

## WASTE DISPOSAL IN THE EUROPEAN UNION: NORMATIVE FRAMEWORK AND PRACTICE

### *Abstract*

*Waste disposal is a global challenge, particularly in the context of environmental pollution prevention and human health protection. That is the reason why the European Union has been adopting and applying a series of documents pertinent to this issue. The most relevant are: Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on Waste and Council Directive 1999/31/EC of 26 April 1999 on the Landfill of Waste. However, the reports of the European Commission and the practice of the Court of Justice of the European Union confirm that there are numerous disparities between the Member States regarding the implementation of standards of waste management in general and in particular, waste disposal. The Republic of Serbia has to make substantial improvements in the area of waste disposal, especially in the context of the upcoming opening of the Negotiation Chapter 27, dedicated to the environment and climate change. Therefore, the authors analyse legal sources of the European Union related to waste disposal, reports on their application and relevant practice of the Court of Justice of the European Union as potential directions and guidelines.*

**Key words:** *waste, waste disposal, landfill, environmental protection, European Union.*

### 1. Introduction - General Waste Disposal Issues

In the past couple of decades, waste has been considered a serious global environmental issue and its management, including its prevention, recycling and disposal represents a challenge for experts from various fields including

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international environmental law<sup>3</sup>. It was estimated that in the period between 1980 and 1997, municipal waste in OECD countries increased by around 40%. At the same time, the quantity of waste was predicted to grow by a further 40% by 2020<sup>4</sup>. European Environmental Agency underlined that the EU Member States produce around 1.3 billion tons of waste, of which 40 million tons is considered hazardous<sup>5</sup>. The most severe negative environmental impacts caused by the increase in waste production include the permanent loss of material and energy resources, the pressure to use new sites with the loss of that land use for housing, leisure or agriculture as well as air, water and soil pollution.<sup>6</sup>

These findings raised a growing concern about the problem of waste management in both developed and developing countries, including the Member States of the European Union (hereinafter: the EU), which initiated the adoption of national and international legislative and strategic frameworks dedicated to that issue. Waste has been at the centre of the EU environment policy in the last 30 years and substantial progress has been made in that area. In many EU countries, polluting landfills and incinerators are being cleaned up and innovative hazardous waste treatment techniques are being developed. Moreover, hazardous substances are being removed from vehicles and electrical and electronic equipment and the levels of dioxins and other emissions from incineration are being significantly reduced<sup>7</sup>.

A comprehensive strategic and legislative framework is playing an important role in successful waste management at the EU level. But, in spite of generally positive trends in this area, practice confirms that there are still some substantial differences among the EU Member States when it comes to the implementation of waste management standards. This particularly refers to illegal waste disposal and irregular work of landfills

<sup>3</sup> For a more detailed analysis of international sources of environmental law see: V. Joldžić, A. Batričević, V. Stanković, "Međunarodnopravni okviri transporta, čuvanja, prerade i odlaganja otpada", *Ecologica*, 84/2016, 854-858.

<sup>4</sup> The Organisation for Economic Cooperation and Development (OECD), *Environmental Outlook Report*, Paris 2001, 235, <http://dev.ulb.ac.be/ceese/CEESE/documents/ocde%20environment%20outlook.pdf>, 28.10.2017.

<sup>5</sup> D. Savić, "Evropske ekološke vrednosti za dobrobit građana Srbije, sa posebnim osvrtom na praksu postupanja sa otpadom", u: *Evropski standardi u Srbiji - zbornik radova* (ed. Jelena Milić), Beograd 2009, 67.

<sup>6</sup> A.M. King, S.C. Burgess, W. Ijomah, C.A. McMahon, "Reducing waste: repair, recondition, remanufacture or recycle?", *Sustainable Development*, 4/2006, 257-267.

<sup>7</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and The Committee of the Regions - Taking sustainable use of resources forward - A Thematic Strategy on the prevention and recycling of waste {SEC(2005) 1681} {SEC(2005) 1682}, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005DC0666&from=EN>, 27.10.2017

in some countries, such as Italy<sup>8</sup> and Greece<sup>9</sup>, which brought them before Court of Justice of the European Union.

## 2. Strategic Approach to Waste Management in the EU

The Thematic Strategy on the Prevention and Recycling of Waste<sup>10</sup> was published in December 2005 by the European Commission. The Strategy emphasises that current EU waste policy is based on a concept known as the waste hierarchy. This concept is applied in most developed countries, in particular, European countries and Japan. It is based on the assumption that first of all, waste should be reduced, otherwise recycled, next incinerated and, only if there are no other available options, landfilled. Landfilling is considered the worst option because it consumes a lot of space and runs a high risk of unwanted leakages and emissions to air, water and soil<sup>11</sup>.

