

VKU Opinion on the Study Bio Intelligence Service to the European Commission (GD ENV) on Implementing EU Waste Legislation for Green Growth

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About VKU

The German Association of Local Utilities (Verband kommunaler Unternehmen, VKU) represents 1.400 municipal enterprises in the areas of energy supply, water services as well as waste management and city cleaning. 94 billion euros in revenues were generated with over 236,000 employees and about 8 billion euros invested in 2009. In the end customer segment, the VKU member enterprises have a market share of 54.2 per cent in electricity supply, 67.7 per cent in natural gas supply, 76.3 per cent in drinking water supply, 58.2 per cent in heat supply and 12.8 per cent in wastewater disposal. About 430 companies of municipal waste management and city cleaning services of varying organisational structure, cities, municipalities, inter-municipal utility associations (Zweckverbände) and counties are organised in the VKU section *Waste Management and City Cleaning VKS*. VKU bundles up-to-date knowledge and expertise on all issues relevant for its members and represents their interests at global, European and national level. VKU is a member of the European Centre of Employers and Enterprises providing Public services (CEEP) and of Municipal Waste Europe (MWE).

1. The role of local utilities in the waste management sector

Environmental legislation is mostly established as a framework at European level. It thus defines the conditions for the activities of Member States as well as local waste management utilities. **VKU welcomes the fact that the authors of the study *Implementing EU Waste Legislation for Green Growth* [1] acknowledge the important role of local and regional public entities for the implementation of the EU waste legislation.**

The waste management system technically consists of four hierarchical complexes: precautionary measures/waste prevention, collection/transport, preparation/treatment of waste, which may consist in sorting, recycling, energy recovery etc., possibly in several steps, and

final disposal/reuse/utilisation of secondary materials and energy. Obviously, not every end-of-life product necessarily runs through all possible levels of the waste management system.

Local utilities and municipalities are active on all these levels, they undertake actions to improve waste prevention and reduce waste amounts, collect and transport a multitude of different types of waste, recycle biowaste, treat, sort, incinerate, landfill waste, use and buy recovered materials and energy and secondary products etc. The VKU member companies operate, among other installations, landfills, thermal and mechanical-biological waste treatment, composting and fermentation plants as well as recycling centres and carry out waste collection, street cleaning and winter services.

The responsibility for waste collection and disposal, street cleaning and winter services of the municipalities historically stems from the necessity to ensure, at all times, good hygiene in densely populated areas. The beginning of the industrialisation was soon followed by accelerated population increase and urbanisation. Serious hygienic problems occurred in German cities in the first half of the 19th century and ordinances had to be enacted establishing the framework for waste and faeces collection and disposal by private companies. The collected mixture was sold to farmers and used as fertiliser. However, in the second half of the 19th century sewer systems were constructed and as a result the solid municipal waste did not contain the faeces any more. It had lost most of its fertiliser value, the farmers did not buy it anymore and the waste transport companies *simply dumped it in the area*. The business was not profitable any more for the private entities and the municipalities had to solve the immediately appearing massive problem, which got worse rapidly. Thus, waste management departments of the public administration and public waste management companies were established and in 1893 Prussia enacted the first Local Tax Law. [2]

In light of the complexity of today's economy, a variety of chemicals and products, ongoing urbanisation and the fact that even grave changes of economic structures may occur rapidly, it is more important than ever that the citizens can rely on the fact that hygiene is guaranteed independent of market prices of recycled materials, market shares and the economic situation of enterprises etc. The management of municipal waste is a natural service of general interest, which must consider the local/regional geographical, cultural, economic, social etc. situation. That's why many Member States have delegated the responsibility for waste management to local and regional authorities. The municipalities have and must have the organisational authority in this matter and the right to provide these services. The responsibility usually covers waste from households or all municipal waste, which consists of household waste and similar waste. However, some 60 per cent of the collection of municipal waste is carried out by private companies commissioned by the local authorities in Germany.

