

## **Must try harder: EU waste legislation and the problem of compliance**

By Dr Caroline Jackson, European Parliament Rapporteur on the Landfill and Waste Framework Directives, Chairman of the Institute for European Environment Policy.

Very soon now the European Commission will be publishing the results of a feasibility study being carried out for it by the Belgian consultancy 'Milieu' into the case for establishing a European Waste Implementation Agency. It is heartening that the Commission is grasping this nettle. In its own words 'Waste is one of the two areas of the EC environmental *acquis* subject to the highest number of complaints, petitions, parliamentary questions, and infringement cases'. (The other is nature protection legislation.)

The study will analyse the different areas in which an agency might work. These could include: providing analysis of technical issues relevant to updating EU waste legislation; organising training for Member State officials and supporting Member States on enforcement eg through coordination and strengthening activities and (my italics here) *possibly the carrying out of investigations, inspections and controls*. The study will look at the environmental, legal, organisational, financial and other implications of creating and operating such an agency.

Do we really need this? Yes I am convinced we do and I think we need to go the whole way, giving such an agency adequate powers to investigate and inspect.

The EU now has a wide spectrum of measures in force on waste management. The last 25 years have seen a rich harvest of new laws, some with major implications for national waste management practices (the landfill directive), some introducing the idea of producer responsibility (WEEE, packaging waste and the end of life vehicles directive), some revisiting old ground with new definitions (the waste framework directive), some designed to deal with particular pollution problems (CFCs; waste incineration) and one – the waste shipment regulation – designed to ensure that the EU does not simply export its nastier wastes to third countries for disposal there.

All have one thing in common: no-one can really swear, hand on heart, that they know how individual member states are implementing them, in detail, on the ground. But the Commission knows that all is not well: officials admit that waste is not a top EU priority, that national waste management plans are often just pieces of paper, and that states under-report potential infringements while cases of non-compliance before the Court of Justice can take years to resolve. The record of the landfill directive is instructive. Adopted in 1999 it requires the closure of all illegal sites at the latest by July 2009. Yet the Commission suspects that large numbers of illegal sites are still operating, putting the figure at 5,000 in Italy and 1,500 in France.

Does non-compliance and poor enforcement matter? Yes: uneven implementation of laws that increase business costs means unfair competition between EU Member States. It is also a betrayal of public trust. EU environment policy is sold as the desirable 'green' face of the European Union. It doesn't do the EU's fragile reputation much good if policies that are welcome are seen not to work.

So what are the difficulties in the way of better compliance in the waste sector? I think the main problem areas are as follows:

- The type of legal instrument used by the EU does allow Member States considerable latitude. Most, though not all, EU waste laws are directives which means that, although Member States have to carry out certain policies and (perhaps) reach certain targets, the means that they may use to achieve those ends are up to them. So some degree of variation is built into the system and compliance with most EU waste management laws is not an orderly race. Indeed it is made more chaotic by the fact that, in some countries, responsibility for waste management is devolved to regional authorities and governments who may only communicate with Brussels through their national governments.
- The European Commission has the constitutional role of ‘guardian of the Treaties’. It brings actions in the Court of Justice against countries for non-compliance with EU law; defaulting countries may face a fine. But for the process to work the Commission needs to know what is going on. Given the degree of permitted variation that directives allow, this is a complicated task. It is made more difficult by the fact that Member States evade/avoid/forget their obligations, in all waste laws, to report to the Commission on their progress in implementing those laws. If reporting is late, supervision is hampered, court actions are delayed – and non-complying Member States thus buy several useful years of non-compliance, quite at variance with the obligations they signed up to when they participated in the adoption of waste directives.
- The Commission lacks the means to pursue a policy of more active supervision of compliance. Ideally what it needs is an information system that follows steps towards compliance in all Member States from the point at which legislation comes into force. The European Environment Agency in Copenhagen does a good job in collating, commenting on and publicising the data that Member States and others send it. But it has no role in verification of that data, and no powers at all to carry out inspections to see what Member States are up to. In fact, and bizarrely, in default of any reliable stream of evidence from Member States, the Commission does rely to a surprising extent on complaints from members of the public as the trigger for many of its actions before the Court of Justice. This is why the Commission has turned to the idea of a Waste Implementation Agency to help them out.
- To date, poor emphasis, through impact assessments attached to new laws, on the cost of new waste laws has meant that Member States have signed up to laws they cannot afford to implement. Impact assessments on MEPs’ amendments to draft laws have been lacking too. I well remember hearing an MEP declare she was simply not interested in the cost of her amendment to the packaging directive – which went through. Impact assessment is now rising up the Commission’s order of priorities though the European Parliament has yet to take it seriously – at least in the Environment Committee.
- The European Parliament has not been as much help to the Commission as it should have been on implementation issues. MEPs are much more interested in putting through reports on new laws than they are in reporting on what has happened to existing ones. This is a sad neglect of an aspect of public concern (‘Why is it that we comply with EU laws when others don’t?’) that MEPs of

many nationalities encounter at election times. It could offer a very rich field for parliamentary investigation and exposure of malpractice.

So that is the gloomy background. Where do we go from here?

- **Specifically on waste we should be arguing loudly in support of the establishment by the Commission of a Waste Implementation Agency. Member States will resist: the Commission needs support. The British always proclaim they abide by EU law to the letter – so we have nothing to fear...**
- Almost all the potential new Member States over the next 30 years are going to be poorer than the founder states, and therefore will find it difficult to comply with the laws we now have in place. Here we need 'transparency'. Politically their entry may be unstoppable, but at least they should start with a clear view of where they still need to bring their environmental systems up to current EU standards. Otherwise things will go haywire from the beginning. Serbia is apparently aiming to beat the EU entry speed record: who knows whether it can already comply with the waste management laws that we struggle with? Will they simply be part of the great bundle of laws that new members accept?
- MEPs have a key position in ensuring good compliance – if they choose to use it. The omens are not good. As Chairman of the Environment Committee 1999-2004 I found my colleagues reluctant to take up the cudgels on this issue. What they wanted was a heavy diet of new law, with rich rapporteurships attached. What they never saw was that they could make their names if they took up compliance issues energetically. MEPs should now be holding hearings on compliance with **existing** EU law before they agree to consider amendments to it. For example they now have an opportunity to do just this with the 're-cast' of the WEEE directive. It is not encouraging that the Parliament's senior civil servants have almost ignored compliance as a subject for MEPs' activities in a paper put together for the President ('EU policy challenges 2009 – 2019', published by the Cabinet of the Secretary General). The paper seems to be searching rather desperately for things for MEPs to do, but misses this key area. MEPs must be made to realise that compliance and enforcement are activities where there is a very important and prominent role for them to play.
- Meanwhile, non-governmental organisations with a pan-European reach – the European Environment Bureau, Friends of the Earth, Greenpeace, etc – should be encouraged to produce reports on compliance with existing EU law and to liaise with MEPs to see that the information gets to them. Why are they not campaigning on this theme?
- The new Environment Commissioner should be bold and implement a six-month moratorium on work on all new draft laws while he carries out an audit of what exactly is happening to the laws in place.
- National Waste management organisations such as CIWM must be prepared to come above the parapet and urge the Commission to take up the idea of the Waste Implementation Agency. Otherwise we are all conniving in a conspiracy of silence that ultimately does nobody any good.

Caroline Jackson. 12 January 2009