The Strategy points out that landfill represents the most inconvenient option for the environment because it involves the loss of resources and causes pollution. In spite of differences among the Member States when it comes to waste management and various approaches to the management of different types of waste, it accentuates the importance of moving towards a recycling and recovery society and moving up the hierarchy, away from landfill and more and more to recycling and recovery<sup>12</sup>.

The Strategy sets basic objectives of the current waste policy of the European Union: to prevent waste, to promote its re-use, recycling and recovery as well as to reduce its negative environmental impacts. Its long-term goal is to make the EU a recycling society, avoiding waste and using it as a resource.<sup>13</sup> In order to achieve these objectives, the following measures and activities are suggested: 1) full implementation of current legislation, 2) simplification and modernisation of existing legislation, 3) introduction of life-cycle thinking into waste policy, 4) promotion of more ambitious waste prevention policies, 5) better knowledge and information, 6) development

<sup>8</sup> Court of Justice of the European Union Press release No 163/14, Luxembourg, 2 December 2014, Judgment in Case C-196/13, Commission v Italy, <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140163en.pdf>, 30.03.2017.

<sup>9</sup> Action brought on 21 December 2012 -European Commission v Hellenic Republic (Case C-600/12) (2013/C 63/19), <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-07/cp140104en.pdf>, 30.03.2017.

European Commission - Press release Waste management: Commission refers Greece to the Court of Justice of the EU over illegal landfill, Brussels, 10 December 2015, [http://europa.eu/rapid/press-release\\_IP-15-6224\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6224_en.htm), 30.03.2017.

<sup>10</sup> Strategy on the prevention and recycling of waste.

<sup>11</sup> E. Dijkgraaf, H. Vollebergh, "Burn or Bury? A Social Cost Comparison of Final Waste Disposal Methods", *Nota di Lavoro* 46/2003, 2.

<sup>12</sup> Strategy on the prevention and recycling of waste, 4.

<sup>13</sup> *Ibid.*, 6.

of common reference standards for recycling and 7) further elaboration of the EU's recycling policy.<sup>14</sup>

The review of the progress towards the objectives set out in the Strategy was made in the Report on the Thematic Strategy on Waste Prevention and Recycling<sup>15</sup>, adopted by the European Commission in January 2011. The Report confirmed that the Strategy had played an important role in regulatory policy development, as well as that progress, was made in the improvement and simplification of legislation, the establishment and diffusion of key concepts such as the waste hierarchy and life-cycle thinking, waste prevention, improving knowledge, and setting new European collection and recycling goals. According to the Report, the recycling rates improved, whereas the amount of waste disposed on landfill decreased. The use of hazardous substances was reduced, which led to a decrease of the relative environmental impacts per ton of waste treated. However, negative environmental impacts were still caused by the expected increase in waste generation.<sup>16</sup> Therefore, the Report suggested the application of the following measures: proper implementation and enforcement of the existing EU waste acquis, application of an optimal combination of economic and legal instruments, improving the competitiveness of EU recycling industries, developing the markets of secondary raw materials and strengthening their supply in the EU, improving stakeholders' participation, raising public awareness etc.<sup>17</sup>

Although the Strategy represents key strategic document in this area, it should be taken into consideration that the development and implementation of the EU waste policy and legislation, including the issue of waste disposal, is taking place within the perspective of several broader EU policies and programmes such as 1) Seventh Environment Action Programme<sup>18</sup>, 2) Roadmap to a Resource Efficient Europe<sup>19</sup> and 3) Raw Materials Initiative<sup>20</sup>.

<sup>14</sup> *Ibid.*, 10.

<sup>15</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Thematic Strategy on the Prevention and Recycling of Waste SEC(2011) 70 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0013&from=EN>, 27.10.2017.

<sup>16</sup> *Ibid.*, 8.

<sup>17</sup> *Ibid.*, 9.

<sup>18</sup> Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet" (Text with EEA relevance), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D1386&from=EN>, 27.10.2017.

<sup>19</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Roadmap to a Resource Efficient Europe" {SEC(2011) 1067 final} {SEC(2011) 1068 final}, Brussels, 20.9.2011 COM(2011) 571 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0571&from=EN>, 27.10.2017.

