18 December 2020

FEAD position on the delegated act on climate mitigation activities under the Sustainable Investment Regulation ("Taxonomy")

In the context of the current drafting of the first delegated act on taxonomy covering activities "substantially contributing" to climate adaptation and mitigation, **FEAD – the European Waste Management Association** – stresses the importance of considering the views of the private waste management sector as a significant contributor to the transition towards circular economy and, more generally, climate neutrality.

First, FEAD points out that, from a legislative point of view, we expected **the second delegated act on activities substantially contributing to circular economy to cover our activities**, instead of the current under consultation, which covers activities substantially contributing to climate mitigation and adaption. This is **clearly stated in Regulation 2020/852 in its art. 13**, as follows:

"*Article 13 - Substantial contribution to the transition to a circular economy*

1. *An economic activity shall qualify as contributing substantially to the transition to a circular economy, including waste prevention, re-use and recycling, where that activity:*

   (i) Increases the development of the waste management infrastructure needed for prevention, for preparing for re-use and for recycling, while ensuring that the recovered materials are recycled as high-quality secondary raw material input in production, thereby avoiding downcycling;

   (j) minimises the incineration of waste and avoids the disposal of waste, including landfilling, in accordance with the principles of the waste hierarchy;

   (k) avoids and reduces litter; or

   (l) enables any of the activities listed in point (a) to (k) of this paragraph in accordance with Article 16".

While we clearly acknowledge their significant role in saving CO2 emissions, **waste management activities are not *at all* listed under Regulation 2020/852 art.10 describing mitigation activities**. The latter in fact covers energy processes (such as "generating, transmitting, using renewable energies", "improving energy efficiency", "capture and carbon utilisation", "decarbonisation of energy systems"), and mitigating CO2 emissions in manufacturing processes. Consequently, from a legislative point of view, the technical criteria related to any waste management activity should be set up in the second delegated act. While we understand that the latter would encompass *other* activities in the waste management chain (not yet described in the first delegated act), this would still disregard the scope of art.13.

Concerning preparatory work, **FEAD stresses the need to properly consult the waste management sector for activities whose classification will strongly impact our operations across Europe**. This is particularly relevant, as the Platform for Sustainable Finance formed in October 2020, where only recycling activities are represented (not the whole waste management sector), had not been consulted yet at the time when this consultation was launched. For this reason, we reiterate the availability of our organisation – which represents the **whole** waste management

chain – in providing technical inputs into the formulation of both delegated acts at any state of the process.

If several waste management activities were to remain under the first delegated act, some elements contained in Annex I should be carefully addressed, in view of achieving objectives and targets posed by waste and climate legislation:

- **R1 waste-to-energy activities**: since the first formulation of a list of taxonomy-compliant activities under the Technical Expert Group's final report on taxonomy[1], FEAD has been continuously advocating for the inclusion of waste-to-energy activities as **substantially contributing to the transition towards a more circular and climate neutral economy**. As a matter of fact, while we understand that the second delegated act foreseen under Directive (EU) 2020/852 art. 12(c) and 13(c) will cover activities contributing to circular economy, we regret to see that the inclusion of waste-to-energy activities, complying with the R1 criterion[2], are still left out.

  We would like to remind the Commission that **waste-to-energy activities play a key role in the integrated waste management system on which targets for waste activities are foreseen**. A recently published legal study conducted by Price Waterhouse Coopers[3] concludes that, pursuant to a clear distinction between incineration for disposal and incineration for R1 energy recovery, waste-to-energy activities (complying with WFD's R1 criterion) are (1) consistent with the circular economy and (2) fulfil other environmental objectives, as long as they comply with the waste hierarchy. Therefore, in accordance with the above-mentioned legal analysis, **FEAD reiterates once again that recovering the energy from non-recyclable non-recoverable waste should be regarded as an environmentally sustainable economic activity**. In particular:

  - **R1 waste-to-energy installations allow net reduction of CO_2 emissions by generating heat/electricity**, which would be otherwise produced by fossil fuels' sources. Existing waste incineration BREFs ensure that waste-to-energy activities operate under the lowest and safest levels of emissions of any pollutants.