Public entities have also a great deal of experiences and success in providing sophisticated collection services as the basis for subsequent recycling. Bring systems for glass and paper using central container facilities in residential areas have been successfully established by many municipalities since the 1990s. The successful introduction of the kerbside collection of source-separated organic waste as well as paper and board also significantly contributes to increased rates of recycling. More recently, kerbside and bring systems for the separate collection of composite materials, plastics, small electric and electronic devices contribute to the protection of climate, and resources for materials, which until now remained in the residual waste, are increasingly returned to the material cycle.

2. Barriers and drivers for implementation of EU waste legislation

The authors of the study identified several political, economic, administrative, knowledge-related, legislative and juridical issues that may be addressed in order to come closer to meet

the objectives of the EU waste management policy. Included are for example the interests of Member States as a political aspect and the availability of infrastructure, including funding, and waste treatment availability costs, taxes, levies, penalties and monetary incentives as economic aspects. The prosecution of violations of laws, licensing requirements and limit values as well as the power of environmental authorities play an important role too. Legislative and other aspects are also considered in the study. Many of these issues are, of course, interrelated.

Every single one of these aspects is indeed an important factor influencing the implementation of EU waste management legislation and the success of EU waste management policy. VKU agrees that room for improvements exists across Europe in all these areas. However, municipal enterprises have been decisively contributing to an ecologically oriented waste management in the past decades. The separate collection of glass, paper, biowaste, metals and hazardous waste is a common element of municipal waste management concepts in Germany. Acknowledging this, the authors of the study refer to examples from Germany several times in a positive way.

In agreement with the authors of the study (p. 22) **we consider the lack of reliable, adequate and comparable data about the waste management in the Member States a basic problem that must be solved with priority.** Without detailed knowledge of the state-of-affairs it is impossible to reliably identify the opportunities for further improvements, draw conclusions (identify tasks) and assess the efficiency of possible measures.

In particular (partial) **liberalisation, privatisation and establishment of a Single European (or even global) Market for waste do frequently have a negative impact on recycling, the environment and security of waste disposal** (see study p. 80), for example

- the liberalisation in Germany of the management of commercial waste for further utilisation in conjunction with the waste producer's responsibility to determine the type of the waste (attribute the waste code number), which resulted in the miraculous *disappearance* of any waste for final disposal from many businesses and a total recycling share of mixed commercial waste of less than 17 per cent [3],
- the liberalisation in Germany of the management of waste for thermal utilisation with energy recovery, which resulted in the uncoordinated establishment of additional, unneeded privately owned incineration capacities of several million tonnes per year, which again resulted in continuously decreasing prices undermining recycling efforts,
- the partial liberalisation in Germany of the collection of source-separated municipal waste, which resulted in the abandonment of waste paper and board collection in urban settlements in Germany by private entities when the market prices for these materials dropped to near zero as a result of the acute global economic crisis in 2009,
- the partial European Single Market for waste when waste for further utilisation from one Member State is landfilled in another Member State instead of recycled or at least incinerated with efficient energy recovery.

Liberalisation and privatisation may also have a negative impact on the public opinion towards a sophisticated waste management system if the privatisation of revenues (i.e. from the marketing of separately collected/recycled materials) or simply the profit orientation of private entities cause an increase of levies or prevent the decrease of levies.

Full compliance with EU waste management legislation and policy can only be achieved if all key stakeholders of the economy play an active role in each of the fields of waste management. But **as yet industry, trade and commerce nearly neglect their responsibility for waste prevention as soon as such an activity does not lead to direct monetary advantages for their companies.**

3. Tasks and actions at EU level to improve implementation of EU waste legislation

VKU underlines all nine tasks at EU level listed in the study to be taken on for supporting better implementation of EU waste legislation (p. 12). In the following a number of tasks of particular importance are emphasised and comments made on certain recommendations by the study authors.

Concerning the above mentioned issues the shortcomings of the present situation also require additional measures especially to strengthen and re-extend public control.

