



EEB's key concerns with Commissioner Dimas's letter and note to MEP Florenz (24/8/2006) assessing the potential impacts of the proposal to use an energy threshold to distinguish between municipal incinerators that are disposal installations from those that are recovery.

October 2006

Mr Florenz wrote to Commissioner Dimas (23/06/2006) raising the issue that:

The Impact Assessment made by the Commission on the proposal does not cover the issue of the impact of the proposed energy efficiency threshold. As a result, it is very difficult for Parliament to assess the Commission proposal on this issue. I would, therefore, ask you to provide us, if necessary by means of a complementary impact assessment, with all the relevant information on the number of incineration facilities that will be affected, the countries in which they are located, as well as an estimation of the number of facilities which would then qualify as recovery operations and as disposal operations.

We would like to stress that the response to this request, has, in our opinion been **completely insufficient** to answer the questions posed and reveals furthermore that the Commission has still not performed a proper impact assessment of its proposal to use an energy threshold to distinguish between municipal incinerators that are disposal installations from those that proposed to be defined as recovery. An impact assessment should take into account social and environmental impacts as well as economic ones (who will and will not meet the formula). Given that this is a potentially very significant and concrete legislative proposal in terms of its impacts on waste management practices this is entirely unacceptable and is a clear violation to the Commission's own Impact Assessment commitments (point 29 of the Inter-institutional agreement on better lawmaking (2003/C 321/01)¹).

Furthermore we note that there is a **severe lack of transparency in choices made for this policy option** (efficiency formula versus use of the ECJ criteria versus other options such as calorific value etc). Alternative policy options have never been assessed in any meaningful way - as is the minimum required by the Commission's own Impact Assessment guidelines (SEC 2005 - 791). **Most worryingly is that there has never been a full impact assessment of what is proposed against the existing baseline, in which (reflecting ECJ decisions) MSW incineration is defined mostly as disposal.**

In addition to this the data presented uses predominantly non-peer reviewed incineration industry data and makes extrapolations from a small data sample to the whole of the EU without taking into account for example the effect on new Member States. There are also **seriously misleading statements made** concerning the supposed environmental benefits of waste incinerations (claiming green-house gas abatement benefits of 20 MT when current estimated figures are closer to 0.3 MT or even negative benefits). See Annex below for more details

¹ Extract from the EUROPEAN PARLIAMENT COUNCIL COMMISSION INTERINSTITUTIONAL AGREEMENT on better law-making (2003/C 321/01) - Pt 29. *The Commission will continue to implement the integrated advance impact-assessment process for major items of draft legislation, combining in one single evaluation the impact assessments relating inter alia to social, economic and environmental aspects. The results of the assessments will be made fully and freely available to the European Parliament, the Council and the general public. In the explanatory memorandum to its proposals, the Commission will indicate the manner in which the impact assessments have influenced them.*

Annex

On the integrity and balance of the assessment

1) Concerning the specific perspective of what installations meet the formula the assessment does not take into account the effects of the proposal on the New Member States in particular, the geographic area of the EU where there is likely to be the biggest effect of its proposal due to potential future large scale investments in waste management infrastructure.

2) As the Commission itself notes, no independent peer review has been undertaken on the information obtained from the CEWEP report, which is one of the main sources of data in the Commission's note. Furthermore the CEWEP report, when scrutinised, does not reveal the location of the 67 plants that CEWEP claims meets the criteria. As the exact data sample used is not available no independent assessment is possible of the risks f.ex. that they underestimate the number of plants achieving the criteria making the Commission's proposal seem more ambitious.

