

Implementation of the Waste Framework Directive in the EU Member States

Position Paper

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The use of natural resources and the generation of waste is such a general problem of our current lifestyle that there seems to be no prompt and easy solution thereto. Law is a fundamental part of the solution, guiding stakeholders and not allowing the overproduction of waste in abundance.

Association Justice and Environment has always been sensitive to the question of waste management and time to time had a different focus on issues. In 2009 we compared the “old” Waste Directive with the „new” Waste Framework Directive (WFD), while in 2011 we conducted a six-country survey on the application of the waste planning provisions of the WFD.

In 2012 we covered this area again, with a specific focus now on the practical application and implementation of the WFD. In our legal analysis we assessed the main findings of our work programme of 2012 based on the practice gained by investigating national implementation measures of the EU waste policy in the Member States.

The Waste Framework Directive (2008/98/EC) should have been transposed by MS until 12 December 2010, repealing the old Framework Directive (Directive 2006/12/EC) and incorporating and repealing the Hazardous Waste Directive (Directive 91/689/EEC) and the Waste Oil Directive (Directive 75/439/EEC).

Due to the WFD, Member States must ensure that waste is recovered or disposed of without endangering human health and the environment and that the waste amount disposed of is reduced to a minimum by kind of measures and effective tools to minimize waste generation. It sets the basic concepts and definitions related to waste management, such as definitions of waste, recycling, recovery, etc. It explains when waste ceases to be waste and becomes a secondary raw material (so called end-of-waste criteria), and how to distinguish between waste and by-products. Main principles of the WFD are re-use, recycling and recovery which shall be promoted and adopted whenever suitable in order to save resources and to reduce the amount of waste.

The WFD provides a detailed clarification and differentiation of the waste hierarchy, introduces definitions, such as the end-of-waste status and by-products, specifies the classification of treatment operations and changes requirements for the preparation of waste management plans.

The Directive encourages waste reduction and gives a new dimension to prevention as MS are obliged to draw up and implement waste management plans and waste prevention programmes no later than 2013.

An important measure of the WFD is the application and promotion of the polluter pays principle and within this the extended producer pays principle. The concept of producer responsibility reflects the holistic approach which lies behind the integration principle.

The principle of extended producer responsibility shifts the burden of product waste management back onto those companies that make the products becoming waste later. The principle may take the form of different obligations for producers, like to recover products, to collect waste, to establish funds or deposit schemes for recovery or recycling etc.

Due to Article 8 of the Directive, in order to strengthen the re-use and the prevention, recycling and other recovery of waste, Member States may take legislative or non-legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has extended producer responsibility.

Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities. These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable.

Member States may take appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with Articles 4 and 13 of the Directive.

Such measures may encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, that are technically durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.

When applying extended producer responsibility, Member States shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market.

The original aim of the polluter pays principle would be to stimulate a policy of pollution abatement by encouraging polluters to reduce their emissions instead paying charges. In the same time, the principle aims at correcting market failures as well: the costs of pollution need to be reflected in the price of services and products and be borne by the polluters and not the society at large.

In the same time, the practical enforcement of the principle would create an incentive for producers to place on the market environmentally friendly products.

Implementation and enforcement of the EU waste related legislation would be much effective, if those principles of environmental protection like the polluter pays principle or the producer pays principle would more prevailed in daily practice of Member States as well.

The Court of Justice of the European Communities has an extended case law¹ on the implementation of the polluter pays principle, even in the territory of waste management.

Due to the European legislation the polluter will be the final holder of waste. It is possible to devolve liability to other actors based on the polluter pays principle, however according to the Court of Justice of the European Communities; this requires contribution to the risk of the pollution occurred.

Based on the practice of Member States implementing the regulations of the WFD, and considering the development of the European policy on waste, a more detailed guidance for Member States on the proper application of the polluter pays and producer pays principles would be needed to enhance the appropriate application of these principle.

Further development of the EU waste policy shall concentrate on those measures which aim to prevent pollution (e.g. by the proper enforcement of the polluter pays principle) rather than concentrating on ex-post measures.

¹ C-254/08; C-188/07; C-365/97 etc.

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