

May 2012

EU waste law: the challenge of better compliance

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Key Messages

- Waste management in the EU is improving, but the goal of decoupling waste generation from economic growth has not yet been achieved.
- Implementation by the Member States of EU waste legislation remains patchy; persistent failures need to be addressed – with potential economic benefits.
- EU waste legislation *has* resulted in successes; annual awards or prizes to highlight and celebrate good waste management practices and progress would help motivate authorities to improve performance.
- It is important to get legislation right from the start; better impact assessments (in particular by the Parliament on its proposed amendments) prior to the adoption of laws would help.
- Progress must be made in knowing what is happening in the Member States; in the absence of a supra-national waste authority, MEPs could contribute by holding Environment Committee hearings on implementation and related waste management progress.

Introduction

Waste is an area of policy where the European Union (EU) is very active. Its involvement has developed over some 35 years but there are still enormous problems in ensuring that the waste laws it adopts are transposed into national law and then properly implemented by all the Member States. The European Commission is now discussing the draft 7th Environment Action Programme (7th EAP) and in this context has published its Communication on improving the delivery of benefits from EU environment measures.¹ It is very important that in developing new strategies the Commission should revisit and address the persistent implementation failures in

¹ Commission Communication: Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness, COM(2012)95, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0095:FIN:EN:PDF>

relatively mature sectors of policy, such as waste, where things are still not moving smoothly, as well as tackling newer environmental challenges such as climate change, biodiversity targets and the broader resource efficiency agenda. Full compliance with existing waste law would provide a major step forward in the transition to a resource-efficient, low-carbon economy. This paper contains some ideas in this direction.

The story so far

The first EU legislation covering the generation and treatment of waste was introduced in 1975, and there are now over 20 pieces of legislation in place on waste management. These laws have been designed to bring about a major change away from the widespread dumping of waste in landfills to the imaginative exploitation of waste as a resource that can be re-used, recycled or treated to produce energy. Such a change, in many countries, has been expensive and politically difficult to implement. The enlarged EU faces major challenges in securing proper compliance across the whole field of its legislative activity – but waste poses particular dangers to the health and well-being of European citizens.

The EU has chosen mainly to use directives to legislate on waste measures, allowing Member States some latitude in the way they put policies into operation, but the ‘targets’ set out in directives are understood to be legally binding. The patchy implementation of waste management law now being revealed within the EU suggests that Member States were, in some cases, prepared to sign up for what they knew they could not implement within the given timescale or –

to put it more charitably – for what they thought they could implement but found they could not. At the same time, the inadequate follow up by the European Commission whose role is to safeguard the integrity of the Treaties, suggests that it neglected these duties, or – to put it more charitably – that it lacked the means to police the system.

Either way, the problems of implementing EU waste law mirror, in a distant corner of the field, the much bigger implementation battles taking place over the rules governing the Euro. The questions at the root of such conflicts are basically the same: how can the EU’s central institutions effectively monitor what is happening in 27 countries? How does the EU collectively keep individual countries on the straight and narrow? What are the appropriate penalties for failure to comply with legal obligations, and which institution should apply them?

The state of waste: where are we now?

The European Commission published its first broad Communication on waste² in September 1989, admitting that it was ‘extremely difficult if not impossible’ to estimate the quantity of waste produced in the EU. It cited in particular the ‘lack of a single nomenclature’ – that is, a definition of waste. This is still a problem today: national statistics drawn up on different bases can skew comparisons. For example ‘municipal waste’ is a description which includes business waste in some countries but not in others. One statistical phenomenon noted by Eurostat is that data availability is actually higher now in

² A Community Strategy for Waste Management, SEC(89)934, 18 September 1989, <http://aei.pitt.edu/5679/>

the newer Member States than in the old EU15.

