

Network of European Environment Protection Agencies

Barriers to Good Environmental Regulation

January 2007

Umweltbundesamt (Federal Environment Agency), Austria
Flemish Environment Agency
Environment Service, Cyprus
Czech Environmental Information Agency
Danish Environmental Protection Agency
Estonian Environment Information Centre
Finnish Environment Institute
Federal Agency for Nature Conservation, Germany
Federal Environment Agency, Germany
Environment and Food Agency, Iceland
Environmental Protection Agency, Ireland
Italian Agency for Environment Protection and Technical Services (APAT)
Latvian Environment, Geology and Meteorology Agency
Environmental Protection Agency, Lithuania
Netherlands Environmental Assessment Agency
Directorate for Nature Management, Norway
Norwegian Pollution Control Authority
Chief Inspectorate for Environmental Protection, Poland
Environmental Agency for the Republic of Slovenia
Swedish Environmental Protection Agency
Federal Office for the Environment, Switzerland
Environment Agency, England and Wales
Scottish Environment Protection Agency
European Environment Agency

The Network is an informal grouping bringing together the heads of environment protection agencies and similar bodies across Europe to exchange views and experiences on issues of common interest to organisations involved in the practical day-to-day implementation of environmental policy.

Contents

two	1	Introduction
three	2	Barriers to good regulation
four	3	EU level barriers
six	4	Domestic barriers
eight	5	Stakeholder barriers
nine	6	Infrastructure and administrative barriers
eleven	7	Recommendations and actions
thirteen	Annex 1	Identifying barriers to good environmental regulation
sixteen	Annex 2	Case studies of barriers to good regulation

Introduction

- 1¹ A healthy environment is a basic requirement for everyone. Good environmental regulation is essential for protecting and improving the environment and is effective, efficient and easy to adopt and implement. It supports a clean and competitive economy in which to work and live.
- 1² A paper published by the Network of Heads of European Environment Protection Agencies in November 2005¹ concluded that there is significant evidence from international research that good environmental regulation, management and performance do not impede overall competitiveness and economic development.
- 1³ The Network welcomes the EU Better Regulation programme. This programme aims to simplify existing EU legislation, withdraw or re-draft unnecessary or inappropriate pending legislation and to ensure there are adequate impact assessments for new proposals that fulfil the environmental aims of the EU. It gives a greater emphasis on consultation and reducing administrative burdens.
- 1⁴ Members of the Network aim for continuous improvement in the way obligations imposed by the needs of environmental protection are transposed into the legal framework using the most appropriate mix of regulatory instruments. We are working to identify and remove potential obstacles to good environmental regulation and to promote examples and case studies of good environmental regulation in practice.
- 1⁵ The Network has considered how obstacles or barriers to good environmental regulation arise and developed a simple diagnostic tool for environmental legislation (Annex 1). This was derived by examining case studies of where such barriers exist or have been overcome (Annex 2).
- 1⁶ The Network's work on Better Regulation is intended to complement work being carried out elsewhere, for example the DG Enterprise BEST report² and the work of the Implementation and Enforcement of European Environmental Law (IMPEL) network³. IMPEL has created a detailed checklist for assessing the practicability and enforceability of new and existing environmental legislation. Stakeholders, regulators and EU law-making institutions can use this at the different stages of the regulatory cycle.

1
The contribution of good environmental regulation to competitiveness. Network of Heads of European Environment Protection Agencies, November 2005.

2
Streamlining and simplification of environment related regulatory requirements for companies. Final report of the BEST Project Expert Group. DG Enterprise and Industry, May 2006.

3
<http://ec.europa.eu/environment/impel/>

Barriers to good regulation

2.1 Barriers to good regulation can take three forms.

- Institutional, legal and regulatory framework barriers arising from the processes for developing legislation at EU level and its transposition and implementation into national law.
- Behavioural barriers on the part of both regulators and those they regulate.
- Lack of scrutiny and challenge mechanisms in the legislative and regulatory process.

These three types of barriers may arise along the regulatory chain at EU and national level, and amongst the regulated community and other interested groups. We have used the following headings to highlight where we think barriers to good environmental regulation can be overcome and who would need to take action to overcome them.

- EU level barriers
- Domestic barriers
- Stakeholder barriers
- Infrastructure and administrative barriers

We conclude the paper with recommendations and actions that could help overcome these barriers.

