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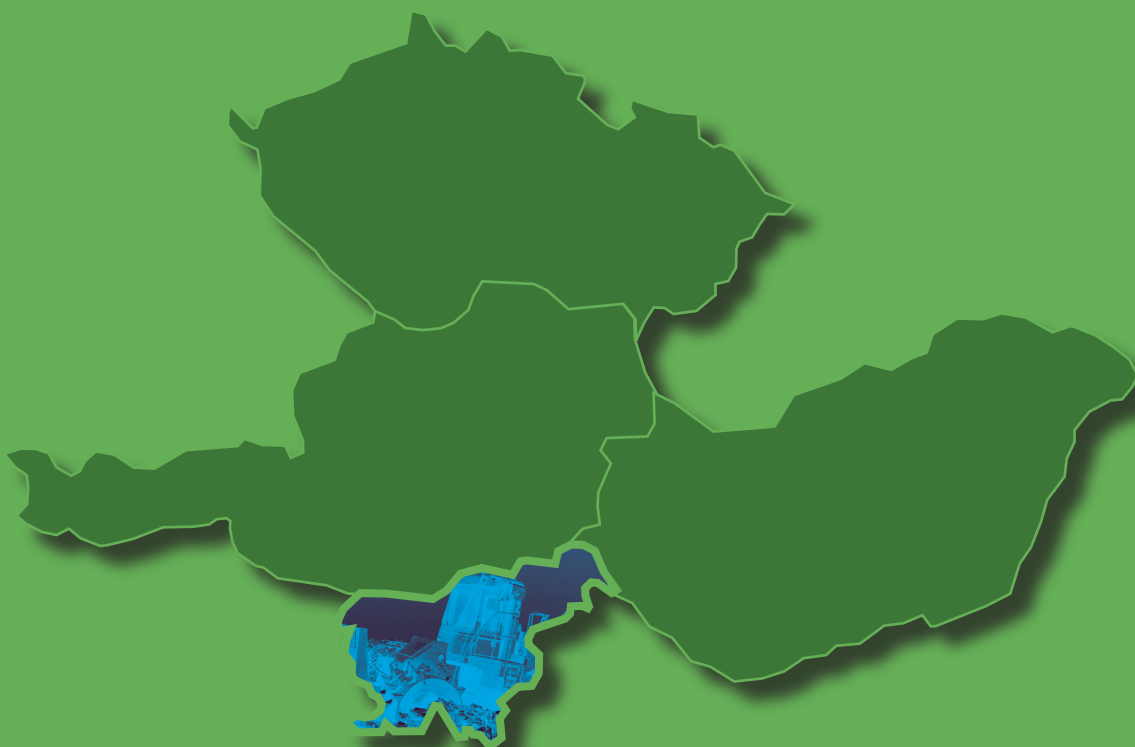


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Justice & Environment Legal Analysis

WASTE – 2008

Slovenia



Justice & Environment

Justice & Environment (J&E) is a European network of environmental law organisations. J&E is a non-profit association with a mission that *aims for better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature*. J&E fulfils this mission by ensuring the enforcement of EU legislation through the use of European law and exchange of information.

J&E was created in January 2003 and founded as a non-profit association in September 2004. J&E currently comprises six full-member organisations: Environmental Law Service, Czech Republic (EPS); Estonian Environmental Law Centre, Estonia (EELC); Environmental Management and Law Association, Hungary (EMLA); ÖKOBURO – Coordination Office of Austrian Environmental Organisations, Austria; Legal-Informational Centre for NGOs, Slovenia (PIC); and the Centre for Public Advocacy, Slovakia (VIA IURIS). J&E also has six associate members: Environmental Justice Association, Spain (AJA); Centre for Legal Resources, Romania (CRJ); Front 21/42 Citizens' Association, Macedonia (Front 21/42); MilieuKontakt International, the Netherlands (MKI); Independent Institute of Environmental Concerns, Germany (UfU); and Green Action – Friends of the Earth Croatia, Croatia (ZA).