However the latest figures^{3,4} are as comprehensive as possible and show, firstly, that the amount of waste produced in the EU has grown even as politicians have been pre-occupied with reducing it. To a considerable extent this reflects the failure so far to achieve the goal of the 6th Environment Action Programme to 'decouple' waste generation from economic growth. Thus in 23 of the 31 countries covered by Eurostat the amount of municipal waste generated per capita increased between 1995 and 2009, with the highest annual growth rates recorded for Malta (3.9 per cent), Greece (3.5 per cent) and Denmark (3 per cent). The total municipal waste generated in the EU27 in 2009 was 256 million tonnes. In 2010 in the EU27, 502 kg of municipal waste was generated per person, and 486 kg of municipal waste was treated per person. The amount of waste generated in each country varies considerably: Cyprus with 760 kg per person was the highest, followed by Luxembourg, Denmark and Ireland with values between 600 and 700 kg per person. The UK comes in the next group with values between 500 and 600 kg. The lowest values – less than 400 kg per person – were recorded in Lithuania, Romania, the Czech Republic, Poland, Estonia and Latvia – all countries where

there may still be a considerable amount of illegal waste dumping beyond the recorded figures.

The treatment methods used also vary. This is perfectly legal, as EU directives allow for freedom of choice as to the method of implementation. Overall in the EU27, 38 per cent of municipal waste was landfilled, 22 per cent incinerated, 25 per cent recycled and 15 per cent composted in 2010. This total masks huge variations: Bulgaria still landfills 100 per cent of its municipal waste; Denmark (54 per cent), Sweden (49 per cent), The Netherlands (39 per cent) and Germany (38 per cent) have the highest shares of municipal waste treated by incineration; recycling is most common in Germany (45 per cent) and Belgium (40 per cent), while Austria has the highest rate of waste treated by recycling and composting (70 per cent). This inevitable mosaic of practices and rates makes more complex the task of tracking what is happening and ensuring that the (binding) targets are met.

The second point to emerge is that there *has* been a major shift away from landfilling of waste, the main aim of the 1999 Landfill Directive. The Directive requires Member States to reduce the amount of biodegradable material going to landfills to 75 per cent by July 2006, to 50 per cent by 2009 and to 35 per cent by July 2016 - with the percentages being based on the amount of biodegradable municipal waste produced in 1995. Those countries which would struggle to meet these targets (Bulgaria, the Czech Republic, Estonia, Greece, Ireland, Latvia, Lithuania, Poland, Romania, Slovakia and the United Kingdom) received a four-year extension, meaning the final 'finishing tape' is July 2020.

³ Eurostat news release 48/2012, Landfill still accounted for nearly 40% of municipal waste treated in the EU27 in 2010, 27 March 2012, <http://europa.eu/rapid/pressReleasesAction.do?reference=STAT/12/48&format=HTML>

⁴ Eurostat Statistics in Focus 31/2011, June 2011, Generation and treatment of municipal waste, http://epp.eurostat.ec.europa.eu/cache/ITY_OF_FPUB/KS-SF-11-031/EN/KS-SF-11-031-EN.PDF

Between 1995 and 2009 the volume of waste landfilled in the EU fell by 45.6 million tonnes, an annual decline of 2.7 per cent. The share of landfilling in the EU27 dropped from 68 per cent in 1995 to 38 per cent in 2010. Where did it all go? The top of the waste hierarchy of alternatives – prevention – has not yet fared well. But the amount recycled has shot up from 21.8 million tonnes in 1995 to 59.2 million in 2009: the overall percentage of waste recycled is now 25 per cent, and when composting is included the total figure is 42 per cent. To the dismay of some, waste incineration has also increased and accounted for 20 per cent of EU waste treatment in 2009.

Some campaigners have welcomed the changes in waste management since 1999 as important advances towards the goal of the EU becoming a 'recycling society'. Given the behavioural and organisational changes that the introduction of recycling entails, the switch to recycling from landfilling has been quite a success. But we need to know more about what is happening: what are the destinations of the waste collected for recycling? To what extent is the 'treatment' of recyclable waste traded between the Member States merely a way of facilitating that trade before the waste is in fact disposed of (incinerated)? What controls do the Member States have in place on the illegal export of waste at a time when waste exports have risen steadily? As things stand, no-one in the EU has the answers to these questions.

