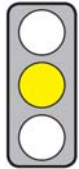


MAIN ISSUES

Objective of the Communication: The Commission assesses the management of bio-waste and proposes related measures.

Affected parties: All citizens, waste management companies



Pros: (1) Compliance with the already existing rules in all Member States must be a top priority target in EU waste management policy.

(2) EU-wide standards for compost increase market transparency and thus facilitate the marketing of compost in the internal market.

Cons: Member States should not receive any EU subsidies for the management of bio-waste.

CONTENT

Title

Communication COM(2010) 235 of 18 May 2010 on future steps in bio-waste management in the European Union.

Brief Summary

Unless otherwise stated, the articles quoted refer to the Waste Framework Directive 2008/98/EC.

► Objective

- The Commission is obliged (Art. 22):
 - to assess the management of bio-waste in order to submit proposals “if appropriate” and
 - to examine if minimum requirements for bio-waste management and quality criteria for compost and digestate from bio-waste should be defined in order to guarantee a high level of protection for human health and the environment.
- In the present Communication and the accompanying Working Document [SEC(2010) 577] the Commission publishes
 - the results of its assessment of bio-waste management and
 - proposals for the “main potential courses of action” at national and EU level to “optimise” the management of bio-waste (p. 4).

► Background

- “Bio-waste” includes garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises as well as “comparable waste” from food processing plants (Art. 3 No. 4).
- In the EU, between 118 and 138 million tons of bio-waste are produced every year, of which an average of 40% (in some Member States up to 100%) are deposited in landfills.
- According to the priority order of waste policy measures (“waste hierarchy”, Art. 4 (1)), “waste prevention” is deemed the best option, followed by “preparing for re-use”, recycling and, “other recovery” (e.g. incineration), with “disposal” (e.g. landfill) as the worst option.

► Full implementation of EU legislation

- According to the Commission, the existing EU waste legislation is an “excellent basis” for “advanced” bio-waste management and requires no “additional new regulation” (p. 8).
- The Commission intends:
 - to “re-enforce” its attention to “better implementation” of EU waste legislation in Member States and
 - to render financial support through regional EU policies.

► Prevention of bio-waste

- Member States must:
 - by 12 December 2010 draw up “waste management plans” (Art. 28) in line with the “waste hierarchy” (Art. 4 (1)) and
 - by 12 December 2013 draw up “waste prevention programmes” with national prevention objectives serving to measure progress (Art. 29).
- The Commission criticises that most Member States have taken no “clear and measurable steps” to increase bio-waste prevention (p. 6).
- The Commission calls on Member States to define “appropriate” bio-waste prevention objectives (p. 9).

- By the end of 2010 the Commission intends to have submitted proposals [SEC(2010) 577, p. 57] for:
 - guidelines regarding bio-waste prevention in order to promote the dissemination of best practices and
 - indicators for assessing whether or not waste prevention targets should be set at EU level.
 They are to be adopted “under the committee procedure for national waste prevention plans” (Art. 29 in conjunction with 39 (3)).

► **Collection and treatment of bio-waste**

- Member States must ensure that bio-waste is collected separately and treated and used in an environmentally safe way (Art. 22).
- The Commission calls on Member States to “make strong efforts” to introduce the separate collection of unavoidable bio-waste (p. 9) in order to make possible high-quality recycling and biological treatment (among other things composting, anaerobic digestion, biogas production).
- According to the Commission, it is “improbable” that “less advanced Member States” would take significant action towards biological treatment “without further incentives” (p. 7).
- At EU level the Commission intends to review whether or not by 2014 targets regarding the treatment of bio-waste should be defined in the Waste Directive, in order to achieve, for instance, a good quality of compost and digestate.

► **Soil Protection**

- Although materials from bio-waste (e.g. compost, digestate) can contribute to improving carbon-depleted soils, there is little demand for them due to a lack of confidence in their quality.
- The Commission calls upon Member States to promote the production and use of compost from “clean” (“separately collected”) bio-waste.
- The Commission intends:
 - to review whether or not it will propose binding EU minimum requirements for the use of biologically treated bio-waste in agriculture within the framework of the ongoing examination of the Sewage Sludge Directive 86/278/EC in 2011 and
 - to propose binding quality standards for compost and digestate so as to enable them to circulate freely in the EU internal market and be used without further control. The relevant criteria are to be adopted in a “committee procedure on the end-of-waste status” (Art. 6 in conjunction with 39 (2)).

► **Reduction of landfilling**

- The Commission warns (p. 2) that the landfilling of bio-waste:
 - invokes environmental risks (greenhouse gas emissions, pollution of soil and groundwater),
 - withdraws valuable resources (compost, energy) from economic and natural cycles and
 - is contrary to the guidelines of EU waste policies (“waste hierarchy”, Art. 4 (1)).
- Member States must reduce the landfilling of municipal biodegradable waste to 35% by 2016 compared to 1995 levels (Art. 5 (2) lit. c Landfill Directive 1999/31/EC).
- The Commission highly recommends Member States to (p. 10):
 - fully implement the provisions of the Landfill Directive (1999/31/EC),
 - aim at “zero landfilling” of untreated bio-waste “at the fastest possible pace”.

► **Producing energy from wastes**

- According to the Commission, bio-waste can be converted to energy (electricity, heat, fuel) “at relatively low cost”, thus limiting the use of fossil fuels and increasing security of supply (p. 10).
- The Commission asks Member States to use the energy production from bio-waste in order to reach:
 - their renewable energy targets in the gross total energy consumption for 2020 (Art. 3 (1), Annex I Part A Renewable Energy Directive 2009/28/EC; s. [CEP Dossier](#), p. 23, in German only) and
 - their 10% transport fuel target for 2020, for which the use of waste for producing transport fuels is even weighted double (Art. 3 (4) in conjunction with Art. 21 (2) Renewable Energy Directive; see [CEP Dossier](#), p. 27 in German only).