<sup>20</sup> Communication from the Commission to the European Parliament and the Council "The raw materials initiative — meeting our critical needs for growth and jobs in Europe" {SEC(2008) 2741}, Brussels, 4.11.2008 COM(2008) 699 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0699&from=EN>, 27.10.2017.



### 3. Key Directives Regulating Waste Disposal in the EU

Waste management has always been the focus of the EU environmental policy and it has adopted several legal documents pertinent to various waste management issues<sup>21</sup>. The first one, Council Directive 75/442/EEC on waste<sup>22</sup> was adopted in 1975 and is no longer in force. It recognised that the objective of provisions pertinent to waste disposal should be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste. Moreover, it proclaimed that the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources. The aforementioned and many other principles set by this Directive have been later re-affirmed in other EU legal sources dealing with the issue of waste.

The legal framework that current strategic approach to waste management in the EU is based upon includes horizontal legislation on waste management, accompanied by more detailed legislation regulating the waste treatment and disposal operations.<sup>23</sup> When it comes to regulation of waste disposal in the EU, the following legal sources can be singled out as the most relevant: 1) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (the Waste Framework Directive)<sup>24</sup> and 2) Council Directive 1999/31/EC of 26 April 1999 on the Landfill of Waste<sup>25</sup>.

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<sup>21</sup> D. Prlja, D. Stepić, D. Savović, "Upravljanje otpadom - međunarodni propisi sa posebnim osvrtom na regulativu Evropske unije", in: *Ekologija i pravo* (eds. Aleksandra Čavoški, Aleksandra Knežević Bojović), Institut za uporedno pravo, Beograd 2012., 150-165.

<sup>22</sup> Council Directive 75/442/EEC of 15 July 1975 on waste, OJ L 194, 25.7.1975., <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1975L0442:20031120:EN:PDF>, 29.10.2017.

<sup>23</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and The Committee of the Regions - Taking sustainable use of resources forward - A Thematic Strategy on the prevention and recycling of waste {SEC(2005) 1681} {SEC(2005) 1682}, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005DC0666&from=EN>, 27.10.2017.

<sup>24</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (the Waste Framework Directive), OJ L 312, 22.11.2008., <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0098&from=EN>, 27.10.2017.

<sup>25</sup> Council Directive 1999/31/EC of 26 April 1999 on the Landfill of Waste, OJ L 182, 16.7.1999., <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0031&from=en>, 29.10.2017.

### **3.1. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on Waste (the Waste Framework Directive)**

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, also known as the Waste Framework Directive, sets the basic principles and definitions related to waste management. It lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use (Article 1).

According to the Directive, the term waste refers to any substance or object which the holder discards or intends or is required to discard (Article 3, Paragraph 1). Waste management comprises the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker (Article 3, Paragraph 9).

The Directive establishes fundamental waste management principles. It requires that waste is managed without endangering human health and harming the environment, and in particular without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest (Article 13). The Directive defines waste disposal as any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. A non-exhaustive list of disposal operations is set out in Annex I of the Directive (Article 3, Paragraph 19). It is suggested that waste legislation and policy of the EU Member States should apply the following waste management hierarchy: prevention, preparing for re-use, recycling, other recovery and disposal (Article 4, Paragraph 1). This means that waste disposal represents the least acceptable option that is supposed to be applied only if prevention, re-use, recycling or other recovery of waste is not possible. Such standpoint is expressed in the Introductory part of the Directive that prescribes that the Member States should support the use of recyclates, such as recovered paper, in line with the waste hierarchy and with the aim of a recycling society, and should not support the landfilling or incineration of such recyclates whenever it is possible.

### **3.2. Council Directive 1999/31/EC of 26 April 1999 on the Landfill of Waste**

Council Directive 1999/31/EC of 26 April 1999 on the Landfill of Waste was adopted in accordance with Council Resolution of 7 May

1990 on Waste Policy<sup>26</sup> that invited the European Commission to propose criteria and standards for the disposal of waste by landfill. It is aimed to achieve the goal set by the Council Resolution of 9 December 1996 on waste policy<sup>27</sup>, according to which in the future, only safe and controlled landfill activities should be carried out in the EU. The aim of the Directive is to provide for measures, procedures and guidance to prevent or reduce as far as possible, negative effects on the environment (in particular the pollution of surface water, groundwater, soil, air and the emission of greenhouse gasses) as well as any resulting risk to human health, from landfilling of waste, during the entire life-cycle of the landfill (Article 1).