EU level barriers

- 3-1 In some Member States it is estimated that as much as 70% of environmental legislation originates from the EU. The quality of EU legislation therefore has a significant impact on the ability to deliver good regulation. However, difficulties arising from EU legislation are not necessarily due to the EU legislative process. Member States and other stakeholders can also create difficulties by failing to engage properly in these processes. Lack of good regulatory impact assessments have also meant that barriers to implementation have not been identified. Active pursuit within the EU of a programme for better law making should help to break down barriers in future.
- 3-2 **Decision-making process barriers and lack of timeliness**
- 3-2.1 The EU decision-making process can be unwieldy and result in a loss of coherence of the original proposal. The time from proposal to adoption of a directive can be very long. This can improve the understanding and acceptability of the new legislation but for those to be regulated the lack of certainty can reduce the ability to modernise or adapt quickly. Conversely, decisions on proposals can also be made at very short notice with insufficient time for effective involvement by all interested parties.
- 3-2.2 Legislation is a compromise of the positions of Member States and the views of the Members of the European Parliament. This can improve proposed legislation and allow for alternative and innovative approaches, and increase acceptability. However, it can also lead to a loss of transparency and clarity for regulators and regulated businesses planning for the implementation of legislation. Businesses will take advantage of the ability to innovate if they have a level of certainty on the direction of future legislation. Lack of certainty and proportionate transition periods reduce the ability to plan and invest. There can also be delays in addressing the issue that the original proposal was designed to remedy. For example, the White Paper on the EU chemicals strategy, REACH, was published in February 2001. The resulting legislative proposal was subjected to some 3,000 proposed amendments at first reading in the European Parliament before political agreement was reached in Council on 13 December 2005. This version was published as the common position on 27 June 2006 and finally agreed on 18 December 2006.
- 3-3 **Legislative framework may be neither integrated nor has a common platform**
- 3-3.1 New legislation should fit into existing legislation wherever possible to reduce complexity and inconsistency and to allow for effective transposition and implementation by Member States.

4
[The inter-relationship of the IPPC Directive with other Directives. IMPEL Network, adopted April 2006.](#)

- 3-3.2 There are sometimes inconsistencies between single-issue EU directives and large framework directives that seek to provide a common platform. It can also allow Member States to create further integrated acts during implementation, as has been done in Germany. However, single-issue directives can lead to inconsistencies in administering the legislation and framework directives may lead to inconsistencies of interpretation.
- 3-3.3 Some environmental legislation is neither fully integrated nor allows easy transition from previous regimes in all EU member states. Examples include the body of waste legislation, the Environmental Impact Assessment (EIA) Directive and the Integrated Pollution Prevention and Control (IPPC) Directive. A recent report by the IMPEL network on the inter-relationship of the IPPC Directive with other directives⁴ concluded that there are a number of areas where there are inconsistencies and overlaps between the IPPC Directive and other directives (particularly sectoral directives).
- 3-3.4 Directives are often developed and amended by many of the same actors in the EU decision-making process. However, inconsistencies and overlaps can still arise. These reduce the impact of the framework role that the directive is expected to have. The Water Framework Directive is an example of a framework Directive that has worked well. It seeks to harmonise a number of water issues given detailed consideration in subsequent legislation (for example, bathing waters).
- 3-3.5 There is no common platform for providing information associated with environmental legislation. When Member States execute European law the Commission needs a feedback mechanism to further improve future law. Reporting is the easiest way for the Commission to gain that information. Almost every new legislative act comprises new reporting. Consequently, the public and business have to meet a large variety of reporting duties. Harmonising and streamlining the reporting requirements would reduce the burden of regulation significantly.
- 3-4 Regulatory practitioners are not always involved in the process
- 3-4.1 New legislation should be developed in a manner that allows effective implementation in Member States to deliver its intended outcomes. Involving regulatory practitioners in the process can help ensure that legislation is implemented smoothly and with least administrative burden. In the UK, for example, implementation of the Ozone Depleting Substances Regulation resulted in a mountain of fridges that could not be disposed of. Government departments subsequently recognised that they should consult UK environmental regulators on EU proposals to ensure that the EU legislation is designed and implemented in a timely, targeted and effective manner.

Domestic barriers

- 4¹ Embedded cultural perceptions can lead to unwillingness to take new and innovative approaches within government and regulatory bodies, and unwillingness to tackle the difficulties arising from existing regimes.
- 4^{1.1} Good environmental policy requires the use of a range of tools, from traditional command and control regulation to economic instruments, risk-based approaches, negotiated or voluntary agreements, trading schemes, and education and advice.
- 4^{1.2} Traditional structures and entrenched behaviours can be difficult to change when new approaches could be used to complement, for example, command and control. Better regulation requires creativity and imagination but these skills are not always present. For example, if the legislator or regulator wishes to use a risk-based approach, there may be an underlying aversion to risk and a lack of experience in dealing with risks or problems that arise when it is implemented.
- 4^{1.3} A recent report by the Better Regulation Commission in the UK highlighted over-reliance on government to manage all risk at the cost of eroded responsibility⁵. Not only can this prevent the use of risk-based regulatory approaches, but can also lead to unnecessary use of regulation to manage risks.
- 4^{1.4} New and innovative approaches to environmental regulation and management can take longer to develop when first used, and so there must be political and stakeholder acceptance to ensure these approaches are implemented. This allows the new approaches to be implemented efficiently in future.
- 4^{1.5} Training and professional development programmes need to be developed to create the skill base required. For example, more training on the skills necessary for auditing operator compliance rather than prescriptive inspections may be required, with a greater focus on identifying root causes of poor environmental performance rather than treating the symptoms.
- 4² Political and regulatory structures in Member States may restrict the ability to respond to new legislation
- 4^{2.1} Regulatory structures vary across Europe and also within Member States. Devolution of legislative powers in some states has sometimes led to lack of homogeneity in the enforcement of environmental legislation. On the other hand, regionalisation offers the chance to take regional characteristics into account. According to the principle of subsidiarity regulators should ensure take care about the appropriate regulatory level where provided that their constitution offers this possibility.
- 4^{2.2} There can be problems where political and regulatory structures in a Member State restrict the ability to respond to new legislation. For example, the legislation may require new bodies to be set up to oversee the implementation or monitoring requirements, but this may conflict with existing structures or that Member State's constitution.