3.1. Economic aspects

According to the European Environment Agency (EEA) [4] the amount of municipal waste generated in Europe is expected to rise by 25 per cent from 2005 through 2020. Increased waste prevention and waste recovery along with the diversion of waste from landfills play a key role in tackling the environmental impacts of rising waste volumes. As recycling and incineration with energy recovery are applied increasingly, technological innovations and great financial efforts are required. **The enormous investments in efficient and environmentally sound plants, vehicle fleets and procedures made by local utilities in order to ensure public hygiene and resource recovery through permanent disposal security and must be protected and further supported by European measures**, e.g. through the protection of the established waste disposal facilities and the respective competences.

The Single European Market may be established and any transboundary shipment allowed only of separately collected or subsequently sorted waste streams that have been preconditioned for recycling, pose no environmental hazard and are traded/shipped for recycling purposes, and secondary materials and products that have reached the end-of-waste status. It must not be established for not source-separated waste, untreated waste, waste for any other utilisation than recycling. Transboundary shipment of waste must take place under control of public authorities in any case. Waste that must not be traded on the Single European Market may only be shipped across national borders if no adequate treatment/disposal facility is available nationally and if permitted by the authorities on an individual basis, and it must not be subjected to market mechanisms (i.e. price competition). At the same time, the EU must support investments in high-grade recycling and efficient waste-to-energy capacities necessary to render regionally autarkical structures possible.

Financial relief for the citizens through lower disposal fees, better waste prevention and better recyclability of products could be reached if the producers had to make a larger contribution to disposal costs and implement a higher level of transparency regarding waste management. **If the polluter pays principle (producer responsibility) is established**, as it is the case for the management of waste packaging, waste electrical and electronic equipment and waste batteries, **the costs for collection and transport should be imposed on the producers completely even if disposal services are provided by local utilities.**

The suggestion in the study to enforce more Public-Private Partnerships (pp. 60, 76, 82) would not necessarily lead to more ecologically beneficial competition, more involvement of SMEs or a more resource-protecting waste management but rather worsen the identified problems. Anyway this demand is unnecessary and misleading for the **municipalities cooperate closely and successfully especially with regional waste management companies** in many cases already. The municipalities thoroughly assess the options for waste management in the respective territories and chose the option that suits the local specifics best. That often

results in the commissioning of or cooperation with private companies as it was the case in some 40 per cent of the decisions restructuring municipal waste management in Germany in the years 2003 through 2007 [5]. However, since private partners in general are in the end predominantly interested in the profitability of their waste management business, there will always remain with the municipalities the obligation to hold treatment capacities available for the case that the private entity abandons its business.

Public-public cooperation is often a very meaningful and successful way of cooperation in waste management. The success of such Public-Public Partnerships is based on the established long-term cooperation of the partners. The use of already existing waste disposal facilities is a clear advantage for no/reduced additional investments are required. As a result, experiences and competences of regional partners can be used conjointly and resources pooled, thereby counteracting waste tourism, which is supported by increasing liberalisation and privatisation. In addition, Public-Public Partnerships mostly are operated on a non-profit basis and prices are calculated on a break-even basis to keep the public fees stable and low.

However, European competition and internal market rules do currently not advance the establishment of Public-Public Partnerships in waste management. **European competition and internal market regulations need to acknowledge the freedom of local and regional authorities and their utilities to organise and provide services of general interest.** This particularly refers to the procurement law: if local authorities take organisational decisions for example in favour of inter-communal cooperation (public-public partnership) or in-house provision, then this must not be hampered by the procurement law or its interpretation. It is above all important to avoid de facto privatisation constraints as a result of exaggerated tendering obligations. This demand is also supported by the European Court of Justice. In one of its recent decisions (C-480/06 – Stadtreinigung Hamburg) local authorities are granted large freedom to determine how they wish to provide their services. The current revision of the EU public procurement directives must respect this freedom of local and regional authorities **and should strengthen and support them in this matter.** In this respect it is also crucial to redefine the existence of a *market* in terms of relevance for the internal market (see above). The theory of the internal market and competition policy supports the assumption that all operational tasks can be wholly left to the market. However, in the end the duty to guarantee the provision of services of general interest always rests with the municipality – not only the safe disposal of waste and not only in Germany. Therefore, **it is mandatory to leave the organisational decision as well as a certain part of the operational business and know-how with the public authorities and their local utilities.**

