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WASTE MANAGEMENT

Volume 7

Waste-to-Energy

TK

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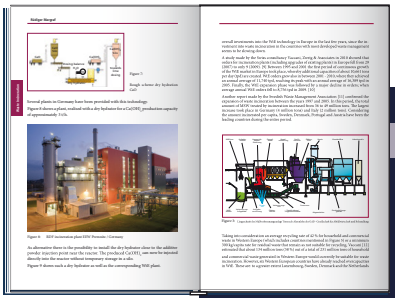
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Policies and Strategies

Impact of EU Legislative Developments on the Waste-to-Energy Sector

Patrick Clerens and Natalia Walczak

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Looking at the evolution of the municipal waste management in the EU during the last two decades, one can come to several observations. Firstly, we can see a steady decline in landfilling. Secondly, there was a substantial growth in recycling and composting rates, followed by an increase of waste incineration capacity. With regard to municipal waste generation, although the amount of waste per capita decreased during last fifteen years, it is still rather high (c. 475 kg/capita) and prone to fluctuations [7]. For some, these developments are not satisfactory, as they place the EU still rather far away from a real circular economy.

In this context, the last years alone have been an intensive period for the EU institutions, Member States and other stakeholders trying to envisage a transition to a more resource efficient and less waste generating society. This push will of course also impact Waste-to-Energy sector. From the review of the EU waste legislation, through the European Commission's Communication on Waste-to-Energy, to the work on the review of Waste Treatment and Waste Incineration BREFs, all these legislative proposals raise many questions with regard to *raison d'être* of Waste-to-Energy sector. Will it be still feasible to run Waste-to-Energy plants? Will it be allowed to build new plants? Is the sector part of the circular economy at all?

In this article we are going to consider these and other issues that might impact the Waste-to-Energy sector in the coming years. We have divided them into three sections representing a full legal landscape: policy, technical regulations and financing.

1. Policy

1.1. Circular economy package

The review of the European waste laws has been a classic example of EU lengthy legislative procedures. The first proposals of the so-called Circular Economy Package were published and then withdrawn in 2014, and current drafts were issued in December 2015. However, hopefully the works on the Package are finally coming to an end. During the drafting of this article, the outcome of the negotiations between the EU institutions (so-called *trilogues*) were not known yet. We will therefore focus on general considerations regarding the likely impact that the new legislation can have on Waste-to-Energy.

For the Waste-to-Energy sector, the draft Waste Framework Directive [9] and the Landfill Directive [8] are the key pieces of legislation. Although the acts rarely refer directly to waste incineration or energy recovery, the topic has been present during the legislative works at the European Parliament and the Council of the EU.

For example, in 2016 while discussing the proposals at the Parliament's Committees some Members of the European Parliament proposed to add caps on incineration to the draft Directives proposed by the European Commission. The final version of the European Parliament's amendments to the proposals did not keep such extreme measures, but still included provisions directly targeting Waste-to-Energy. For instance, the amendment 5. to the Landfill Directive called for ensuring that minimising landfilling does not lead to a shift towards incineration, while the amendment 11. suggested considering an introduction of incineration limits in the future. Although these amendments concerned recitals that form the non-binding part of a legislative act, they show clearly the European Parliament's attitude towards Waste-to-Energy.

On the other side, the position of the Council of the EU, composed of the EU Member States, did not foresee such provisions. It is therefore probable that the final outcome of the negotiations between the Parliament and the Council will keep the *status quo* with regard to Waste-to-Energy.

One of the more concrete issues that are under discussion during the trilogues is the definition of recycling and which activities can be included in its scope. In the Commission's proposal for the Waste Framework Directive the art. 11a(5) introduced a possibility to count metals recovered in conjunction with incineration towards the recycling targets. The Parliament tabled an amendment allowing counting metals also from co-incineration. In turn, the Council went back to the original version concerning metals, but it also added an amendment that would allow minerals recovered in co-incineration plants (but not incineration plants) to be counted towards recycling targets. Such provision could lead to an increased demand for waste from cement kilns plants – and to be specific, pre-treated Refuse Derived Fuel. It could have an impact

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