

FEAD Preliminary Recommendations Guidelines on “Municipal Waste” Definition May 2018

FEAD welcomes the huge achievement by the EU institutions in reaching agreement on the new Circular Economy legislation, and in particular our members are pleased to see the agreed revisions to the Waste Framework Directive. The transition from a linear to a more circular economy is vital if the European Union is to develop a sustainable, low carbon, resource efficient and competitive economy in the future.

The private waste and resources management industry plays a key role in making progress towards a circular economy by collecting, sorting, preparing waste and, finally, providing secondary raw materials and energy for Europe’s industries and consumers. But strong leadership from EU policy makers is crucial to provide the right legal framework and direction of travel, on the basis of which the private sector can make the necessary investments for a more circular economy. This will in turn create many more jobs in Europe while making our economy more resilient and resource efficient and protecting the environment.

This paper sets out FEAD’s position on how Member States should interpret the new definition of “municipal waste” in the revised WFD. We believe that there are three crucial points for the European Commission to take into account when developing the required guidelines on the definition of “municipal waste”:

1. The definition of “municipal waste” does not affect responsibilities for waste collection and treatment.
2. The sole purpose of defining “municipal waste” is for calculating the achievement of the recycling and landfill diversion targets.
3. A clear and practical demarcation between “municipal waste” and “commercial and non-hazardous industrial waste” is needed.

1. The definition of “municipal waste” does not affect responsibilities for waste collection and treatment

We are happy to see that legislators agreed that the principle of neutrality is crucial and that this is clearly safeguarded in the legislative part of the Directive:

Recital 6: “It [definition] is neutral with regard to the public or private status of the operator managing waste and therefore includes waste from households and other sources that is managed by or on behalf of municipalities or directly by private operators.”¹

Article 3.2b: “This definition is without prejudice to the allocation of responsibilities for waste management between public and private actors;”²

¹ Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste, Analysis of the final compromise text with a view to agreement, 8 February 2018

Defining the types of wastes to which the new EU recycling targets apply should not affect who collects or treats the waste. As a matter of fact, 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. Many European countries have taken steps to ensure waste markets are opened up for competition. For example:

- ***In some countries retailers, businesses, offices, etc. can choose waste management suppliers for all their wastes as similar waste³ 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.
- In MS such as France, Italy, Belgium, **municipalities can choose** either to operate themselves the public service of waste collection and treatment, or **to delegate this task** by choosing, through competitive call for tenders, **a private company** which will run the service for a given number of years.
- ***Extended Producer Responsibility (EPR) waste collection from households:*** In many Member States (e.g. Germany, Austria, Estonia, Ireland, Sweden, France) 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.

However, across the EU the principle of fair and open markets is not consistently applied. In some Member States municipalities claim that both waste from households and similar waste from the commercial and industrial sectors should come within their exclusive rights. In-house services in the municipalities are increasing, which can result in them awarding contracts for household waste management to themselves without tendering, giving rise to inefficient “municipal monopolies”. In some cases municipalities are also selling waste management services on the commercial waste market, taking unfair competitive advantage of concessions, such as lower-rated VAT, only afforded to public bodies.

² Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste, Analysis of the final compromise text with a view to agreement, 8 February 2018

³ Waste similar in nature, composition and quantity to household waste.

The mixing of household waste management services and commercial activities by municipalities risks giving rise to illegal state aid and cross-subsidisation, as householders are put at risk of paying for the collection and treatment of commercial waste. Many Member States do not have sufficient controls in place to prevent this from happening.

In addition, decisions on waste management are often taken by local public authorities with little or no coordination with private actors. This can lead to sub-optimal practices, for example municipalities investing in waste treatment which is at a lower level in the waste hierarchy, and sometimes creating local or national over-capacity, so affecting the possibility of reaching EU recycling targets.

Therefore, we believe the European Commission guidelines for Member States have to be crystal clear that the new definition of “municipal waste” does not affect responsibilities for waste collection and treatment.

