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A discussion paper for a better “Better Regulation” debate applied to Waste Policy.

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Today's EU policy decision making climate is dominated by strong centrifugal forces as well as increasing focus on competitiveness and economic growth. This has serious repercussions for the EU environmental protection agenda. Specifically, under the “better regulation” drive, environmental policies are seriously challenged in terms of having to prove no significant short-term negative impact on business and even specific sectors as well as the limited willingness and capacities in Member States to do more in achieving already set targets.

This has led in the last years not only to an absence of any new ambitious legislation, but also the repeal of existing legislation as well as a new type of Framework legislation, which are characterized by a domination of procedural requirements and increased flexibility in setting and meeting targets and deadlines at national level. The EEB does not believe that these actions represent better regulation. Instead they are a clear case for de-regulation and sometimes present worse regulation in the sense that procedural requirements without measurable and enforceable common objectives might be considered as inadequate bureaucracy.

Good starting principles: the Interinstitutional agreement on better law-making²

The agreement from 2003 between the three institutions provides the right principles for better regulation in the true sense, including:

- Better regulation means better implementation and enforcement.

*'The three Institutions (...) call upon the Member States to ensure that Community law is properly and promptly transposed into national law within the prescribed deadlines; and deem such **transposition to be essential to the consistent and effective application** of that legislation by the courts, the administrations, members of the public and economic and social operators' (point 32 of the Interinstitutional agreement).*

- Better regulation means that legislation is effective

*'The three Institutions, exercising their respective powers, will ensure that legislation is of good quality, namely that it is **clear, simple and effective.**' (point 25 of the Interinstitutional agreement).*

- Better regulation means the policy-making process is transparent and clear on why policy options were chosen

*'The three institutions confirm the importance which they attach to **greater transparency** and to the increased provision of information to the public **at every stage of their legislative work...**' 'The Commission will continue to implement the integrated **advance impact –assessments** process for major items of draft legislation,... In the explanatory memorandum the Commission will indicate the manner in which the impact assessments have influenced them.' (points 10 and 29 of the Interinstitutional agreement).*

¹ For more information please see <http://www.eeb.org/activities/waste/Index.htm> or contact melissa.shinn@eeb.org

² Interinstitutional agreement on better lawmaking (2003/C 321/01)

Current developments need to be assessed under those principles

Better implementation and enforcement:

With respect to **enforcement**, no reliable assessment is possible due to the lack of comprehensive and comparable data from the Commission and Member States. A recent IEEP study on the implementation of the 6EAP³ poses a number of pressing questions, especially with respect to the Commission's handling and statistics of environmental complaints, which account for the bulk of infringement proceedings. Whether a declining number of environmental complaints is due to an improved implementation record, a lack of citizens' interest in the EU or increased rejection of complaints by the Commission, is unclear. In any case, the Commission has not put forward a strategy and the **capacity of DG Environment to enforce EU law is effectively declining**, while the complexity of legislation (especially the Framework Directives) is increasing.

In addition to which, the Member States are resisting the increase of the role of citizens' organisations in enforcement by blocking a Directive on Access to Justice in Environmental Matters as well as similar access at EU level.

What is lacking is a **proper evaluation of why and where transposition and national enforcement go astray** and what are the real bottlenecks. It would seem that many of the bottlenecks are lack of EU and national capacities for enforcement and supporting tools, including market based instruments as well effective access to justice in environmental matters.

In the case of the Commission's proposal to revise the Waste Directive it is doubtful that the **shifting of responsibilities of setting targets to national waste management plans and programmes using lifecycle 'thinking' assessments**, for example in case of biowaste management or waste prevention, without the backbone of EU harmonised and measurable objectives and indicators will improve enforceability or verification of compliance by the limited DG Environment capacities.

Effective legislation

Directives requiring monitoring and reporting or other procedural requirements but without commonly agreed and enforceable targets risk becoming unworkable bureaucratic '**paper tigers**'. Legislation cannot be effective unless it is clear and **clarity** is created to a great extent by **common definitions and objectives**. The most precise objectives are quantified targets and emission limit values, the most imprecise objectives are mere reporting obligations.

At the same time **delegation of decision-making** to the Commission (comitology) or private business (European standardisation) must be designed more carefully to avoid lack of democratic legitimacy and the public's increasing lack of trust in the EU.

Again in the case of the Commission's proposal to revise the Waste Directive the proposal **abandons the commitment to implementing legislation** setting specific targets, eg recycling targets, and waste stream management requirements, eg separate collection of recyclables, **in favour of setting technical criteria (end-of-waste) via comitology**. This not only creates a lack of clarity normally provided by common

³ Drowning in the Process? The Implementation of the EU's 6th Environmental Action Programme – an IEEP report for the European environmental Bureau (EEB), April 2006

objectives and definitions adapted to each waste stream, but also depends heavily on undemocratic committee procedures to determine technical criteria without a tailor-made precise decision-making framework, for example the framework necessary for setting technical criteria on when a compost becomes a product requires very different considerations to that on construction waste derived materials.

Transparency

The transparency on the development of legislation is greatly influenced by the existence and quality of **consultative structures** that exist in a policy field. Structures such as permanent Steering Groups and consultative platforms, with a high degree of continuity, allow for iterative development and assessment of policy options.

Similarly **impacts assessment and subsequent stakeholder debate on specific legislative proposals (or lack of them)** are crucial for greater transparency of the basis and consequences of policy decisions.

The implementation and consultation surrounding many of the Commission's final concrete legislative provisions concerning the proposal to revise the Waste Directive were highly unsatisfactory to many stakeholders. This also meant that **specific proposals** such as the **use of energy efficiency criteria to re-classify municipal waste incinerators** as recovery or to **not propose any common objectives or concrete EU measures on waste prevention** were never properly assessed and their impacts were never properly debated.

In conclusion

The EEB's aim is to enhance environmental protection in the EU and promote its sustainability and believes that the **EU has a role in showing environmental leadership** on global level. It therefore rejects a watering down of environmental protection and proposes that Better Regulation, in the case of the Commission's proposal to revise the Waste Directive Better Regulation should mean at least:

- 1 – A strategic approach to **improvement of DG environment capacities** to deal with increased enforcement and compliance demands, and also plan and programme reporting requirements established by the Directive
- 2- The establishment of **EU harmonised and measurable objectives and indicators on waste prevention**
- 3- The introduction of the obligation for the Commission to come forwards with **implementing legislation on specific waste streams**- in particular on **biodegradable waste** management – dealing with both common management objectives (eg recycling targets) and enabling the setting of product standard setting framework in codecision
- 4 – The **rejection of the re-classification of municipal waste incinerators** using energy efficiency criteria, insisting the Commission conduct at least a proper assessment of the implications of such a step
- 5 – The establishment of a permanent **EU level consultative forum (Waste Committee)** to participate in future legislative developments, oversee technical implementation measures and accompany closer monitoring of implementation.