



# Study on the feasibility of the establishment of a Waste Implementation Agency

## Revised Final Report

7 December 2009

**milieu**  
ENVIRONMENTAL LAW & POLICY

AmbienDura

**F**Fact  
MANAGEMENT CONSULTANTS

This report has been prepared by Milieu Ltd, AmbienDura and FFact for the European Commission, DG Environment under Study Contract DG ENV.G.4/ETU/2008/0080r. The primary authors were Tony Zamparutti, Nancy Isarin, Matthieu Wemaëre and Kees Wielenga, with additional expertise and support provided by Martin Candell, Catherine Fielden, Florent Pelsy, Emma Psaila and Sophie Vancauwenbergh.

The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

Milieu Ltd. (Belgium), 15 rue Blanche, B-1050 Brussels, tel: +32 2 506 1000; fax: +32 2 514 3603; e-mail: zamparutti@milieu.be; web address: [www.milieu.be](http://www.milieu.be)

# Table of Contents

## List of abbreviations

<b>Executive Summary</b> .....	<b>1</b>
<b>1. Introduction and summary</b> .....	<b>5</b>
1.1 The implementation gap.....	5
1.2 Tasks for a possible waste implementation agency .....	10
1.3 Proposal for a Waste implementation agency.....	19
1.4 The structure of this report.....	26
<b>I. The implementation gap</b> .....	<b>27</b>
<b>2. The Implementation Challenge</b> .....	<b>29</b>
2.1. Amount of waste generated.....	29
2.2. Waste treatment.....	32
2.3. The increase in transboundary movements of waste .....	34
2.4. Problems in the transposition and application of EU waste legislation.....	35
2.5. Differences in Member State capacities .....	37
2.6. Review of key points.....	37
<b>3. Enforcement: current needs, current EU-wide activities</b> .....	<b>39</b>
3.1. Review of existing literature .....	40
3.2. Preliminary results from the survey .....	44
<b>4. Training, guidance and other areas: current activities and needs</b> .....	<b>49</b>
4.1. Current training activities and needs.....	49
4.2. Guidance for implementation and supporting the updating of legislation .....	52
4.3. Updating EU waste legislation.....	53
4.4. Other areas of activity .....	55
<b>5. Legal issues concerning the implementation of EU waste legislation</b> .....	<b>57</b>
5.1. Background on Member States' obligation to implement EU law .....	57
5.2. The role of Member States in the application of EU law .....	58
5.3. The role of the Commission as Guardian of the Treaties .....	60
5.4. Illustrative ECJ Case Law on implementation of EU waste legislation .....	62
5.5. Recent EU initiatives to improve implementation of environmental legislation .....	64
<b>6. An overview of the implementation gap</b> .....	<b>67</b>
<b>II. The tasks for a possible Waste Implementation Agency</b> .....	<b>71</b>
<b>7. Assessing the individual tasks</b> .....	<b>73</b>
7.1. The dimensions of the analysis .....	73
7.2. The Institutional setting.....	74
<b>8. Enforcement options</b> .....	<b>77</b>
8.1. Option 1. European body for carrying out direct inspections and controls .....	78
8.2. Option 2. Reviews of Member States' enforcement systems.....	80
8.3. Option 3. Coordinated control and inspection activities.....	83
8.4. Option 4. Information exchange to improve enforcement .....	85
8.5. Overview of the assessment results .....	86
8.6. Expected results .....	87
<b>9. Training options</b> .....	<b>91</b>
9.1. Option 1. Direct training .....	91
9.2. Option 2. Train-the-trainer programmes.....	93
9.3. Option 3. Coordinate and facilitate MS training programmes .....	94
9.4. Summary of the assessment results .....	95
9.5. Expected results .....	97

---

<b>10.</b>	<b>Options for updating and clarifying EU legislation .....</b>	<b>99</b>
	10.1. Option 1. Support to the Commission for the updating of EU waste legislation .....	100
	10.2. Guidance for implementation and enforcement .....	101
	10.3. Summary of the assessment .....	102
	10.4. Expected results .....	103
<b>11.</b>	<b>Options for other key tasks.....</b>	<b>105</b>
	11.1. Option 1. Assessment and monitoring of waste management plans and waste prevention programmes .....	105
	11.2. Option 2. Gathering and analysing data on recycling .....	106
	11.3. Option 3. Improving overall waste data .....	107
	11.4. Option 4. Gathering and analysing data for enforcement .....	108
	11.5. Option 5. Helpdesk function or knowledge centre on waste.....	109
	11.6. Summary of the assessment .....	109
	11.7. Expected results .....	110
<b>III.</b>	<b>Description of a possible Waste Implementation Agency.....</b>	<b>113</b>
<b>12.</b>	<b>The outline of a new agency .....</b>	<b>115</b>
	12.1. Allocation of tasks.....	115
	12.2. Mission, mandate and governance of a Waste Implementation Agency .....	116
	12.3. Estimate of staff required .....	118
	12.4. Estimated budget .....	124
	12.5. Expected results .....	125
<b>13.</b>	<b>Two alternative approaches .....</b>	<b>131</b>
	13.1. Alternative A: A less ambitious agency.....	131
	13.2. Alternative B: Commission offices and European networks .....	132
	13.3. Comparing the approaches .....	133

