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Competitive and transparent markets for waste

FEAD position paper on the Commission's call for evidence – access to justice in relation to State aid decisions

To encourage further private sector investment in the circular economy, FEAD has long called upon policymakers to ensure the full implementation of a European internal market for waste. This includes enforcing Single Market rules on State aid, in particular with regard to public undertakings.¹ In this context, **FEAD welcomes the Commission's initiative to ensure access to justice in environmental matters related to State aid and strongly stresses that the planned procedure must not jeopardise or compromise the anonymity of complainants.**

In addition, FEAD notes the following points in relation to State aid measures:

1. State aid allocation should follow a special procedure to ensure market competition

FEAD represents the private waste and resource management industry across Europe. As such, FEAD members have noticed a trend in recent years where State-owned enterprises (SOEs) have significantly easier access to public aid. For example, the Polish waste management sector has long been dominated by a few private companies competing against a single, dominant State entity. In Warsaw, the State regularly provides financial support to the active SOE, enabling it to purchase needed infrastructure, such as garbage trucks, while private companies must seek the necessary funds and investments independently. Additionally, public authorities have initiated the construction of a waste incineration plant valued at approximately 355.56 million euros, which has entirely been allocated to the SOE active in Warsaw.

In Italy, some private operators in the sector have reported anti-competitive practices by competent local authorities. For example, in some areas of the south of Italy, contracts are being exclusively awarded to public companies, established or to be established, without verifying whether it is the most efficient solution and excluding private companies operating in the sector. In fact, institutions, such as the Court of Auditors and the AGCM - Competition and Market Guarantor Authority, have already raised concerns about anti-competitive practices that limit market access for efficient operators.

Another example in Italy is the distribution of European funds under the National Recovery and Resilience Plan. The funds are intended to be used to overcome existing infrastructure gaps (especially in the South of Italy). However, they are being distributed as non-repayable funds to waste authorities and municipalities, who allocate them without objectively evaluating the best projects but often giving priority to public companies. For private

¹ See FEAD's Vision: <https://fead.be/wp-content/uploads/2024/03/FEADsvision2030-final-1.pdf>

companies, there are a few funds available. The NRRP should ensure market instruments open to all operators.

Private companies lack effective legal avenues to challenge the preferential treatment afforded to SOE, making competition arduous and leading to their market exclusion. This lack of access to justice and public aid for private companies results in market monopolization, inevitably leading to increased waste management costs, which burdens citizens directly. To address this issue, it is essential to implement special procedures for granting State aid that guarantee fair competition in the market. These new rules should be founded on transparent tenders and collaboration within public-private partnerships (PPP). Environmental investments should be carried out through objective competition in which the most efficient technologies are selected. Only by means of competitive conditions can we promote market growth and innovation, and ensure a level playing field.

2. Implementation of effective mechanisms to control State aid utilisation

FEAD members have reported cases of lacking transparency and effective oversight in the use of public funds at national level. Coming back to the Polish example, the Supreme Audit Office (NIK) routinely highlights these irregularities in its reports on the financing of municipal companies by the State. It is crucial to establish more robust oversight mechanisms than those in place currently. Specialised bodies should conduct these controls, with assessment criteria designed to ensure that State aid does not hinder private enterprise activities or disrupt market competition. Such measures will significantly enhance access to justice, ensuring equal conditions for all market participants.

3. Alignment of State aid decision procedures with EU legislation

The new procedures must align with the public procurement directive and other EU competition law. It is equally important to ensure compliance with the Net Zero Industry Act, the Critical Raw Materials Act, and the proposals within the FEAD Manifesto², which calls for a Circular Material Use Act.

In addition, public authorities must be made more aware of the fact that in-house awards and horizontal cooperation between authorities or SOEs - which may be permissible under public procurement law - can constitute State aid and must be notified to the Commission accordingly. This should be included in public procurement law; a corresponding reference in the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1–50) is obviously not sufficient.

4. Redefining State aid measures

A critical element is redefining the concept of State aid, which should be understood as:

- Any form of benefits transferred to an entity by or on behalf of public authorities,
- Measures taken by the State, public institutions or private institutions controlled by the State or public institutions/bodies in the area of environmental investments and areas where a free market operates or could operate.

We firmly assert that the introduction of transparent rules and more effective oversight over the activities of SOE receiving State aid is crucial to protect the interests of all market participants. This is essential to ensure the efficient utilisation of public funds. Furthermore, FEAD fully recognises the need to support and promote

² <https://fead.be/wp-content/uploads/2024/05/FEAD-Manifesto-2024.pdf>

collaboration between the scientific and economic sectors. State aid in this context is vital for investments in research, development and innovation, and for the seamless execution of cooperation activities between science and industry, particularly in areas employing advanced technologies.

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:

FEAD Secretariat

info@fead.be