  - A recent study[4](CEWEP, 2019), projecting scenarios of ambitious targets for municipal waste for 2035, illustrates that **the EU will face a capacity gap of approximately 41 Mt for the treatment of residual (non-recyclable) waste**. FEAD would like to point out that, while legislative targets for non-hazardous commercial and industrial waste do not currently exist, quantities of residual waste deriving for this stream are significant and must be taken into account when assessing waste-to-energy capacities within the EU.

  - Existing waste incineration BREFs ensure that waste-to-energy activities operate under the lowest and safest levels of emissions of any pollutants.

[1] EU Technical Expert Group on Sustainable Finance. "Technical report on Taxonomy". March 2020.
[2] Waste Framework Directive, Annex II on recovery operations: "R1: use principally as a fuel or other means to generate energy", with production of heat/electricity with at least a 0.65 recovery factor.
[3] PwC (2020). "Legal analysis on the sustainability of waste incineration for energy recovery under Regulation 2020/852". Study commissioned by FEAD and available here.
[4] Available here.

- To further enhance the sustainability of waste-to-energy activities under an integrated waste management perspective, certain **conditions**, for instance under the taxonomy's technical screening criteria, should be set. To this regard, selective collection and sorting schemes for waste undergoing a waste-to-energy solution, as well as sound national waste management plans, should be mentioned as technical criteria able to ensure that waste-to-energy activities contribute to the objectives of the taxonomy.

More concretely, on the draft delegated act on mitigation activities (Annex I), we would like to point out the following:

- **For point 5.6 on "anaerobic digestion of sewage sludge**":
  - among the technical screening criteria, the pre-conditions posed in terms of resulting digestates should be carefully assessed. In fact, not all digestates resulting from anaerobic digestion can be used as soil improvers; sometimes, they have to be disposed of, depending on the entry matrix.
  - To facilitate circularity, the Commission should look into considering the inclusion of potential requirements for the utilisation of a minimum percentage of the digestate from anaerobic digestion of sewage sludge as fertilizer or soil improver, as long as it meets the requirements of the EU Sewage Sludge Directive (Directive 86/278).
  - Moreover, we would like to point out that, in point 5.6, the Do no significant harm criteria on climate change mitigation "(1) a monitoring plan is in place for methane leakage at the facility" should clearly mention that such monitoring plans must be suitable to minimise the methane leakage from the facility.
- **For point 5.7 on "anaerobic digestion of bio-waste"**, under the list of technical screening criteria, we believe that, under the mentioned technical screen criteria – substantial contribution to climate mitigation (Annex I):
  - (point 1): it should be clearly specified that required monitoring plans must be suitable to minimise methane leakage from the facility.
  - (point 5): the mention of Component Material Categories (CMC) 4 and 5 should be adequately corrected, as reflected by Annex II of Regulation (EU) 2019/1009.
  - (point 4): we believe that the criteria according to which "bio-waste constitutes at least 90% of the input feedstock, measured in weight, as an annual average, and the share of other input material is less than or equal to 10% of the input feedstock" is relatively stringent. Moreover, the additional criteria according to which "other input material include food or feed crops" does not reflect common practices within the industry.
- **For point 5.9 on "material recovery from non-hazardous waste"** (Annex I), FEAD points out the following:
  - Under the section "description of the activity", it should be clearly specified that both "*entire facilities as well as dedicated production lines for the sorting and processing of separately collected non-hazardous waste streams in secondary raw materials*" should be covered by this section. This would better reflect the reality of recycling

facilities across Europe, as the latter often receive and process both mixed waste and waste that has been segregated at source and collected separately.

- **On point 5.10 on "landfill gas capture and utilisation"** (Annex I), FEAD would like to stress that the scope of the activity covered ("*permanently closed landfills*" and "*equipment installed during or post landfill closure*") should be extended proprietarily to legacy landfills and to closed landfill cells in operational landfills. For what concerns the introduction of "closed landfill cell" in the activity's definition, **it is key to consider "closed landfill cells" as already specified in screening criteria 2,** in line with the operational functioning of landfills.

