EU Policy Review

Analysis of recent EU legislation and policy for local and regional government

Number 1/06 – Dec 2005-Jan 2006

Produced by the Institute of Public Administration (IPA)
in association with the Irish Regions Office (IRO)

IPA INSTITUTE OF PUBLIC ADMINISTRATION

Irish Regions Office

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LEGISLATION

Commission Proposes New Directive on Waste Management, Waste Prevention, Recycling and Recovery

As indicated *EU Policy Review* 4/05 (June – July 2005), a new proposal on waste management was formally submitted to national governments by the Commission in December 2005. The proposal forms part of the EU's 'thematic strategy' on waste prevention and recycling.

Waste Prevention Programmes
While recycling and incineration is increasing, the Commission notes that absolute amounts of waste landfilled are not decreasing because of increasing waste volumes. Production, design and consumption choices are failing to reduce the amounts of waste generated and have in the past shifted the environmental and financial burden on 'end of pipe' solutions.

In the light of these trends, the proposal would oblige national governments to develop waste prevention programmes that take account of national, regional and local conditions. These waste prevention programmes would have to be finalised within 3 years of the Directive being adopted.

The Thematic Strategy accompanying the draft Directive re-states the importance of the waste hierarchy, with landfill considered the worst option in environmental terms - although it also urges some flexibility in ensuring that the best environmental approach is pursued in each individual case. One emphasis within the proposals is a move towards reducing environmental impacts through the 'life-cycle' approach. The 'life-cycle' approach (sometimes termed the *cradle to grave* approach) involves a greater emphasis on waste prevention and minimisation at source, examining the environmental impacts at each stage of the life of a resource, with the aim of minimising overall impacts. For example, decisions on whether or not to recycle plastics could depend on whether the material in question is high quality or mixed quality plastic - the life-cycle approach allows the environmental impacts of recycling mixed plastic to be weighed against the environmental impacts of producing the materials that it is supposed to replace.

The Commission argues that prevention activities can only be effective if they impact on decisions at various stages of the life cycle – for example how a product is designed, processed, refined or manufactured, transported, made available to consumers, used, and treated at the end of its useful life. Most waste prevention measures require action at national, regional and local level. The proposal does not establish EU-wide waste prevention targets, but the Commission argues that targets could be set as part of national waste prevention programmes. Public bodies should also be encouraged to use environmental and waste prevention criteria in calls for tender and contracts.

The national waste prevention programmes may also include the promotion of research and development into cleaner products and technologies, eco-design, eco-labels, awareness campaigns, voluntary agreements with industry, or taxes designed to provide an incentive for cleaner purchasing.

Waste Recycling
The proposal aims to improve the market for recycled goods. The Commission argues that the EU has suffered from a history of 'dirty recycling', for example in cases of the production of contaminated compost, which has had a negative impact on consumer confidence and markets. New EU-wide minimum quality standards for recycled goods will support the development of new markets for these products.

The proposal will also provide for future environmental standards that specify under what conditions waste ceases to be considered waste, but high-quality secondary materials instead – this would effectively mean that these materials would no longer fall under the scope of waste legislation but would be considered products instead. Initial guidelines on this subject are due to be published this year. This issue has caused some concern amongst local authority representatives in different EU countries, who have argued that it risks problems of interpretation and legal uncertainty down the line – for example, experience in the Netherlands has shown that the 'end of waste concept' can lead to confusion where the same material can be interpreted as waste by some and as 'non-waste' by others.

Waste Recovery
On recovery of waste, the Commission argues that clean incineration can make significant contributions to the recovery of energy resources from waste, although the environmental benefits depend on the amount of energy actually extracted from incinerated waste.

The Commission has proposed setting a new energy efficiency benchmark to determine whether an incinerator can be identified as a recovery facility instead of a disposal facility. Existing case law from the European Court of Justice classifies the vast bulk of municipal incinerators as disposal facilities, including those with high energy efficiency and recovery. However, the Commission argues that a definition of recovery "that takes into account that energy produced by a municipal incinerator substitutes the use of resources in other power plants will better reflect the environmental benefits of incineration … at high energy efficiency incineration could be as favourable as mechanical recycling or composting of certain waste flows".

