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**From Environmental Conflict to Liberalization:  
The Uncontrolled Deregulation of the German Waste  
Management System Questions the Modernisation  
Successes of the Early 1990s**

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**From Environmental Conflict to Liberalization:  
The Uncontrolled Deregulation of the German Waste Management System  
Questions the Modernisation Successes of the Early 1990s.**

**By Winfried Osthorst, University of Bremen**

**Introduction**

Since the mid-1990s, the German Federal Government has been trying to implement the liberalization of waste management, against the resistance of municipalities. But instead of creating a new fitting regulative environment for the sector, the strong position of the municipal waste management has been decomposed by delayed regulation. As a by-product of this policy of uncontrolled deregulation, some important effects of the modernisation strategy which was enforced in the early 1990s by the same government, under pressure of the environmental movement, are contested again.

A review of the major developments of the German waste policy within the past ten years indicates a dramatic change of perspective in terms of waste treatment and disposal: Whereas at the beginning of the 1990s, the environmental conflict concerning waste management reached its peak, economic interests are now hitting the headlines. Cities and administrative districts which are responsible for the organisation of garbage collection, consider the precarious situation of their service units within the waste management market, and their own tight budgetary situation to be decisive factors for decisions about privatisation.

This change in perspective is the result of the "waste policy turn", started by the Christian Democratic (CDU) Kohl-government: It decisively altered the scope of action and possible choices for cities and administrative districts. Tight settlements enforced investments into improved technical standards of the municipal waste disposal facilities, and invalidated the public criticism of these technologies. The so-called "dual system", created by the Packaging Ordinance (*Verpackungsverordnung*, 1991), introduced recycling nation-wide and ensured its financing. As a result, the amount of waste to be removed by the municipalities decreased, which solved the previous problem of insufficient waste treatment capacities. Thus, this policy solved major problems which the municipalities had not been able to cope with by local means.

Simultaneously, the municipalities faced a considerable reduction of possible choices in the technical design of the local waste collection and treatment systems. They were also encumbered by high investments, resulting from the new legal obligations. This increasingly contributed to conflicts in local politics about rising waste charges.

From a retrospective perspective, this policy of environmental modernisation seems to be an important element in the successful attempt of the Federal Government to solve the political conflict with the German environmental movement, within just a few years. At the same time, and in interaction with European regulation, the resulting changes in traditional institutional settings created the basis for transformation of this up-to-then municipal task into a service offered by the market. This process is still going on, and leads to a permanent readjustment of only recently achieved environmental standards in the waste management economy, because the marketisation process constantly creates opportunities for the actors and interest groups involved to renegotiate and reinterpret them. By the end of the 1990s, the absence of clear and uncontested regulations for this sector had led to a regulatory crisis which hit the municipalities and their service units in particular. The still unfinished liberalization of the waste management sector can thus be interpreted as an example of an "unordered deregulation" which causes considerable problems.

The developments show, at the same time, how public discourses are connected with institutions and institutional settings, and how they contribute to change.

Furthermore, the examination of the liberalization process of the German waste management sector points to the importance of central government settlements in a country, whose municipalities are perceived, from the perspective of international comparative local policy research, to have a comparatively high degree of political, and organisational scope. My study of the German waste management system illustrates that in a decentralised political system, central deregulation goals are accomplished largely via indirect mechanisms.

### **Combining Institutionalism and Discourse Analysis**

The analytical approach that underlies this work links institutional perspectives with discourse analysis. "Institutions matter" here in various ways: Regarding local level policies, the purviews of municipalities and local actors are regulated by the German local government system. Its consequences and particularities are discussed in comparative and German local policy research (For overviews, see: Lidström 1999, on comparative policy research; and Wollmann 2000, on German policy research). In order to understand the relations between government levels, and the consequences of constellations across levels, the effects resulting from German federalism and Europeanization have to be considered. For explaining these phenomena, actor-oriented institutionalism theory proves to be valuable (Mayntz, Scharpf 1995; Benz 2001). However, while empirical findings, concerning identifiable effects of political structures, support this form of theorising, the theory has difficulties explaining interactions between political structures and dynamic societal processes.