The role of the Commission and the Parliament: failure in progress

The *general* failures standing in the way of full compliance with EU environmental law start with the poor, patchy and hard-to-compare data supplied by the Member

States to the Commission. Often such data are based on perfectly legal differences in definitions or interpretations arising from rather skeletal texts in the original directives. This makes any pursuit by the Commission, which can take countries to the Court of Justice over implementation, very difficult, if not impossible. Without regular and accurate data from the Member States many compliance cases in the waste field originate in complaints from members of the public, rather than from any planned pattern of policing. Although successive EU Environment Commissioners have expressed keenness to pursue implementation, in practice there has been a lack of will and resources. The same is true of the European Parliament, which might have followed up its work on the Waste Framework Directive, the WEEE, Batteries, ELV and Packaging Waste Directives, and the Waste Shipment Regulation with investigations into how the individual laws that MEPs helped to shape were working out in practice. However, MEPs have not considered this an appropriate area for their efforts over the long term.

In the general area of handling compliance issues there have been two recent developments. Firstly, the Commission introduced a central registry, called CHAP, in September 2009. This is a system for the registration and management of complaints from the public, which, it is hoped, will speed up the EU institutions' responses and improve their answerability to the public. Secondly, in 2008 the Commission introduced the EU pilot scheme – an early filtering system to try to resolve complaints without resort to legal proceedings. It is probably because of this scheme that the latest Annual Report on

the implementation of EU law⁵ shows that in 2010 the percentage of active cases of non-compliance triggered by complaints from the public, as opposed to the Commission's own investigations, was 40 per cent, down from 53 per cent in 2009. The Report notes that one fifth of all active cases are associated with environmental legislation.

Although they represent some progress, CHAP and EU pilot are essentially initiatives at the edges of the problem of non-compliance. The volume of complaints is setting the Commission a stiff task, particularly because it places so much importance on talking through with individual Member States the problems that they have before seeking action through the European Court of Justice. Another obstruction is simply the fact that Court cases take a long time to come to a conclusion. The pace here was set by the first instance of the Court of Justice's ability to fine a country for non-compliance with environmental law: 13 years elapsed between the initial complaint to the Commission in 1987 about uncontrolled waste disposal in the Kouroupitos river in Crete and the historic Court of Justice ruling that Greece must pay a penalty of 20,000 Euros a day until it complied fully with the relevant EU directives. A year later the European Parliament's Environment Committee pursued the matter to be told, in effect, that although the dump was closed in February 2001 the Commission was still unable to guarantee that Greece had taken steps to provide adequate

alternative treatment of the waste. Even then the Commission appeared rather relaxed about payment and the conditions of the fine set out by the Court.

On 26 January 2012 the Commission released news of its first 'infringement package' of the year. Four countries were highlighted for infringements of EU waste laws. Perhaps unsurprisingly, given its economic circumstances, Greece maintained its poor record. Illegal landfills are still being used on the islands of Zakynthos and Corfu, to the detriment of the health of its inhabitants. On Zakynthos, leakages and plastic bags from illegally dumped waste are threatening loggerhead turtles, although they are inside a National Marine Park. Alternative facilities for the waste are not expected to be ready until 2014, so the Commission hopes to speed things up. On Corfu, the Temploni landfill operates without any permit and, although the authorities adopted a remedial plan for the site in 2008, in practice nothing has happened.

Cyprus also has several illegal landfills, including the six which take all the waste from Nicosia and Limassol – a point that may have been conveniently overlooked when Cypriot EU membership was being negotiated prior to its accession in 2004. The Commission now has to take action to underline the need to comply with a directive adopted five years before, in 1999.

