



FEAD position paper on the Circular Economy Package*

October 2014

Introduction

FEAD welcomes the European Commission's proposal "Towards a circular economy: a zero waste programme for Europe" published on 2 July 2014. The private waste management sector has a vital role to play in the transition to a more circular economy in Europe. But progress in this direction can only be made under the right economic and regulatory framework conditions, and based on partnership working between all actors involved in the value chain.

This position paper sets out FEAD's views on some of the key Commission proposals, as well as suggestions for changes to make them practical and achievable.

Our key messages:

1. Municipal waste should be defined by waste type, not by who collects it, and the definition should not be broadened to include commercial waste.
2. The recycling calculation method should refer to the output of the sorting process, minus any non-recyclable material, and not to the input to the final recycling stage.
3. FEAD members support the proposal to ban landfilling of recyclable wastes from 2025 and the aspiration to reduce landfilling further after that, subject to review in 2025.
4. EPR schemes should be market-oriented so as to fully exploit their potential to achieve circular economy, but Member States should retain flexibility over EPR rules.
5. Better enforcement of the EU acquis is needed to close the gap between best and worst performing Member States.
6. All measures which were previously dealt with under the regulatory procedure with scrutiny should become implementing acts, not delegated acts.

About FEAD

FEAD is the federation of the European private waste management industry. FEAD's members are national waste management associations covering 18 EU Member States, Norway and Serbia. 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 3,000 companies with activities in all forms of waste management. These companies employ over 320,000 people who operate around 2,400 recycling and sorting centres, 1,100 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 and in returning valuable secondary raw materials to the European economy.

* Commission proposal for a Directive of the European Parliament and of the Council amending Directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste, 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment

1. Definition & composition of “municipal waste” (Article 3.1(a) & Annex VI of the WFD)

The Commission proposal for a new definition and composition of “municipal waste” is of vital importance, as it defines the types of wastes to which the new EU recycling targets would apply. FEAD believes that the definition and composition proposed are not clear enough to be applied consistently by the Member States and also introduce unnecessary new complications:

- It places undue emphasis on who collects the waste or on behalf of whom. This is completely inappropriate, as the role of the public and private sectors in waste collection varies widely between Member States, and is a matter for Member States to decide.
- It broadens the scope of “municipal waste” excessively by bringing in categories of commercial waste which have no connection with “household and similar waste”, which is rightly the core element of municipal waste as currently defined in the Landfill Directive.

Accordingly, FEAD is of the opinion that the proposed Article 3.1(a) should be amended to define municipal waste as household and similar waste, with Annex VI providing clarification of the composition of the term “municipal waste” for the purpose of reporting and calculating the recycling targets. FEAD strongly believes that municipal waste should be defined by waste type, not by who collects it, and will suggest detailed changes to the Commission proposals in this regard.

Finally, FEAD deems that rather than seeking to expand the scope of the term “municipal waste”, the Commission should examine the possibility of setting targets for commercial and industrial waste in the future, and take steps to ensure that Member States gather data on commercial and industrial waste to help facilitate this.

2. Recycling target calculation method (Article 11 of the WFD)

FEAD is in favour of harmonising the recycling calculation method to ensure that all Member States can report their performance on a comparable basis. We also agree with the Commission that the calculation should in principle exclude materials which are collected for recycling but in practice cannot be recycled. However, the Commission proposal for how the calculation should be made is very unclear and appears to propose a method which is impractical. In particular, the proposal does not take account of the various steps in the collection, sorting, recycling and reprocessing chain. For example for recycled plastic, process losses prior to the point at which the Commission proposes to measure the recycling rate could in some cases reduce the currently reported recycling rate by up to 30%. Nor does the proposal take account of material which is exported for recycling.

For these reasons, FEAD considers that the Commission proposal for a calculation method based on input to a “final recycling process” is neither desirable nor feasible. Instead, FEAD suggests that the calculation method should refer to the output from the sorting process, minus any non-recyclable material.

Moreover, defining the calculation method is a complex technical issue which should not be dealt with in a framework directive (WFD). Such technical details should be further elaborated in an implementing act revising the current Decision on calculation methods¹.

