

Dr Caroline Jackson MEP
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The Landfill directive - a reflection from the European Parliament

The landfill directive went through the European Parliament just before the European elections in June 1999. It was subject at that time to the co-operation procedure, not to co-decision, so that MEPs did not get the chance to negotiate directly with the Council of Ministers. As rapporteur for the Parliament I have been following the directive's track - I will not go so far as to say "progress" - ever since. On the basis of this, I have four main observations to share with you.

First, looking back on it, the landfill directive of 1999 is a case study in how not to draw up and agree a directive. In many ways it embodies the approach to environmental law-making from the 1970s to the late 1990s, and illustrates all the pitfalls of that approach. It is a fairly detailed text, specifying exactly how landfills must be constructed and what may and may not go into them. It sets clear targets for the reduction of landfill and pays ritual homage to the waste hierarchy without going quite so far as to specify quantitative destinations for diversion from landfill. But it was also typical of its generation in leaving the specification of important requirements to technical committees. These were the testing and acceptance criteria outlined in Annex II. Delays in agreeing the waste acceptance criteria did lead to problems and confusion in those member states where there were previously no rules governing what could and could not go into landfill. Perhaps this lesson will be learned

Two things rapidly became apparent to me. The first was that, as I had pointed out in my report to the parliament, ministers were legislating in the dark. There was no adequate cost impact assessment attached to the directive, and the only acknowledgement of the possible difficulty in reaching the demanding targets set (or demanding for those member states with heavy reliance on landfill) was the possibility of postponing the targets for four years. The consequences of complying with the directive for local government in many countries have been very expensive indeed, and unfortunately, local government was virtually silent in our discussions before the landfill directive was adopted. The consequences of failing to face up to costs were that a number of member states were in denial, and having signed up to the directive would be in big trouble about complying with it.

I do hope that this situation will not be repeated in our discussions on future waste directives. I am however not encouraged by the views I have received from the CEMR on the batteries directive, where there has been a call for higher targets. Such calls must be accompanied by a precise assessment of cost and how such costs are to be met otherwise you and I, in the committee of the regions and the European Parliament, are not doing our job in representing our home territory.

The second thing that became apparent to me was that the landfill directive was like a ship where everybody took a great interest in the launch but then turned away and showed no interest in the ship's route or progress beyond the harbour walls. It is true that Article 15 of the directive contained an obligation on the member states to report

to the Commission on the basis of a questionnaire, and that Article 5 of the directive obliges the Member states to set up and notify the Commission of a national implementation strategy no later than 16 July 2003. But when, as an interested MEP, I turn to the Commission's report on these implementation strategies dated 30 March 2005, I find that Ireland, Spain and the Brussels region of Belgium had not submitted anything, and that Finland's report was too late to be included in the Commission's overview. I also find that it was obviously difficult to draw comparisons between the Member States since, in the Commission's words: "As no format was provided for the strategies the structure and detail of them varied significantly".

Could we turn anywhere else for an independent overview of how things were getting on? Apparently not. The European Environment Agency has no inquisitorial or investigatory functions and must rely on what it is told by the member states. We do at least know from the latest State of the Environment report for 2005 that the "Reduction" element of the waste hierarchy is failing, since the total amounts of waste produced in all member states are rising. We might turn to the evidence submitted to the thinly attended "Name and Shame" seminar held by the Commission in 2002. This concentrated on the landfill directive. At that time, only three years ago, there was evidence of thousands of illegal landfills in the EU: 2810 in Greece, and 8000 unregulated sites in Spain- which intended to remove 3600 of them by 2006 (leaving 4400 presumably still there); earlier that year the French environment minister admitted in a speech that up to 9000 unauthorised landfills may exist in France. What has happened to these since then?

My second observation is that the landfill directive illustrates the law of unintended consequences. The directive banned the co-disposal of hazardous and non-hazardous waste in the same landfill. The result in the United Kingdom, which I have no doubt was replicated elsewhere, was the closure of many hazardous waste sites and a desperate search for surviving sites, together with very difficult planning decisions in relation to the creation of new hazardous waste sites. This has led to hazardous waste being transported for much greater distances than before. For example, Wales and Scotland now have no hazardous waste sites at all, and all their hazardous waste is carried by road, hardly to the advantage of the environment, to distant sites in England. This was a direct result of the failure to map the consequences of the directive before it was adopted.

Another example of unintended consequences relates to the ban on placing tyres in landfill. What has happened to them? I got some idea of the answer to that in visiting Rumania in 2002. The Rumanian environment minister then asked us MEPs what he should do about the avalanche of used tyres that were crossing the Rumanian frontier from Western Europe - thus many used tyres were not being recycled but simply exported. Another part of the answer comes from the applications outstanding from cement companies to burn these tyres as fuel: this too has led to complications, opposition from the public and very lengthy and expensive planning wrangles. None of this was anticipated.

My third observation is that we should, in assessing the impact of the landfill directive, be very grateful indeed to the Chinese. The imperative of the waste hierarchy has led many countries to put the emphasis on recycling. But there are problems with recycling. As the Commission acknowledges in its communication on

a waste strategy, there is the problem of finding recycling destinations for recyclables. Then there is the question of whether we are recycling the right things. Because the directive's landfill reduction targets are calculated by weight the recycling effort has been led by glass, paper and cans - since these are all heavy and it is relatively easy to get the public to cooperate in their collection through local recycling schemes. We have also been diverting green waste from landfill to composting schemes. In our odd order of priorities this has left some undesirable substances still going into landfill - things such as non biodegradable plastics, paint and batteries when they should have been given a higher priority for removal from landfill.

Then there is the question of whether we can or should push up our recycling figures much further without the assurance of more destinations in the EU. This is where the Chinese come in. Without China's appetite for paper, glass, plastics and metal from the EU, and of course for our electronic waste, we would by now have piled up vast quantities of recyclates for which we have no home. China's economic growth on the current scale was not foreseen when the directive was being drafted: we have been fortunate in our Chinese partners and need to remain so for a long time to come.

But this great trade in waste from west to east brings its own problems. With so much waste on the move it is extremely difficult to track down what is and is not legal. Impel, the EU network of environmental inspectors, carried out a week of checks in October, inspecting documents and 258 ship cargo holds in 17 ports in 9 EU countries. Of 140 waste shipments found, 48% breached EU rules. The search showed that EU countries enforce waste rules in very different ways. This was a one week snapshot: today the cameras are not there and the trade continues.

My fourth and last observation concerns the application of the waste hierarchy in the context of the landfill directive. Because energy recovery has been so near the bottom of the hierarchy there has been in many countries a desperate search for other means of waste treatment in order to avoid going down the route of mass burn with energy recovery. This has led to some very expensive searches for viable alternatives and some interesting experiments. In at least one instance another EU directive has stepped in to complicate the picture. Thus mechanical biological treatment has been the focus of some interest in my country but the problem is what to do with the refuse derived fuel at the end of the process. If it is to go into power stations then these must comply with the incineration of waste directive. This means more expensive modifications and at the moment RDF from MBT has no home - except landfill. It is my belief that any future waste strategy from the EU needs to send out some more positive signals about the benefits of incineration with energy recovery because that is a route that many countries will need to go down, including my own.

It seems from recent reports that the Commission has learned many of these lessons and will bring forward a waste thematic strategy that focuses on life cycle analysis rather than try to increase recycling targets and force 27 or more member states to sign up to going further down routes it cannot monitor. This will bring EU policy into welcome contact with reality .