The case of another well-known offender, Italy, is being taken up by the Commission for its failure to transpose correctly the provisions of the 2006 Mining Waste Directive. Key parts of this needed to be implemented by 2008. Yet the Commission has detected 'shortcomings' in such areas as maintenance after

⁵ 28th annual report on monitoring the application of EU law, COM(2011)588, 29 September 2011, http://ec.europa.eu/eu_law/infringements/infringements_annual_report_28_en.htm

closure, and making information available to the public. The Berlusconi Government almost passed a decree to modify national law appropriately in the summer of 2011 but then lost heart or interest and nothing more has happened.

On the showing of this infringement package, the two largest continental Member States should not feel overly proud. France is on the verge of being referred to the Court of Justice for failing to implement correctly the 1993 Packaging Waste Directive, and Germany has failed to meet the deadline for putting the Waste Framework Directive onto its statute book.

All round it is a rather depressing start to the year. But things could get better: in its recent Communication on improving the delivery of benefits from EU environment measures, the Commission pointed out that full implementation of EU waste legislation is calculated to have the potential to generate 400,000 jobs and give rise to net costs that are €72 billion a year lower than under the alternative scenario of non-implementation.

The dangers of non-compliance with EU waste law

The Commission should now use the opportunity offered by the new focus on implementation and the crafting of the 7th EAP to announce that it intends to fillet out the cases of non-compliance with waste law to give them priority in a new campaign for better performance by the Member States. The Commission's recent underlining of its commitment to improving the implementation of environment law generally is to be welcomed. But waste law is especially important and the Commission now needs to be much more active both in using its

existing implementation tools and in developing new ones in co-ordination with the Parliament.

This prioritisation is justified because non-implementation of waste law poses serious dangers to human health, the welfare of the lands in which we live, and the future of the wildlife that the EU has set such store in maintaining and protecting. There are also very important considerations affecting conditions of competition. Waste infrastructure is expensive. Those countries delaying building it are gaining a temporary competitive advantage.

All the worst consequences of poor implementation are well illustrated in the case of the following directives.

The Landfill Directive has absolutely clear targets. By 16 July 2020 *all* Member States should be sending to landfill only 35 per cent of the total biodegradable municipal waste they sent in 1995. We know that this is extremely unlikely to happen. In July 2009 a Commission official told a conference on landfill that 'There is very little we can do regarding enforcing implementation'. A colleague revealed that the 7,000 or so illegal landfills identified were 'the tip of the iceberg' in the EU. Quite aside from illegal activity, eight Member States are still sending over 80 per cent of their municipal waste to landfill. Commissioner for the Environment, Janez Potočnik, mildly remarked as recently as 3 February 2012 'I think there is a major opportunity lying there'. The Commissioner also stated that whilst 'the State of the Environment 2010 report by the European Environment Agency gives us a pretty good picture of where we need to pay close attention in the future', it does not really detail the

position of each Member State. This is because the mandate of the Agency does not extend to requesting, still less requiring, data from the Member States. It does its best with what it has, and what the Member States choose to send it.

The consequences of poor implementation of this Directive amount to multiple damage, since poorly maintained illegal landfills (often dumps in remote rural areas) can damage the quality of groundwater, thereby endangering public health. They also encourage irresponsible disposal of potentially recyclable materials.

The **Waste Framework Directive** of 2008 also contains specific targets, the attainment of which by the Member States will probably be as difficult to monitor in practice as those of the Landfill Directive. Member States are to take measures 'designed to achieve' a target to recycle 50 per cent of waste from households by 2020, and a target to recycle, reuse or recover 70 per cent of non-hazardous construction and demolition waste by 2020. The Directive obliges Member States to establish waste prevention programmes within five years of its entry into force. The Commission knows that these waste management plans are often – in the words of a Commission official – 'just pieces of paper', but have committed themselves to monitoring them closely. One of the authors was present at a closed meeting with Member State representatives before the second reading where one civil servant representing Italy walked out, after declaring that his country would sign up to the Directive but stood no chance of complying with it.

