

REASONED OPINION

of the European Affairs Committee of the Federal Council

of 19 January 2016

**pursuant to Article 23g (1) of the Austrian Constitutional Law in conjunction with Article 6 of Protocol
No.2 on the application of the principles of subsidiarity and proportionality**

COM (2015) 595 final

**Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC
on Waste**

A. Reasoned Opinion

Some parts of the project under consideration in their present form are incompatible with the principle of subsidiarity.

B. Grounds for Reasoned Opinion

In principle, the Federal Council welcomes the objectives of increased resource efficiency and improvements of the circular economy in the European Union pursued by the European Commission with the package of measures proposed, although it is regrettable that the targets are less ambitious than those proposed in the package tabled in 2014, in particular with regard to landfilling.

Legislation on waste management has already been harmonized to a large extent within the framework of the European Union, but substantial differences between individual Member States are still to be observed, for instance in the percentages of waste that is recycled or the percentages of municipal waste disposed of through landfilling.

Austria has achieved a high standard of waste management and ranks among the countries that regularly assume a pioneering role in the EU. As a matter of principle, the Federal Council welcomes the initiatives tabled by the Commission, as they are intended to ensure a uniform level in all Member States of the EU

and, in particular, to encourage states falling short of the targets to introduce a more efficient system of waste management.

Nevertheless, the Federal Council takes a critical view of the proposed directive in light of the principle of subsidiarity enshrined in Art.5 para.3 TEU.

In its Art.3 para 1a, the proposed directive introduces a definition of “municipal waste”, a subject matter which so far has been regulated on a national and/or regional basis. In particular, the introduction of a quantitative criterion results in considerable uncertainty: As proposed in this paragraph, waste collected from sources other than households is not to be regarded as municipal waste, unless its quantity is comparable to that of municipal waste. Besides the lack of clarity and the uncertainties inherent in this definition, this is likely to cause an increased administrative burden and additional costs. Similar reservations apply to the newly included quantitative restriction for biogenic waste. The definition of bio-waste should refer exclusively to the quality of biogenic waste. A quantitative criterion is not suited for this purpose.

Another point of criticism concerns the extensive use of delegated and implementing acts and the resulting erosion of the powers of Member States and regions.

The proposed Article 9 obliges the Member States to take measures to prevent waste generation. Although this newly introduced obligation is to be welcomed in substantive terms, Member States should not be excessively restricted in their ability to act.

The provision contained in Article 37 of the proposed directive, according to which reports have to be submitted to the Commission for each calendar year and every second year, respectively, instead of every third year under the current legislation, is questionable in view of the resulting administrative burden.

Moreover, the explanatory memorandum on the proposed directive refers to an obligation for Member States to submit “explanatory documents” regarding the measures taken to transpose the directive into national law. These are so-called “correspondence tables” require the Member States to specify point by point which provisions of the directive have been transposed through which national norm. This is likely to cause an enormous administrative workload.

Altogether, the Federal Council is of the opinion that the proposed directive in its current form is not compatible with the principle of subsidiarity on account of the excessive delegated and implementing powers to be conferred upon the Commission.

The Federal Council wishes to point out that opinions on the legislative project under consideration have been received from the Parliament of the Land of Upper Austria and the Austrian Association of Cities and Towns.