

Brussels, 13/07/2010
C/2010/ 4854

Dear President,

The European Commission would like to thank the German Bundesrat for expressing its opinion on the preliminary steps undertaken by the Commission towards an in depth assessment of the feasibility of a European Entity for the implementation of European waste legislation. The European Commission takes careful note of the concerns expressed in that paper and would like to draw the attention of the Bundesrat to the following circumstances:

The Treaty establishes the obligation for preserving, protecting and improving the quality of the environment and the prudent and rational utilisation of natural resources. The Commission would be failing in its role of Guardian of the Treaty were it not to insist on effective implementation of waste legislation to which Member States have committed. The Commission has observed significant shortcomings in implementation of waste legislation in Member States over more than 30 years documented through a high number of waste related infringement cases and further described in detail in a number of recent studies on the implementation of waste legislation. Even today a very high number of Member States still mostly rely on landfill as the primary waste management option, using to a great extent substandard landfill technique and often tolerating the illegal dumping of waste. This is not a tolerable situation in view of the obligations of Member States under the Landfill Directive and Waste Framework Directive, inter alia.

Waste management standards differ greatly between Member States. It is evident that Member States providing costly infrastructure, engineered landfills, and other high tech waste disposal installations, as well as making major investments in recycling and recovery techniques, risk to suffer from unfair competition in relation to Member States where dumping practices are still a more widespread phenomenon. Better implementation will be required in order to turn the Union as a whole into a recycling society, with high resource efficiency and less energy use, as set out as in the EU waste and resource strategies.

There are many reasons for insufficient implementation: inadequate administrative capacities and infrastructure can play a role, as can insufficient understanding of individual legal acts, and the resulting unawareness of options for action with the consequence of establishing systemic shortcomings. Many of these problems could be

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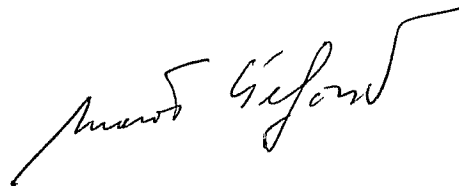
effectively dealt with if the Commission services could provide more support and if technically complex implementing measures could be developed more rapidly than is presently the case. Unfortunately, our services cannot respond to the demands of the Member States to the extent required.

It is also evident that the entire absence of verification and control mechanisms at Union level effectively allows the continuation of illegal and sub-standard dumping practices in Member States. Up until now the Union has only been able to react to this on a case-by-case basis, as and when alerted by complaints from citizens and NGOs. Principles of good European Administration require a more systematic and efficient approach towards the control of implementation with a view to creating a level playing field for all Member States. This is not being achieved and cannot be achieved by Member States individually.

For these reasons we are discussing, in close co-operation with Member States and without pre-empting any results, different possibilities that would enable the Commission to ensure more effectively the full implementation of the waste legislation in Member States. The external feasibility study the Bundesrat refers to has indeed for the first time assessed in detail one of several possibilities, in the shape of an EU agency or similar body. It must be underlined, however, that the Commission has not committed itself to any particular solution – the study therefore has no official standing whatsoever.

The Commission will consider the points raised by the Bundesrat in further discussions, in particular as regards the aspects of de-regulation, subsidiarity and proportionality and will keep the Bundesrat informed about the further development of the project, in particular the outcome of the projected cost-benefit –analysis on the option of a waste implementation entity.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Bernard Gieffon". The signature is written in a cursive style with a long, sweeping tail on the final letter.