The Hazardous Waste Directive of 1991 is one of the older pieces of EU waste legislation, so Member States have had more time to consider its implementation. Nevertheless, an IEEP report in 2009 found that the evidence of compliance submitted by the Member States omitted such key details as the precise nature of exemptions granted, and the nature of the inspections carried out. We do know that the newest Member States were admitted to membership when they were far adrift of EU waste targets and have made little progress since. In May 2009 IEEP reported that Romania had 53 hazardous waste landfills, only six of which complied with EU law. (This Directive was repealed and subsumed within the new Waste Framework Directive which entered into force in December 2010. Although the new Directive retained the majority of requirements for hazardous waste management, derogations are now provided from the ban on mixing hazardous waste with other materials if certain conditions are met, and the impacts on hazardous waste management of changes in how waste is defined are not yet clear.)

The 2002 **Directive on Waste Electrical and Electronic Equipment (WEEE)** also has specific targets which we are unable to monitor in any detail over the whole EU 27. It sets a separate collection target of at least an average of 4 kg per inhabitant per year, to be achieved from private households. This has now been increased in a revision of the Directive agreed in February 2012: from 2016, Member States must recycle 45 per cent of the average weight of all EEE put on the market in the previous three years. That includes WEEE from businesses and households, and equates to about 11 kg of

WEEE per person in the UK. After 2019, the target rises to 65 per cent (around 16 kg). Note that Sweden has already reached a 16 kg target, mainly through the introduction and operation of good producer responsibility schemes. So it can be done.

The urgency behind these targets lies not only in the desirability of recovering materials which are, in some cases, becoming more scarce, but also in the fact that so many of the chemicals used in EEE are dangerous to human health. The pressure for higher targets is therefore understandable. What is not satisfactory is the fact that targets are being promoted by legislators with no guarantee that their home countries can or will comply.

The issue is linked to another measure in the waste field – the **Waste Shipment Regulation**. There is plenty of evidence of the continuing illegal shipment of ‘non-green listed’ waste, hazardous and non-hazardous. The issue was brought into sharp focus by the case of the Probo Koala, an obscurely registered cargo ship which discharged toxic waste at Abidjan in the Ivory Coast in 2006. This was dumped illegally around the city, causing at least 17 deaths and poisoning many thousands. The waste had accumulated in the ship's tanks through inadequate cleaning and had actually been off-loaded and then re-loaded in Amsterdam without attracting the attention of the authorities.

Within the EU, 15 per cent of all transport movements involve waste. The Waste Shipment Regulation states that, to aid enforcement, Member States shall provide for spot checks at the point of origin, the destination, the frontiers of the EU and during shipment within the EU. IMPEL, the European Union Network for

the Implementation and Enforcement of Environmental Law, set up its ‘TFS cluster’ or taskforce on transfrontier shipment in 2003. A report from 2009⁶ found that of 7,886 physical inspections carried out on shipments, 18.9 per cent were in violation of the Waste Shipment Regulation. The two main reasons for such violations were failure to provide information on green waste, and illegal exports in defiance of bans or the obligation to notify the authorities of such exports. The report concluded that more effort needs to be put into such co-operative enforcement, and to the necessary training related to it. The signs are hopeful, but the Report also noted that the Slovak Republic, Spain, Italy and Greece are not participating in the project, and concluded that it would be ‘highly beneficial to get on board all Member States in order to prevent and eliminate illegal ‘escape routes’ from the Community’.

A recent study⁷ estimated the total cost of not implementing the waste acquis at around €90 billion per year, and highlighted that the associated environmental impacts would include increased greenhouse gas emissions, loss of the value of recyclable materials and increased use of virgin raw materials.

⁶ Services to support the IMPEL network in connection with joint enforcement actions on waste shipment inspections and to co-ordinate such actions, 15 July 2009, http://ec.europa.eu/environment/waste/pdf/impep_report_09.pdf

⁷ COWI et al, The costs of not implementing the environmental acquis: Final report, September 2011, http://ec.europa.eu/environment/enveco/economics_policy/pdf/report_sept2011.pdf

Economic instruments - one way forward?