5

Risk, Responsibility and Regulation – Whose risk is it anyway? Better Regulation Commission, 2006.

- 4³ Unnecessary statutory guidance, gold plating and regulatory creep
 - 4^{3.1} Better Regulation means creating concise, consistent and harmonised law which is easy to execute. Guided by those aims, legislators should try to find a balance between detailed regulations that simplify interpretation and maintaining transparency and flexibility. Where proportionate execution of law by the competent authority is combined with coherent and uniform application, business is more able to predict and prepare for its implementation. Guidance and rules may facilitate the enforcement of law and improve equity in adopting it. However, if every possible incident or condition is taken into account this can lead to unnecessary and complicated regulation and additional burdens for compliance by the regulated community.
 - 4^{3.2} There is also a tendency to identify solutions on the basis of ‘we have always done it this way’. While providing for coherent national schemes, supporting guidance for domestic transposition may itself introduce regulatory creep and constrain regulators into prescriptive approaches. For example, statutory guidance in the UK known as ‘Waste Management Paper 4’ specifies how and when to inspect waste sites rather than allowing a more appropriate risk-based approach to be used to target regulatory effort.
- 4⁴ Transposition neither integrated nor taking into account historic regulations
 - 4^{4.1} Lack of integration with existing environmental legislation is not just a problem at EU level. It also occurs when Member States transpose legislation. For example, in the UK there are differences in the way exemptions are dealt with under the End of Life Vehicles Directive, the new notifiable exemptions under the 2005 Waste Management Licensing provisions, and the proposed exemptions under the repair and refurbishment requirements of the Waste Electrical and Electronic Equipment Directive. These apparently minor issues lead to unnecessary administrative burdens and confusion for industry. They also risk undermining the desired outcomes of the legislation.
 - 4^{4.2} One way to avoid lack of integration is to summarise existing law in a coherent code, aiming for harmonised and standardised environmental law. This strengthens environmental law and can achieve a high level of protection for the environment as a whole. Sweden has had a comprehensive code of environmental law in force since 1999 and Germany is currently developing an Environmental Federal Code.

Stakeholder barriers

- 5-1 Businesses do not take corporate responsibility for managing their compliance
- 5-1.1 For better regulation approaches to work effectively, businesses must take corresponding corporate responsibility. Mature industries generally ask for regulation with little prescription and based on outcomes. Companies not used to this approach often want more micro-management by the regulator and prescriptive site-specific conditions.
- 5-2 Public and NGOs may perceive reduced standards
- 5-2.1 Engagement in the regulatory process allows the public and non-governmental organisations (NGOs) to play an important role both in the development of new legislation and its implementation. However, some NGOs and the public may perceive effective and innovative regulatory approaches as reducing standards for environmental protection or as inappropriate deregulation. Avoiding this misperception requires good communications with stakeholders throughout the development and implementation of regulation.
- 5-3 Regulatory practitioners are sometimes not being involved in the national process
- 5-3.1 The legislator or regulator should take account of the experiences gained by competent authorities, trade associations and business advisors in executing existing law. These experiences are often indispensable for consistent law. Feedback from those involved in enforcing and complying with the law is vital. Regular formal reviews of the effectiveness, coherence and continuing relevance of regulations are vital good practice.

6
*Hampton review on regulatory
inspections and enforcement.*
UK HM Treasury, 16 March 2005

Infrastructure and administrative barriers

- 6¹ Lack of scrutiny and challenge
 - 6^{1.1} Poor regulation can arise from lack of challenge and scrutiny at all levels. The first approaches developed for implementing a new piece of legislation are not always the best ones. Scrutiny and challenge generally produces a better approach.
 - 6^{1.2} In Germany, regulatory scrutiny is ensured by the requirement for Federal legislators to undertake an impact assessment of new legislation. A new independent body (Normenkontrollrat) is being set up to help the Federal Government reduce bureaucracy costs caused by legislation.
 - 6^{1.3} In England and Wales scrutiny by the Government's Hampton Review of regulation⁶ and the Better Regulation authorities has made regulators rethink their approaches and target regulation more effectively. In addition, Ministerial Challenge Panels ensure that new legislation and impact assessments are scrutinised and challenged. The Modern Regulation framework produced by the Environment Agency (in England and Wales) has also resulted in challenges to its ways of working. Sweden's Enforcement and Regulation Council has produced similar benefits in its national regulation. The Netherlands and Denmark have better regulation and administrative reduction processes in place.
- 6² In some countries penalties are not effective incentives for companies to improve and manage their own compliance
 - 6^{2.1} The better regulation agenda provides scope for voluntary approaches, trading schemes and reduced regulatory oversight. But for these to work effectively there must be an appropriate and proportionate system of fines and penalties with an effective monitoring system to ensure compliance. Otherwise new legislation must be developed to achieve the desired environmental outcomes.
 - 6^{2.2} Voluntary approaches that go beyond the implementation of existing legislation can only be applied through mutual agreement of the participants and require a strong monitoring system. They should be designed so that failure to comply with the voluntary standards results in removal of the certification; this can affect a company's competitiveness in markets where consumers consider environmental certification important. Making the results of this monitoring available to the public provides an additional incentive to comply.