Here, discourse analysis comes into play. According to the definition of Hajer (1995), discourses are interpretations of societal and political processes, by certain actors. These interpretations result in shared assumptions about causalities between problems, and subsequently in necessary political decisions. This often includes a normative dimension of shared basic values among the actors involved. Actors, who share such "storylines", agree about the subse-

quent political goals and actively support them, are regarded as members of discourse coalitions. In this paper, the term “policy coalition” will also be used. My conceptual approach emphasises the relevance of public (but also discrete inner-organisational) argumentation and basic beliefs. Moreover, actors do not necessarily have to be formally related. Thus, this research perspective has been particularly fertile for understanding the conflicts of environmental and social policy (Brand et. al. 1997; Nullmeier 2001). Regarding Germany’s waste management in particular, my work draws on Keller (1998) who identified two opposing waste policy coalitions that differ substantially in their core assumptions and political goals.

My paper will use references to both strands of literature to investigate how effects of institutional settings and normative conflicts within society impacted on the regulative frame conditions of the waste management sector.

### **The Environmental Waste Management Conflict as a Subject of Local Policy**

Like in other industrialised countries, the amount of waste produced in Germany has constantly increased, parallel to the economic recovery following the 2nd World War. The shortage of suitable disposal capacities became a permanent topic in professional journals. Reacting to this situation in the early 1960s, more than 20 cities started to plan large incineration plants. Experts developed proposals for the erection of organised and maintained landfill sites as well as recycling systems, in order to modernise the waste management system which still operated "like in Abraham's time". At that point, municipalities still enjoyed a high degree of autonomy concerning all important decisions on waste management. The Water Conservation Act of 1960 led to first limitations, confining the erection of landfills in water conservation areas. The implementation of a specialised waste management law began with the 1972 Waste Act which was intended to modernise waste management in rural areas, by shifting the responsibility for this task to the administrative districts. As a result, approximately 50.000 smaller dumping sites were replaced by a few hundred large scale landfill sites. These had to pass legally defined and standardised approval procedures, under the supervision of state authorities.

Increasingly, the public became aware of the amount of waste. Especially one-way products and packaging materials attracted the attention of experts, politicians and households, since the citizens were confronted with them, as part of their everyday life. More important types of waste that contributed a much higher percentage to the total amount of waste, or to pollution, rarely caught the public’s attention. Important examples for such unnoticed types of waste were construction materials, industrial sewages or remains of production processes.

As a result of the engineer-based, and technology-orientated tradition of their infrastructure and service departments, the municipalities reacted by expanding the capacities of all parts of their waste management system. A second, fundamentally different perspective developed simultaneously and progressively, in some parts of society: At the beginning of the 1960s, only a few intellectuals were concerned with the negative effects of the modern way of life in industrialised societies on the global environment. In the middle of the decade, these cultural critics increasingly found an echo in the public debate. By the beginning of the 1970s, the

topic of waste had become a permanent subject of reporting by press and television. Within a few years, more than 20 toxic waste scandals shocked the public. Other pressing issues were the desolate condition of landfill sites, financial problems, and concepts for recycling strategies. Media analyses show that by 1976 – the year of the dioxin catastrophe in the Italian city of Seveso – reports on environmental issues had tripled, and increasingly included political disputes on responsibilities and proposed solutions (Keller 1998).

The growing environmental movement in Germany considered the waste plight as the logical result of production, marketing and consumption. From this perspective and its critical judgement of Western culture and its economic system, environmental problems could only be solved by interventions into production, and the protection of natural resources. Given the strong orientation of individual free choice to consumption within German society, it is not surprising that this critical, normative orientation remained limited to a small minority. Still, this perspective gained influence and importance, when the dominating orientation towards market and technology proved to be incapable to meet essential challenges for a long period of time.

In the years after 1976, the public increasingly regarded dioxin as a symbol for all environmental and health risks, resulting from industrial plants, and large units, based on incineration processes. When the public debate turned to the dioxin emissions of incineration plants and landfill sites, the responsible authorities denied the existence of dangers for years, to ensure the urgently needed extension of waste management capacities. While this strategy resulted in a dramatic loss of public credibility, the growing expertise of the increasingly professionally working environmental movement became widely accepted. Its political demands aimed at waste avoidance, and pollutant bans within the production chains.