All J&E activities are based on the expertise, knowledge and experience of its member organisations. The members contribute their legal know-how and are instrumental in the initiation, design and implementation of the J&E work programme. The strong grassroots contacts of the members enable J&E to concentrate on Europe-wide legal issues and horizontal legislation, notably the: Aarhus Convention, environmental impact assessment, environmental liability, pollution, Natura 2000, transport and the building of legal capacity. Within these fields J&E: carries out analysis, compiles case studies and joint position papers; formulates strategic complaints, encourages discussion and legal education; and conducts outreach activities. Thus J&E provides added value from civil society to legislators and adds tangible benefits by broadening public knowledge of EU law and legislation.

To carry out its programme of work J&E relies on a number of donors and supporters. First and foremost the members themselves financially contribute to the network. However J&E has been supported by: the European Commission through the LIFE+ programme, the International Visegrad Fund (IVF), The Ministry of Housing, Spatial Planning and the Environment of The Netherlands (VROM), the Sigrid Rausing Trust and its own member organisations

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The purpose of this legal analysis is to discover to what extent the legal framework of the respective Member State is in line with the requirements stemming from the EU Landfill Directive.

I. Overall information on the transposition of the Landfill Directive in the Member State

List of relevant laws of the Member State transposing the Landfill Directive:

Decree on the landfill of waste (No. 32/2006), which came into force in March 2006 and was amended twice, in 2007 (No. 98/2007) and 2008 (No. 62/2008), with the Decree amending the Decree on the landfill of waste

Decree on the management of waste (No. 34/2008), which amended previous Rules on the management of waste

On the basis of EU Landfill Directive and National Environmental Action Programme on waste management Slovenia also issued an Operational Programme regarding waste management for the time period 2009-2013.

The Decree on the landfill of waste is the main act, in which the Landfill Directive was transposed.

Has the Member State brought into force the laws, regulations and administrative provisions necessary to comply with the Landfill Directive not later than the date of its accession to the EU?

According to our research, Slovenia did not bring into force all the necessary laws in order to comply with the requirements of the Landfill Directive by the time of accession to the EU (1 May 2004). Rules on the landfill of waste, which were in force before Slovenian accession to the EU and its amendments made in 2004 did not include the requirements of the Landfill

Directive. Only in 2006, when Decree on the landfill of waste cancelled the mentioned Rules on the landfill of waste, Slovenia complied with the requirements of the Landfill Directive.

What state body was designated as “competent authority” in the Member States to be responsible for performing the duties arising from the Landfill Directive?

In Slovenia the “competent authorities” as defined in Art. 2 of the Landfill Directive are the Environmental Agency, which is a body of the Ministry of Environment and Spatial Planning (MoE) and the Environment and Nature Inspection Service (there are 54 inspectors in the country; 45% of their work is related to waste management), which is operating within the Environmental Inspectorate.

What date has been set by the Member State for the definite closure of those landfills not meeting the respective requirements (inappropriate landfills)?

The date for the definite closure of the inappropriate landfills (23 of them) in Slovenia set by the Landfill Decree is 15 July 2009. 22 of them have already closed down, 16 of them will be closed by the end of the year 2008.

II. General information on the regulation of landfills with special regard to the requirements of the Landfill Directive

What is the definition of waste in the Member State (Art. 2 Landfill Directive)?

Waste according to Art. 2 Point 1 of the Decree on the landfill of waste means any substance or object that is categorized in one of the groups of waste and is in compliance with regulation governing waste management.

According to Art. 3, Point 1 of the Decree on waste management, waste, on the basis of Environmental Protection Act, is classified in one of the groups of waste, which are defined in Annex 1 of the mentioned Decree.

What is the definition of inert waste in the Member State (Art. 2 Landfill Directive)?

According to Art. 2, Point 5 of the Decree on the landfill of waste, inert waste is waste that does not undergo any significant physical, chemical or biological transformations, will not dissolve, burn or otherwise physically or chemically react, is not biodegradable and does not adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm to human health. The content of contamination parameters in leachates of inert waste and ecotoxicity of the leachate expressed as hazardous property H14 from the act, that regulates waste management, does not endanger the quality of surface water or groundwater.