## Abbreviations

ADEME	French Environment and Energy Management Agency (Agence de l'Environnement et de la Maîtrise de l'Energie)
CA	Competent Authority
CEPOL	European Police College
CFCA	Community Fisheries Control Agency
CIS	Common Implementation Strategy
DG Environment	Environment Directorate-General of the European Commission
DG SANCO	Directorate General for Health and Consumers of the European Commission
EEA	European Environmental Agency
ECHA	European Chemicals Agency
ECJ	European Court of Justice
EFSA	European Food Safety Authority
EMA	European Medicines Agency
EMSA	European Maritime Safety Agency
ENP	European Neighbourhood Policy
EU	European Union
EUDIN	European Data Interchange for Waste Notification System
FVO	DG SANCO's Food and Veterinary Office
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
IMPEL TFS	IMPEL Transfrontier Shipment network
INTERPOL	International Criminal Police Organization
JITs	Joint Investigation Teams
MoE	Ministry of Environment
OECD	Organisation for Economic Co-operation and Development
TAIEX	Technical Assistance and Information Exchange Instrument of the Institution Building unit of Directorate-General Enlargement of the European Commission



---

## Executive Summary

The European Commission is taking a series of steps to strengthen the implementation of EU waste legislation and is exploring new initiatives for the coming years. As part of these efforts, the Commission has launched this feasibility study to outline the benefits and costs of creating a dedicated agency to support the implementation and enforcement of EU waste legislation.<sup>1</sup>

Overseeing the safe and environmentally sound management of waste is among the most serious environmental challenges which the EU faces today. An estimated 2.6 billion tons of waste are generated each year in the EU, over 6 tons per citizen, and about 90 million tons of this waste is classified as hazardous. The European Parliament, the Council and the Commission have set in place a comprehensive system of around 60 legal acts (regulations, directives and decisions) aimed at ensuring that all waste in the EU is managed so as to prevent harm to human health and the environment.

However, in many parts of the EU, implementation and enforcement of EU waste legislation fall significantly short of legal obligations. Key problems include the following:

- Many Member States lack sufficient capacity for the inspections, controls and other actions to enforce waste legislation properly;
- Organisational problems, such as poor coordination among the various national bodies with responsibilities for inspections and controls, hinder enforcement;
- More generally, implementation of EU waste legislation is considered a low priority in many Member States, resulting in insufficient allocation of resources for enforcement;
- Lack of technical capacity for the preparation of waste management plans and programmes is another widespread problem;
- Further, Member States have different interpretations of the EU waste requirements.

These gaps in implementation and enforcement have given rise to significant problems in many parts of the EU, notably: illegal waste dumping at a significant scale, large numbers of landfills and other facilities and sites that do not meet EU requirements and a high level of illegal waste shipments. Moreover, many national producer responsibility schemes, waste management plans and other strategies and programmes work poorly. These problems have led to a high level of citizen complaints to the European Commission and many infringement cases against various Member States: the waste sector, together with nature protection, has accounted for the largest share of environmental infringement cases brought before the ECJ in recent years.

In this situation, the protection of human health and the environment – an overarching goal of EU waste legislation<sup>2</sup> – is not achieved. Moreover, the differences in implementation and enforcement across the EU, together with differences in interpretation of EU waste legislation, mean that actors in the waste field and industry in general do not have level playing field across the EU. Citizens, NGOs and stakeholders have regularly called on the Commission and Member States to address these problems. In the survey for this study, nearly all Member State officials and all stakeholder representatives who responded saw the need for new actions at EU level to improve the implementation and enforcement of EU waste legislation.