In the early 1980s, the NIMBY-style<sup>ii</sup> public action groups, founded by eventual neighbours of waste treatment facilities, gained political importance, by forming alliances with larger NGO's concerned with environmental issues, and local alternative parties or their election campaigns. By the end of the 1980s, the public debate and resistance had reached such an extent that experts considered new incineration plants or large scale landfills no longer enforceable. The political controversy reached its peak in 1991, with a referendum concerning the Bavarian Waste Management Act, which the public treated as a polarised decision between incineration plants, and an avoidance strategy. The Bavarian government could finally gain acceptance for its proposal, after having taken over essential positions from the incineration critics. For the protagonists involved, a solution of the waste management problem increasingly became "the decisive environmental policy task of the decade", as Klaus Töpfer, the Federal Secretary of Environment, put it.

Referring to the various actors' characteristics, Keller (1998) labelled the dominant one of the two waste policy coalitions "the traditional discourse coalition". This coalition considered a market-based consumer society to be of central political value, and bureaucratic and technological measures as the most feasible and effective ways to solve problems. As actors, it included liberal and conservative parties, governments dominated by them, and large parts of the media. The Social Democratic Party has been divided, with the majority belonging to the traditional discourse.



The opposing coalition was called “the critical discourse coalition” because it was based on the belief that the existing social order is inevitably linked to environmental crisis. Technical measures were thus regarded as futile. It included large parts of the environmental movement, the Green Party, the smaller part of the Social Democratic Party and parts of the media.

### **The Municipalities’ Role in the Waste Management Crisis**

As a result of the municipalities’ responsibility for waste collection and treatment, the municipalities were inevitably the venue for conflicts about waste politics. The concerned authorities of the Länder (i.e., states) - responsible for the legal supervision of municipal tasks - often had to press the municipalities to develop plans for new waste treatment facilities, since local politicians feared public controversies about new locations. At the end of the 1980s, the professional scene agreed that without sufficient expansion the existing landfill capacities would be exhausted within five years. The crisis of the waste management system, which had been feared for a long time, threatened to become reality.

An empirical comparison between the municipal waste management strategies of seven German cities (Osthorst 2001) shows how the municipalities have reacted to these challenges: As a consequence of all the problems described above, many municipalities were ready, for the first time, to start extended experiments with new forms of organising waste management, and to approach citizen action groups in order to regain acceptance for local waste policies. Within this process, the municipalities became part of one of the two opposing waste policy coalitions, described above.

To various degrees, the examined municipalities developed systems for recycling different materials, to relieve the pressure on existing treatment facilities. Some cities (Nuremberg, for instance) became protagonists for new strategies, and managed to separate one third of the domestic garbage for recycling before the dual system was implemented, while others only reached a quota of seven percent. New instruments were staffed reception centres for materials to be recycled, service officers responsible to raise public awareness, and the separate collection of organic waste.

In all municipalities that were part of the study, the local system of charges was altered to motivate the households to participate in the separation of waste materials. Strictly use-dependent systems, in which each single emptying of the garbage bin was controlled, showed a more radical effect than charging systems’ content, with allowing households a choice between various bin sizes. One problematic side-effect of the changes was that the municipal waste management units steadily lost parts of their revenue from the content charges (Petrowsky, Osthorst 2000).

In several cases, the intensity of local conflicts about waste treatment facilities was reduced by the integration of environmental action groups into participatory planning processes, in order to reach consensus about local waste management strategies.

Unnoticed by the public, the lifetime of existing landfills was extended, by excluding important parts of the total waste volume (like building rubble and excavated materials) from using landfills, and by imposing the use of recycling plants on them, by local regulations. For other forms of commercial waste the charges were raised, as an incentive for waste prevention.