The Directive is familiar with several types of waste: municipal, hazardous, non-hazardous inert, biodegradable and liquid (Article 2, Paragraph 1, Subparagraphs b, c, d, e, m and q). It defines landfill as a waste disposal site for the deposit of the waste onto or into the land (underground). These sites include internal waste disposal sites and permanent sites. Internal sites include landfills where a producer of waste is carrying out its own waste disposal at the place of production, whereas a permanent site is used for temporary storage of waste that lasts for more than one year. However, landfill does not include facilities where waste is unloaded in order to permit its preparation for further transport for recovery, treatment or disposal elsewhere, storage of waste prior to recovery or treatment for a period less than three years or storage of waste prior to disposal for a period less than one year (Article 3, Paragraph 1, Subparagraph g).

Some cases of waste disposal are not covered by the Directive: 1) the spreading of sludge, including sewage sludge and sludge resulting from dredging operations and similar matter on the soil the purpose of which is fertilisation or improvement; 2) the use of inert waste which is suitable for the redevelopment, restoration and filling in work or for construction purposes, in landfills; 3) the deposit of non-hazardous dredging sludge alongside small waterways that they have been dredged out from and non-hazardous sludge in surface water and 4) the deposit of unpolluted soil or of non-hazardous inert waste resulting from prospecting and extraction, treatment and storage of mineral resources and operation of quarries (Article 3, Paragraph 2). According to the Directive, there are three classes of the landfill: 1) landfill for hazardous waste, 2) landfill for non-hazardous waste and 3) landfill for inert waste (Article 4).

<sup>26</sup> Council Resolution of 7 May 1990 on waste policy, OJ C 122, 18.5.1990, p. 2–4, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31990Y0518\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31990Y0518(01)&from=EN), 29.10.2017.

<sup>27</sup> Resolution on the communication from the Commission on the review of the Community strategy for waste management and the draft Council resolution on waste policy (COM(96)0399 - C4-0453/96) OJ C 362, 2.12.1996, p. 241, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:1996:362:TOC>, 29.10.2017.

Article 5 of the Directive obliges the Member States to set up a national strategy that would facilitate the reduction of biodegradable waste going to landfills, within the terms set by the Directive and to inform the Commission about this strategy (Article 5, Paragraph 1 and Article 18, Paragraph 1). The Directive also obliges the Member States to take measures in order to avoid the disposal of some specific types of waste in a landfill. These include, for example, liquid waste, waste, which, in the conditions of the landfill is explosive, corrosive, oxidising, highly flammable or flammable, hospital and other clinical wastes arising from medical or veterinary establishments, which are infectious etc. (Article 5, Paragraph 3).

The Directive obliges member states to ensure that only waste that has been subject to treatment is landfilled. However, this does not refer to inert waste for which treatment is not technically feasible and to any other waste for which such treatment does not contribute to the goals of the Directive. Hazardous waste must fulfil special criteria set out in Annex II of the Directive in order to be disposed to a hazardous landfill. On the other hand, the non-hazardous landfill may only be used for: municipal waste, non-hazardous wastes of other origin and stable, non-reactive hazardous wastes that fulfil the criteria from Annex II of the Directive. Finally, it is highlighted that inert waste landfill sites may only be used for the disposal of inert waste (Article 6, Paragraph 1).

The Directive prescribes the fundamental elements that an application for a landfill permit must contain and obliges the Member States to take measures to ensure that these criteria are met (Article 7). It also enumerates the conditions that have to be met in order to obtain a landfill permit issued by the competent authority (Article 8). The minimal content of the landfill permit is also set out by the Directive (Article 9). Member States are obliged to take measures to ensure that all of the costs related to the setting up and operation of a landfill site and the estimated cost of its closure and aftercare for a period of at least 30 years are covered by the price that is charged by the operator for the disposal of waste in that site (Article 10).

Member States are expected to take measures to ensure that landfills that have been granted a permit or that are already functioning may not continue their operating unless several steps are accomplished as soon as possible or at least within time frames set by the Directive. These measures include, for example, presenting to the competent authorities a conditioning plan for the site, the decision-making by the competent authorities on the basis of the conditional plan, authorising the necessary work by the competent authorities and laying down a transitional period for the completion of the plan etc. (Article 14). Member States are obliged to send to the Commission a report on the implementation of the Directive at intervals of three years. Nine months after receiving the reports from

the Member States, the Commission has to publish a Community report on the implementation of the Directive (Article 15).

