

Better regulation of waste at the European level

ACR+ President Jean-Pierre Hannequart sets out a view of the current Better Regulation debate, taking place across the European Union.

HOW TO EXPLORE THE CONCEPT OF "BETTER REGULATION", DEVELOPED AT THE EU LEVEL?

Without doubt, reflections of the European Commission are less developed than, and do not exactly match, those of the Council of Ministers. But in general, it is considered that better regulation means - for the European authorities - the desire to go forward according to the following nine key axes:

1. Validation of the regulatory option

- For all finally adopted policies, a comparison of the regulatory option with other alternatives
- The justification of every derogation using an approach based upon the free circulation of goods and services

2. Principles of codification, consolidation & transparency

- a European programme of codification
- consolidation of regulations
- greater accessibility to the contents of legislation

3. A simplification (and reduction) of the rules

- Simplification and a reduction in the amount of Community legal instruments
- Improvement in the mechanisms which help identify those regulations which require simplification

4. Modification of the content, or the nature, of the regulatory acts

- limitation of the European rights to determine general objectives, while leaving Member States and industry freedom of choice as to the means of execution
- restricting directives to the essential aspects of legislation
- in certain cases, using regulations rather than directives
- more frequent recourse to the co-decision process
- a reinforcement of preambles in proposals

5. Modification of the procedure for elaboration

- respecting the minimal standards for consultation of all stakeholders (COM(2002)704)
- clarification of the rôle of experts in the process (COM(2002)713).

6. Development of analyses of impacts and costs

- an instrument for analysing impacts, to be integrated and proportionate to any legislative initiatives and major policy instruments (COM(2002)276)
- balanced and effective evaluations of impacts, taking full account of the long-term costs of inaction
- reinforcement of the economic dimension, and evaluating the impacts
- measurement of the administrative costs of initiatives

7. Modification of the control procedures

- attention given to implementation and to respecting European law pursuing and acting against those who transgress the laws, bearing in mind priorities
- practical applications for monitoring and reporting

8. Modification of the revision procedure

- introduction of a clause to allow re-examination of regulatory acts
- an increasing recourse to the possibility of withdrawing a legislative proposal
- a re-evaluation of whether draft legislation is well-founded

9. Definition of structures and of ad hoc sectoral strategies

- creation of organisations with responsibility to improve legislation
- integrated sectoral action plans for simplification (particularly for those concerning waste)

WHAT DOES "BETTER REGULATION" MEAN, PARTICULARLY CONCERNING WASTE?

It is worth recalling that in 1994-95, a group of the independent experts set up by the Commission proposed to:

- revisit the definition of waste, while guaranteeing that by-products and secondary materials do not become less well regulated
- re-examine all regulatory texts relating to wastes, and then consolidating, simplifying and clarifying them - while seeking to take advantage of voluntary agreements

In applying the action plan « Better Regulation », the Commission published in February 2003 a communication « Updating and simplifying the Community acquis » (COM(2003)71 final).

In accordance with this last Communication indicators have been put forward allowing the prioritisation of actions to simplify legislation on a case-by-case basis following a list of

key action areas. One sees under the heading “waste legislation”.

In 2004, the EU Council of Ministers agreed the following as targets for simplification:

- directive 75/439 on used oils
- directive 75/442 on waste
- directive 91/156 on waste
- directive 91/689 on hazardous wastes
- directive 200/76 on waste incineration

In March 2005, the Commission re-launched its initiative on “Better Regulation”, emphasising the importance of developing integrated sectoral simplification action plans. It immediately identified waste as a priority sector.

This proposition was approved by the Council in June 2005.

In September 2005, the European Commission set out a new generation of policies on the environment – the Thematic Strategies – particularly the Thematic Strategy concerning the prevention and recycling of waste; setting out the Better Regulation principles (COM(2005)466 final).

Finally, the Thematic strategy on prevention and recycling of waste was officially adopted in December 2005, and including a relatively precise timetable for revising several directives, including:

- In 2006
 1. revision of the Waste Framework Directive
 2. integration of the directive on hazardous wastes
 3. cancellation of the directive on used oils
 4. revision of the directive on end of life vehicles (ELVs)
 5. integration of the directive on titanium dioxide
- In 2007
 1. Extension of the IPPC directive
 2. Revision of the

directive on sewage sludge

- In 2008
 1. Revision of the directive on waste electrical and electronic equipment (WEEE)
 2. Adoption of quality standards of compost and recycled aggregates

Besides, following this thematic strategy, the Commission would next publish “guidelines”, clarifying the orientation concerning:

- when a waste ceases to be a waste
- the life-cycle approach to biodegradable wastes
- life cycle analysis instruments
- regulations governing the movement of wastes
- environmental standards for “non-IPPC” installations and for managing mixtures of hazardous wastes

Before 2010, an in-depth study will be carried out reflection on how to lead Europe to become a truly recycling society.

WHAT DO BETTER REGULATION AND WASTE MANAGEMENT MEAN FOR LOCAL AND REGIONAL AUTHORITIES?