These strategies can be understood as a development towards differentiation of previously standardised waste management structures which no longer met the demands. The development towards a differentiated structure was particularly distinct in cities with obvious lack of waste management capacities. The heads of the respective municipal environment departments, in many cases members of the local Green Party, also proved to have a decisive influence. They were particularly successful in constellations where they managed to act unanimously with other important groups of the local council. This was regularly the case when their proposals managed to reduce costs.

Some municipalities used a variety of instruments to avoid waste, and to change consumption and production patterns. To demonstrate their sympathy and support for the discourse of the environmental cultural critics, the local projects included actions and strategies, such as: pilot schemes with schools; having single local enterprises, or all companies of a specific sector, ban one-way packages at public events; or imposing municipal taxes on one-way packages in fast food restaurants.<sup>iii</sup> As administrative instruments, these initiatives did not show any measurable effects, since they could not overcome the limitations of waste management as an “end-of-pipe-system” attached to societal production and consumption. The differentiation of the waste management system reached its limits because the municipalities’ had only restricted possibilities to organise and subsidise a market for recovered raw materials.

Weaker forms of differentiation of the waste management system were developed in municipalities where sufficient waste management capacities were available long-term. In these cases, the local actors regarded additional forms of waste treatment primarily as cost drivers. Open sympathy and support for the traditional waste policy coalition existed only in municipalities where new waste management facilities had to be fought through, against the political resistance of the environmental movement. Their critical position concerning the risks resulting from these facilities and plants was widely judged as irrational by the dominating actors of the local regime.

### **From Technical Modernisation of Waste Treatment ...**

To overcome the widespread resistance blocking the extension of waste management capacities, and particularly to restore the credibility of the official environmental policy, the CDU-led Federal Government achieved several settlements, between 1990 and 1994, which have fundamentally altered waste management in Germany (Osthorst 2002).

In 1991, the Packaging Ordinance installed a full-coverage recycling system in Germany, which ensured the collection of this part of household waste, with its crucial symbolic importance, and guaranteed subsidies for processing and recovering useful materials. The Packaging

Ordinance had to be fought through, against the resistance of, both, the environmental movement, demanding a real prevention and reduction of waste, on one side, and the protest of trade and commercial associations, fearing restrictions on market solutions and competitive disadvantages, on the other side. Viehöver (2000) shows, how the political process of developing the Packaging Ordinance split the social and political groups supporting the CDU-led German government into a group of moderate regulators, and another group of opponents of environmental regulation. The ordinance had the aspired effect: Despite all environmentalist campaigns against problematic aspects of recycling, the majority of the population accepted the separation of waste as an important every-day-life contribution of the households to the solution of the waste management problem.

For the municipalities, the ordinance meant a first reduction of their responsibility, as a public authority, for waste management, in favour of supra-regional private-sector waste management structures. At the same time, the new system guaranteed the sale of collected raw materials, which until then had been the major obstacle for municipal recycling systems. It also promoted the development of new technical solutions for recycling and recovering materials, which in turn led to higher efficiency and cost reduction. In the years following the ordinance, most of the differences between the respective municipal waste management systems and local quotas of collected recycling materials disappeared. A few differences still remain, primarily concerning the collection of organic waste, and due to local differences of the respective social and spatial structures.

With the 17th Federal Pollution Protection Ordinance (17. Bundesimmissionsschutzverordnung - BImSchVO) of 1990, the Federal Government drastically intensified the regulation of exhaust gas from incineration plants, with tight limits for dioxins and furans, thereby stipulating a regular after-burning of the exhausts, as well as the installation of expensive additional filters. As a result of these standards, the core problem of dioxin emissions could be considered resolved. This fact was recognised by the majority of the environmental movement's protagonists with some years delay only, and it dispelled their criticism against incineration plants (Lahl, Zeschmar-Lahl 1991). With the so-called "Investment-Promotion-Act" of 1993, the Federal Government limited the possibilities for legal and public interventions into planning procedures of incineration plants, and other types of public and private infrastructures.