What types of landfills are characterized by law in the Member State (Art. 4 Landfill Directive)?

According to Art. 4 of the Decree on the landfill of waste types of landfills are:

- landfill for hazardous waste,
- landfill for non-hazardous waste,
- landfill for inert waste.

The same Article also has another paragraph saying that waste can only be deposited on the landfills.

Has the Member State taken measures in order that no landfill is operated without a permit (Art. 7 Landfill Directive)?

According to Slovenian regulation an environmental protection consent and environmental permit have to be obtained by the competent authority for the construction of the landfill. The environmental protection consent is issued, if the impacts to the environment are still acceptable. However, by issuing environmental permit it is checked, whether the intervention in the environment is in accordance with the Operational Programme¹. In accordance with that no landfill can operate without environmental protection consent and environmental permit.

First Paragraph of Article 44 of the Decree on the landfill of waste states that for the operation of the landfill an environmental permit shall be obtained in accordance with the Environmental Protection Act. Furthermore the second Paragraph of the same Article contains all the provisions that are required by Art. 7 of the Landfill Directive except for Par. h, which is not explicitly included in the list.

There are some additional requirements in Art. 44 of the Decree on the landfill of waste that are not included in Art. 7 of the Landfill Directive. In order to get the environmental permit the investor has to submit documents that show the landfill will not cause excessive environmental burden and the landfill will be constructed in accordance with the provisions set in this Decree.

The Decree on the management of waste in Art. 20 and 21 also regulates that environmental permit has to be issued by the MoE for the operator of waste treatment. However, if the operator of waste treatment already has the environmental permit, which includes the procedures of storage of waste and waste treatment before its disposal, it does not have to get an additional environmental permit for the operation of the landfill.

¹ The Operational Programme is a strategic document that sets the politics and system of waste management in the whole territory of Slovenia.

Has the Member State taken regulatory measures in order that only waste that has been subject to treatment is landfilled (Art. 6 Landfill Directive)?

According to Art. 5 of Decree on the landfill of waste, only waste subject to prior treatment can be landfilled, except for inert waste, for which treatment is not technically feasible or other waste for which such treatment does not reduce their quantity or nature, which causes the hazards to human health or to the environment.

Has the Member State taken regulatory measures in order that only hazardous waste that fulfils the respective criteria is assigned to a hazardous landfill (Art. 6 Landfill Directive)?

According to Art. 6, Paragraph 1 of the Decree on the landfill of waste only hazardous waste, which does not exceed certain limit value set in Annex 2 of this Decree, can be deposited on the landfill for hazardous waste.

However in Slovenia there is no appropriate landfill for hazardous waste, for that reason hazardous wastes are and also will be after 2009 transported abroad.

Has the Member State taken regulatory measures in order that landfill for non-hazardous waste may be used for (i) municipal waste; (ii) non-hazardous waste of any other origin; (iii) stable, non-reactive hazardous wastes (e.g. solidified, vitrified) (Art. 6 Landfill Directive)?

According to Art. 6 of the Decree on the landfill on waste, waste that fulfils the criteria set in Annex 2 can be landfilled as follows:

- a) non-hazardous waste; 2,3
- municipal waste that do not exceed limit value for municipal waste set in Annex 2;
 - non-hazardous waste that do not exceed limit value for municipal waste set in Annex 2;
 - treated non-hazardous waste with high level of biodegradable substance in accordance with the regulation governing waste;
 - stable and non-reactive non-hazardous waste that do not exceed limit value set in Annex 2.
- b) inert waste
- inert waste that do not exceed limit value set in Annex 2;
 - waste as set in Annex 3 – waste that can be only deposited on the landfill for inert waste.

Notwithstanding the previous provisions and with some exceptions the MoE can allow the operator to dispose waste, which exceed limit value set in Annex 2 up to three times.

Furthermore Par. 4 of the same Article states that only hazardous waste, inert waste with certain limit value set in Annex 2 of this Decree and certain non-hazardous waste can be deposited on the landfill for hazardous waste.