In order to ensure that their national normative frameworks are harmonised with the Directive, Member States have to adopt necessary laws, regulations and administrative provisions not later than two years after its entry into force. It is also underlined that the measures adopted by the Member States must contain a reference to the Directive or be accompanied by such reference on the occasion of their official publication. The texts of the provisions of national law adopted in the area covered by the Directive must be delivered to the Commission (Article 18).

#### **4. The Implementation of the Landfill Directive in the EU Member States**

The Landfill Directive entered into force on July 16th, 1999 and the Member States had to transpose its provisions into their national legislation by July 16th, 2001. As part of the transposition requirements of the Directive, Member States are asked to provide information on several issues related to waste disposal on landfill and to send information on the number of existing landfills.<sup>28</sup> The latest available Final Implementation Report for the Directive on the Landfill of Waste was published in 2015 and it represents a synopsis of the replies submitted by the Member States to the Implementation Questionnaire covering the Landfill Directive for the period between 2010 and 2012<sup>29</sup>, in accordance with Commission Implementing Decision of November 17th, 2000.<sup>30</sup> Member States have transposed the Landfill Directive into national legislation.<sup>31</sup> They have taken measures to provide for collection, treatment and use of landfill gas. Some Member States, such as Finland, have increased their overall number of landfill collecting and treating gas, whereas others, such as the Netherlands and Sweden have decreased their number and its energy extraction and use<sup>32</sup>.

All Member States, except for Estonia, have implemented measures to minimise nuisances and hazards arising from the landfill through emissions of odours and dust, wind-blown materials, noise and traffic, birds, vermin and insect, formation and aerosols and fires. These measures include

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<sup>28</sup> *Ibid.*, 7.

<sup>29</sup> *Ibid.*, 8.

<sup>30</sup> Commission Decision 2000/738/EC of 17 November 2000 concerning a questionnaire for Member States on the implementation of Directive 1999/31/EC on the landfill of waste (OJ L 298/24 of 25.11.2000), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000D0738&from=EN>, 30.10.2017.

<sup>31</sup> C. Tsiarta, J. Rodrigo, I. Puig, 18.

<sup>32</sup> *Ibid.*, 25-26.

location requirements, treatment of waste before deposit, covering or fencing of landfills, a collection of gas and pest control. However, Member States mostly failed to adopt any new measures to minimise nuisances and hazards, with the exception of Latvia.<sup>33</sup> Member States have set lists or criteria for the acceptance or refusal of waste at each landfill class and that they have been communicating these to the Commission<sup>34</sup>.

When it comes to their obligations related to biodegradable waste, Member States have developed their national strategies for the reduction of its quantity going to landfills and notified the Commission. Some of them presented their national definitions for biodegradable waste and municipal biodegradable waste and many have reported that they have established a list of biodegradable waste. The most common experiences reported with the application of the Strategy include: the reduction of organic waste going to landfill, but also experiences about separate collection and treatment, household composting and new treatment facilities such as composting plants, biogas plants, mechanical-biological treatment, and incineration with energy recovery. It is also worth mentioning that the amount of biodegradable waste going to the landfill was reduced in the majority of Member States in the period between 2010 and 2012.<sup>35</sup>

All Member States apart from Belgium, Bulgaria, the Czech Republic, Finland, Germany, Romania and the United Kingdom have reported that their hazardous waste landfills are fully complying with the Directive. Germany and particularly the UK have shown the worst performance in that area, whereas Cyprus, France, Ireland, Italy and Poland have not submitted a reply to this question.<sup>36</sup> Moreover, in 2014 the European Commission took legal action against Spain in this regard due to the fact that several Spanish landfills are still functioning in the manner that represents a violation of EU landfill legislation.<sup>37</sup>

Most Member States have reported that all of their non-hazardous waste landfills are complying with the Directive. This does not refer to Belgium, Bulgaria, Cyprus, the Czech Republic, Finland, Germany, Romania, Slovenia, Spain and the United Kingdom. Bulgaria, Germany and especially Greece have had the worst performance in that area and there is no available information for France, Greece, Ireland, Italy, Malta and Poland.<sup>38</sup> A similar situation has been reported regarding the landfills for inert waste.<sup>39</sup>

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<sup>33</sup> *Ibid.*, 31.

<sup>34</sup> *Ibid.*, 37.

<sup>35</sup> *Ibid.*, 76.

<sup>36</sup> *Ibid.*, 77.

<sup>37</sup> *Ibid.*, 78.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, 79.