3) The Commission has so far not evaluated alternative policy approaches for promoting incinerator efficiency or resolving the distinction between R and D in the case of MSWI, such as a clarification of 'principal use' on the basis of the ECJ criteria and improving incineration efficiency through the IPPC, which is designed to ensure 'Best Available Techniques', or through the Waste Incineration Directive. The Commission's own Impact Assessment guidelines (SEC 2005 791) recommend that all alternative policy options be assessed and that "[the Commission] should have sufficient information to be able to show why certain options have been adopted after screening and others eliminated before going on to a more in-depth analysis of impact". **In conclusion the Commission has not done a proper assessment of the impacts of the R1 formula proposed.**

4) It is unclear on what basis the Commission claims that '*increases in MSWI do not correlate to low recycling rates*' and "*it is therefore unlikely that the proposal would have negative effects on recycling levels*'? It is not our experience that this is the case. No evidence is given to back up the Commission's statement.²

5) It is nowhere stated how many facilities have an '*unclear status under the given ECJ criteria*' and what really are the environmental social and economic problematic impacts of that? What exactly are the 'subjective elements and grey areas remaining' coming from the Court cases C-228/00 and C-458/00 and what really are the environmental social and economic problematic impacts of these? Until these are clearly identified it is not possible to address these supposed problems.

² Observations of the levels of recycling and incineration in North EU countries (from EU statistics) are often claimed as evidence to support claims such as these but we would stress that contrary conclusions can be drawn from the same statistics (eg France and Austria – high incineration low recycling and high recycling low incineration). Similarly, it seems some Nordic/North EU countries have such a high rate of incineration that recycling rates could not increase without affecting the utilisation of existing incineration capacity eg Denmark and Netherlands. In our view the higher levels of recycling in some countries are a result of concrete and proactive recycling policies setting targets for separate collection and recycling. Promotion of incineration in countries that do not have such proactive recycling policies, at the same time as no such policies are required at the EU level cannot be assumed to lead to similar outcomes as seen in Northern EU countries.

Specifically on energy efficiency and greenhouse-gas benefits/disbenefits

6) In Annex 2 of the Commission's note the Commission states that "*EUROSTAT reports that incineration with energy recovery in the ERU produces about 8 million tonnes oil equivalent of energy. This can be estimated to represent an avoidance of 15 to 21 million tonnes CO₂ equivalent, i.e. roughly 0.5% of EU total greenhouse gas emissions*". As far as we can tell this is a miscalculation. A recent German study³ estimates net GHG savings from waste incineration in the EU 15 to be no greater than 0.3 MT in the year 2000 . In other words nowhere near 0.5% of EU total greenhouse-gas (GHG) emissions.⁴

7) We fail to understand how the Commission can substantiate its claim '*GHG emissions will be decreased through production of heat and electricity*' in the case of the efficiency threshold proposed. The Commission's own note admits that the criteria can be achieved by municipal waste incinerators generating electricity only. Research has shown ⁵ that this approach can actually result in a net contribution to climate change relative to some fossil sources of energy such as gas-fired generation, not to mention increased use of renewables.

8) We also fail to understand how the Commission substantiates that the proposal will have the effect of classifying only the most energy efficient existing MSWI as recovery installations – when no independent sample of the 'most energy efficient' installations exists? As far as we are aware the IPPC BREF process has not delivered benchmark data on the efficiency levels of best performing installations that are equipped and more importantly, use, to their full potential, combined heat and electrical power production (CHP)?⁶

How does the Commission substantiate that the proposal will 'spread good practices developed mainly in northern regions of the EU to the rest of the EU' – when the efficiency requirements are already reached by incinerators in the South and when more than 1/3 of all incinerators (around 130 in 359) are in France where energy efficiency is not attractive due to competition with highly subsidised nuclear power prices??