Gaining classification as a recovery facility gives better access to the market and the amounts of wastes recovered can count towards mandatory recovery targets set out in various EU Directives (such as the WEEE Directive on electrical and electronic waste). Setting this energy efficiency recovery standard will also help meet targets for the use of electricity from renewable energy sources. Incineration now generates energy equivalent to 8 million tonnes of oil per year across Europe. Due to stringent EU standards, emission to the air of dioxins from the incineration of municipal waste has dropped to 0.5% of total dioxin emissions in the European Union.

Economic Instruments and Taxes at National Level
The draft also promotes the use of economic instruments by national governments, such as landfill taxes, as well as 'pay as you throw' schemes to encourage alternative methods of waste management. The Commission encourages national governments to use economic instruments of this kind, as it argues that large differences in disposal taxes creates an incentive for unnecessary shipments of waste across borders.

Effective Implementation of Existing Waste Directives
The strategy also signals a more rigorous approach to the implementation of existing waste legislation, and points in particular to the dumping of waste at thousands of mismanaged or unlicensed landfills across Europe, and the fact that authorities have in some cases failed to exert effective control over some shipments of waste. The Commission asserts that it will continue to take legal action to ensure equal enforcement of Waste Directives across all EU countries.

Waste Management Plans
The draft Directive also clarifies the issues that need to be addressed in waste management plans. As well as an analysis of the waste management situation and measures to promote the prevention, re-use, recycling, recovery and safe disposal of waste, the plans must also contain:

- The type, quantity and origin of waste generated;
- Collection schemes and treatment methods;
- Special arrangements for waste streams posing specific policy, technical or waste management problems;
- Identification and assessment of existing waste disposal and major recovery facilities, as well as historical contaminated waste disposal sites and measures for their rehabilitation;
- The criteria that allow the relevant authorities to decide whether or not to grant authorisation for future disposal or major recovery facilities;
- Those bodies or organisations empowered to manage waste;
- Financial and organisational issues;
- Assessment of the usefulness of economic instruments in tackling waste problems.

The text also specifies that a life-cycle approach should be taken towards the elaboration of these plans, which must be revised every five years. All waste management plans, and subsequent revisions to these plans, must be notified to the Commission.

Future Waste Initiatives
More activities are envisaged under the thematic waste strategy in the coming years. For example, the Commission believes that it may be necessary in the future to set targets for the recycling of specific wastes, which would be done by material rather than product as has been the case until now (for example through a plastics recycling target to cover everything from pipes from construction waste and plastic bottles, to agricultural films and car bumpers). This could also extend to the greater use of the producer responsibility principle. Any future EU recycling targets would seek to capture waste material with the highest recycling potential at lowest cost.

The Commission will also review the volume of waste going to landfill in 2010, and states that "if the amounts and types of waste being landfilled remain unacceptable, and the move away from landfill is not progressing quickly enough, further landfill bans will be envisaged".

The Commission is also due to publish new guidelines on the management of biowaste, with a view to assisting local and regional authorities where they are responsible for drawing up plans for the management of municipal waste. A proposal to revise the Directive on the use of sewage sludge is expected in 2007.

In addition, the Commission plans to support the dissemination and transfer of best practice in areas such as awareness, education and incentives for waste prevention and recycling at national, regional and local level.

The text will now pass to national environment ministers and their officials, as well as MEPs, for their consideration.

A copy of the strategy and the proposed Directive on waste is available at:

http://www.europa.eu.int/comm/environment/waste/strategy.htm

New EU Directive to Require Local Authorities to Purchase 'Clean' Vehicles

A new draft Directive proposed by the Commission in December would require public bodies and local authorities to ensure that at least a quarter of their annual procurement of heavy-duty road vehicles is devoted of the purchasing of 'clean' vehicles.

The text of the proposal specifies that public bodies, including local authorities and public transport companies, would at a minimum be required to ensure that a quota of 25% of their annual procurement (purchasing or leasing) of heavy-duty vehicles be reserved to 'enhanced environmentally friendly vehicles' - known as the EEV standard. This EEV standard sets advanced emission limits lower than EU legally binding limits for items such as hydrocarbons, nitrogen oxides, particulates, and smoke. These EEV standard vehicles would also consume less energy, for example through the use of biofuels – at present there are very few vehicles operating to these standards, although there are examples of their use by local authorities in Paris, Montpellier and Frankfurt. Heavy-duty vehicles are road vehicles with a weight greater than 3.5 tonnes, and include buses and most utility vehicles, including refuse collection lorries.

