POSITION PAPER

on the trilogue negotiations between the European Council of Ministers, the European Parliament and the European Commission on the EU Circular Economy Package

Brussels, May 2017

Transparency register/ registration number: 1420587986-32

The German Association of Local Public Utilities (VKU) represents more than 1,450 local public utilities in the energy, water/waste water, waste management and telecommunications sectors. With almost 260,000 employees, VKU members achieved a turnover of over 111 billion euros in 2014 and invested over 9.4 billion euros. VKU member companies have large market shares in central supply areas to end consumers (54 percent in electricity, 56 percent in natural gas, 85 percent in drinking water, 67 percent in heat supply and 40 percent in waste water disposal). They dispose of 31,500 tonnes of waste each day and make a vital contribution towards ensuring that Germany, with 65 percent, has the highest recycling rate in the European Union. Local public utilities supply 5.7 million customers with broadband. They plan to invest around 1.7 billion euros by 2018 to provide some 6.3 million people with a fast internet connection.
Background

In mid-December 2015, the European Commission made a total of four proposals for the amendment of European waste legislation as part of the EU Circular Economy Package. These were to revise the European Waste Framework Directive, Landfill Directive and Packaging Directive and the Waste Electrical and Electronic Equipment Directive. By amending these directives and taking other measures as part of the Circular Economy Package Action Plan, the European Commission aims to free the EU from the restrictions of a linear economic model and create a circular economy. The legislative proposals are largely confined to municipal waste (household and similar waste), which makes up around 10% of all waste generated in Europe.

As the plenary agreed on the amendments concerning the Circular Economy Package and referred the package back to the responsible Environment Committee, the trilogue negotiations with the Environment Council are due to begin. The VKU would like to take this opportunity to set out its position on the current discussion and the proposals in question.

I. Move away from disposing of recyclable and biodegradable waste in landfill
(Art. 5, Landfill Directive)

Disposing of waste in landfills, which has not undergone treatment before, especially biodegradable waste, has a severely negative impact on the environment. In Germany alone, the ban on disposing of untreated municipal waste in landfills introduced in 2005, for example, reduced methane emissions that are directly harmful to the environment by 70% to 80% in 2010 compared to the reference year 1990; this comes down to a contribution of around 10% to the overall reduction in greenhouse gas emissions achieved in the country. Other Member States such as Belgium, Finland and Austria have also entirely moved away from disposing of non-pretreated municipal waste in landfills, while other EU Member States still dispose of a large proportion of their municipal waste, including biodegradable waste, in landfills. However, it is essential to consider the fact that harmful emissions and environmental pollution do not recognise borders and affect the whole of Europe and global climate change. Furthermore, landfill sites not only leave behind huge environmental burdens, but also economic ones which will be left to future generations to take care of and are very difficult to calculate.

Disposing of untreated municipal waste in landfill also has a negative impact when it comes to recycling objectives. It prevents the expansion of recycling capacity and the
development of other high-quality recovery options, meaning that vital resources are
removed from the circular economy. To meet the requirements of the European
Commission and European Parliament - achieving ambitious recycling rates and
promoting reuse - Member States need clear legislation to restrict the disposal of non-
pretreated waste in landfills and thus enable the reliable planning of recycling capacity.
When implementing these stringent objectives, Member States which have already
established effective waste management systems can help other Member States which
are still developing a waste management system in line with a circular economy and
provide them with waste treatment capacity.

The VKU believes that the European Commission is taking the right approach by obliging
EU Member States to limit the quantity of waste to be disposed of in landfill to 10% of
municipal waste by 2030 and by offering the option of postponing this target to 2035 to
countries which currently dispose of a high proportion of waste in landfill. However,
intermediate targets for 2030 must be set for these countries.

II. Standardised and clear definitions for European waste law

In principle, the VKU welcomes the inclusion of clear definitions in waste law proposed
by the European Commission and European Parliament.

It is positive that the definition of municipal waste in the Waste Framework Directive is
closely based on the definition of the term in the European Waste Catalogue and the
OECD definition of 2012. According to the Commission’s draft, waste originating from
sources other than households is also to be deemed to be municipal waste if its quality
and quantity are similar to household waste.
However, the VKU opposes the new quantity-related differentiation criterion because it
would result in considerable uncertainty when classifying waste and an increased
bureaucratic burden.
The proposal of the European Parliament to descriptively limit municipal waste to
“(b) mixed waste and separately collected waste from small businesses, office
buildings and institutions including schools, hospitals and government buildings
that is similar to household waste in nature and composition;”
rather than explicitly specifying a quantitative criterion also does not appear to add any

value for recording statistics or controlling material flows. The referral to “small businesses, office building institutions etc.” would rather cause complex differentiation problems (what is a large business and what is a small one?). The composition itself is what is relevant for the technical treatment of waste, not the quantity or specific origin. Waste that is similar to household waste can thus also originate from administrative buildings belonging to major industrial companies, for example.

