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FEAD position paper – call for evidence on the application of the "do no significant harm" principle to the Social Climate Fund and policy reflections for its future extension under the next Multiannual Financial Framework

FEAD takes the opportunity of this call for evidence to comment on the need to clarify Article 17(1)(d) of the Taxonomy Regulation (TR) in combination with Article 13(1)(j) with regard to the incineration of non-hazardous waste.

The Taxonomy Regulation provides that an activity qualifies as substantially contributing to the transition to a circular economy, including waste prevention, re-use and recycling, where that activity *'minimises the incineration of waste and avoids the disposal of waste, including landfilling, in accordance with the principles of the waste hierarchy'* (Art. 13(1)(j)). Later, the text also describes activities *'significantly harming'* the circular economy (Art. 17(1)(d)) as those leading to a *'significant increase in the generation, incineration or disposal of waste, with the exception of non-recyclable hazardous waste'*. **The term waste incineration is not defined in the Taxonomy Regulation, and the Regulation does not distinguish between waste incineration for recovery and waste incineration for disposal. However, a clear difference exists between recovery (R1 waste-to-energy) and disposal (other incineration), and they fall under different sections of the waste hierarchy.**

FEAD is fully aware of the interpretative challenges that these two provisions pose, particularly, in relation to

1. What is to be understood under 'waste incineration' in the Taxonomy Regulation;
2. What is to be understood under a 'significant increase' in the Taxonomy Regulation.

Clarification of the term 'waste incineration' in the TR

In relation to the first point, the interpretation of 'waste incineration', FEAD already commissioned a legal analysis to the consultancy PricewaterhouseCoopers in 2020¹. The document says that 'the different meaning of waste incineration suggests that it can also have different impacts on the circular economy and must therefore be assessed differently in terms of sustainability'. **After interpreting the concept of 'waste incineration' in the Taxonomy Regulation from a grammatical, historical, systematical and teleological point of view, the analysis determines that a distinction must be made, and that if the activity complies with the waste hierarchy, it does not contradict the environmental objectives of the EU Taxonomy, in particular the transition to a circular economy.** As underlined in Article 13(1)(j) TR, the analysis of whether an activity contributes to the transition to a circular economy must always be conducted according to the waste hierarchy under Article 4 of the Waste Framework Directive. Such hierarchy explicitly places energy recovery (d) above disposal (e). As a consequence, under the waste hierarchy, where an activity leads to energy recovery of waste, thereby avoiding its disposal, it is in full compliance with the waste hierarchy. If such an activity, which would be performed by the construction of a new WtE plant, would per se be

¹ https://fead.be/wp-content/uploads/2022/07/20200911_Legal_Analysis_Regulation_2020-852_final_EN.pdf

regarded as significantly harmful to the transition to a circular economy, this would constitute a violation of the waste hierarchy under Article 4 WFD.

Clarification of a 'significant increase' in the TR

In relation to the second point, the interpretation of a 'significant increase', **FEAD is deeply concerned that the construction of any new WtE plant is considered a 'significant increase'**, thus being wrongly presumed to create *significant harm* to the circular economy. Such an interpretation can already be seen, for example, in the Technical guidance on the application of 'do no significant harm' under the Recovery and Resilience Facility Regulation (Commission Notice C/2023/111), where it says that '*the construction of new waste incinerators to increase the existing incineration capacity in the country leads to a significant increase in the incineration of waste, which does not fall under the category of non-recyclable hazardous waste. Therefore, it is in direct breach of Article 17(1)d(ii)*'.

Considering that there is no differentiation made between recovery and disposal when using the terms 'waste incineration' in the Taxonomy Regulation, interpreting Art. 17(1)(d) TR in a way that any new WtE plant is harmful to the transition to a circular economy is not *in accordance with the principles of the waste hierarchy* as mandated by Art. 13(1)(j) TR. The wording of Article 17(d)(ii) TR does not distinguish between a significant increase in the incineration of non-hazardous waste as a recovery activity and the disposal of non-hazardous waste through incineration, as far as a significant harm to the circular economy is concerned. Such wording again disregards that an increase in the thermal recovery of non-hazardous waste is very often directly linked to the avoidance of non-hazardous waste disposal. This, in turn, and taking into account the life cycle assessment that must be performed under Article 17(2) TR, leads to less overall emissions. Indeed, a study on the CO₂ saving potential of the waste management sector shows that the key to achieving maximum CO₂ avoidance is to make full use of recycling and WtE-capacities².

To assess if an increase in capacity is 'significant', quantitative information (what is the current capacity?) **is needed. In addition, to determine that the 'measure hampers the development and deployment of available low-impact alternatives with higher levels of environmental performance (e.g. reuse, recycling)', information on the type of waste** (non-recyclable waste, waste containing substances of concern, rejects from recycling, ...) **is essential.** Today, public and private investors (who are often also owners of recycling and other waste treatment facilities, as many FEAD member companies), have the appropriate tools to make safe and sustainable investments and also have solid information and predictability on what is and will be available as feedstock. **Responsible capacity planning ensures that no 'locked-in effects' occur and that all waste streams are managed in the way that they provide the best environmental outcome,** including for residual, non-recyclable waste. **FEAD suggests several points to be assessed to determine the inclusion of waste-to-energy in the EU Taxonomy, which include the fact that new WtE facilities do not increase the total capacity of residual waste treatment.** A 'significant increase' must be considered in light of the local waste management plan and the actual energy recovery capacity in each Member State, including the foreseen capacity based on the treatment needs and type of waste input. Only with such a case-by-case analysis can one assess if the project is a substantial increase or not. This can mean, for example, that new plans would either replace an existing landfill for non-hazardous waste, especially in MS that are not in line with the Landfill Directive, or replace or upgrade an existing WtE plant.