The average price of 'clean vehicles' meeting these standards is between 5% and 15% higher than the price for conventional vehicles, with the difference depending on the technology used – for example diesel vehicles upgraded for EEV with catalysers and particulate filters cost about 5% more, whereas compressed natural gas vehicles and liquefied petroleum gas vehicles cost some 15% more. The additional cost for each bus meeting the EEV standard is estimated at €20,000. Obviously, the proposal would have financial implications for local authorities and affect their procurement policies.

The Commission states that the "higher costs incurred by public bodies can be compensated by appropriate European and national support programmes in order to avoid a negative impact on the quality of public transport services". However, EU support to Ireland for these costs is unlikely in the context of the limited amount of financing coming to Ireland under the Structural Funds, meaning that support would have to come from the national level. The Commission goes on to say that "such support would be justified, as it is society at large which would profit from a wider deployment of clean vehicles".

The first stage of the Commission's plans involves the current proposal to establish a quota of 25% of new vehicles over 3.5 tonnes to meet EEV standards. Three years after the Directive is implemented, the Commission will review whether or not to extend the quota to other vehicle categories, such as passenger cars and light duty vehicles. An increase in the quota could also be considered. National governments must annually compile statistics on the numbers and relative share of EEV standard vehicles purchased or leased by public bodies, and report these to the Commission.

The proposed Directive must be approved by national ministers and their officials, and by MEPs, before it becomes law. The provisions, if approved, would have to be implemented within one year of the text being agreed.

Public Procurement Thresholds Lowered

The thresholds for public contracts, above which they must be advertised in the EU's *Official Journal* and subject to the rules and provisions under the EU's Public Procurement Directives (2004/17/EC and 2004/18/EC), have been lowered with effect from January 2006. These replace the previous thresholds agreed in 2005 (see *Local Authority Bulletin on Europe* for December 2004 – January 2005).

The new thresholds that apply are:

- All public works contracts - *€5,278,000* (down from €5,923,000 million);
- Public supplies and service contracts (not including utilities) - *€211,000* (down from €236,000);
- Utilities supplies and service contracts (water, energy, public transport, etc) - *€422,000* (down from €473,000).

New Directive to Combat Flooding

Following a consultation process launched in mid-2005 (see *EU Policy Review* 4/05 for June – July 2005), a new Directive on flood risk management was proposed by the European Commission in January. The Directive builds on the Water Framework Directive (2000/60/EC) which is the cornerstone of EU water protection policy. The proposal would require preliminary assessments to identify the river basins and coastal areas at risk of flooding, as well as the compilation of flood risk maps and flood risk management plans.

The draft Directive itself recognises that Europe will be faced with a greater flooding risk and related economic damage in the coming decades. In part, this will be due to climate change, but an increase in construction and population density in flood plain areas will also contribute to the problem. The Commission also proposes to help EU countries exchange information and best practice.

The Directive envisages a three-step process in the creation of risk management plans. Firstly, Member States will undertake a preliminary flood risk assessment of their river basins and coastal areas. Secondly, where risk of flood damage exists, the Directive will require the development of flood risk maps. These maps will also increase public awareness and support the process of prioritising, justifying and targeting investments and developing sustainable policies. Finally, flood risk management plans must be drawn up for these zones, with a particular focus on prevention, protection and preparedness. These plans will, amongst other things, include an analysis and assessment of flood risk and the definition of the level of protection. With respect to cross-border river basins, these steps must be co-ordinated

between the relevant authorities, and implementation cycles and reporting mechanisms shall also be synchronised.

For more information on the draft Directive, see

http://europa.eu.int/comm/environment/water/flood_risk/index.htm

Ministers Agree on Directive on Waste from Mines and Quarries

Environment Ministers and MEPs reached agreement in December 2005 on a new Directive to regulate the management of waste from mining and quarrying industries. The extractive industry generates large volumes of waste. Waste from the mining operations is estimated to represent over 20% of total waste generated in the EU each year, with an annual volume in excess of 400 million tonnes. This includes topsoil, overburden, waste rock and tailings (tailings are the waste solids that remain after the mineral processing of ore). Because of its composition or volume, this waste can constitute a serious threat to the environment and human health if not properly managed. For example damage can be done through the smothering of river-beds, acid drainage, and leaching of heavy metals and other dangerous substances used in the industry.

Serious accidents in Spain in 1998 and in Romania in 2000 involving mining waste prompted the Commission to propose a new Directive in this area (see *Local Authority Bulletin on Europe* for June – July 2003).