Restricting municipal waste based on the quantity generated would result in exempting partial quantities of commercial waste of a similar nature and composition to household waste from the new recycling rates and from the restriction of its disposal in landfills. The overall recycling carried out as part of European waste management would therefore be significantly reduced because the requirements of the Waste Framework Directive only apply to municipal waste, which currently makes up around 10% of all waste generated. The proposals of the European Commission and European Parliament to introduce a quantity limit to the definition of municipal waste would further reduce the proportion of municipal waste in relation to the total waste generated, while there are currently not any requirements or targets for recycling, reuse and restricting landfill at European level concerning the significant amount of commercial waste. Reducing the overall recycling carried out as part of European waste management is thus in direct opposition to the desired environmental objectives of the Circular Economy Package – recycling more waste, and thereby extending the life cycle of important resources and keeping them in the cycle. Furthermore, complex differentiation problems would arise in the Member States if waste management responsibilities and financial obligations were linked to the term ‘municipal waste’.

The VKU thus advocates retaining the definition of municipal waste in accordance with the Commission’s proposal, while removing the quantity criterion.

IV. Harmonising and optimising the process of determining recycling rates
(Art. 11a, Waste Framework Directive, Art. 6a, Packaging Directive)

The VKU welcomes the initiative of the European Commission and European Parliament of determining a standardised method for calculating recycling rates to apply throughout Europe. Member States can currently choose between different calculation methods. According to the Commission’s proposal, there are only to be one or two methods in the future, while the European Parliament wishes to determine only one
standardised method of calculating recycling rates. The VKU believes that it is essential to standardise the approach and harmonise the calculation method at a European level to make comparing whether the Member States have met their targets in terms of recycling requirements easier and more transparent.

The calculation method for recycling rates is based on two parameters. (1) The interface where the amount of recycling is measured and (2) the identification of the processes and waste to be regarded as recycling material.

For example, the VKU welcomes the fact that the future process for calculating recycling rates is to be based on the recycled output. The VKU sees the interface chosen by the European Commission and European Parliament for calculating rates (input into the final recycling process) as a sensible compromise between a calculation method based on the quantity collected (an approach based purely on input) and one based on the recycled output.

The further on in the treatment or recycling process the interface for calculating the recycling rates is established, meaning as close as possible to the recycling output, the closer we get to the actual amount of recycling. Residues from sorting would not count towards the recycling rate and thus cannot lead to inflated recycling rate statistics. There is a risk that stages in the process such as separating contrary material or types of plastic, which are actually part of sorting, would be deliberately transferred to the final process to make it easier to achieve the set targets. However, to establish for example functioning markets for secondary raw materials, information as relaibale as possible about the actual amounts recycled is needed. Nevertheless, a detailed regulation that covers all processes and materials in a standardised manner could not be implemented in practice. The recycling rates should thus be recorded in the final recycling stage in certified plants that eliminate the artificial transfer of sorting stages to the final recycling process. The objective is to at least be able to estimate the Member States’ actual output of substances and materials that can be returned to the production cycle and prevent the wrongful relabelling of process stages. Having certified plants would also result in an initial quality standard for secondary raw materials, which benefits the development of a circular economy.

The VKU supports the proposal of ‘input into the final recycling process’ as the interface and also proposes that only amounts that are processed in certified plants in the final treatment stage are to be included in rate calculation.
V. Separate collection
(Art. 11, Art. 22 para. 1, Waste Framework Directive)

The separate collection of municipal waste makes a significant contribution to Germany’s high recycling result. The separate collection of organic waste in particular enables flows of single materials to be delivered to specific treatment and recycling plants, thus ensuring high-quality recycling. Collecting organic waste separately also prevents the contamination of dry recyclable materials.

However, as also specified in the European Commission’s proposal, it should be noted that the separate collection of organic waste and all other material flows listed in the directive must be “technically, environmentally and economically practicable”. Separate collection must always add environmental value. If the environmental benefits of separate collection and the high-quality recycling it enables do not, however, outweigh the environmental damage, the Member States must retain the right to specify exemptions for certain flows.

