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REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

ON IMPLEMENTATION OF THE COMMUNITY WASTE LEGISLATION
Directive 2006/12/EC on waste,
Directive 91/689/EEC on hazardous waste,
Directive 75/439/EEC on waste oils,
Directive 86/278/EEC on sewage sludge,
Directive 94/62/EC on packaging and packaging waste,
Directive 1999/31/EC on the landfill of waste and
Directive 2002/96/EC on waste electrical and electronic equipment

FOR THE PERIOD 2004-2006

{SEC(2009)1586}

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1. INTRODUCTION

This report aims to inform the other Community institutions, the Member States and the public about the implementation of the EU legislation on waste over the period 2004 – 2006. It covers Directives 2006/12/EC on waste, 91/689/EC on hazardous waste, 75/439/EEC on waste oils, 86/278/EEC on sewage sludge, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste, 2002/96/EC on waste electrical and electronic equipment, and 2000/53/EC on end-of-life vehicles.

The report was drawn up in line with Article 5 of Directive 91/692/EEC standardising and rationalising reports on the implementation of certain Directives relating to the environment. It is based on information supplied by Member States complemented by the conclusions from additional Commission studies and internal statistics. More information can be found in the reports prepared for the Commission and published at: http://ec.europa.eu/environment/waste/reporting/index.htm.

This report is complemented by separate reports on the Waste Shipment Regulation[1] and the End of Life Vehicles Directive[2]. Therefore, only brief summaries of the main findings of those reports are included here.

An Annex to the Report contains details on the implementation of specific provisions of the legislation in title.

[1] Commission Report on the implementation of the Waste Shipment Regulation, COM(2009) 282 final (http://ec.europa.eu/environment/waste/shipments/reports.htm)

[2] See: http://ec.europa.eu/environment/waste/elv_index.htm.

2. TIMELINESS AND QUALITY OF REPORTING

The reporting discipline of Member States leaves much scope for improvement, for both the tri-annual implementation reports and the annual data on the progress to reach the targets. For this report, 14 Member States have not provided all their implementation reports on time. Concerning the annual recycling and recovery data on WEEE, ELV and packaging, around one third of Member States did not reply on time in 2006. In many cases the replies were incomplete and the quality of reporting varied. This could result to a certain extent from the sometimes ambiguous formulation of some questions in the implementation questionnaires, but in many cases Member States omitted responding to certain questions or provided unclear or misleading answers.

Based on the results of this report, the Commission may consider streamlining the questions in order to render them more specific. Also, the reporting methodologies of Member States differ when it comes to the annual recycling and recovery data, which may necessitate further harmonisation. The Commission has started working on this issue in close cooperation with the statistical offices and national experts.

3. DIRECTIVE 2006/12/EC ON WASTE

The basic requirements, definitions and principles regarding the management of waste in the Community are laid down in Directive 2006/12/EC on waste (Waste Framework Directive, WFD). This directive introduces a definition of waste, obliges Member States to establish adequate networks of waste disposal installations, introduces a waste management hierarchy promoting waste prevention over its recovery, with disposal as the last recourse. The Directive obliges Member States to ensure that waste is recovered or disposed of without endangering human health and the environment, and prohibits the abandonment, dumping or uncontrolled disposal of waste. It requires Member States to draw up national waste management plans (WMP) and introduces an obligation to obtain a permit for waste handling.

In 2009, 11 cases for structural and wide-spread failure to address illegal waste dumping, 10 for bad application, 4 related to waste planning, and 3 on non-conformity of national laws with the directive were still pending in relation to the WFD.

All Member States confirmed having incorporated the Directive into their national law. The basic requirements to ensure the environmentally sound management of waste were implemented in all Member States, although there are still problems in some countries especially as regards the creation of complete waste management infrastructures. At the same time, there are huge differences in the implementation of the waste hierarchy and the use of waste as a resource.

The degree of recycling/recovery varies both for waste in general and in respect of different waste streams. The increase of the recycling and recovery rates over the past years was partly a result of the implementation of the requirements of the recycling directives and partly due to national waste management policies (in the latter case, for construction and demolition waste and bio-waste). However, there are still huge unused recycling potentials leaving more than half of the existing resources embedded in waste completely unused[3].

[3] European Atlas of Secondary Raw Materials, 2004 Status Quo and Potentials, January 2008, Prognos.