More effective use of processes that may eventually lead to legal sanctions is a key requirement for improving compliance and hence the main focus of this paper. This should also be a priority topic for the 7th EAP. The 7th EAP should however also indicate the future role of economic instruments that might be employed to stimulate better performance. The case for these has recently been set out in an IEEP-led Report for the Commission.⁸

The Report emphasises that higher landfill charges reduce the amount of waste sent to landfill and tend to push waste towards recycling and composting. It points out however that landfill charges vary enormously in the current EU27 - from €3 a tonne in Bulgaria to €107 a tonne in the Netherlands. It therefore argues that Member States should be permitted some flexibility in implementing economic instruments in the most appropriate way for their own conditions, thus respecting the subsidiarity principle. Among the options put forward is the idea of setting a minimum level of landfill tax to be applied in all Member States (although not necessarily the same figure in all Member States). Some countries may object to this, perhaps resulting in more watered down 'guidance' issued by the Commission. In fact the Commission might have more luck with another option the Report puts forward – setting criteria or guidance at the EU level for the design of producer responsibility schemes, which currently differ greatly between the

⁸ Use of Economic Instruments and Waste Management Performances, IEEP et al, 10 April 2012, <http://ec.europa.eu/environment/waste/use.htm>

Member States. (The new Waste Framework Directive allows Member States to take legislative or non-legislative measures to apply extended producer responsibility, but does not give detailed criteria or guidance on the design of schemes.)

EU authorities certainly need to tread softly here because of media hostility in many countries to policies originating in Brussels. In the UK, waste management almost has become sacred British ground (though often administered by foreign-owned companies) where any EU initiatives are automatically opposed by important sections of the press. Thus for example, the Report's idea that a levy might be applied for the generation of waste above an EU average level probably would run into strong opposition, however great its merits.

We may therefore be a long way from seeing the universal introduction of economic instruments in the waste sector in the EU27 – and if they are sanctioned under the subsidiarity principle and levied at different rates and in different ways, this will add to the importance of European oversight to prevent abuse and unfair competition. This issue therefore brings us back to the basic question: who knows who is doing what?

How could the EU respond effectively and quickly to the challenge of implementing waste law?

The EU needs to pull out all the available stops if it is to deal effectively with neglect of its waste law by those who knowingly took on the obligation to adopt and implement it. We have three suggestions to make.

Firstly, waste legislation has been very much under-sold to the European public as a success story. EU waste laws have brought huge gains in sustainability in countries such as the UK where, within 10 years, an important switch has occurred from dumping waste in landfill to collecting it for recycling and re-use. It is, on past form in similar areas, extremely unlikely that the UK and other Member States would have moved on this question with the speed they have shown without an EU initiative. The immense efforts of local authorities in the UK and other countries to comply with the Landfill Directive and other measures deserve to be celebrated rather than obscured, as in the UK, by whippers about issues such as alternate weekly collections. As a success, achieved with the help of the actions of millions of citizens, waste law becomes a progressive theme that people will be proud to defend, and where they will have a stake in preventing failures through non-implementation.

To build on this heightened public awareness, we propose that the Commission institute a system of **annual awards or prizes to highlight and celebrate good waste management practices and progress**. This will illustrate what can be achieved and help EU citizens put pressure on their local authorities to achieve better performance.

Secondly it is important to **get legislation right from the start**. Pursuing countries that fail to comply right through to the Court of Justice is a lengthy and expensive business. If the ultimate sanction of a fine is imposed at the final stage it may be effective or it may simply add to the costs of a country struggling to put sufficient resources into environmental management. The crucial change here

would be to inject greater realism into the discussions of those who decide new laws and revise existing ones. The aim will be not to lower sights and reduce targets, but to ensure that those who agree to new waste laws acknowledge what they are taking on. Greater coherence within and modernisation of waste legislation – most notably increasing the focus on turning waste into a useful resource – would also contribute to more forward-looking legislation that could motivate Member States to improve their waste management.