2. The sole purpose of defining “municipal waste” is for calculating the achievement of the recycling and landfill diversion targets

FEAD members would like to stress that the intention of the legislator is to ensure that the definition of “municipal waste” is introduced in the Waste Framework Directive for the sole purpose of calculating the recycling targets and their calculation rules:

Recital 6: “The definition of municipal waste in this Directive is introduced for the purposes of determining the scope of application of the recycling targets and their calculation rules.”⁴

Indeed, the legislator rightly intended to underline that the purpose of having the definition of “municipal waste” is to ensure that recycling targets are based on reliable and comparable data and to enable more effective monitoring of progress in attaining those targets. In other words, the definition should be used for statistical purposes only and the use of it should not be extended to other European, national, regional or local legislation.

FEAD believes that it is important to stress in the future guidelines on “municipal waste” that the purpose of defining the types of waste to which the new recycling targets would apply is solely for reporting and calculating the recycling performance, on the same basis.

3. A clear and practical demarcation between “municipal waste” and “commercial and non-hazardous industrial waste” is needed

FEAD welcomes the legally binding targets for municipal waste and also welcomes the fact that the municipal waste definition is without prejudice to the allocation of responsibilities for waste management between public and private actors. However, FEAD regrets that the revised Waste framework Directive does not make a clear distinction between municipal waste on one hand and commercial and non-hazardous industrial waste on the other hand. FEAD members look forward to solid and precise guidelines to be developed by the Commission to help Member States to make a clear demarcation between municipal waste and waste from large commerce and industry which is rightly excluded from the calculation of the municipal waste recycling targets:

⁴ Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste, Analysis of the final compromise text with a view to agreement, 8 February 2018

Recital 6: “Member States should ensure that waste from large commerce and industry which is not similar to household waste is not included in the scope of municipal waste”).⁵

This clear demarcation is crucial in view of the requirement in the new legislation that the Commission should consider setting recycling targets for commercial and non-hazardous industrial waste by the end of 2024:

Article 11.6: “By 31 December 2024, the Commission shall consider the setting of preparing for reuse and recycling targets for construction and demolition waste and its material-specific fractions, textile waste, commercial waste, non-hazardous industrial waste and other waste streams, as well as preparing for reuse targets for municipal waste and recycling targets for municipal bio-waste”).⁶

FEAD supports the setting of such targets because a truly circular economy will not be created if only municipal waste is taken into account.

The European Commission should therefore assess how commercial and non-hazardous industrial waste can be clearly distinguished from municipal waste so that Member States can report to EUROSTAT in a comparable way. One method of doing so would be to set a maximum weight/quantity for municipal and similar waste to be collected on a weekly/monthly basis for this waste to qualify as municipal waste. Above that threshold, collections would be considered as commercial and/or industrial waste. Alternatively, the Commission could set a yearly maximum threshold of municipal waste generation per capita, above which waste would be defined as commercial and/or non-hazardous industrial waste.

FEAD is happy to see that the Commission will examine the possibility of developing new targets for commercial waste and non-hazardous industrial waste. As a first step FEAD recommends that Member States should be required to put in place better data gathering on commercial and non-hazardous industrial waste. Today, the absence of reliable statistics on commercial and industrial waste in some Member States, remains a significant barrier.

As explained above, the demarcation between “municipal waste” and “commercial and non-hazardous industrial waste” is crucial in view of the need to consider setting targets for commercial and non-hazardous industrial waste by 2024. FEAD believes it will not be possible to draw a clear and practical line between these two waste streams without a criterion on quantity.

FEAD is the European federation representing the private waste and resource management industry across Europe. FEAD's members are national waste management associations covering 19 Member States, Norway and Serbia. Our companies play a key role in the transition to a circular economy by producing resources which can be re-injected in the economy and by supplying energy. They add value through innovative and cost-efficient collection, sorting, and recycling of secondary raw materials. In doing so, they play a key role in achieving the best economic and environmental outcomes.

FEAD members represent 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. Our companies 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.

⁵ Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste, Analysis of the final compromise text with a view to agreement, 8 February 2018

⁶ Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste, Analysis of the final compromise text with a view to agreement, 8 February 2018