The Technical Instructions on Waste from Human Settlements (Technische Anleitung Siedlungsabfälle, TASI) of 1993 tightened the requirements for landfills, so that after 2005 waste disposal was only possible after previous incineration. This led to a shift in the political controversy among the two waste policy coalitions because now, solutions favoured by individual municipal waste management units and environmental groups came under pressure. Especially the practice of combining landfills with mechanical and biological treatment of waste had to prove that it was without risks, and that it would meet the newest standards of incineration technology.

The previously prominent and intense political conflict about the major decisions concerning the development of a new waste management system increasingly became a dispute around technical problems, of interest only for professional audiences (Lamping 1997).

As to the relations within the multi-level German governance structure, the waste management crisis proved that streams of waste materials can only be handled effectively by centralised solutions on the national level. The specification of standards and the management of political modernisation aims in waste management definitely became tasks of the Federal Government, with the municipalities losing autonomy and turning into implementers of federal regulation.

Because of its initiatives, the Federal Government succeeded in the political conflict with the environmental movement about waste management. Large parts of the public who had previously sensed threatening delays in the technical and institutional implementation of offered solutions now accepted the Federal Government's policy as consistent with their demands. Therefore, by the mid-1990s, the far-reaching cultural criticism of parts of the environmental movement had lost its resonance in German society.

Correspondingly, the symbolic commitment of the municipalities to one of the two political discourses progressively lost its meaning. Environmental movement representatives who had gained leading positions in municipal environmental administrations became integrated into the traditional professional and political discourse, which partly changed and became more pluralised.

### **... to the Deregulation of the Waste Management Sector**

As mentioned, with the modernisation of their waste policy, and within the context of this political shift, the CDU-led Federal Government introduced a new strategy for their environmental policy – partially against economic and commercial resistance – which seemed capable of regaining the support of the public majority. To distinguish this strategy from, both, more radical environmentalists concepts, and opponents of environmental regulation defending free market solutions, the Ministry of the Environment created the idea of a "closed substance cycle economy" ("Kreislaufwirtschaft"), in which recycling solutions reintegrate waste, as recovered raw materials, into the market for tradable goods. The vision was that, finally, the municipalities would only be responsible for the remaining non-reusable rest. In 1996, the Closed Substance Cycle and Waste Management Act (Kreislaufwirtschafts- und Abfallgesetz) took effect. It followed these principles, and defined the recycling of commercial waste as a private-sector task.

This law was also a result of the increasing influence of European regulation on German waste politics. In 1989, the EC had developed a waste management strategy which reacted to limited resources and increasing environmental problems, by declaring the consolidation of recycling and the avoidance of waste high-priority goals. This strategy reflected the existing environmental conflict on the European level, with the same problems as those previously debated at the national level, and with comparable actor constellations. Problems of resources and the lack of waste treatment capacities were to be solved by a market for recycled raw materials which now should be treated as tradable goods. Based on this strategy, the European Waste Directive of 1991 prescribed, among other things, the use of the European legal definition of waste in the member states' national law. One consequence of this European regulation, which

is still effective today, was that it created a fundamental contradiction between the goal of integrating the waste management sector into the common market, on the one hand, and the aim of ensuring sufficient high-quality waste treatment capacities on the national level, on the other hand (Jäger 1996).

The European legislation on waste management became possible only in 1986, as a consequence of the Treaty of Rome, when the "Single European Act" amended the EEC-contracts, and included the aim of environmental protection as an area of European policy. Earlier regulations on waste management, like the First Waste Directive of 1975, merely had had an administrative character, and only obliged the member states to install some form of legal supervision of this sector (Jäger 1996, 225 pp.).

The regulations of the German Closed Substance Cycle Act of 1996 had indeed an impressive effect on German waste management: Within a few years, a fiercely contested market for waste recovery and recycling services of commercial waste developed. Expensive services, offering high environmental standards, could hardly compete with cheap but low-standard services. Obviously, the inferior recycling solutions that were offered intended, among other things, to save their customers the use of costly public waste management utilities, thereby provoking the critique of municipalities and their associations. But at the same time, the surplus of competing waste management capacities also arose from municipal landfills whose life-span had been reduced as an effect of TASI. The affected municipal waste management units often reduced their charges, in order to sell a high proportion of their capacities during the remaining years, as a way to regain at least parts of their investments, and to avoid a dramatic increase of charges for their local citizens. This strategy created the necessary preconditions for the criticised low-level recycling services which were (and some of them still are) situated in direct neighbourhood of landfills. Obviously, the main problem was that the legal framework defined no requirements regarding the standards of reuse, recovery or recycling solutions.