¹Commission Decision 2011/753/EU of 18 November 2011 establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC of the European Parliament and of the Council

3. Landfill reduction targets (Article 5 of the Landfill Directive)

FEAD supports the proposal to ban landfilling of recyclable wastes from 2025, and the aspiration to reduce landfilling further after that, subject to the proposed review of progress in 2025. FEAD's position is that only wastes for which no environmentally sound or economically practicable recycling or recovery operations exist should be landfilled. At the same time, landfilling should remain available for those wastes where it is the best overall environmental option.

We suggest that the formulation of the proposed aspirational target for 2030 should be aligned with that of the mandatory 2025 target, since moving from a quantitative target (to decrease landfilling to 25% of municipal waste generated by 2025) to a qualitative target only five years later (to limit landfilling to a specific waste type, i.e. residual waste, by 2030) would pose both practical and reporting problems for Member States and operators. Hence, FEAD believes that there is no need to refer to "residual waste" at this point in the proposal.

4. Extended Producer Responsibility (Article 8 & Annex VII of the WFD)

FEAD believes that Extended Producer Responsibility (EPR) schemes should operate in a transparent way, to encourage manufacturers to use recycled materials and to ensure fair and equal access to materials and resources. FEAD is of the opinion that the definition, scope and objectives of EPR should be market-oriented so as to fully exploit its potential to achieve a circular economy. Producers should be able to choose the services they want and who provides them.

In FEAD's view, the desired results will be delivered only if local conditions in the Member States are taken into account. FEAD considers that the language of Article 8 paragraph 3, and the minimum requirements set out in Annex VII, are much too prescriptive. Instead, we suggest that Member States should have to take into account the minimum requirements in Annex VII when developing and applying extended producer responsibility, rather than having to follow every detail.

In particular, Article 14 of the WFD states that Member States may decide that the costs of waste management are to be borne partly or wholly by the producer of the product from which the waste came and that the distributors of such product may share these costs. The discretion of the Member States in choosing the most appropriate national mechanism to reflect the obligations set by the EU ensures that Member States are free to look for the most efficient approach fit for their own market conditions.

5. Better enforcement of the EU acquis (Article 11a of the WFD)

The EU has made substantial progress in turning waste into a resource and promoting sustainable ways of waste management, but performance varies considerably between Member States. There is significant potential to further improve the implementation of waste legislation at national level and to reduce the current disparities.

To ensure better implementation, FEAD welcomes the new instrument proposed by the European Commission – an early warning system, which we see as designed to strengthen regulatory enforcement in those Member States which are having most difficulty in reaching the EU recycling and landfill diversion targets. We believe that the early warning system will contribute to narrowing the gap between the worst and best performing Member States. However, keeping in mind that

there is no “one-size-fits-all” solution, it is important that the measures listed in Annex VIII of the Commission’s proposal remain at the discretion of the Member State concerned. In addition, FEAD, as the industry, will play its part, supporting national and European regulators by disseminating environmentally responsible management practices across the sector.

It is also vitally important that EU rules on fair and equal competition and the internal market are properly upheld. Waste management is a modern business sector where investments and innovation can only flourish when competition creates incentives for economic efficiency. In some Member States 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.

6. Delegated acts (Article 38 WFD & Article 16-17 Landfill Directive)

Many of the important technical details of the EU waste acquis are included in annexes or in other pieces of legislation, and the Commission has proposed to deal with most of these matters by delegated acts in the future. FEAD does not believe this would be appropriate. Changes to the List of Waste, End-of-Waste status, etc.² have an immediate impact on the daily work practice of waste management companies. Such measures go far beyond “non-essential elements” as described in Article 290 TFEU. Hence the feasibility of such measures needs to be checked by experts from the Member States, who are best informed about the situation on the ground. We therefore strongly advocate for these measures to be dealt with as implementing acts, allowing a Member States experts’ committee to examine and if necessary amend the Commission proposal, as was the case under the regulatory procedure with scrutiny. This will ensure better and more practicable regulation.

² The Commission proposes the use of delegated acts for amending the annexes of the Waste Framework Directive (except Annex VI) and the Landfill Directive, and for the following articles of the WFD: Article 5.2 on by-products, Article 6.2 on End-of-Waste status, Article 7.1 on the List of Waste, and Articles 27.1 and 27.4 on minimum standards for waste treatment.