The Directive sets out rules designed to prevent water and soil pollution from long-term storage of waste in waste heaps, tailings ponds, etc. Provisions are set out covering the planning, licensing, operation, closure and after-care of mining waste facilities.

Operators must draw up waste management plans, and one of the conditions of receiving an operating permit is that sufficient environmental and safety measures must be in place. Proper monitoring is also included as a requirement, during both the operational and the after-care phases. Operators of waste management facilities should also draw up closure plans, to form an integral part of the overall operating plan.

Waste facilities have to be classified, and those that are high-risk are also subject to a major-accident policy, covering the prevention of major accidents, and emergency response systems.

In addition, the Directive contains an obligation to provide for an appropriate level of financial security to ensure that the 'polluter-pays' principle is applied. This entails ensuring that sufficient funds are available to leave waste sites in a satisfactory state after closure, for example, if a company goes into administration, becomes insolvent or even engages in asset-stripping (the so-called 'walk away' practices).

In terms of dealing with the legacy of the past, the Directive will require an inventory of the most polluting historical sites to be drawn up.

National governments must now bring in legislation to give effect to the provisions of the Directive within the next two years.

Government Moves to Give Effect to Energy Performance of Buildings Directive

At the end of December, the Minister for the Environment, Heritage and Local Government made new regulations (S.I. No 872 and 873 of 2005) on energy-efficiency in non-domestic buildings, such as offices, shops, factories, leisure centres, etc. These amend Part L of the Building Regulations to incorporate higher thermal performance and insulation standards in these premises.

In addition, the new Building Control Bill also gives effect to the Energy Performance of Buildings Directive (2002/91/EC), by requiring the energy performance certification of buildings (see *EU Policy Review* 3/05 for April – May 2005). These Building Energy Rating (BER) certificates will be required for new dwellings from January 2007, for new non-domestic houses from January 2008, and for existing buildings (when sold or let) from January 2009. It is estimated that there are some 10,000 lettings or re-lettings of local authority and voluntary housing each year, which will in future require energy certificates. The Bill will also require that consideration be given to alternative energy systems (such as renewable energies, heat pumps, combined heat and power systems) during the design of large new buildings of over 1,000m².

Under the EU Directive, a revised methodology was required for assessing the energy performance of dwellings that commence by July 2006. This methodology is being drafted by Sustainable Energy Ireland. This methodology will not apply where planning permission is applied for before July 2006 and the building is substantially completed by June 2008.

In a separate development, national ministers and MEPs have agreed on the text of the Directive on Energy End-Use Efficiency (see *EU Policy Review* 5/05 for August - September 2005). The aim of this legislation is to reduce energy use by 9% over a 9-year period. This will lead to targets for public bodies, including local authorities, for cuts in energy consumption across a range of service areas. The details on how to achieve energy savings across the public sector are to be left to national governments, but they could involve energy savings in local authority facilities (local authority offices and buildings, libraries, fire stations, leisure centres, etc.), energy savings in the local authority housing stock, adaptation of public procurement practices to include energy efficiency criteria (see separate article above), undertaking energy audits of local authority activities, and an increased emphasis on the building control function and the activities of local energy agencies. Savings are also to be achieved by the private sector.

POLICY INITIATIVES AND ANNOUNCEMENTS

New EU Strategy to Improve the Urban Environment in Towns and Cities

In January, following an extensive consultation process, the Commission unveiled the latest in the line of its 'thematic strategies' with the launch of its Strategy on the Urban Environment. The initiative aims to facilitate better implementation of EU environmental policies and legislation at local level in towns and cities.

Urban areas across Europe face a range of very similar environmental challenges such as poor air quality, urban wasteland, high levels of traffic and congestion, waste generation and urban sprawl. The Commission notes that as the actors closest to the problems, local authorities have a particularly important role to play in the implementation of the strategy, and suggests that the best performing cities have developed integrated approaches to urban management where daily decisions are guided by a strategic vision and objectives. The EU strategy will support investment, research and demonstration projects on issues such as urban transport, using derelict land and training in urban management.

The main actions under the strategy include the provision of technical guidance on environmental management and the development of sustainable urban transport plans, based on research and experiences in different cities. EU programmes will offer training and capacity-building opportunities for local authorities in order to improve urban environment management. Support for exchanges between local authorities will also be provided using the EU's LIFE programme for the environment, EU Structural Funds, and EU funding for research and development. Consideration will also be given for the establishment of a new European programme to exchange knowledge and experience on urban issues, including the use of an internet portal based on the EU's website.