- 6⁻³ The costs and delivery mechanisms of the information technology (IT) systems needed to support better regulation, and data policies, restrict sharing of environmental information and data
- 6^{-3.1} Competent authorities depend on comprehensive and up-to-date information. Environmental issues are often complicated and detailed knowledge is required to make correct decisions. Authorities need to be able to access simple databases and to share information in other ways. The Directive on Public Access to Environmental Information improved the situation considerably, not only for the authorities but also for those affected by environmental legislation.
- 6^{-3.2} To reduce regulatory burdens and make regulation more efficient, there is a need for greater sharing of information and online administration. Both require new IT systems for the regulators and the regulated. Historically, however, there have been major problems with the delivery of IT solutions such as common portals and inter-agency systems in terms of cost and technical scope.

Recommendations and actions

- 7.1 The Network of Heads of European Environment Protection Agencies believes that many of the barriers to good environmental regulation can be overcome. We believe that closer working by the European Commission, Member States, implementation bodies, business and other interest groups should help to identify where barriers are likely to arise.
- 7.2 The Network's Better Regulation Interest Group has designed a short checklist to help identify the barriers that are preventing the development of good legislation and its implementation. The checklist could be used as a diagnostic tool for new legislation. The Interest Group will work closely with the IMPEL network who are similarly looking at appropriate tools for scrutinising legislation.
- 7.3 We have highlighted a number of things that the European Commission could build into its better regulation programme as it continues to strengthen its programme of better law making. We think the Commission should integrate new environmental legislation into existing legislation or should integrate existing Directives wherever possible. They should involve regulatory practitioners or implementation bodies in the process. We also suggest that Member States and other stakeholders need to properly engage in the EU legislative process.
- 7.4 We think that national transposing authorities and delivery bodies should use a mix of regulatory approaches and should target environmental outcomes. The right mix of staff skills and flexibility in national structures, as well as resources for IT and delivery mechanisms, are needed to deliver better regulation. There should be integration and consistency in national legislation. Unnecessary gold plating and regulatory creep should be eliminated.

Finally, we would like to highlight that challenge and scrutiny designed into the regulatory process generally produces better approaches. We recommend that our checklist in Annex 1 should be used to ensure that barrier to good environmental legislation are eliminated.

Annex 1

Identifying barriers to good environmental regulation

This simple checklist is designed to help to identify where barriers to good environmental regulation exist in the design and implementation of EU and domestic legislation. Identifying the source of the barrier should allow action to be focussed on overcoming it. The IMPEL Network is developing a detailed checklist for assessing new environmental legislation that should help prevent these barriers arising in the first place.

In the checklist, if the answer to any question is ‘Yes’ it is likely that this issue is not a barrier. However, if the answer is ‘No’ further action should be taken to understand the cause of the barrier and to identify solutions to overcome it.

Key

- * factors also considered in the IMPEL Practicability and Enforceability Checklist
- ** more advice given on this issue in the IMPEL Practicability and Enforceability Checklist

European barriers		Yes	No
1	Is there clarity on the environmental outcomes to be achieved by the proposed legislation?	<input type="checkbox"/>	<input type="checkbox"/>
2	Are the best mechanisms or regulatory mix being used to deliver the desired outcomes?	<input type="checkbox"/>	<input type="checkbox"/> **
3	Can the outcomes be achieved by amending existing instruments rather than establishing new legislation?	<input type="checkbox"/>	<input type="checkbox"/> *
4	Are there sufficient thresholds, <i>de minimis</i> values, exemptions, etc. to ensure that a disproportionate burden is not unintentionally imposed on business and competent authorities?	<input type="checkbox"/>	<input type="checkbox"/>
5	Where there are other directives regulating the same or similar issues within the sector, does the proposed legislation fit with them?	<input type="checkbox"/>	<input type="checkbox"/> *
6	Are there net financial benefits accruing to operators who comply with the legislation (i.e. not just their costs)?	<input type="checkbox"/>	<input type="checkbox"/> **
7	Has there been engagement of regulatory practitioners?	<input type="checkbox"/>	<input type="checkbox"/> *
8	Has there been engagement of business?	<input type="checkbox"/>	<input type="checkbox"/>
9	Has there been engagement of other stakeholders, for example environmental organisations?	<input type="checkbox"/>	<input type="checkbox"/>
10	Is there appropriate time for Member States to implement the legislation?	<input type="checkbox"/>	<input type="checkbox"/>
11	Have unintended consequences been considered?	<input type="checkbox"/>	<input type="checkbox"/>
12	Is the legislation targeting properly at least those operators with the largest environmental impacts? Can others be left out of the scope of the legislation?	<input type="checkbox"/>	<input type="checkbox"/>
13	Is there a review stage for the legislation to be modified in the light of experience?	<input type="checkbox"/>	<input type="checkbox"/>
14	Are the envisaged economic instruments, if any, sufficiently harmonised at EU level?	<input type="checkbox"/>	<input type="checkbox"/>
15	Have indicators for measuring implementation been included and are they adequate?	<input type="checkbox"/>	<input type="checkbox"/>
16	Has an impact assessment been used properly and has its outcome been taken into consideration?	<input type="checkbox"/>	<input type="checkbox"/>

