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## **Classification of waste:**

### **Consequences for Local Government and recommendations to the European Commission**

#### **Background**

The Luxembourg Case C-458/00 concerns the classification of waste that is burnt in an incinerator in which the heat generated is used as energy, as being 'for disposal' or 'for recovery', and the subsequent application or not of the proximity principle to the movement of the waste.

In this case, the Commission had claimed that objections raised by the GD of Luxembourg against certain shipments of waste to France to be used principally as fuel in an incinerator were unjustified and contrary to the wording of Article 7 (2) and (4) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the EC and Article 1 (f) read in conjunction with head R1 of Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste.

The 'Belgian Cement Kilns' Case C-228/00 concerns the possibility for a member state (in this case Germany) to impose minimum standards, relating in particular to calorific value, for waste to be considered 'for recovery' and thus not to be subject to the proximity principle. In this Case, the Commission had claimed that objections raised by Germany to the transfer of waste to Belgium to be burnt in a cement kiln on the basis that the waste did not satisfy certain minimum standards laid down in national legislation for waste 'for recovery' were unjustified and contrary to Article 7(2) and (4) of the Waste Shipment Regulation ((EEC) No 259/93) and that Germany has failed to fulfill its obligations under Article 7(2) and (4) of the Regulation.

#### **Conclusions and implications of the Judgments**

The Luxembourg judgment concludes that the incineration of municipal waste at an incineration plant in general is to be classified as a disposal operation (D10, Annex IIA, "Incineration on land", Waste Framework Directive 75/442/EEC) and not as a recovery operation (R1, Annex II B, "Use principally as a fuel or other means to generate energy"), even if most or all of the heat is used to generate energy. Exceptions to this rule concern installations that would need to continue their operations using another source of energy, if no waste was available, or those that buy waste.

The implications of this Judgment are that waste is classified as 'for recovery' or 'for disposal' according to its destination rather than its content.

The 'Belgian Cement Kilns' Judgment concludes that Member states are not allowed to impose minimum standards relating to the 'recovery potential' of waste for waste that is being shipped. The Court however adds that authorities may base themselves on the following considerations to oppose certain shipments of waste:

- If the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non-recoverable fraction do not justify the recovery under economic and environmental consideration;
- If the energy generated by the combustion of waste and recovered is not superior to the energy consumed during the combustion process and/or that none of the surplus energy generated is effectively used.

### **Implications for Local Government**

The principal issue at stake for local government in waste management is to know clearly and reliably for which sort of waste from which origin in which amount they will be responsible for the forthcoming 10 to 15 years; this knowledge is the necessary basis for planning the required incineration capacity. This certainty as regards planning is vital not only for local authorities, whose scarce resources mean that investments in waste management facilities need to be carefully planned, but also for private operators of waste management facilities. On this point, the Luxembourg judgment provides some certainty in as much as it makes it clear that household waste going to a local incinerator is indeed subject to the principle of proximity.

However the two judgments provide for no such certainty when it comes to commercial waste.

Currently, local authorities in some countries have planned the capacity of their incinerators taking account of commercial waste as well as household waste. Producers of commercial waste are however now unlikely to pay the full price for the disposal of waste at a local incinerator, if the waste can be disposed of more cheaply elsewhere by sending it to a 'recovery' operation.

### **Recommendations to the European Commission**

The recent court judgments bring to the fore the long standing issues of certainty as regards planning and investment in waste management facilities.

The implications of the Landfill Directive (Directive 99/31/EC), regarding in particular the considerable reduction of the amount of biodegradable waste going to landfill, could lead in many countries to a considerable increase in the amount of waste being incinerated, and thus an increase in the required capacity for planned incineration facilities.

On the other hand, local authorities are still uncertain about what the implications will be for them as regards the treatment of biowaste following the entry into force of the future directive on biodegradable waste.

Local government would therefore greatly benefit from a long-term EU strategy relating to waste management, which would enable it to plan investments in waste management facilities in a reliable way and in accordance with the environmental priorities set out at EU level.

Furthermore, CEMR believes that in accordance with the European Union objectives, as set out in the EC Treaty, to achieve sustainable development and to promote a high level of protection and improvement of the quality of the environment, and without prejudice to the need to ensure freedom of movement of goods within the Community, the European Commission should ensure that waste that is not subject to the principle of proximity is indeed used for recovery purposes and that the environmental benefits generated from this recovery process surpass the environmental costs incurred in the travel and treatment of this waste.

CEMR would therefore like to put forward to the Commission the following proposals and recommendations:

**We call upon the Commission to:**

- Develop European wide minimum standards for waste for recovery, so as to ensure a harmonized approach to waste recovery and waste disposal operations;
- Set out rules and ensure control over waste sorting operations: sorting facilities should be considered as recovery operation on the basis of minimum criteria relating to the amount of waste which is actually recovered;
- Carry out a study on the existing capacity for energy recovery within the EU member states, and whether this capacity is sufficient to fulfill the provisions of EU legislation in this field and in particular the Landfill directive.