This legal uncertainty had far-reaching consequences for the municipal waste management units, and the municipal waste policy's scope of action.

The low exploitation of many municipal facilities led to revenue losses which the respective units were not able to compensate by rationalizing their operations and adapting commercial management strategies. Therefore, in the second half of the 1990s, many municipalities increased the local waste charges for households every year, with the consequence of growing dissatisfaction of, both, citizens and municipal politicians. The stabilisation of waste management costs thus became a central performance feature for local waste policy. Particularly successful in this regard were municipalities who had set up their facilities later, in the second half of the 1990s, and were therefore able to adjust their capacities to the reduced volume of waste. But municipalities which could not make full use of the large capacities of old, and only recently modernised, incineration plants faced severe financial problems.

Almost all cities and administrative districts have looked for private sector partners, mostly from the small group of leading commercial waste management companies, or from the energy industry. Both were among the businesses which commercialised waste management

capacities. The co-operation of municipalities in regional networks, to ensure the maintenance of adequate capacities lost importance, when these processes proved, in some cases, to be extremely vulnerable to political blockades (Osthorst 2002)<sup>iv</sup>.

The combination of financial risks, high capital requirements for the legally specified environmental protection investments and the altogether problematic situation of the municipal budgets have been working as an incentive for the privatisation of municipal waste management units. While the municipalities have been selling parts of their waste management services, a small group of national, and partly even international, enterprises has emerged which offer different forms of municipal services (Verheyen, Spangenberg 1998).

After 1996, these developments created the background for an intense legal and political controversy involving the municipalities, the private waste management industry and their respective associations, single Länder, and the Federal Government. The contested issue was the legal differentiation between "waste for disposal" and "waste for recycling" – the first one being within municipal responsibility, and the second one meant to be recycled by private-sector companies.

Before 1998, the CDU-led Federal Government had stated occasionally that such turbulences were fostered by the phasing-out of the locally organised small-scale waste management system, only capable to maintain an end-of-pipe orientation. This strategy should be replaced by a privately organised supra-regional recovery and recycling industry. Thus, the eroding position of the municipal waste management was regarded as a transitional crisis, enabling the development and growth of more modern waste management structures. Consequently, the CDU-led Federal Government always rejected demands for amendments of the Closed Substance Cycle and Waste Management Act.

After developing drafts with substantially contrasting orientations, the Social Democratic/Green Federal Government, which followed the Christian Democratic Government in 2002, passed a commercial waste ordinance which became effective in 2003, thereby fulfilling important demands of the municipalities. For example, the ordinance obliges commercial waste owners to keep materials to be recycled separate from waste to be treated. Whether or not this regulation will cause conflicts with European norms, and whether it will contribute to the stabilisation of the municipal waste management systems, remains an open question.

The Federal Government understood its regulation as a clear signal that municipal waste management was still meant to be an important part of the local services structure in the future, thus referring to the German debate about the concept of "Daseinsvorsorge" which has been used as a label for the traditional institutional settings of the local welfare state (Osthorst 2002: 44pp.). Whether this suffices remains doubtful because in the meantime, associations of the private-sector waste management industry and municipalities are expecting the EU to turn the responsibility for domestic garbage into a private-sector task (e.g., Kelling 2002).

Another highly contested area, through which different actors have increasingly tried to sustain and enlarge their scope and market position, is the interpretation of European law.

In several cases, the European Court of Justice has decided against municipalities which tried to prevent cross-border transports of mixed waste to foreign recycling facilities, and wanted to

impose the use of their own waste management facilities instead (Tettinger 2000). The court's decisions were an effect of the principle that European law cannot be changed by national regulations, and that in case of conflict, the European law supersedes the individual member state's law. In the case of waste politics, this means that the liberty of trade within the European market may be limited by environmental regulation, but only by means of EU law (Krämer 1999).