Domestic barriers		Yes	No
17	Is the structure of the competent authorities adequate to tackle and enforce EU directives?	<input type="checkbox"/>	<input type="checkbox"/> *
18	Is there adequate time for transposition and implementation?	<input type="checkbox"/>	<input type="checkbox"/> *
19	Is there an implementation plan stretching from development of regulations to on-the-ground implementation?	<input type="checkbox"/>	<input type="checkbox"/>
20	Are implementers, businesses and other stakeholders properly engaged in the process?	<input type="checkbox"/>	<input type="checkbox"/> *
21	Is business providing adequate co-ordination to engage constructively with government and regulators?	<input type="checkbox"/>	<input type="checkbox"/>
22	Can the new requirements be implemented through amendment of existing Member State legislation or by modifying existing permits?	<input type="checkbox"/>	<input type="checkbox"/>
23	Is there challenge and scrutiny at all stages of the transposition and on-the-ground implementation?	<input type="checkbox"/>	<input type="checkbox"/>
24	Have operational requirements been identified (i.e. staff recruitment and training, information systems, IT systems, application forms and guidance)?	<input type="checkbox"/>	<input type="checkbox"/>
25	Has the regulator explained or published its enforcement priorities for the introductory period?	<input type="checkbox"/>	<input type="checkbox"/>
26	Are there adequate penalties or sanctions for non-compliance?	<input type="checkbox"/>	<input type="checkbox"/> **
27	Is there a feedback loop for regulators, operators and other stakeholders to advise government where changes are required to the legislation?	<input type="checkbox"/>	<input type="checkbox"/>
28	Does the proposed legislation account for local characteristics in all Member States (for example, soil physical and chemical properties, climatic features)?	<input type="checkbox"/>	<input type="checkbox"/>
29	Have adequate compliance support initiatives been put in place?	<input type="checkbox"/>	<input type="checkbox"/>

Other barriers		Yes	No
30	Have the proposals been scrutinised adequately to allow identification of better regulation solutions?	<input type="checkbox"/>	<input type="checkbox"/>
31	Have stakeholders been consulted adequately to ensure they can make the necessary preparations for proposed changes?	<input type="checkbox"/>	<input type="checkbox"/>
32	Are businesses resistant to any of the regulatory approaches proposed?	<input type="checkbox"/>	<input type="checkbox"/>
33	Are businesses unwilling to take responsibility to manage their own compliance or reduce their environmental impact?	<input type="checkbox"/>	<input type="checkbox"/>
34	Is there a need to develop new IT infrastructure, which may be difficult to deliver?	<input type="checkbox"/>	<input type="checkbox"/>
35	Is an adequate laboratory testing system available in Member States with standards and practices agreed at EU level?	<input type="checkbox"/>	<input type="checkbox"/>

Annex 2: Case studies of barriers to good regulation

These are cross-referenced to the paragraphs describing the particular issue exemplified in the main paper.

In preparing our report, we considered the examples below as well as those mentioned in the body of the report.

- 1 EU Emissions Trading Scheme (EU ETS) (example from all Member States). This ground-breaking regulation, which is implemented in all 25 Member States, is the only trans-boundary emissions trading scheme in the world. Phase 1 of the EU ETS was implemented successfully to short timescales (paragraph 3^{2.1}).

European regulators have networked via an IMPEL project and internationally via the International Network for Environmental Compliance and Enforcement (INECE). In its review of the scheme's monitoring and reporting guidelines, the European Commission took on board the experiences of the regulators. Experience has revealed differences in the enforcement of definitions in the EU ETS and other directives. In addition, emissions covered in Phase 1 would have been reduced only by 5% if half the operators had been excluded (paragraph 3^{4.1}).

Future expansion of the scheme (Phase 2 and beyond) is welcomed by European environmental protection agencies.

- 2 Landfill Directive (UK example). Implementation of the co-disposal ban in July 2004 reduced the number of landfills in England and Wales able to accept hazardous waste from 260 to about 15. Five key Directives (Landfill, Waste Framework, IPPC, Hazardous Waste and Groundwater) were not synchronised both in terms of time and requirements. The lack of meshing together of these Directives resulted in major obstacles, which became very obvious when attempting to implement via a single landfill IPPC permit. Although the Landfill Directive took 12 years to negotiate, it postponed and delegated a crucial component (Waste Acceptance Criteria) to a Technical Adaptation Group, which took another three years to come to a conclusion.