VI. Specifying provisions on extended producer responsibility
(Art. 8, 8a, Waste Framework Directive)

The VKU wishes to mention several points in the discussion of extended producer responsibility:

The VKU is open to the setting of minimum requirements for extended producer responsibility schemes, provided that these criteria allow Member States to assign responsibility for collection and/or recycling also to local public authorities and public bodies. The criteria must not, under any circumstances, be formulated in such a way as to prohibit local public authorities from playing a role in product responsibility systems or even to require existing systems of shared responsibility for waste management, such as for waste electrical and electronic equipment, to be abolished. Furthermore, Art. 8 and Art. 8a must not oblige Member States to impose a product responsibility scheme on further waste fractions beyond those which are already part of a product responsibility scheme at European level. Therefore, the VKU approves of the proposal of the European Commission on Art. 8, para. 1, no. 1, sentence 1 and rejects the counterproposal of the European Parliament.

References in Art. 8a, para. 1, second indent of the proposal of the European Commission and that of the European Parliament to define measurable waste
management targets within product responsibility systems to at least meet the quantitative targets of the End-of-Life Vehicles, Packaging and Waste Electrical and Electronic Equipment Directives are confusing with regard to the relationship between the general criteria in Art. 8a of the Waste Framework Directive and the specific directives mentioned. Therefore it should not be adopted. The targets in the specific directives have also been adapted to the material flows that they regulate and are not generally applicable to other material flows.

The VKU also rejects the proposal of the EP, which requires the equal treatment of collection, transport and waste treatment providers because individual partial services (collection, recycling, etc.) can also be regulated exclusively by local public authorities (see shared responsibility for waste disposal). Organising waste management should, according to the principle of subsidiarity, be left to Member States.

The VKU advocates the idea that producers do not necessarily need to be responsible for organising collection and recycling, but that a financial responsibility on their part is also conceivable. This means that Art. 8a para. 3 should not stipulate that producers must offer comprehensive waste collection capacity and have the operational resources required to support a product responsibility system. The financing of local public waste management services, for example, can also be part of product responsibility. In Art. 8a, para. 3, letter d, third indent, product responsibility systems should thus only have to make the selection process for waste management operators public if public waste operators have not been declared responsible for managing waste flows.

**Hence the VKU supports the proposal of the European Parliament in Art. 8a para. 3 letter b that requires “organisational and/or financial resources” and leaves the organisation to the Member States.**

Further amendments proposed by the VKU with regard to extended producer responsibility relate to the cost calculation which is to show the total treatment costs associated with the products. Even the costs incurred when the waste which comes under an extended producer responsibility scheme is mixed with residual waste and is disposed of with it are to be included in the calculation. Citizens should not pay twice for waste management for products which come under extended producer responsibility schemes – once due to waste management being factored into the price of a product which comes under an extended producer responsibility scheme and a second time due to waste treatment charges imposed by local public waste management companies to cover the cost of treating municipal waste and residual waste in particular.
The proposal of the European Parliament on Art. 8a, para. 4, letter a) cover the entire cost of waste management for the products it puts on the Union market, as follows:
– costs of separate collection, sorting, transport and treatment operations required to ensure the proper management of waste taking into account the revenues from re-use or sales of secondary raw material from their products;

should be extended accordingly, by adding the following second indent:
“– costs of treating the products which have become waste and remain in mixed municipal waste despite available separate collection systems and the costs incurred by the products which have become waste for removing litter from public spaces.”

Only a provision of this kind meets the requirement for producers to cover the entire cost of waste management, including the treatment of their waste products which end up in residual waste and the removal of litter associated with their products.

Finally, the VKU also considers the method used to calculate the costs when services are taken over by public waste management operators important. The VKU welcomes the proposal of the European Parliament on Art. 8a, para. 4, letter c to calculate the costs based on the optimised cost of the services provided and to define the term ‘optimised cost’ in terms of the services provided by public waste management operators. The definition of ‘optimised cost’ is essential because, without any further explanation, only operators with the lowest costs would receive a full refund. Nevertheless, the process of determining the optimum cost would cause significant problems. Hence, the relevant proposal of the European Parliament would serve to appropriately exclude operators which are particularly uneconomical from receiving a full refund, while at the same time making the term ‘optimised costs’ more easily applicable.

VII. Energy recovery

Finally, the VKU asks for the focus to remain on the subsequent implementation of the legislative package in the Member States. To develop an effective circular economy, complementary legislation is required. For example, the waste hierarchy must be strictly complied with and recycling must be promoted while the disposal of non-pretreated waste in landfills must be restricted. In view of the proposals of the European Parliament on waste management, the following recommendations are made:

1. Wording in English: The optimised cost of the service shall be transparent and reflect the costs incurred by public waste management operators when implementing operational tasks on behalf of extended producer responsibility schemes.
Commission and the communication on waste to energy published by the European Commission at the beginning of 2017, it is important to note that energy recovery via waste incineration is positioned above landfilling in the European waste hierarchy and plays a significant part in enabling high-quality recycling.