Has the Member State taken regulatory measures in order that inert waste landfill sites shall be used only for inert waste (Art. 6 Landfill Directive)?

² In 2006 Slovenia collected 4,2% more of municipal and other non-hazardous waste than the year before, of which there was 86,6% municipal waste, 6,7% separate collected fractures, 2,7% waste from gardens and parks and 4% of packaging waste.

³ 1.137,087t of waste was disposed in 2006, of which there was:
- 73,9% disposed on landfills for non-hazardous waste (that is 11,7% more than in year 2005);
- 25,3% on industrial landfills and
- 0,8% on landfills for hazardous waste.

As cited above, inert waste and some other types of waste set in Annex 3 (e.g. glass, minerals, soil, rocks) of the Decree on the landfill of waste can be landfilled on inert waste landfill site.

III. Specific information on the regulation of landfills with special regard to the requirements of the Landfill Directive

Has the Member State set up a national strategy for the implementation of the reduction of biodegradable waste going to landfills (Art. 5 Landfill Directive)?

On the political level Slovenia started with the activities on the field of waste management in 1996, when also strategic orientations for waste management were prepared. On its basis National Environmental Action Programme was accepted in 2006, which set the enforcement of modern forms of waste management as priority objective. A period of systematic regulation in the field of waste management followed, with the adoption of implementing acts on the basis of EPA. However in 1998 Rules on the management of waste already started a new regulation period in waste management.

The National Environmental Action Programme was the basis for the Operational Programme for waste disposal with the goal of reducing deposited biodegradable waste for the period 2009-2013, which was accepted by the government in 2008. However, the Rules on the landfill of waste accepted in 2000 already had provisions regarding reduction of biodegradable waste and these are also included in the Decree on the treatment of biodegradable waste, which was accepted in 2008 and repealed the mentioned Rules.

Does this strategy include measures to achieve the targets set by means of in particular, recycling, composting, biogas production or materials/energy recovery?

The Operational Programme is project oriented, focusing on goals:

- at least 65% or more of the produced municipal waste should be redirected in other type of treatment and at least 42% of them should be reused;
- all kitchen waste should be extracted and biologically processed;
- the remainder of waste should be processed in a way that the content of organic carbon will not exceed 5%;
- in the structure of the whole deposited waste 47% of the deposited biodegradable waste should be reduced to 16% until 2013 or 2015 that means in average 5% per year.

Also measures for achieving the listed goals are part of the Operational Programme:

- the existing landfills should be closed down, if the adjustment to the existing provisions would be too expensive or technically difficult to manage;
- reconstruction and enlargement of the existing landfills, which will be operating until the end of 2008;
- the construction of new infrastructure for treatment, recovery and disposal of waste for regional centers for waste management and national centers for thermal treatment.

Decree on the landfill of waste also includes Annex 4. It specifies the volume of biodegradable substance in municipal waste, which can be deposited in all landfills in the territory of Slovenia per year. It also sets that the amount of deposited biodegradable waste should be decreased for 10% in years 2008 – 2009, for 5% in years 2009 – 2010, 2011

– 2012 and 2013 – 2015 in accordance with the base year 1995⁴.

Has the Member State taken regulatory measures in order that the following wastes are not accepted in a landfill (Art. 5 Landfill Directive)?

(a) liquid waste;

(b) explosive, corrosive, oxidizing, highly flammable or flammable waste;

(c) hospital and other clinical wastes arising from medical or veterinary establishments, which are infectious;

(d) whole used tires, excluding tires used as engineering material, and shredded used tires (excluding in both instances bicycle tires and tires with an outside diameter above 1 400 mm)?

Art. 5 of the Landfill Directive was transposed in Art. 9 of the Decree on the landfill of waste. Pursuant to Art. 9 the following types of wastes cannot be landfilled:

- waste that does not fulfill the conditions set in Art. 6 of the Decree on the landfill of waste;
- liquid waste;
- explosive, corrosive, oxidizing and flammable waste;
- mechanically and biologically treated municipal waste⁵;
- containers filled with gasses under pressure;

⁴ Data from Statistical Office of the Republic of Slovenia shows that in 1995 there was 1.024.000 tons of waste deposited on non-hazardous landfills, of which there were 47% or 483.000t of biodegradable waste. In the year 2007 there were 197.000t biodegradable waste, which is still a significant amount.