The existing UK infrastructure relied on hazardous waste disposal to landfill, but meticulous planning and engagement of government, regulators and industry overcame the domestic barriers. In addition, the Environment Agency and the Scottish Environment Protection Agency (SEPA) set out a clear enforcement position, undertook targeted enforcement and monitored illegal activity. One benefit has been a marked reduction in the production of hazardous waste by industry (paragraphs 3^{2.1}, 3³, 3⁴, 5¹, 5³).

- 3 **Hazardous waste co-disposal (Italian example).** In July 2004, mud from the chemical and biological treatment of tanneries' spray water was found to contain more oil than the statutory limit. This would have meant that spray waters could no longer be treated in a common plant and would become classified as hazardous waste. A study of the process found that neither mineral oil nor hydrocarbons were used in the process. The problem was caused by use of an analytical procedure that did not differentiate between mineral oil and non-hazardous animal fat. A new analytical method was developed by the Agency for Environmental Protection and Technical Services (APAT) working with the tannery industry (paragraph 5¹).
- 4 **Waste Electrical and Electronic Equipment (WEEE) Directive (UK, German, Italian and Flemish examples).** This Directive has thrown up many difficulties for regulators. Its scope is very broad, potentially extending to many types of product that most people do not regard as electrical or electronic equipment. In addition, there is no de minimis threshold for retailers or producers.

Article 9 (funding of non-household WEEE) risked making many producers technically insolvent overnight. The impracticality of this Article was recognised after the Directive had been adopted and necessitated the production of an amending Directive (paragraphs 3^{2.1}, 3^{3.3}).

Some of the WEEE treatments are linked to size limits for components and there is no clear justification for others (e.g. the need to remove external power cables when they will usually be processed alongside the products from which they have been removed). The UK Government resisted gold plating and consulted widely (both formally and informally). It has produced guidance on the Directive's scope aimed at focussing efforts on mainstream products and is developing practical treatment guidance. The UK will also be making use of exemptions from waste management licensing for the storage and repair/refurbishment of WEEE. The biggest problem has been the difficulty in drawing up a clear and credible implementation plan. The business community has been active in consultations and meetings with Government. They have volunteered potential delivery mechanisms and established compliance schemes (paragraphs 3³, 4³).

4 cont'd In Germany, the ElektroG (Act Governing the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment) transposed the WEEE and the Restriction on Hazardous Substances (RoHS) Directives simultaneously. All producers of electrical and electronic equipment in Germany have to be registered; a financial guarantee against insolvency is a precondition of registration for producers of electrical and electronic equipment for use in private households. The registration and guarantee obligations aim to prevent producers from placing equipment on the market without meeting their take-back and disposal duties (i.e. becoming 'free-riders'). There are no exemptions for registration for minimum quantities of electrical and electronic equipment put on the market. However, the ElektroGKostV (Cost Ordinance on the Electrical and Electronic Equipment Act) allows the competent authority to reduce the fee for registration or to grant exemption from the fee under specific conditions.

Producers in Germany must set up a clearing house and the companies involved set up the independent EAR Foundation (Stiftung Electro-Altgeräte-Register) in August 2004 to:

- determine the collection volumes for individual producers;
- calculate an even temporal and regional distribution of WEEE collection quotas between all producers;
- collect data on equipment placed on the market, taken back and recovered;
- submit these data to the state (Länder) authorities.

The EAR Foundation has sovereign powers but is supervised by the Federal Environmental Agency (Umweltbundesamt, UBA). The UBA has transferred responsibility for 'registering' and 'co-ordinating collection' under the ElektroG to the EAR Foundation. This will allow the producers to organise the fulfilment of their disposal responsibility as efficiently as possible. The Länder authorities are thus spared much of the responsibility for monitoring and controlling the legislation.

In Italy WEEE and RoHS Directives have been transposed with Decree 151/05 that establishes a national register for all the producers of electrical and electronic equipment. To put products on the market the producers of EEE must be registered. The Agency for the Protection of the Environment and for Technical Services (APAT) must collect data on treated, reused, recovered and recycled WEEE and monitor the achievement of the fixed targets. Under IPPC, APAT improved national guidelines on Best Available Technology (BAT) for waste management plants and WEEE treatment plants. These guidelines contain descriptions of the treatment, recovery and recycling techniques for WEEE, including also an evaluation of techniques for storage, pre-treatment and de-pollution. Specific treatment techniques for the various categories of WEEE and certain hazardous substances are also analysed, to help increase the recovery and recycling of materials and reduce the emissions arising from treatment operations.