Statement on Subsidiarity by Commission

The Commission is concerned that EU guidelines for bio-waste might not be in line with the principle of subsidiarity, and stresses that the impact of EU waste prevention targets cannot yet be assessed “due to uncertainties regarding different national circumstances” (p. 6).

For the same reason the Commission wishes first of all to examine more closely the idea of establishing an EU target for biological treatment in terms of the principle of subsidiarity (p. 7).

Member States should choose the best bio-waste management options themselves in line with their country-specific conditions (e.g. population density, demand for compost or energy). Thus, in particular decisions regarding centralised or decentralised composting, energy production by digestion and various ways of using the energy produced (electricity, heat, fossil fuels) depend on local conditions (e.g. energy mix) and should be left to Member States (p. 8).

The Commission is against a full harmonisation of EU requirements for the use of biologically treated bio-waste in agriculture due to the “different local conditions (e.g. soil quality and needs)” (p. 8). Instead it wishes to limit itself to EU minimum requirements as a “safety net” for dangerous usage.

Policy Context

The Sixth Environment Action Programme called for EU legislation on biodegradable waste (Art. 8 (2) lit. iv Decision No. 1600/2002/EC). In 2008, the Commission published a Green Paper [COM(2008) 811] and a Consultation initiated by stakeholders, in consistency with Art. 22 of the Waste Framework Directive, which asked the Commission to assess the management of bio-waste. On 25 June 2009, the Environment Council argued in favour of an improved management of bio-waste in its conclusions on the Green Paper and asked the Commission to take into account the local conditions of the Member States. Further consultations of May, June and October show that the views on the necessity of EU legislation vary widely.

Options for Influencing the Political Process

Leading Directorate General:	DG Environment
Consultation procedure:	No consultation procedure scheduled.

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The Member States’ waste policies diverge significantly. This is due on the one hand to different baseline conditions and on the other hand to different degrees of commitment to waste policies. Some Member States still do not even meet the minimum requirements of the Waste Framework Directive, while others go far beyond them. For instance, in Bulgaria, Greece, Ireland, Latvia and Romania, currently not even the collection of all waste is guaranteed [SEC(2010) 577, Annex 5]; this is not expected to change before 2011 (Bulgaria) or until after 2020 (Latvia).

Therefore, **the top priority in EU waste policy must be** – as requested by the Commission – **compliance with the already existing rules** in all Member States. **An additional new regulation** cannot – as the Commission is right to stress – **“be expected to compensate for bad implementation or lenient enforcement of existing legislation”** (p.8).

The Framework Waste Directive (2008/98/EC) prescribes the “polluter-pays” principle as the guiding principle also for waste management at European and international level (Recital 26 and Art. 14). This makes economic sense, as only in this way can disincentives for the production of too much waste and/or of waste which is difficult to dispose be avoided. Therefore, **it is not comprehensible why Member States should receive EU subsidies for waste management, especially when they have so far failed to meet their obligations from EU waste legislation.**

Besides, there is an additional incentive for Member States to improve their waste management as part of the policy of climate protection, as this can reduce the emission of greenhouse gases significantly. Such reductions can be offset against national emission targets.

Impact on Efficiency and Individual Freedom of Choice

In order to prevent households from producing excessive amounts of bio-waste, a drastic change in consumer behaviour is required, including in shopping habits and food storage. In its Communication the Commission does not explain how this should be accomplished, within which timeframe and at which costs. Until these issues are clarified, repeatedly referring to the prominent position of waste prevention in the “waste hierarchy” does not mean very much. It is precisely because the Commission has announced its intention to propose guidelines for the prevention of waste before the end of this year that clarification would have been desirable in this Communication.

In view of already existing separate waste treatment practices in several Member States, the Commission is right in its claim that the separate treatment of bio waste is to be welcomed. However, it should be left to the Member States’ to decide whether or not to collect bio-waste separately. If a mechanised sorting can achieve good results, then the Member States should not be obliged to separate collection.

EU-wide quality criteria for compost are to be welcomed **as they increase market transparency**, facilitate the marketing of compost in the internal market **and provide additional incentives for the environmentally friendly management of bio-waste.**

Impact on Growth and Employment

Not evident.

Impact on Europe as a Business Location

Not evident. A large part of bio-waste from industrial production is already recycled.

Legal Assessment

Legislative Competence

The EU is empowered to adopt measures regarding waste management (Art. 192 TFEU) and to promote the development of renewable energies in the form of energy production from bio-waste (Art. 194 TFEU).

Subsidiarity

In defining EU-wide binding targets for waste prevention and the biological treatment of bio-waste, the Commission's reluctance in view of different conditions in Member States is acceptable.

The same holds true for the Commission's stance against a full harmonisation of the requirements to the use of biologically treated bio-waste in agriculture.

Proportionality

As it is not yet known exactly what form the intended measures will take, an assessment of their proportionality is currently not possible.

Compatibility with EU Law

Currently not assessable.

Compatibility with German Law

Currently not assessable.

Conclusion

The top priority in EU waste policy must be – as called for by the Commission – the compliance with the already existing rules in all Member States. An additional new regulation cannot be expected to compensate for bad implementation or lenient enforcement of existing legislation. As the Waste Framework Directive stipulates the “polluter-pays” maxim as the guiding principle, it is not comprehensible why some Member States should receive EU subsidies, especially when they have so far failed to meet their obligations under EU waste legislation. EU-wide standards for compost increase market transparency, facilitate the marketing of compost in the internal market and set additional incentives for the environmentally friendly management of bio-waste.