1. Towards the wider involvement in the European policy?

The thematic strategy on wastes foresees specifically the collection of information on good practices, and the dissemination of information concerning waste-related initiatives for the awareness-raising, encouragement and education developed at the local and regional levels. One can only regards this choice as very positive, in our opinion.

The general principle of a wider involvement in EU policy of all the stakeholders suggests a greater degree of involvement upstream - by local and regional authorities – in shaping European policy.

However, the interests of this principle are not well served by a lack of objectives on how to deal with wide ranging consultations (one refers here to previous initiatives, notably by Internet).

2. Towards greater importance of economic instruments

Incontestably, the “Better Regulation” debate places a stress on deregulation and favours other, non-legislative tools – even economic instruments. A coherent option with the desire to preserve and integrate a single free trade market.

But while the Commission has underlined the importance of using economic instruments, it has failed to push ahead with this matter, being rendered powerless by the necessity to achieve unanimity for any decision taken by the European Council.

However, there are – in our opinion – a range of possibilities for action at the European level. For example:

- why not bring forward a proposal to reduce VAT on certain products – those which generate less waste – or on activities such as repairing, reusing and recycling?
- why not impose differential levels of taxes on different types of materials when landfilled
- why not draft a directive recommending that Member States integrate all environmental costs into waste management charges, or even into the initial product price, or deploying tools to ensure that the costs of disposal are higher than the costs of recycling?

These initiatives would surely have some effects.

In all cases, good practice for waste management can be served by different economic instruments, and it is important to favour in this regard the active exchange of information and experiences.

The conference arranged by ACR+

on May 18 – 20 in Dublin (IRE) will be considering just these issues.

3. Towards a questionable overhaul of waste legislation

Manifestly, the “Better Regulation” approach in the waste sector needs to be implemented within existing EU policies. Without doubt it seems appropriate, at a given moment, to re-group a number of EU laws.

In this sense, the concept of consolidation-codification-transparency applied to EU law seems to be a positive step. Each time, following these ideas, the Commission puts forward some questionable aspects/ directions, eg:

- fusion of the Waste Framework Directive and the Directive on hazardous wastes
- revocation of the Directive on used oils

One might consider that at the European level waste regulation will henceforth be complete. One should not forget:

- the abandonment of a directive of biodegradable wastes
- a moratorium on the formulation of Directives centred upon producers’ responsibility for some specific flows

The Thematic strategy on prevention and recycling of waste, and the draft Framework Directive proposed by the Commission last December (COM(2005) 666 et 667 final) are based upon less convincing options. In the first place, the impact study which accompanies the proposed directive avoids evaluating the key questions (cf our article in Warmer Bulletin 103). Concerning objective figures for prevention, the Commission responds negatively, citing the absence of reliable statistics

and the scientific evaluation of practices at the national or regional level. We beg to differ with this view. The setting of quantified targets (even indicative at first) is a politic choice, and even a must to rally everybody (the European Environment Agency recently expressed the same point of view on this question).

On the subject of recycling, the Commission advocates the development of objectives at the EU level for broad groups of products. Alternatively, applying producer responsibility to sectors which produce significant waste flows (packaging, vehicles, WEEE, batteries etc). Alternatively, it seems to us that producer responsibility should be maintained and reinforced by a stronger harmonisation at EU level.

If the creation of recycling targets by material types is to contribute to developing a European market for recycling, it must in our opinion remain coupled through producer responsibility to particular waste flows.

As far as re-defining the terms waste/products and recovery/disposal, one could believe that in the current climate this could work to the detriment of the environment. Without doubt, some regulatory measures deserve to be formulated at the European level. However, using the « comitology » route is very opaque and could even be a denial of real democracy. Without entering here into a more detailed analysis of the content of planned revisions of the European waste legislation, we would ask at every opportunity for a more democratic debate on the subject.

In this perspective, we invite you to join us in Brussels on June 19 – 20 for an international conference « [For better European regulations on prevention and recycling](#) », organised by ACR+ with a range of partners. Jean-Pierre Hannequart can be contacted at:
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International conference: “How to better regulate waste prevention, reuse, recycling and composting at the European level ?”

June 19 - 20, 2006 - Brussels

European environmental policy is on the brink of major changes. With the release of various Thematic Strategies on waste, products and resources and the draft Waste Framework Directive, the European Commission has opened the door to a complete revision of waste regulation.

It seems essential to ACR+ that this revision is fully informed and based on the knowledge and experiences of the actors on the ground. Therefore, it is co-organizing with the Brussels Institute for the Management of the Environment, (IBGE-BIM) and the Instituto para la Sostenibilidad de los Recursos (ISR) in partnership with the CEMR, EEB, RREUSE and WRAP an International conference on June, 19-20 in Brussels.

This conference will be organised under the patronage of the Spanish Minister of the Environment (Christina Narbona) and of the Minister of the Environment of the Brussels Region (Evelyne Huytebroeck). This event aims to clarify stakeholders’ positions on the revision of the Waste framework Directive and to feed the debate. Thematic roundtables are intended to set out concrete amendments and recommendations for a Better Regulation in the field of :

- waste prevention
- reuse
- organic waste management
- recycling

Detailed programme, further information and practical details, papers will be made available on the conference web site:

<http://www.betterregwaste.org>