



## FEAD position paper

# Ensure open markets and fair competition to reach a circular economy

April 2015

### Introduction

A circular economy and a more resource efficient society require major changes in the use of resources and new EU policy measures. To reach a circular economy, market based conditions must be introduced in the whole value chain to incentivise all actors to take their responsibilities. Open markets and fair competition stimulate customised services and solutions, and possibilities for innovation and investment. They also help small companies to enter the market.

Waste legislation must be developed in this direction and adapted to a circular economy, not only from an environmental point of view but also from an economic point of view, through ensuring open markets and fair competition.

The private waste and resource management companies have a key role in a circular economy to deliver high quality services and support their customers to turn waste into resources and reduce both costs and environmental impact. The uniqueness of the waste and resource management companies is that they have customers at both ends, they provide services to the customers generating the waste and they act as raw material suppliers to industry. Preconditions for the private sector to deliver these services and make the necessary investments for a circular economy are clear rules, fair competition and a progressive opening up of the waste market for increased competition.

### Household waste management and market conditions today

In many Member States developments are not going in the direction described above. In several countries the municipalities claim that both waste from households and similar waste from the commercial sector should come within their rights. This leads to uncertainty as to who is allowed to handle the waste.

A problem faced by the private waste management companies in Europe is that in-house services in the municipalities are increasing. This means that the municipalities award contracts for household waste management to themselves, based on their rights for household waste. Many municipalities are not only operating household waste management services, they also sell waste management services on the commercial waste market. Mixing of household waste management services and commercial activities risks giving rise to illegal state aid and cross-subsidisation, and means that households risk paying for collection and treatment of commercial waste. In most countries there are not enough measures in place to ensure that municipalities cannot cross-subsidise between household and commercial waste operations. In addition, the mixing of rights to handle household waste and commercial waste services in European municipalities can give rise to investment in waste treatment plants with over capacity. These plants are used to offer services on the commercial market, in competition with the private companies. Decisions on waste management are often taken by local public authorities with no or little coordination with private actors. This can lead to sub-optimal practices. Often the municipalities' investments in waste treatment are at a lower level in the waste hierarchy, so affecting the possibility of reaching EU recycling targets.

## 1. FEAD calls for the opening up of household waste management markets to competition from private entities

Opening up of waste markets to competition will facilitate the achievement of the EU recycling targets by involving all the actors on the market and will enable steps towards a circular economy. Some countries in Europe have already taken different steps in order to ensure opening up waste markets for more competition. These countries provide good examples:

- ***In some countries retailers, businesses, offices, etc. can choose waste management suppliers for all their wastes as similar waste<sup>1</sup> is not a municipality responsibility:*** In Norway and Ireland household waste is defined as waste only coming from households. This means that retailers, businesses, offices, institutions etc. are encouraged to take the responsibility for all their waste and can choose between professional waste management companies in order to decide which operator should supply them with services best suited to their needs.
- ***Waste collection contracts directly with the households:*** In Ireland and parts of Finland households have direct contracts with the waste management companies to collect their household waste. This is the situation also in Estonia, but there it is only the company that has won the public contract that can offer services direct to the household. A licensing system is under consideration which would allow several waste management companies to offer services directly to the households. This would open up the market for competition all the time, not only when there is a public tender.
- ***Extended Producer Responsibility (EPR) waste collection from households:*** In many Member States (e.g. Germany, Austria, Estonia, Ireland and Sweden) the private sector has responsibility for collecting EPR waste. In Sweden the property owners of apartment buildings can buy door to door collection services directly from private waste management companies. The services are offered in competition which gives opportunities for customised services.
- ***Bulky waste from households:*** In the city of Stockholm, 19 private waste management companies have permission from the municipality to collect bulky waste from households. This extra service can be bought from any of those companies, while the city provides recycling centre services as part of the main waste fee.

## 2. FEAD calls for mandatory tendering of waste management services by municipalities<sup>2</sup>

European municipalities that tender waste management services use market competition to explore the best waste management solutions for their municipality's needs. However many municipalities do not tender these services - neither for household waste management services nor for the waste they generate in their own premises. Some countries show good examples and are forerunners in utilising competition on the market:

- ***Tender collection of household waste:*** Municipalities tender 50 % or more of the collection services in Austria, Belgium, Finland, France, Norway, Sweden and the UK.

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<sup>1</sup> Waste similar in nature, composition and quantity to household waste.

<sup>2</sup> Except in Ireland, where the household waste market is already fully privatized. FEAD supports private sector collection and treatment of household waste through tendering, but also through side-by-side competition, as exists in Ireland.