In Flanders the obligations of the Waste Electrical and Electronic Equipment Directive are met by the acceptance obligation. The acceptance obligation implies that the producer is held responsible for the product that he has placed on the market, from production through to the scrapping of the product as waste. In this way, the policy makers aim to promote the selective collection and environmentally-conscious processing of waste. Confronting the producer with the cost for collection and processing is also meant as qualitative prevention. The producer is stimulated to take account of the processing cost as early as in the design phase, so as to obtain products that have a longer life cycle and that are easier to repair, disassemble and recycle. The procedure to be applied by producers and importers for implementation of their acceptance obligation, is set out in an environmental policy agreement (EPA), concluded between the government and producers/importers, the latter represented by representative business federations. Implementation of the acceptance obligation via an EPA allows a collecting and processing circuit to be set up at sector level with the resulting economies of scale. This increases the efficiency and reduces the costs. In the EPA it is prescribed that 90% of all Equipment must be recycled and there is an obligation to depollute. Practically speaking, a special enterprise (Recupel) was created to collect and to recycle all WEEE that the EPA-signing producers produced⁷.

- 5 Involving practitioners (Swedish and German examples). Sweden's work within the EU is divided in such a way that the agencies (e.g. the Swedish Environmental Protection Agency (EPA), Naturvårdsverket) are responsible for liaising with the European Commission and the ministries (e.g. the Ministry of the Environment) are responsible for input into the work of the EU Council. Because civil servants from the Swedish EPA participate in both the expert and implementation stages, it is difficult to draw a line between political and technical decisions.

As a consequence, co-operation between the EPA and the Ministry of the Environment is close, with regular meetings. Each week the EU co-ordinator at the Swedish EPA attends a phone conference at the Ministry of the Environment with the Swedish Environment Counsellors in Brussels (part of the Swedish permanent representation) to discuss the agenda in Brussels for the coming week (paragraph 3^{4.1}).

In Germany, the Bundesrat (the chamber of representatives of the Länder and the second legislative chamber of the Parliament) examines proposals for new legislation at the European level. In addition, a representative of the Länder attends the meetings of the EU Council. These approaches involve both the Länder and members of the Federal Government in the legislative process in Europe, introducing experiences in executing existing law into the European process (paragraphs 4^{2.1}, 4^{2.2}).

- 6 **Involving regulatory practitioners in the national process (German example).** In Germany, the Länder execute the law in most cases and are involved in the legislative process via the Bundesrat. Draft texts of new German legislation must be sent at an early stage to national associations of local authorities, central and umbrella associations, and the expert community to capture the opinions and expertise of experts and practitioners (paragraph 5³).

In addition, a practical test ('map exercise') may be used as a tool to enhance the proposed legislation. Such tests highlight problems in implementing the requirements in practice, allowing experts to propose ways of overcoming them and helping the legislator to create law that can be applied effectively. For example, implementation of the SEA Directive in Germany has been guided by an R&D project commissioned by the UBA. This project involved voluntary environmental impact assessments on three regional planning procedures (paragraph 5^{3.1}).

- 7 **Political and regulatory structures (German and Flemish examples).** The Water Framework Directive posed significant problems for Germany when it was first proposed. The Directive required river basin authorities to be established, but with only one competent authority for each river basin. Under the German constitution, water management is at the Länder (state) level; a single competent river basin authority would therefore be inconsistent with the German constitution. This was overcome with the clarification that the Directive allowed competence to be shared between several competent authorities for river basin management (paragraph 4^{2.2}).

A Flemish study on the implementation of the Water Framework Directive deals with the initiative for an integrated water policy. Municipalities, provinces, polders and waterworks are stimulated by the Flemish Region to create more ambitious co-operation and a more coherent water policy. For 103 sub-basins, sub-basin management plans are developed. The study, an interim analysis and evaluation, found that in all Flemish sub-basins the initiative was taken to set up a water policy plan on a sub-basin level. However, all the initiatives have led to a number of different financing options and different terminology, which has led to a lack of policy transparency. The co-ordinating provincial councils enable positive dynamics in the sub-basin functioning, but their effort is sometimes experienced as too dominant. Most planning processes in the sub-basins will not be completed by the target of mid 2005. The future of the planning composition on sub-basin level is unclear. The mutual co-ordination between sub-basin management planning and other policies (e.g. nature policy, environmental planning) is not self-evident.

8 Public participation and simplification (Finnish example).

Finland adopted new legislation for environmental permitting in 2000. This introduced integrated permitting, not only for the (approximately) 600 processes covered by the IPPC Directive but also for 25,000 smaller installations. Under this process, the public can make submissions during the permit application procedure and submit complaints after the permit is issued.

The Finnish Ministry of the Environment proposed the adoption of simpler permitting systems including a notification procedure for asphalt and quarrying activities. This new procedure would have speeded up the permitting process but would have also reduced public participation.

In Finland, there is significant participation with about 38% of permit applications receiving submissions and 20% of decisions receiving complaints. For quarrying, the number of complaints rises to 50%. The proposed simplification measure was therefore criticised as being inconsistent with the Aarhus Convention and the Finnish constitution because it would reduce public participation. As a result the proposed simplification initiative was withdrawn. This example demonstrates the difficulties of choosing the most appropriate mix of regulatory instruments (paragraph 5²).