⁵ Mechanically and biologically treated municipal waste, except if its disposal on non-hazardous landfill was permitted by the MoE, in accordance with Art. 7 and 8 of the Decree, cannot be landfilled; treated municipal waste can be landfilled on non-hazardous landfill only if the amount of its pollution does not exceed the limit values set in Annex 2 of the Decree.

- hospital or clinical waste and other waste arising from human medical or veterinary establishments, which are infectious;
- waste tires, excluding bicycle tires and tires with the outside diameter above 1.400 mm;
- paste-like and some other kinds of waste, that can be dangerous to water;
- end-of-life vehicles and their unmanufactured parts, which can arise by their degradation;
- and some other specified waste, which are not specified in Art. 5 of the Landfill Directive.

Has the Member State taken regulatory measures in order that the competent authority does not issue a landfill permit unless it is satisfied that adequate provisions, by way of a financial security or any other equivalent has been or will be made by the applicant prior to the commencement of disposal operations to ensure that the obligations (including after-care provisions) are discharged and that the closure procedures are followed (Art. 8 Landfill Directive)?

Art. 44 Par. 2 of the Decree on the landfill of waste states that in the application for obtaining the environmental permit waste disposal investor has to provide a financial security, which has to be ensured together with the environmental safety measure after the cessation of the landfill. In Art. 45 Par. 3 it is determined that before issuing environmental permit costs of the construction and operation of the landfill and the financial security have to be specified. Furthermore Par. 4 of the same Art. states that environmental permit specifies the financing of the Programme after the cessation of the landfill. Environmental permit also defines:

- time after the cessation, for which the calculation of the financial security has to

be made, where this amount has to cover 30 years after-care;

- the level of the financial security, calculated on one ton of the whole amount of disposed waste on the landfill;
- type of financial security, such as bank guarantee, insurance policy or deposit on special bank account;
- envisaged annual level of the collected financial security, calculated for each year of the operation of the landfill;
- envisaged level of cessation costs;
- envisaged level for environmental safety measures after cessation;
- envisaged apportionment of the costs for cessation and costs for environmental safety measures after cessation for each kind of disposed waste on the landfill.

Has the Member State taken regulatory measures in connection with landfills existing at the time of the EU accession of the Member State in order that

(a) the operator of a landfill shall prepare and present to the competent authorities, for their approval, a conditioning plan for the site and any corrective measures which the operator considers will be needed in order to comply with the requirements of the Landfill Directive

(b) following the presentation of the conditioning plan, the competent authorities shall take a definite decision on whether operations may continue on the basis of the said conditioning plan

(c) on the basis of the approved site-conditioning plan, the competent authority shall authorize the necessary work and shall lay down a transitional period for the completion of the plan (Art. 14 Landfill Directive)?

According to Art. 65 of the Rules on the landfill of waste the operator of the existing landfill had

to prepare the conditioning plan in accordance with the requirements of the Rules and notify the MoE until 31 December 2003 that its landfill will operate also after the 1 January 2004.

These Rules were annulled by the Decree on the landfill of waste. However Art. 67 of the Decree states that after the operator notified MoE as described above, it has to continue with the conditioning plan, if MoE issued environmental permit in accordance with Art. 67 of the Rules before the implementation of the Decree on the landfill of waste and accepted the conditioning plan.

The operator of the landfill had to send MoE supplementations of the conditioning plan of the landfill no later than 30 June 2006 in order to fulfill the requirements of the Decree, if the procedure of issuing the permit and approval of the conditioning plan to the requirements of the Rules were not finished until the implementation of the Decree.

The operator of the plan from previous paragraph, for which the permit was not issued before the implementation of this Decree, could dispose waste at the latest until 30 September 2006 or until the dates set in Art. 69 and 70 of the Decree⁶, if MoE confirmed its supplemented conditioning plan for the landfill and issued environmental permit for its operation.