  FEAD insists on the absolute necessity for landfills either in operation or closed, to be equipped with landfill gas capture to reduce landfills' GHG impact. To this regard, we would like to point out the following:

  - According to Directive 99/31/EC, all landfills not meeting the requirements put forward in the Directive had to be closed before 2007. Since then, all landfills in operation after 2007 do require gas control according to requirements set by the above-mentioned Directive. Yet, landfills closed before 2007 do not legally require formal closure or after-care, while their GHG impact is significant. Thus, we believe that point 5.10 should clarify the status of legacy landfills and ensure a proper installation of a landfill gas capture system, also not foreseen by-law, as a mitigation activity.
  - Considering that the delegated act aims at identifying activities "substantially contributing to climate mitigation", we believe that limiting the scope to closed landfills lacks precision. As a matter of fact, operational landfills are subject to mitigation under Directive 99/31/EC. Yet:
    - Landfills that stopped operations before 2007 are not formally closed and should also be addressed by the scope of point 5.10 of Annex II.
    - **Climate mitigation potential of operational and legacy landfills remains often untapped. For this reason, gas capture and utilization of operational landfills, while already a requirement under Directive 99/31/EC, should be included under point 5.10 as of its need for financial incentives to comply with existing requirements.**
  - **Reference should be made to the EU Methane Strategy**. In the waste sector, the Commission will consider further measures to reduce the emissions from landfill gas, by capturing it and by exploiting its energy potential. The taxonomy is a good tool to achieve this goal.

Proposal for amendment:

"*Description of the activity*

Installation and operation of infrastructure for landfill gas capture and utilization in permanently closed landfills according to Directive 99/31/EC, legacy landfills as well as closed landfill cells in their operational phase complying with criteria for pollution control and monitoring set in Directive 99/31/EC.

(5) Pollution and prevention control

Landfill gas capture for permanently closed and legacy landfills and closed cells in operational landfills are carried out in accordance with the following".

- **On point 3.16 on "manufacture of plastics in primary form**" (Annex I), FEAD believes that the criterion "*(b) plastic manufactured by chemical recycling*" is not formulated in away allowing to prove substantial contribution to climate change mitigation and the Do No Harm to pollution prevention and to circular economy. This is because:
    - **Chemical recycling is a waste management activity:**
        - contrary to mechanical recycling, chemical recycling does not produce plastic materials as an output, but monomers/polymers that can be used as feedstock. This implies that virgin feedstock is used in the process and chemically recycled feedstock cannot be fully traced and will be only theoretically allocated to a product.
        - Chemical recycling should **not** include the production of fuels, to ensure consistency with the recycling definition contained in the WFD.
        - For chemical recycling, no specific BREF seems to be in place to ensure pollution prevention and control during the recycling process. The criterion does not provide for a level-playing field with existing waste treatment methods (such as mechanical recycling).
        - **This to prove "substantial contribution to climate change mitigation", chemical recycling processes should demonstrate life cycle GHG emissions aligned with mechanical recycling** or, at least, better performance compared to energy recovery. This needs to be done in to ensure compliance with art. 4.2 WFD, which reads "*when applying the waste hierarchy (…), Member States shall take measures to encourage the options that deliver the best overall environmental outcome*".

    Thus, we propose the following amendment to point 3.16:

Proposal for amendment:

"*Technical screening criteria*

(b) fully manufactured from monomers or polymers resulting from chemical recycling of plastic waste and the full life cycle assessment shows that chemical recycling is the best environmental choice for plastic waste, in comparison with other waste treatment options. The life cycle assessment is conducted in full using relevant standards, such as ISO 14040.

Do no significant harm:

- *Circular economy: the life cycle assessment conducted following ISO standards ensures that it is the best environmental waste treatment option for plastic waste.*
- *Pollution prevention and control: the plastic waste is handled according to the Best Available Techniques Reference Document (BREF) on Waste Treatment, until its dedicated environmental standards are set in a BREF".*

For more information, please contact info@fead.be