The Commission's initial goal was to bring forward legislation to require cities above a certain size to adopt an urban environment management and transport plan. However, the Commission has now shied away from this idea of regulation and binding requirements. There will be no new legislation arising from the thematic strategy, as the Commission recognises the diversity of urban areas in terms of geography, climate, history and governance arrangements. The Commission agreed with stakeholders that guidelines, funding programmes, and the exchange of best practice would be the preferred and most effective way to achieve high quality urban areas. Local and regional authorities will be invited to submit their views on the impact of the strategy's measures on a regular basis as well as part of a wide consultation exercise in 2009.

A copy of the strategy can be accessed at:

www.europa.eu.int/comm/environment/urban/home_en.htm

Commission Issues a 'Wake Up Call' over IPPC Licensing and 2007 Deadline

A review of the implementation of the Integrated Pollution Prevention and Control (IPPC) Directive has highlighted serious concerns over the impending deadline of bringing all existing installations into conformity with the IPPC regime by October 2007.

The IPPC Directive (96/61/EC) establishes a permit system and certain basic conditions to be met by operators of installations in certain sectors with a view to minimising emissions to air, water and soil – these sectors include waste management, combustion plants, energy industries, metal processing, minerals and chemicals, textiles, processed foods, and pig and poultry farming. Local authorities are obliged to comply with the provisions of IPPC licences under the terms of the Directive in the management of various facilities.

New installations and those undergoing reconstruction have had to comply with the Directive since October 1999, while arrangements were supposed to be put in place to ensure the upgrading of pre-October 1999 installations to meet the requirements of the legislation by October 2007.

The Commission is concerned that this deadline is unlikely to met in a number of countries. It is not sufficient to simply issue a permit by the deadline of October 2007 - all installations must fully comply with the requirements of the Directive by this date. Achieving full compliance with the Directive may in many cases require an upgrading of the installation – the Commission believes that many national governments and operators of installations seem unaware of this deadline and are poorly prepared for it. Apart from anything a large number of IPPC permit applications can be expected in the run-up to October 2007. The Commission plans to monitor the number of installations identified as requiring permits, the number of permits issued, and in some cases visit different locations to carry out compliance checks on installations with high emissions. The Commission also states that it will, as normal, investigate individual cases if it receives complaints from members of the public alleging violations.

In Ireland the IPPC permit system is operated through the EPA, although local and sanitary authorities continue to be responsible for the licensing and control of activities not licensable by the Agency. The IPPC permits must contain requirements regarding emission limit values for pollutants, as well as requirements on the monitoring of discharges by operators.

Once a permit is issued, the operator may take a minimal approach to ensuring the conditions are complied with in a strict sense – the Commission plans to investigate whether incentives (for example market based instruments such as emission trading schemes, or taxes and charges) could be introduced, with a view to encouraging operators to go beyond minimum requirements.

A copy of the report is available at:

http://www.europa.eu.int/comm/environment/ippc/ippc_report.htm

EU Strategy on the Use of Natural Resources

In a related development to the Thematic Strategy on Waste Prevention and Recycling (see above), a separate strategy on the use of natural resources was also launched in December 2005. The overall aim is to break the link between economic growth and the environmental impact on natural resources. The use of natural resources can include for example the use of land to build housing or infrastructure, or for waste disposal. Other natural resources might include raw materials such as minerals, fossil fuels, biomass, or environmental resources such as air or water resources.

In order of importance, those activities that have the biggest environmental effects on natural resources are:

- Food production, through land use, the use of fertilisers and pesticides, and energy use;
- Transport, primarily though its impact on fossil fuels, air quality and landscape fragmentation, putting pressure on biodiversity; and
- Housing, through heating and the use of energy derived from fossil fuels, as well as land use.

The Commission argues that awareness of the full environmental impacts of resource use is low amongst the public, and often amongst key actors in resource use, such as those involved in land use planning or farming. Part of the strategy's aim is to provide better and more concrete information on the environmental costs of resource use to allow this information be brought to bear and improve policy-making at European, national and local levels.

Targets are not set for improving resource efficiency, given that there is not sufficient information to do so at present. However, the strategy will put in place arrangements to improve the level of information available on resource use. National measures and programmes will also be developed to reduce the environmental impacts on natural resources in each country. A set of indicators, for example measuring the use of specific resources and measuring resource productivity, will be developed by 2008 to monitor and review progress in the area.

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