All Member States have reported on the measures they designed to avoid negative environmental effects of the closed landfills. These measures most commonly include setting closure plans in the permit and verified by the competent authority and the continued responsibility of the operator for maintenance, monitoring, and controlling of the closed landfill to prevent any negative impacts to the environment and human health.<sup>40</sup> The reported practice of Belgium is particularly worth highlighting as an example of good practice. Namely, Belgium has reported that after a landfill had been definitively closed, the operator remained responsible for its maintenance, monitoring and control in the aftercare phase for as long as was required by the licensing authority, taking into account the time during which the landfill could present hazards.<sup>41</sup> Member States have undertaken technical measures provided to ensure the requirements of Annex I, Section 2 related to water control and leachate management. The most frequently applied measures include the collection of surface water and groundwater through drainage, the collection and treatment of leachate and cover and vertical sealing structures.<sup>42</sup>

### **5. Case law of the Court of Justice of the EU in the cases of Irregular Waste Disposal**

The infringement procedure starts with a letter of formal notice, by which the Commission allows the Member State to present its views regarding the breach observed. If no reply to the letter of formal notice is received, or if the observations presented by the Member State in reply to that notice cannot be considered satisfactory, the Commission moves to the next stage of infringement procedure, which is the reasoned opinion; if necessary, the Commission then refers the case to the Court of Justice.<sup>43</sup>

More precisely, according to article 258 of The Treaty On The Functioning Of The European Union (hereinafter: TFEU) if the Commission<sup>44</sup> considers that a Member State has failed to fulfill an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion

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<sup>40</sup> *Ibid.*, 91.

<sup>41</sup> *Ibid.*, 86.

<sup>42</sup> *Ibid.*, 116.

<sup>43</sup> European Commission, Infringements proceedings, [https://ec.europa.eu/transport/media/media-corner/infringements-proceedings\\_en](https://ec.europa.eu/transport/media/media-corner/infringements-proceedings_en), 03.11.2017.

<sup>44</sup> The Treaty On The Functioning Of The European Union, *Official Journal C 326*, 26/10/2012 P. 0001 – 0390, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>, 03.11.2017.

within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union. Furthermore, according to article 260 of TFEU if the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court. Otherwise, if the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. Finally, if the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

In case of C-286/08 of 10 September 2009 Commission vs Greece, the Court has declared that by failing to draw up and adopt within a reasonable period a hazardous-waste management plan that accords with the requirements of the relevant Community legislation, and by failing to establish an integrated and adequate network of disposal installations for hazardous waste characterized by the most appropriate methods in order to ensure a high level of protection for the environment and public health, Greece has failed to fulfill its obligations under, first, Articles 1(2) and 6 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, read in conjunction with Articles 5(1) and (2) and 7(1) of Directive 2006/12, second, Article 1(2) of Directive 91/689, read in conjunction with the provisions of Articles 4 and 8 of Directive 2006/12, and, third, Articles 3(1), 6 to 9, 13 and 14 of Directive 1999/31.<sup>45</sup>

Next example of irregular waste disposal concerns Spain. After having investigated a complaint, the Commission has decided to refer Spain to the Court of Justice for failing to close and rehabilitate an illegal landfill operation on La Gomera, one of the Canary Islands. The landfill at Punta Avalos handles the urban waste of San Sebastián de La Gomera, the capital of the island. It has been operating for many years and is located within an important nature conservation site. The key requirements for the safe and controlled handling of waste set out in the Waste Framework, Hazardous Waste and Landfill Directives have not been respected at Punta Avalos.<sup>46</sup> The Commission has decided to send a first written warning to Spain for not having executed a ruling of 28 April 2005 (Case 157/04). The Court condemned Spain for not

<sup>45</sup> Judgement of Court C-286/08, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-286/08#>, 03.11.2017.

<sup>46</sup> European Commission, Press releases database, [http://europa.eu/rapid/press-release\\_IP-03-1424\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-03-1424_en.htm?locale=en), 03.11.2017.