Commercially attractive are various forms of energy, included in waste. Burning waste is seen as a way of recycling, both, in German and European law. The co-burning of waste in facilities of the cement industry, for example, has been subject to less strict norms while the municipal incineration plants have to meet the strict standards of the 17th Pollution Protection Ordinance, as a result of the environmental policy controversies of the 1980s.

These distortions were further amplified by the varying standards of individual EU countries, and were to be removed by the EU Waste Incineration Directive of 2000, which distinguished between recovery, recycling and treatment, as different forms of preparation for disposal. It was primarily focussed on usable energy, thus aiming at a market for high-quality energy use.

The EC Directive on Landfills, which was passed in 1999, after long-standing discussions between European institutions and member countries, defined the requirements on landfills. In the face of sometimes very low standards of existing disposal facilities in several member countries, the regulation only defined minimum requirements on a comparatively low level. Municipalities and environmental pressure groups therefore feared that landfills with unequal standards might compete with each other in future (Tomerius 2000).

### **Liberalization via Denial of Regulation?**

Thus, in the second half of the 1990s, the interaction between the national German waste policy and European regulation resulted in a form of liberalization of public services, which successively eroded the position of the German municipalities as operators of waste management facilities and services, via highly uncertain economic and legal frame conditions. It must be assumed that at least the CDU-led Federal Government, which was in office until 1998, intended "liberalization via denied regulation". Their approach towards waste management represented a style of politics, meant to achieve the aim of the waste management sector's marketisation, by the anonymous effect of economic constraints. It can be understood as a reaction to the complex and hardly governable requirements of political and constitutional coordination within the German multi-level system.

At the same time, EU regulations, meant to promote the development of the single European market, appear, from a national perspective, as constraints whose origins cannot be connected to any obvious protagonist.

A major problem on the European level has been the unclear relationship between free trade and environmental regulation. The regulative regime for the waste management sector is lacking legal norms which could direct the trade of waste materials effectively, by political crite-

ria, and thus guarantee a high standard of environmental protection. This is particularly true in cases where the priority of European law endangers the effectiveness of existing national regulations. In the case of differentiation between waste to be prepared for final disposal, and tradable materials to be recycled, all protagonists are trying to use the gap between different forms of regulation to defend their interests, and to expand their scopes by political, economic and legal means. The result is that conflicts about waste management are estimated to be responsible for about one quarter of all proceedings of the European Court of Justice.

Another deficit is the absence of a regulation regime, settling the rights and possibilities of municipalities in the area of public services in general, and waste management in particular. Even if, in the future, municipalities will mainly act as contract awardees of waste management services in a liberalized economic environment, they would still have to co-ordinate the different parts of the waste management system, which must be adapted to the local "venue". The municipalities will therefore be dependent on effective EU and federal legal support, to safeguard their interests against a growing, and increasingly internationally interwoven, public-facility management industry, and to fulfil their role as guarantors of local public interests and organisers of local public services.

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<sup>i</sup> In German law, larger cities often combine their legal status as a municipality with an administrative district status, and become independent cities (“*kreisfreie Städte*”). In total, 323 administrative districts (“*Kreise*”), with 14.561 municipalities as members, exist, besides 116 independent cities. Furthermore, three cities (Berlin, Hamburg and Bremen) have the status, including all legal rights, of a state (“*Bundesland*”). To complicate the situation further, after 1972, administrative districts in rural areas often contracted out their newly gained responsibility for waste management, to towns which had already developed local waste management systems. Following German parlance, I will call all these types of authorities “*municipalities*” in this article.

<sup>ii</sup> "Not-in-my-backyard"

<sup>iii</sup> By 1998, 45 German cities had introduced different types of municipal taxes on one-way packages, usually aiming at fast food restaurants. In 1998, these local taxes were suspended by a supreme-court decision (Hennerkes 1997: 648).

<sup>iv</sup> Especially the collapse of the *Umlandverband Frankfurt* in 1999, as a result of political conflicts over regional waste policy, gained attention in the German discussion on forms of regional co-operation (see the case studies in Osthorst 2001).

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