³ Environmental Study – waste Sector's Contribution to Climate Protection, Research Report 205 33 314 UBA-FB III

⁴ It appears that the Commission assessment has assumed that 100% of the energy generation avoided by substitution with energy generated from incinerating waste is renewable. I.e. 100% displacement of greenhouse-gases (GHGs). This is clearly not the case as energy generated from incineration is partly fossil based. In addition to this it seems to have been assumed they are replacing one of the highest GHG emitter fuel mixes - oil (the replacement figures use units of oil equivalents). This is unlikely to be correct as only approx. 6.4% of all EU power generation is from oil. According to experts, had they chosen to compare to gas, or average EU electricity generation, let alone future EU fuel mixes with higher renewables content, then (assuming the fossil carbon element of waste had been properly accounted for) there would probably be very little net GHG savings, and possibly a net contribution (ie more GHG emissions from getting energy from waste incineration than from other power sources).

⁵ A changing climate for energy from waste? Eunomia Research and Consulting limited, May 2006.

⁶ Note that the level of use of heat is important. Use of heat for a few months a year only does not necessarily mean that the plant is efficient. The CEWEP assessment claims that plants 'equipped' with CHP (combined heat and power) production would comply but there is not information on the level of USE of the equipment . The use of the CHP equipment – in particular the level of usage of heat is the critical factor in determining the energetic and therefore environmental added value in terms of GHG from such installations

On the loss of controls on waste tourism to incinerators

9) What does the Commission mean by ‘*waste collected from private households represents the most important fraction of the various waste streams traditionally sent to incineration facilities*’? Do they mean important = largest volume or = most environmentally risky volume? In either case how do they substantiate this claim. As far as we are aware there is no data on what is the proportion of non-household waste collected by municipalities / or not (for example small commercial enterprise wastes, hospital wastes etc) that is sent to such facilities?

Strategic issues and assumptions.

10) The Commission's note states:

a) “*the reputation of MSWI would be better than that of facilities classified as disposal*” ...There are strong drivers to divert from landfill already why is it necessary to give incineration a better reputation than landfill – to achieve what? It is not entirely clear that incinerators should have any better reputation than landfill.

Note: The Commission's own research – concerning Externalities from Landfill and Incineration – indicates that the choice is not straightforward. Indeed, the only incinerator which performs better than landfills is a modern facility complying with the Incineration Directive and generating CHP at a net efficiency of 83%. UK calculations by HM Customs & Excise indicate greater externalities from modern incinerators generating electricity only than from landfills. Consequently, it is not entirely clear whether the reputation of MSWI should be improved

b) “*This will make investment in MSWI incinerators more challenging*” – we would ask more challenging than what? Why should this challenge (although not really challenging) be optional – why not make it obligatory for ALL investments and thus ensure harmonising to a minimum level of environmental protection by making the criteria a condition for awarding permits? The Incineration Directive clearly states Article 4(2) (‘*Application and permit*’) that:

Without prejudice to Directive 96/61/EC, the application for a permit for an incineration or co-incineration plant to the competent authority shall include a description of the measures which are envisaged to guarantee that:

(a) the plant is designed, equipped and will be operated in such a manner that the requirements of this Directive are taking into account the categories of waste to be incinerated;

(b) the heat generated during the incineration and co-incineration process is recovered as far as practicable e.g. through combined heat and power, the generating of process steam or district heating;

and at Article 6(6) (operating conditions), that

Any heat generated by the incineration or co-incineration process shall be recovered as far as practicable

The proposal for the Thematic Strategy had as one of its aims, an improvement in the implementation of existing legislation. To the extent that the Commission saw fit to distinguish between 'disposal incinerators' and 'recovery incinerators' on the basis of energy efficiency, one might argue that the rationale for such a distinction is founded upon the basic fact that implementation of the Waste Incineration Directive needs to be improved:

c) the proposal will 'have for effect a more pronounced move away from landfill'. Are not the landfill directive requirements, including the requirements for specialised landfills, objectives for the diversion biowaste and restrictive acceptance criteria sufficient to facilitate the transition from high levels of landfill to lower levels? Is not the main objective of the strategy supposed to be towards Prevention and a Recycling society – NOT 'facilitation of the transition from landfill to incineration'?

For more information please contact:

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