complying with EU legislation on waste in the case of the Punta de Avalos landfill, on La Gomera Island. This landfill is close to the sea and located on a site which is part of the EU-wide Natura 2000 network of protected areas, set up under the Habitats Directive. In May 2005, the Commission asked Spain to report on the measures it had adopted to execute the ruling of the ECJ. The answer by the Spanish authorities was not satisfactory. Although it appears that there are no more discharges of waste into this landfill, the area still needs to be restored to its original natural state. Moreover, the landfill has not been properly inspected and no management plan has been foreseen. The Commission, therefore, asks the Spanish authorities to take the appropriate measures in order to execute the judgment of the Court of Justice.<sup>47</sup> The Court has declared that the Kingdom of Spain has breached its obligations under Council Directive 75/442 / EEC of 15 July 1975 on waste, as amended by Council Directive 91/156 / EEC, of March 18, 1991, of Council Directive 91/689 / EEC of 12 December 1991 on hazardous waste and of Council Directive 1999/31 / EC of 26 April 1999, on the dumping of waste, by not having taken the necessary measures to ensure the application of Articles 4, 8, 9 and 13 of Directive 75/442, 2 of Directive 91/689 and 14 of Directive 1999/31, as regards the uncontrolled landfill located in the area of Punta de Avalos, on the island of La Gomera.<sup>48</sup>

Recent cases of breaching of the EU waste disposal standards concerns Slovenia, Italy and Romania. Slovenia has failed to take measures against 28 noncompliant landfills, as required by the EU Landfill Directive. As it has already been explained, the Directive obliges the Member States to recover and dispose of waste in a manner that does not endanger human health and the environment, prohibiting the abandonment, dumping or uncontrolled disposal of waste. Slovenia was obliged to close and rehabilitate its substandard municipal and industrial landfills by 16 July 2009. Due to insufficient progress in addressing the issue, the Commission sent an additional reasoned opinion in April 2016, urging the authorities to adequately deal with 35 uncontrolled sites, which (although not in operation) still posed a threat to human health and the environment. Some progress was made, but for 28 landfills the necessary measures – to clean them up and close them – had still not been completed by March 2017. In an effort to urge Slovenia to speed up the process, the Commission is bringing the Slovenian authorities before the Court of Justice of the EU.<sup>49</sup>

<sup>47</sup> European Commission, Press releases database, [http://europa.eu/rapid/press-release\\_IP-06-445\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-06-445_en.htm?locale=en), 03.11.2017.

<sup>48</sup> Judgement of Court C-157/04, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=58814&pageIndex=0&doclang=ES&mode=lst&dir=&occ=-first&part=1&cid=2696536>, 03.11.2017.

<sup>49</sup> European Commission, Press releases database, [http://europa.eu/rapid/press-release\\_IP-17-1048\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1048_en.htm), 03.11.2017.

Despite earlier warnings by the Commission, Italy has also failed to take measures to rehabilitate or close 44 non-compliant landfills, as required by Article 14 of the Landfill Directive (Council Directive 1999/31/EC). Like the other Member States, Italy was obliged, by 16 July 2009, to either rehabilitate landfills that had been granted a permit or which were already in operation before 16 July 2001 (“existing landfills”), bringing them to the safety standards set out in the Directive, or to close them. Due to insufficient progress in addressing the issue, the Commission sent an additional reasoned opinion in June 2015, urging Italy to adequately treat 50 sites, which still posed a threat to human health and the environment. In spite of some progress made, the necessary measures to upgrade or close 44 landfills have still not been completed by May 2017. In an effort to speed up the process, the Commission has decided to take Italy to the Court of Justice of the EU.<sup>50</sup>

Romania has failed to take measures against 68 noncompliant landfills, as required by EU Landfill Directive (Council Directive 1999/31/EC). Under the Directive, Member States must recover and dispose of waste in a manner that does not endanger human health and the environment, prohibiting the abandonment, dumping or uncontrolled disposal of waste. Romania was obliged to close and rehabilitate these substandard municipal and industrial landfills by 16 July 2009. Due to insufficient progress in addressing the issue, the Commission sent an additional reasoned opinion in September 2015, urging the Romanian authorities to adequately deal with 109 uncontrolled sites, which (although not in operation) still posed a threat to human health and the environment. Some progress was made, but for 68 landfills the necessary measures - to clean them up and close them - had still not been completed by December 2016. In an effort to urge Romania to speed up the process, the Commission is bringing the Romanian authorities before the Court of Justice of the EU.<sup>51</sup>

## 6. Conclusion

Since the Republic of Serbia is not an EU Member State, it is not officially obliged to implement the provisions of the aforementioned directives related to waste management and disposal.<sup>52</sup> But, establishing an integral system of waste management in accordance with the EU standards should be one of its priorities in the area of environmental

<sup>50</sup> European Commission, Press releases database, [http://europa.eu/rapid/press-release\\_IP-17-1283\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1283_en.htm), 03.11.2017.

<sup>51</sup> European Commission, Press releases database, [http://europa.eu/rapid/press-release\\_IP-17-237\\_en.htm](http://europa.eu/rapid/press-release_IP-17-237_en.htm), 03.11.2017.