9 **Regulatory Impact Assessment (example from several Member States).** Only 12 of the 25 Member States⁸ have obligatory regulatory impact assessments (RIAs) or plan to do so. Some are highly developed and institutionalised (e.g. the UK), while others have only recently been introduced (e.g. Ireland and Czech Republic). In some Member States (e.g. the Netherlands and Finland), a variety of impact assessment systems with different objectives exist side-by-side.

8

See A comparative analysis of regulatory impact assessment in ten EU countries. A report prepared for the EU directors of Better Regulation Group. Italian, Irish and Dutch Presidencies of the Council of the European Union, Dublin, May 2004.

Although these assessments can be used to decide how to implement EU law, their usefulness depends to some extent on the degree of anticipated impact and hence the need to consider options for implementation.

The following are also relevant.

- Assessments are used in some Member States even though they are not obligatory.
- The scope of assessments varies. Some are limited to assessing business and administrative costs, or the effects on government expenditure and revenues. In many Member States, however, approaches are evolving; in Ireland, for example, there is a broadening of the focus of assessments towards wider consideration of environmental and social impacts.
- Some Member States (e.g. the UK and the Netherlands) have introduced a systematic assessment of the impact of proposed EU measures to help formulate their positions in Council. Such assessments can form the basis for subsequent analyses (post-adoption) of the options for implementation.
- The procedures for assessment vary (e.g. the extent of stakeholder consultation).
- There is a wide variation in approaches to the central co-ordination and enforcement of assessment requirements and to quality control.
- Where Member States have introduced a legal basis for assessments, there can still be practical problems in making these a reality in all-important cases (e.g. in Estonia).

9

www.netregs.gov.uk

10

Cost-efficiency of packaging recovery systems. The case of France, Germany, the Netherlands and the United Kingdom. Report for DG Enterprise and Industry. Taylor Nelson Sofres Consulting, 2000.

11

Ministry of Housing, Spatial Planning and the Environment

- 10 NetRegs and the cost of setting up an IT tool (UK example). In the UK, NetRegs has been developed as a free-to-use website⁹ designed to help small businesses and others understand the environmental legislation affecting them. The website provides guidance on how to comply with environmental law as well as advice on good environmental practice.

NetRegs has required significant resources. About £25,000 (€33,000) was spent on the first pilot to test the concept and to build a few pages for one sector. The initial cost of the main project was £3.5 million over three years (about €5 million). Of this, about £1 million (€1.5 million) was for marketing and communications. Writing the content was the most costly element in terms of staff time.

NetRegs has secured additional funding for 2006/2007 for enhancements to make information even more accessible to small businesses (paragraph 6³).

- 11 Implementation of the Packaging and Packaging Waste Directive (example from several Member States). The Packaging and Packaging Waste Directive allows significant flexibility in how Member States achieve its targets and the approaches implemented have varied widely. This was partly as a result of existing systems in place before the adoption of the Directive, which were amended to meet the new EU requirements.

A study in 2000¹⁰ of implementation in four Member States noted the cost implications of the different options chosen. The German system, which is stricter and more prescriptive than the Directive, is based on an administrative approach, i.e. the setting of a relatively detailed legal framework differentiating between household/sales and non-household/non-sales packaging. Although considered costly, it achieves high absolute environmental benefits. In contrast, the Netherlands system, which is based on agreements, does not differentiate between industrial and household sources. It can thus focus on the most cost-efficient, resulting in low costs per environmental benefit (paragraph 3³).

- 12 Scrutiny of regulators (example from several Member States). Considerable scrutiny of regulators is being undertaken in some Member States, particularly where governments are making costed assessments of regulatory burdens (e.g. using the standard cost model). However, this requires the 'burdens' of regulatory activity to be understood. Studies have been carried out on this issue in countries such as the Netherlands, Sweden and Denmark. In the Netherlands, for example, the analysis has resulted in the setting of a target by VROM¹¹ to reduce this burden. This has resulted in a number of initiatives, such as bringing all its permitting activities together into a single process.

Although scrutiny varies between countries and depends upon particular structural issues, the spotlight is on regulators and is resulting in changes to the way that they work (paragraph 6¹).

Umweltbundesamt (Federal Environment Agency), Austria
Flemish Environment Agency
Environment Service, Cyprus
Czech Environmental Information Agency
Danish Environmental Protection Agency
Estonian Environmental Information Centre
Finnish Environment Institute
Federal Agency for Nature Conservation, Germany
Federal Environment Agency, Germany
Environment and Food Agency, Iceland
Environmental Protection Agency, Ireland
Italian Agency for Environment Protection and Technical Services (APAT)
Latvian Environment, Geology and Meteorology Agency
Environmental Protection Agency, Lithuania
Netherlands Environmental Assessment Agency
Directorate for Nature Management, Norway
Norwegian Pollution Control Authority
Chief Inspectorate for Environmental Protection, Poland
Environmental Agency for the Republic of Slovenia
Swedish Environmental Protection Agency
Federal Office for the Environment, Switzerland
Environment Agency, England and Wales
Scottish Environment Protection Agency
European Environment Agency