The prevention policy up to now was not efficient, with limited and punctual actions taken by Member States but hardly any large-scale coherent policies in place. This might have been due to a limited focus on waste prevention in the old WFD, and should change when the requirements of the revised Directive[4] in this respect enter into force.

4. DIRECTIVE 91/689/EEC ON HAZARDOUS WASTE

The Directive introduces a precise and uniform definition of hazardous waste and aims to ensure the environmentally sound management of this waste stream. A number of controls, in addition to those laid down in the WFD, are imposed in respect of the management of hazardous waste, including traceability requirements, ban on mixing hazardous waste with other wastes, notification to the Commission of wastes exhibiting hazardous properties but not listed as such.

The responses of Member States were in some cases insufficiently precise to state whether the Directive has been properly implemented. In particular, there are doubts as regards the enforcement of the mixing ban and the related exemptions from this ban and permit requirements. The regularity of inspections was not ensured by several Member States. There are also concerns as regards the reporting requirements for producers. One case of the lack of clear rules for packaging and labelling of hazardous waste was identified that requires further follow-up.

5. DIRECTIVE 75/439/EEC ON THE DISPOSAL OF WASTE OILS

The purpose of the Waste Oils Directive is to approximate Member States laws and create a coherent system for the collection, treatment, storage and disposal of waste oils to protect the environment against the harmful effects caused by the discharge, deposit or treatment of these oils. Member States are required to establish systems for the registration, permitting and supervision of activities involving the processing or disposal of waste oils. The highest priority for managing waste oils is given to regeneration, followed by combustion, destruction, controlled storage or disposal.

The Directive has been transposed by all Member States into their national legislation. The responses of Member States show that the appropriate permitting and control mechanisms were put in place in order to prevent the negative environmental and health impacts from the management of waste oils. However, the treatment practice demonstrated that the Directive did not bring about the expected results regarding the promotion of regeneration of waste oils: despite the legal obligation to promote regeneration, combustion was the most popular option in the EU. In effect, a number of infringement cases were launched by the Commission. This tendency was further analysed by the Commission and led to a conclusion that regeneration was environmentally and economically no more beneficial than combustion. As a result, the infringement cases related to this issue were withdrawn and the revised WFD does not give an absolute priority to regeneration but at the same allows those countries which want to promote regeneration to prescribe that waste oils should continue to be treated in this way.

[4] Directive 2008/98/EC on waste, OJ L 312, 22.11.2008, p. 3.

6. DIRECTIVE 86/278/EEC ON SEWAGE SLUDGE

The Sewage Sludge Directive was adopted over 20 years ago to regulate the correct use of sewage sludge in agriculture and prevent its harmful effects on soil, vegetation, animals and humans.

The measures put in place in Member States and the described implementation practice point to no implementation problems. At the same time, there are signals that the Directive may be too limited in scope and lack ambition. Since its adoption, several Member States have enacted and implemented stricter limit values for heavy metals and set requirements for other contaminants. The ongoing Commission impact assessment will evaluate whether more stringent measures should be put in place and look into a possibility of extending the scope of the Directive to other types of sludges and applications other than agriculture.

7. DIRECTIVE 94/62/EC ON PACKAGING AND PACKAGING WASTE

The Packaging Directive aims to harmonise national measures in order to prevent or reduce the impact of packaging and packaging waste on the environment and to ensure the functioning of the Internal Market. It contains provisions on the prevention, recovery and recycling of packaging waste and on the re-use of packaging. The Directive sets recycling and recovery targets, obliges Member States to introduce collection schemes for packaging waste, and introduces minimum requirements which all packaging has to meet to be put on the Community market.

The Directive has been properly transposed by all Member States and the overall level of its implementation is satisfactory. No infringement cases were open in 2009.

The Directive has brought about positive environmental effects from the stable recycling and recovery rates of packaging waste[5]. In the reporting period 2004–2006, the amount of packaging waste generated was on the increase (with a part of this increase due to the 2004 enlargement of the EU), whilst the recycling and recovery rates remained stable with only a slight overall decrease. In 2006, eight Member States did not achieve one or more of the required recycling/recovery targets. Separate collection schemes for packaging waste were implemented throughout the EU, albeit with a differing degree of efficiency, and consumer awareness about the need to manage packaging and packaging waste in an environmentally sound manner was at the focus of all Member States. The practical implementation and enforcement of the essential requirements was however questioned by some stakeholders and triggered a closer scrutiny of the situation by the Commission.