- **Tender waste treatment of household waste:** Municipalities in the UK and France tender about 80 % of the treatment of the household waste.
- **Public Private Partnership (PPP) for household waste treatment** has been developed successfully in many Member States, e.g. Austria, France and the UK.
- **Legal requirement to tender all waste management for household waste:** In Estonia the municipalities are obliged to tender both waste collection and treatment.

### **3. FEAD calls for equal market conditions and clear regulations for municipalities operating both on the household and commercial waste markets**

Many municipalities in European countries set up waste management companies or inter-municipality cooperation, to collect and treat not only household waste, but also to offer services on the commercial, industrial and even the EPR market. These companies or organisations have often directly awarded contracts, thereby mixing non-commercial (household waste treatment) and commercial (commercial/industrial/EPR waste treatment) activities within the same company. This causes unfair competition between the private and public sector and places additional costs on local tax and waste fee payers. The use of tax payers' money is not transparent. Mixing of non-commercial and commercial activities within the same company also risks violating EU state aid regulations.

A level playing field is crucial to develop a circular economy and promote innovation, new services and investments, growth and jobs in the private sector. There is a need for more clear regulations and efficient supervision:

- **Municipalities should be required to separate their role as local authority from their waste operator role.**
- **The EU and Member States must ensure that municipalities offering services on the commercial and industrial market comply with the public procurement rules** (the Teckal criteria)
- **Municipalities should not be allowed to mix household waste management services with commercial activities. Separate accounting and auditing of monopoly and commercial operations must be better implemented and controlled.**
- **Measures must be put in place to eliminate the risk of cross-subsidisation and illegal state aid in public waste management companies.**
- **VAT treatment must be equal between public and private sectors for delivering the same type of services.**
- **EU funding** must be allocated to set up modern **waste management infrastructure** which is **in line with the waste hierarchy** (funding of overcapacity at the lower levels of the waste hierarchy must be avoided).

### **4. Conclusion: Fair competition will deliver a circular economy more effectively than re-municipalisation**

FEAD has observed a clear trend towards increasing public sector activity in the recycling market in several Member States. This goes against the evidence which shows that competition and



private sector involvement delivers better outcomes for the environment and for taxpayers. Municipal involvement often means an inefficient use of resources and hence unnecessarily high costs for residents who are often tied to an expensive public waste management authority without the possibility to change to another, less expensive provider.

For example the German Federal Cartel Office's working group on antitrust law recently found<sup>3</sup> that the involvement of municipalities in waste management is often intended to relieve pressure on tight budgets and hence to contribute to the financing of other tasks. Municipal undertakings do not invariably pass on cost advantages in full to their customers or refrain from making profits at their expense. The situation in Poland is similar. Polish municipalities claim that they cannot delegate the management services to the other operators, in particular private ones, since they have already built their own waste infrastructure.

This fully confirms FEAD's observations that municipal undertakings have fewer incentives than private providers to operate efficiently since any losses can be covered via tax receipts or charges, whereas private undertakings must acquire expensive capital or even leave the market.

According to the Finnish Competition and Consumer Authority (FCCA)<sup>4</sup> municipal responsibility narrows down the available options in a way that is problematic for the functioning of markets. The FCCA stated that producers, commerce, private and public institutions, households and the waste sector entrepreneurs should be given the widest possible right to determine the method by which waste is collected and recovered. The public sector's role should be to provide a framework for this activity and ensure that the rules are followed.

Against this background, FEAD strongly recommends that the concept of service of general interest (SGEI) should be defined more concretely. Competition in waste markets should be the norm, via more tendering procedures. In addition the numerous competitive advantages enjoyed by municipal undertakings should be removed (such as lower VAT rates and the possibility of "cross-subsidisation").

The move towards a circular economy and a more resource efficient society will be central to EU policies for decades to come. A crucial element in achieving this challenging transformation is open markets and fair competition for waste and resource management services. The benefits are clear; more choice for customers, lower costs for households, higher recycling rates, more innovative recycling solutions and the potential for higher growth and more jobs.

*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.*

*FEAD's recently-launched Strategy 2014-2020 brochure "Driving the Circular Economy" sets out our vision of the policies needed to allow the industry to play its full part in achieving economic growth in a resource-efficient and environmentally sound way, and it can be downloaded [here](#)*

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<sup>3</sup> German Federal Cartel Office's background paper "The State as Entrepreneur" (2 October 2014)

<sup>4</sup> Finnish Competition and Consumer Authority "Competition Review" (2011)