3.2. Administrative aspects

VKU supports the suggestion to assign additional tasks aiming at the proper implementation of EU waste legislation and policy to the EEA – if necessary. However, **the bureaucratic burden on Member States, local and regional authorities and companies must not increase.**

3.3. Legislative aspects

The EU waste legislation has been developed into an extensive set of rules and regulations already. In particular, the numerous interrelations between the soil, water and air sphere and chemistry make this matter a very complex one already. Therefore, for the time being, **further legislative activities should be limited to the extent necessary to succeed in the proper implementation of the existing waste management legislation and develop, establish, monitor and enforce EU-wide standards** in this field.

Municipal provision of waste disposal services is and will continue to be a necessary instrument of effective, cost-saving and citizen-friendly services to the public at a high quality level and for affordable fees. Especially in times of economic disturbances like the on-going global crisis the high value of municipal provision of services becomes obvious. Provision of that service by the municipality itself guarantees security of disposal also in times of crisis. Municipalities and their local enterprises are responsible for and contribute to meeting the EU objective of sustainable development at the local and regional level. However, the different situation in the Member States and regions requires room for adapted waste management solutions within Europe. **Flexibility is needed when it comes to the targets and general objectives of EU waste legislation and policy to be met by municipalities and regions.** Many possible measures to reduce waste amounts and improve waste management are particularly (or only) ecologically advantageous on regional scale, e.g. waste paper and board disposal and recycling taking greenhouse gas emissions into account as shown by the rural district of Leer in Germany.

One of the gravest obstacles to better implementation of EU waste legislation is the lack of useful data (see above). Therefore, **an EU-wide system to reliably trace all waste from source to final disposal/end-of-waste status must be established.** Existing reporting obligations have to be mutually coordinated and synchronised. Regular reporting obligations of member states towards the EU should be synchronised with those already existing in the member states.

In the waste recovery sector, in particular, **harmonisation** to be approved by the Member States **of technical standards** is needed for the plants and procedures. It is important to avoid as far as possible that waste exports occur to Member States with lower disposal costs, e.g. due to lower standards. In this respect considerable progress can be made by **applying the mechanisms set out in the Industrial Emission Directive (IED) consistently and by Laying down the best available technology in the reference documents.**

VKU considers national waste management plans important tools to advance towards a sustainable waste management in Europe. National waste management plans set guidelines for administrative decisions, measures and planning which are very important for the waste management. However, **waste management plans must address all parties involved in waste management on all levels of the system according to their importance in the economy.** This duty must be laid down clearly in the EU waste legislation. Historical developments and established structures in the Member States must be considered.

VKU further considers waste reduction actions, including waste reduction action plans as tools of utmost importance to effectively contribute to a (more) sustainable waste management. However, trade, commerce and industry, and in particular private waste management companies, widely ignore this opportunity whereas authorities, specialised consultants, selected research institutes and institutions of higher education etc. make great efforts in this regard. Therefore, **every party involved in waste management should be obligated to elaborate and implement a waste reduction plan including actions and recommendations for itself and its partners** such as companies, private customers or the general public.

The authors of the study have calculated that full implementation of the EU waste legislation may result in an additional decrease of the total waste generation by 4 per cent (pp. 11, 116). This would be a considerable improvement and all sufficiently eco-efficient measures should be applied to achieve this. However, waste prevention and waste reduction as parts of waste management are end-of-pipe approaches. It is obvious that upstream approaches such as sustainable consumption and production have a much higher potential for waste prevention. **VKU therefore emphatically advocates the thorough use of sustainable consumption and production plans and other upstream measures.**

4. Literature

- [1] bio Intelligence Service: Implementing EU Waste Legislation for Green Growth, Final Report, European Commission GD ENV, 29 November 2011 (published on 13th January 2012)
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- [5] VKS im VKU & Heinrich-Böll-Stiftung: In- und Outsourcing in der kommunalen Abfallwirtschaft. VKS Information vol. 75, Berlin, 2010

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