As regards the Internal Market impacts of the Directive, in recent years legal discussions were being held between the Commission and Member States on the compatibility of national measures taken to reduce the environmental impact of beverage packaging and the amount of waste which it generates with the Internal Market rules. While their overall goal is often justified for environmental reasons, certain national measures go beyond what is necessary and risk impeding in a disproportionate way the use and marketing of beverages and their packaging. In a move to prevent further Internal Market problems and to reduce the number of legal discussions with Member States, the Commission adopted a Communication on

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[5] See: 2006 Commission Report on the implementation of directive 94/62/EC, SEC(2006) 1579, http://ec.europa.eu/environment/waste/packaging/report.htm.

"Beverage packaging, deposit systems and free movement of goods" which summarizes solutions found and developed so far[6].

8. DIRECTIVE 1999/31/EC ON THE LANDFILL OF WASTE

The Landfill Directive is intended to prevent or reduce the adverse effects of the landfill of waste on the environment, in particular on surface water, groundwater, soil, air and human health. It sets stringent technical requirements for landfill sites, specific requirements for waste acceptance on the sites, and introduces landfill categories depending on the waste intended to be disposed of. The Directive obliges Member States to ensure that competent national authorities issue permits to operate the sites. One of the key provisions includes targets for a gradual diversion of biodegradable municipal waste from landfills in order to reduce methane emissions, coupled with technical requirements for capture and treatment of landfill gas.

The practical implementation of the Landfill Directive remains highly unsatisfactory and considerable efforts need to be undertaken to improve it. Ten years after the adoption of the Directive, not all Member States report having transposed and implemented all its provisions and the Commission continues to open a significant number of infringement cases against Member States for bad transposition or implementation of this legislation.

The Commission receives on a daily basis a vast number of complaints related to illegal landfills lacking the permits required by EU waste legislation, causing serious adverse effects to the environment and risks to human health. These complaints have demonstrated a general and persistent nature of significant implementation deficiencies in a large part of the EU. In the cases observed, Member States have often tolerated serious deficiencies for long time periods without ensuring that illegal activities are brought to an end and punished[7]. A large number of landfills do not comply with the requirements of the Directive and there is a real risk that a vast majority of Member States will not meet the deadline of 16 July 2009 by which all sub-standard landfills that existed before the introduction of the Directive need to comply with its requirements (unless specifically derogated). Only nine Member States report having met the 2006 targets for the diversion of biodegradable municipal waste from landfills and capture of landfill gas appears insufficient.

The problem seems particularly acute in the EU-10 where landfilling remains a predominant option since no alternative waste management infrastructure is available. Despite a quick progress in these countries in closing sub-standard landfills, efforts need to be stepped up to ensure full compliance.

In 2009, thirteen non-conformity cases and eleven bad application cases were pending against Member States related to the Landfill Directive. In response to these systemic failures of Member States to properly implement the EU waste legislation, the Commission has taken a strategic approach. So-called "horizontal" infringements and court cases have been launched addressing the lack of national infrastructures and effective enforcement measures. Vast numbers of individual cases have been used as illustrations. This approach allows problems to be solved in more places than if focus would only have been on individual landfill sites.

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6 OJ C 107, 9.5.2009, p.1 (see: http://ec.europa.eu/enterprise/regulation/goods/deposit_systems_en.htm).

7 See: Commission staff working document on implementing European Community Environmental Law, SEC (2008)2876, 18.11.2008, p. 12.

9. DIRECTIVE 2002/96/EC ON WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT

The amount of waste from electrical and electronic equipment (WEEE) in the EU is presently estimated at 8.3-9.1 million tonnes annually, increasing to about 12.3 million tonnes by 2020 according to recent estimates. WEEE needs to be managed in a controlled way due to its quantities and often hazardous nature, but also because it contains valuable resources. The WEEE Directive aims to lower the environmental impacts of the disposal of this waste stream and optimise its collection, reuse, recycling and recovery at high environmental and health standards. The EU's major trading partners have followed the European example and brought into force similar legislation (e.g. China, Korea, Japan, some US states).