So we need to ensure that we obtain **better assessments of the impact of new laws before they are adopted**. There was agreement between the three EU institutions on this in 2003, with the Inter-institutional agreement on better law-making.⁹ This states that the Commission will continue to carry out advance impact assessments for major items of expenditure while the European Parliament and Council ‘may on the basis of jointly defined criteria and procedures, have impact assessments carried out prior to the adoption of any substantive amendments, either at the first reading or the conciliation stage’.

What has actually happened since then? The Commission has put its house in better order by establishing an internal Impact Assessment Board of senior officials who vet the standard of the impact assessments that each Directorate produces on new proposals.

⁹ Interinstitutional Agreement on better law-making, 31 December 2003, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0005:EN:PDF>

The European Parliament has, despite the huge volume of its own amendments which now stand as part of EU law, carried out less than 10 impact assessments on its own amendments since 2003. It has only recently, in December 2011, established an own Impact Assessment Directorate. However this is now struggling with the question of how to achieve broad agreement among the political groups, the committees and their chairmen on such vital questions as who will decide which amendments are to be subject to impact assessment and who will carry out the assessments. Officials point out that currently MEPs are existing on a frugal diet of new proposals coming from the Commission and may be more inclined to allow time for debate on impact assessment issues. But against that is the rather chilling statistic that the Parliament is now allowing less time for full debate in two or three readings of new law. About 75 per cent of legislation the Parliament now considers is dealt with in one 'First Reading Agreement', and only 20 per cent gets as far as two readings; third readings are very rare. This means that the process of adoption is quick – too quick to allow time for impact assessment – and untransparent since all details are tied up in closed session between the rapporteur and the Council.

Change may come from the Council's side since, under the stress of harsh economic times, Member States are now pressing for the Council to carry out its own impact assessments while laws are still at the draft stage. The same economic considerations may propel MEPs into taking the matter seriously. It must be underlined that it is only once we have reliable impact assessments that we will have a clear idea of what action will be required by each Member State against

the background of existing civil service capacity, the state of their economy and their own priorities.

One adjunct to impact assessments might be implementation agreements, committing Member States to actions which would enable them to deliver on their commitments in signing up to waste laws and/or offering them direct EU assistance (of an unspecified nature) towards improving 'implementation structures'. These are mentioned in the Commission's Communication on improving the delivery of benefits from EU environment measures. But such agreements would really duplicate the EU laws from which they arise: any Member State that agrees to such laws has already made the commitment to implement them. It would also open up the possibility of financial grants over the whole field of EU environment law – which would be an expensive prospect.

Thirdly, we do need to make progress in finding out exactly **what is going on in the Member States**. It is true that we get more information from them now that there is a standardised system of reporting to the Commission. But such reports from the Member States to the Commission can be very broad-brush and, in practice, uninformative.

The creation of a supra-Member State inspection authority is unlikely to happen in the near future. There is no real support among Member States for setting up a European Waste Agency, as considered in a report to the Commission in 2009.¹⁰ The

¹⁰ Study on the feasibility of the establishment of a Waste Implementation Agency, Milieu et al, December 2009,

Member States' hostility to the idea is probably greater in 2012 than it was in 2009 because of popular dislike of the supranational powers conferred on the EU over the fate of the Euro. We have already mentioned the work of IMPEL as a network for the exchange of ideas that can help organise spot checks on waste shipments and can play an important part in developing new structures and best practices. But IMPEL does not want to be turned into an EU-wide inspectorate answerable to the Commission.

The European Environment Agency, based in Copenhagen, has neither the opportunity (given the limitations of its statute) nor the combative appetite to take on the Member States and insist on greater transparency. It is curious that the Commission, in a press release dated 13 January 2012,¹¹ mentions 'the need to establish an auditing capacity at EU level and, possibly common inspection standards'. It adds: 'One relatively cost-effective option to strengthen implementation monitoring at EU level could be to draw on the expertise and capabilities of the European Environment Agency. This option would carry lower administration costs than creating a new agency dedicated to waste'. But what does this mean? In 1990, when the EEA was set up, the European Parliament proposed that it be given enforcement powers. The Commission resisted this and underlined that the EEA would not have

http://ec.europa.eu/environment/waste/pdf/report_waste_dec09.pdf

¹¹ European Commission Press release IP/12/18, Waste – a short cut to job creation and lower costs, 13 January 2012, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/18&format=HTML>

the power, through carrying out on the spot inspections, to verify the data it was given by the Member States. Any such change in this direction now would mean a revision of the EEA's statutes. On past form that could take a long time to bring about – if it were ever agreed. The EEA is certainly part of the solution, but cannot be all of it.

