to allow the "recycling society" in Europe to realise its full potential, several conditions need to be fulfilled. These conditions concern predominantly the establishment of fair competition rules for all market operators (public and private), the full application of the single market rules with regard to waste for recovery and the harmonised implementation of EU waste legislation across Europe (e.g. Waste Framework Directive, Waste Shipments Regulation, Landfill Directive).

FEAD is the European Federation representing the European waste management industry. FEAD's members are national waste management associations covering 19 Member States and Norway. 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 € 75 billion.

FEAD represents about 3000 companies with activities in all forms of waste management. These companies employ over 320000 people who operate around 2400 recycling and sorting centres, 1100 composting sites, 260 waste-to-energy plants and 900 controlled landfills. They play an important role in the determination of the best environmental option for waste management problems.