Despite the existence of the Directive, only one third of electrical and electronic waste in the Community is reported as appropriately treated. The other two thirds are going to landfills and potentially to sub-standard treatment sites in or outside the EU. Illegal trade of electrical and electronic waste to non-EU countries continues to be widespread. Inadequately treated products pose major environmental and health risks. The collection target of 4 kg per person per year does not properly reflect the situation in individual Member States and has not been met by five Member States in 2006 (two other did not report). All the ten applicable recycling targets were met by only five Member States and the nine recovery targets merely by four. In 2009, infringement cases for non-conformity with the WEEE Directive were pending against fourteen Member States and for failure to report against one. There were also eight pending infringement cases for non-conformity with the related RoHS Directive.

In December 2008 the European Commission proposed to recast the WEEE Directive in order to address some of the observed implementation deficiencies, tackle the fast increasing waste stream of such products, and strengthen the enforceability of this legislation.

10. DIRECTIVE 2000/53/EC ON END-OF-LIFE VEHICLES

Directive 2000/53/EC on end-of life vehicles (ELV Directive)[8] aims to prevent waste from vehicles and increase the reuse, recycling and other forms of recovery of end-of-life vehicles and their components. It sets treatment requirements and promotes the design of vehicles facilitating their future recycling. Details related to the implementation of this Directive are specified in a separate Commission report.

A fairly good level of formal implementation was reported by the Member States. All Member States adopted measures transposing the Directive and took steps to set up the waste management systems as required by the legislation but some of the provisions of the Directive have not yet been transposed fully or correctly.

Concerning the practical enforcement of the legal provisions, Member States were able to provide more information than for the previous reporting period, but it remains difficult to evaluate on the basis of the national reports how the systems for the ELV management work in practice. The continuously large number of infringement cases launched by the Commission suggests that the practical implementation remains below the acceptable level: in 2009, nine cases of non-conformity with the directive were pending, including on key definitions and principles (e.g. a definition of an end-of-life vehicle or the obligation to

[8] OJ L 269, 21.10.2000, p. 34.

transfer ELVs to authorised treatment facilities). Six infringement cases have also been launched concerning Member States' failures to report on implementation.

In 2008, the reuse, recycling and recovery levels achieved in 2006 were reported for the first time. It stems from the 25 reports received by the Commission that in 2006 nineteen Member States met the reuse/recycling target of 80% and only thirteen met the reuse/recovery target of 85%[9], a result which is not satisfactory. The Commission has written to the Member States which have not met the targets to seek explanation for their failure.

11. COUNCIL REGULATION (EEC) NO 259/93 ON THE SHIPMENTS OF WASTE

Council Regulation (EEC) No 259/93 on the shipments of waste (WSR) implements into Community legislation the 1989 Basel Convention on the control of transboundary movements of hazardous wastes and their disposal. It organises the supervision and control of shipments of wastes in and outside the Community so as to enable the Community as a whole to dispose of its own waste and also enable Member States individually to move towards that goal, taking into account the geographical circumstances and the need for specialised installations to handle certain types of wastes The reporting obligations under the Basel Convention and the WSR concern shipments of hazardous wastes (green listed wastes are so far not subject to obligatory reporting).

In June 2009, the Commission adopted a report on the generation, treatment and transboundary shipment of hazardous waste and other waste in the Member States for the period between 2001 and 2006 which indicates:

- the amount of hazardous waste generated by EU-15 increased by 22% in the reporting period from 2001 to 2005 (i.e. ca. 4% increase per annum), while the amount generated by EU-25 did not indicate any particular trend;
- shipments of hazardous wastes out of, or into EU-15 doubled in 2005 and reached 5.4 and 3.5 million tonnes respectively;
- around 85% (40 million tonnes) of hazardous waste was shipped for recovery;
- 95% of the waste shipped into EU-15 originated in EU-25 and EFTA countries, while only 1% arrived from non-OECD countries;
- in 2005, an estimated 90% of the Community's hazardous waste was treated in the country of origin;
- approximately 90% of the hazardous waste shipped remained within EU-15, while 98% of the shipments from EU-15 in this period went to EU-25 and EFTA.

More details on the implementation of this legislation can be found in the Commission's report at: http://ec.europa.eu/environment/waste/shipments/reports.htm.

Regrettably, reporting on incidents/accidents and/or illegal shipments was, with few exceptions, inadequate, unclear and presumably unrealistic. This is an important point for

[9] See: http://epp.eurostat.ec.europa.eu/portal/page/portal/waste/data/wastestreams/elvs.

future improvements given that a significant number of illegal shipments are notified to the Commission each year, particularly as regards waste electrical and electronic equipment and end-of-life vehicles.