<sup>52</sup> A. Batrićević, “Nepropisno odlaganje otpada u Srbiji – aktuelno stanje i kaznenopravna reakcija“, *Zbornik Instituta za kriminološka i sociološka istraživanja*, 1/2017, 117.

protection and sustainable development<sup>53</sup>. That is the reason why the analysed provisions of EU directives pertinent to waste management and particularly its disposal should be taken into consideration as valuable guidelines on the road to opening the Negotiation Chapter 27, dedicated to environmental protection and climate change.<sup>54</sup>

Case law analysis of European court of justice has shown that some member states failed to implement properly the EU framework on waste management, hazardous waste and landfills. That is the reason why the European Commission has been forced to react by sending written warnings and reasoned opinions to those Member States that have violated the adopted EU standards. Furthermore, in some cases, the European Commission has decided to bring the case before the Court. Finally, in cases where the offending Member State failed to comply with a previous judgement of the Court, the European Commission asked the Court to impose a financial penalty on the Member State concerned.

Therefore, the main goal in the area of the landfill of waste in the next period must be setting out the most important criteria to ensure effective collection, treatment and use of waste on landfills which comply with the requirements of the EU Landfill Directive. Only in that way the objective of the Directive (defined as prevention or reducing as far as possible negative effects on the environment, in particular on surface water, groundwater, soil, air, and on human health from the landfilling of waste by introducing stringent technical requirements for waste and landfills) could be implemented. Furthermore, implementation of the aforementioned goal would contribute to reducing of landfilling to the necessary minimum and facilitate the accomplishment of other targets regarding waste management.

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<sup>53</sup> Waste Management Strategy for the Period between 2010 and 2019, *Official Gazette of the Republic of Serbia*, No. 29/2010.

<sup>54</sup> Ministry of Agriculture and Environmental Protection of the Republic of Serbia, *Post Screening Document – draft version*, Ministry of Agriculture and Environmental Protection of the Republic of Serbia, Belgrade 2015, <http://www.kombeg.org.rs/Slike/CeTranIRazvojTehnologija/2015/jul/Post%20skrinig%20dokument-%20poglavlje%2027.pdf>, 31.10.2017.

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## **ODLAGANJE OTPADA U EVROPSKOJ UNIJI: NORMATIVNI OKVIR I PRAKSA**

### Rezime

Odlaganje otpada na deponije predstavlja izazov na globalnom nivou, posebno u kontekstu sprečavanja zagađenja životne sredine i nastojanja da se očuva zdravlje ljudi i omogućí opstanak biljnog i životinjskog sveta. Zbog toga je i Evropska unija tokom poslednjih nekoliko decenija usvajala i nastojala da primeni niz pravnih dokumenata, ali i strateških uputstava i smernica posvećenih toj problematici. Za odlaganje otpada među izvorima prava Evropske unije najveći značaj imaju sledeće aktuelne direktive: Direktiva 2008/98/EC o otpadu i Direktiva 1999/31/EC o deponijama otpada. Međutim, dostupni izveštaji Evropske komisije, kao i praksa Suda pravde Evropske unije potvrđuju da postoje mnogobrojne razlike između država članica kada je u pitanju upravljanje otpadom uopšte, a posebno u oblasti odlaganja otpada na deponije. Od država članica se u budućnosti očekuje da svoju praksu u toj oblasti izjednače, te da svoja zakonodavstva i praksu u potpunosti harmonizuju sa standardima Unije. Uprkos očiglednom napretku u oblasti pravnog regulisanja zaštite životne sredine, Republika Srbija treba da preduzme niz zakonodavnih i praktičnih mera u oblasti odlaganja otpada kako bi ispunila zahteve Evropske unije proistekle iz predstojećeg otvaranja pregovaračkog poglavlja 27, posvećenog zaštiti životne sredine i klimatskim promenama. Imajući to u vidu, autori analiziraju pravne izvore Evropske unije od značaja za regulisanje upravljanja otpadom a posebno njegovog odlaganja na deponije, izveštaje o njihovoj dosadašnjoj primeni od strane država članica Evropske unije i praksu Suda pravde Evropske unije u slučajevima kršenja navedenih odredbi, sagledavajući ih pre svega kao potencijalna uputstva i smernice za domaćeg zakonodavca.

**Ključne reči:** otpad, odlaganje otpada, deponije, zaštita životne sredine, Evropska unija.