That leaves the European Parliament. In our view, an increased share of the responsibility for taking up the issue of better implementation, in public, should fall on MEPs. The Parliament's Environment Committee has held question and answer sessions on implementation for several years. It was clear that the Commission was eager to tell its story – but less clear that many MEPs, apart from the British, wanted to listen to that story and aid the Commission in its efforts.

We propose that the **Environment Committee should hold regular short hearings** to examine how implementation is going – what the difficulties are, what progress is actually being made on the ground, and so on. The issue is of great public interest, and MEPs should be aware of the interest of international media in the topic. The list of those giving evidence should be ruthlessly pruned and MEPs should be encouraged to practice their forensic skills on the witnesses. The hearings might be held in the wake of visits by MEPs to the countries under scrutiny. Very importantly, members of the public should be encouraged to come forward and briefly state what they see as going wrong with waste practices in their home state. Since so many complaints from the public form the trigger to Commission investigations it is surprising that, to date, MEPs have not taken steps

to meet and listen to these complainants. The reports on these hearings should be short and to the point – and widely disseminated. They would then form the basis of further action by MEPs, in debates and questions, to follow up on areas of concern.

At the same time, environmental NGOs, think tanks and others in the broader green community should pay far more attention to the battle for better long-term implementation. The priority given to securing new measures should not lead to neglect of the equally critical topic of implementation which is vital at the local and pan-European levels and therefore is of relevance to a wide range of groups.

Conclusion

With the exception of Iceland, all countries in the waiting room for EU membership are relatively poor, and will need to work hard to develop their waste management policies. If we are not careful the procedures leading to accession of these countries will go the way that they have gone before: the imperative will be EU membership, as swiftly as possible, and environmental policy will be borne along with the tide, with little or no attention being paid to a country's ability to comply with the existing body of law.

We have enough recent experience of precisely this chain of events (for example with Bulgaria and Romania) for us to avoid it next time. However, for all the Member States, the proposals that we make here constitute powerful tools that will improve the status of waste law and help to bring about a fairer, cleaner and safer Europe.

It is appropriate, as we prepare for the next enlargements and also as we gather

together ideas for the next Environment Action Programme, to give more thought to the issue of compliance, enforcement and implementation. We should not be afraid that in doing so we may be painted as joining the chorus of those who criticise everything the EU does. The great period of building the first generation of EU environmental policies has now passed. It would be absurd to pass on to a new agenda without making absolutely sure that we know what is happening to the old one, especially when we know that the issue of poor compliance is often brought up by members of the public. We cannot afford to ignore these concerns.

We hope that both the Commission and MEPs will consider these proposals, and we also publish them here for discussion among a wider public.

Selected IEEP work on waste

IEEP, Eunomia, BIO IS, Ecologic, Umweltbundesamt, Arcadis (2012). [Use of economic instruments and waste management performances](#) (for DG Environment)

IEEP (2011). [Practicability and Enforceability of the Waste Shipment Regulation](#) (for IMPEL)

IEEP, Ecologic, Arcadis, Umweltbundesamt, BIO IS, VITO (2010). [Supporting the review of the Thematic Strategy on Waste Prevention and Recycling](#) (for DG Environment)

Ecologic, IEEP (2009). [Reports on the implementation of Community Waste Legislation, 2004 - 2006](#) (for DG Environment)

IEEP, SYKE, Ecologic (2009). *Coherence of waste legislation – assessment of lessons learnt from the EU 'recycling directives'* (for DG Environment)