12. COMMISSION ACTION TO IMPROVE THE IMPLEMENTATION

In 2006, the environment sector accounted for about one fifth of the total number of open cases concerning non-compliance with Community law under investigation by the Commission and remains the sector with the highest number of open cases. The environment accounts for about 10% of all Parliamentary questions put to the Commission and remains the main subject in 35% of the petitions handled by the Petitions Committee. Over 20% of all environmental infringement cases launched are related to the waste legislation.

A largely unsatisfactory state of implementation of Community legislation on waste, including persistent implementation gaps, triggered a focused attention of the Commission and a launch of a series of actions aiming to help to improve the situation.

Compliance checks are carried out on a regular basis, and infringement cases related to waste legislation continue to be regularly launched. The Commission's new "horizontal" approach to multiple infringement cases related to the Landfill Directive should allow addressing a wider spectrum of cases in each proceeding and thus accelerate legal redress. The Commission receives, on a regular basis, a large number of complaints, petitions and letters from the citizens, NGOs, and other EU institutions, constituting a precious source of information about the actual state of implementation of waste legislation. Information from these sources is verified in correspondence between Member States and the Commission, the latter seeking further information or making national authorities aware of the problems.

The Commission meets with the Member States and stakeholders on a regular basis and on various levels, including national experts in the Technical Adaptation Committee, high-level meetings of the environmental directors, multiple ad hoc expert meetings and frequent stakeholder consultations. Such meetings in the number of 20-30 annually allow the exchange of best practice, discussion of implementation issues and clarification of legislation. The Commission has issued a number of implementing measures (comitology decisions) clarifying the legislation and non-binding guidance documents, including on WEEE, ELV, batteries, WFD. Legal interpretation is provided on a regular basis and, where necessary, legislation is reviewed to bring it up to date with progress made in waste management (e.g. review of the WFD, Waste Shipment Regulation, the List of Waste, the ELV targets, WEEE and RoHS directives).

As of 2007, the Commission has undertaken additional steps to improve the implementation by launching a number of compliance promotion actions including 36 awareness raising and information exchange events, guidance documents for Member States on a number of key issues concerning EU waste legislation, joint enforcement actions and inspection activities in Member States in close co-operation with IMPEL, establishment of a pilot phase of a help-desk on the implementation of EU waste legislation. Meetings with the Member States and stakeholders continued. Further studies are being carried out in order to examine how to best address implementation problems in the future, including a feasibility study on setting up a European body for monitoring and supporting the implementation of waste legislation.

13. CONCLUSIONS

Whilst Community legislation is reasonably well transposed into national legislation, although sometimes with significant delays, the lack of adequate enforcement causes widespread failure in achieving the agreed environmental protection objectives in practice. The implementation and "real-world" application" of waste legislation in the reporting period 2004 – 2006 remained unsatisfactory in many areas. This confirms earlier observations which had already resulted in the Commission stepping up its efforts to assist Member States in better implementation. At the same time, the quality of provided information calls for a need for better information such as in the form of publically available monitoring indicators which could facilitate a more in-depth investigation into the state of implementation, the effectiveness and efficiency of waste legislation in line with the Commission's Better Regulation policy.

As demonstrated by a large number of infringement cases, the state of practical implementation remains critical in respect of the Waste Framework Directive, the Landfill Directive, and the Waste Shipment Regulation where coordinated efforts are required to bring the situation in line with the legislation. Action is needed to address significant deficiencies in waste management infrastructure, tackle a large amount of illegal landfills in a significant number of Member States and many illegal shipments of waste, mainly electronic waste and end-of-life vehicles. In particular, it is advisable that, together with the Commission, Member States and IMPEL increase their actions to bridge the implementation gap of the Landfill Directive. Also in various Member States the results of the WEEE, Packaging and ELV directives remained below the agreed binding targets and numerous infringement cases continued to be open.

Even though progress was made in some Member States, huge implementation efforts need to be undertaken in many countries. Some reported problems are particularly common in countries which joined the Community in 2004 where over 90% of waste continues to be landfilled. Efforts need to be stepped up in order to bring the waste management infrastructure in line with the requirements of the Community legislation, including creating separate collection systems for different waste streams, education of citizens, investments in pre-treatment of waste before its final disposal. These efforts are crucial to make the letter of law effectively protect the environment and human health.