Has the Member State taken regulatory measures in order to close down as soon as possible landfills which have not been granted a permit to continue to operate (Art. 14 Landfill Directive)?

There is no specific article in the Decree of the landfill of waste dealing with the closure

⁶ According to Art. 69 the landfill has to be closed down until 31 December 2008, if the operator fulfilled the requirements set by the Decree and MoE issued environmental permit for the operation of the landfill. According to Art. 70 MoE issues environmental permit for the operation of the landfill after 1 January 2009, if the operator fulfilled requirements set by the Decree and finished with the adjustments until 31 December 2008.

of landfills, which have not been granted a permit to continue to operate. It is evident from the Operational Programme that all landfills already were closed down, if the adjustments to the existing provisions were too expensive or technically difficult to manage and because of that the operator did not get the environmental permit. However after 15 June 2009 Slovenia will have 15 regional centers with IPPC permits as it is required by EU regulations.

According to the data received from the Environment Inspectorate none of the landfills were closed down because they were operating without a permit. However the research made in 2006 on the basis of annual reports about waste disposal that operators have to provide to the Environmental Agency showed, that most of the operators did not follow the provisions set in issued environmental permit. This was the basis for the inspection of landfills in 2007, where 56 operating landfills for non-hazardous and inert waste were included. After the inspection procedure 21 decisions and 8 warnings were issued and 26 violation procedures were started. After this the operators disposed waste according to the issued environmental permits and the situation improved also in other problematic fields.

Has the Member State taken measures in order that after a landfill has been definitely closed, the operator shall be responsible for its maintenance, monitoring and control in the after-care phase for as long as may be required by the competent authority, taking into account the time during which the landfill could present hazards (Art. 13 Landfill Directive)?

According to Article 57 of the Decree on the landfill of waste the operator of the closed landfill has to provide maintenance and protection of the closed landfill, monitoring the landfill, regular controls of the closed landfill and annual report about the condition on the landfill and carried out measurements.

The operator of the closed landfill also has to provide after-care with measurements until the emissions from closed landfill could have hazardous impact to the environment. The assessment about hazardous impact to the environment is made by MoE.

Art. 58 of the same Decree states that if the operator of the closed landfill determines that there have been excessive impacts to the environment or the landfill body has been changed, it has to carry out measurements in order to eliminate irregularities and notify the environmental inspectorate about it within seven days.

IV. Conclusions

Slovenian legislation in the field of waste management is, according to the data provided by MoE, in compliance with European legal system. Framework provisions in the field of waste management were in 1998 issued as Rules on the management of waste, which were annulled by the Decree on waste management, accepted 10 years later. Many provisions followed, between them also Rules on the landfill of waste in 2000, which did not transpose the Landfill Directive into Slovenian legal system. That happened with the acceptance of the Decree on the landfill of waste in 2006 and the amendments made in 2007 and 2008. According to this it is evident that Slovenia did not fulfill the requirements set in the Landfill Directive at the time of accession to the EU.

However in 2008 there have been quite a lot of changes in waste management regulation in order to meet the requirements set also by the changed European Directives. All previous accepted Rules were annulled by Decrees following the requirements set in Environmental Protection Act and already mentioned European Directives.

Almost all definitions and other terms from Landfill Directive were literally copied into

Slovenian system. However, there are certain provisions in our regulation that are not required by European Directive, which is legally an advantageous phenomenon but in practice it causes problems not only to the operators, but also to other players in this field – waste collectors, carriers and brokers, etc.

A thing to be mentioned, are examples of good practice by the construction of new regional centers of waste management or by upgrading the existing regional centers for waste management (15 of them are planned for the whole territory of Slovenia) that have to begin to operate after 15 June 2009, meeting all the requirements set by EU legislation. After talking to the investors there is a good cooperation between MoE and them. Also according to the data we were able to get, five of the 15 needed regional centers are already in the procedure of getting all the required documents or under construction, parts of the landfill for certain type of waste are already operating.

Eventually, it can be concluded that Slovenia and the environmental law in the field of waste management is in compliance with EU waste legislation and also Landfill Directive.

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