² See https://fead.be/wp-content/uploads/2022/07/Final_CO2-Study_Dec2021.pdf

In average, the EU landfilled 40% of its waste in 2020.³ This includes ca. 54 million tonnes/y of municipal waste. Not all this waste can be diverted from landfill by recycling. The same recycling operations generate non-recyclable residues. Whereas the average landfilling rate for municipal waste in the EU stood at 23% in 2020, the waste early warning report⁴ shows significant differences across the EU. In 2020, eight Member States still landfilled over 50% of municipal waste, with three of them reporting rates above 70%. In total, there are 13 MS still far from the current target of a maximum of 10% of landfilling of municipal waste to be reached by 2035. This data reflects many countries, in particular eastern and southern ones, having a lack of alternatives to landfilling to treat their residual and non-recyclable, non-hazardous waste with energy recovery. **Member States that are fully aligned with the goals of the Landfill Directive are those who invested in their waste-to-material and waste-to-energy capacities.** In fact, waste management is an integrated activity where different activities are required to treat the waste. WtE is part of such an integrated approach, as a complement to recycling, and has an important hygienic task for our society, treating waste that is not suitable for recycling and residues from recycling, ensuring that material cycles are clean from pollutants and contaminants and preventing landfilling of waste.

Furthermore, and since the aim of the application of the DNSH principle is to ensure coherency throughout EU legislation, the negative connotation of waste incineration under the Taxonomy Regulation is not in line with other pieces of EU legislation and Commission Communications. Waste-to-Energy (WtE) – technologies contribute to increasing the share of energy produced through renewable sources. The incineration of biogenic waste, which accounts for up to 50% of mixed municipal waste, is a renewable energy source under the Renewable Energy Directive (EU) 2023/2413 (RED III). Hence, such an activity even contributes to the major environmental and climate objectives of the EU, with the overarching aim of climate neutrality by 2050. As foreseen by the current BAT, modern waste-to-energy plants ensure high energy efficiency performances. When it comes to plants generating electricity only, efficiency can reach more than 30%. When co-generation is applied, producing both electric and thermal energy for district heating and industrial facilities, efficiency can go beyond 80%. Furthermore, the most recent gas treatment technologies can ensure an efficiency close to 100%. The 2022 Guidelines on State Aid for climate, environmental protection and energy stress that efficient district heating and cooling systems using waste as input fuel positively contribute to environmental protection. Thus, these publications clearly outline the positive environmental and climate impacts of thermal recovery of waste, in contrast to the wording of the Taxonomy Regulation.

The ‘do not significant harm’ principle is a powerful tool to drive investments towards the green transition and FEAD is committed to the EU climate goals. However, considering the huge impact that the ‘do not significant harm’ principle will have in directing financial flows in the EU, its interpretation and application must be carefully assessed and justified. As an example, the recent investment in a new flue treatment facility at a WtE plant in Brescia⁵ shows how the DNSH principle is hampering a more efficient use of energy and resources, the reduction of GHGs emissions and the achievement of better environmental performances. The new technology installed enables the generation of heat for 12,500 additional households for the same amount of waste treated, raising the plant’s efficiency rate from 84% to 98%. Nevertheless, because of the DNSH principle, the investment is not aligned with the European Taxonomy being it part of the WtE facility.

³ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Waste_statistics#Waste_treatment

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A304%3AFIN&Bqid=1686220362244>

⁵ This an A2A plant, an infrastructure company that provides essential services in Italy.

FEAD believes that the future technical guidance on the application of the 'do not significant harm' principle to the Social Climate Fund must clarify that:

1. **A distinction must be made between waste incineration as a recovery activity and waste incineration as a disposal activity.** Following this, it must be ensured that, if the activity complies with the waste hierarchy, it does not contradict the environmental objectives of the EU Taxonomy, in particular the transition to a circular economy (see [legal analysis by PWC](#)).
2. **Not any increase in waste incineration capacities (as a recovery activity) can be considered a 'significant increase'.** To assess if an increase in capacity is 'significant', quantitative information (what is the current capacity?) as well as information on the type of waste (non-recyclable waste, waste containing substances of concern, rejects from recycling, ...) is needed.
3. **Particular attention must be drawn to Article 17(2) of the Taxonomy Regulation.** An increase in waste incineration can never per se be regarded as significantly harmful to the transition to a circular economy. The assessment of the DNSH criteria must always be performed by means of a life cycle assessment, taking into account the activity itself, and other activities that are avoided.

The clarifications exposed above must be consistently applied across EU legislation when referring to the DNSH principle.

FEAD is the European Waste Management Association, representing the private waste and resource management industry across Europe, including 19 national waste management federations and 3,000 waste management companies. Private waste management companies operate in 60% of municipal waste markets in Europe and in 75% of industrial and commercial waste. This means more than 320,000 local jobs, fuelling €5 billion of investments into the economy every year. For more information, please contact:

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