The powers and resources needed to address the underlying problems effectively at EU level are however lacking. The application of EU waste legislation needs to be scrutinised on the ground and

---

<sup>1</sup> The European Commission (DG Environment) awarded this feasibility study (Study Contract DG ENV.G.4/ETU/2008/0080r) to a consortium led by Milieu Ltd of Brussels, in partnership with AmbienDura of Olhão, Portugal; FFact Management Consultants provided further expertise, as did Mr Matthieu Wemaëre, the senior legal expert for the project. The study began in December 2008 and finished in November 2009.

<sup>2</sup> See Article 1 of the new Waste Framework Directive (2008/98/EC).

investigations made about the specific situations at, for example, waste facilities and sites where citizens raise concerns poor implementation and enforcement. The Commission lacks such investigatory powers as regards EU waste legislation, and when verifying complaints from citizens about possible infringements, it is confined to relying on often contradictory information provided by national authorities, complainants and other parties. This creates difficulties for the Commission to fulfil its duty as ‘Guardian of the Treaties’ and ensure that EU waste legislation is correctly applied by Member States.

This study considers the EU actions needed to overcome the implementation and enforcement crisis. It has identified a series of possible tasks to be undertaken, based on an analysis of the work of existing European agencies as well as inputs provided by Member State officials and stakeholders through a questionnaire, interviews and two informal workshops.

The tasks considered include a number of options for carrying out inspections, controls and other enforcement actions; for updating and clarifying EU waste legislation; for training of Member State officials; and for improving information exchange, data gathering and guidance. The study analyses these options and their potential results in terms of improving implementation and enforcement of the EU waste management system throughout the EU.

It then looks at institutional options. Of the three options considered, it concludes that creating a new European structure, i.e. an EU Agency for waste implementation, provides the most effective way forward for carrying out the recommendations concerning enforcement, training, guidance, support for the updating of EU waste legislation, as well as other key tasks.

The study recommends the establishment of an agency that would carry out several enforcement tasks, such as reviews of Member States' enforcement systems, coordinated controls and various inspection activities. This would be combined with the creation of a specific European body, possibly hosted by the European Commission, for carrying out direct inspections and controls of facilities and sites in serious cases of non-compliance.

In addition, the study recommends that the agency also carry out training of Member State officials as well as related work. The agency would carry out both direct training and train-the-trainer programmes. These would be supported by exchanges and other work to coordinate Member State training programmes. The agency's expertise on waste issues would support the Commission on technical and scientific issues for updating of EU legislation, including support on impact assessments and other technical steps. The agency would also draft and update guidance documents, both for enforcement activities and more generally for the implementation of EU waste legislation. Other key tasks would include support to the Commission in the monitoring and assessment of waste management plans and waste prevention programmes and provision of a helpdesk for Member States.

A European network of Member States would support the agency in a number of activities. Information exchange among Member States would also be extended to address common challenges. In addition, the EEA, its Topic Centre and Eurostat would carry out expanded work on waste issues and cooperate with the new agency.

The study estimates the total annual cost for carrying out these recommendations at just over 16 million Euros. The proposed agency would require just under 50 professional staff members and 11 management and support staff. Additional staff would also be needed by the proposed body for carrying out direct inspections and controls of facilities and sites, possibly hosted by the Commission/DG Environment: 20 new staff, including 15 operational staff for the body. Additional staff would be added at the secretariat of the European network (2), Member State governments (5), and EEA/Eurostat (1.75 combined). In addition to these annual costs, the agency would require an additional 1.6 million Euros in estimated start-up costs in its first two years.



The size of the proposed agency, plus the separate body for direct inspections and staff for other new actions, would together be rather small compared to existing EU agencies; nonetheless, the proposed agency and related initiatives would significantly improve possibilities to address the serious challenges of waste management in the EU and in doing so bring a series of benefits.

By supporting better and more uniform implementation and enforcement of EU waste legislation, the new agency and the related initiatives proposed would bring a higher level of protection of the environment and human health. In doing so, it would provide important economic benefits. For example, with better enforcement, governments and taxpayers in some Member States would face a lower burden for the future clean-up costs of illegal waste activities and sub-standard landfills. Related health and environmental costs would be reduced. Moreover, full implementation and enforcement of EU waste legislation is expected to bring further benefits, including lower greenhouse gas emissions. More uniform implementation and enforcement across the EU will provide a level playing for European companies, lowering their costs; it would moreover create opportunities for innovation in waste management and increase access to valuable secondary raw materials.



## 1. Introduction and summary

The European Commission is taking a series of steps to strengthen the implementation of EU waste legislation and is exploring new initiatives for the coming years. As part of these efforts, the Commission has launched this feasibility study to outline the benefits and costs of creating a dedicated agency to support the implementation and enforcement of EU waste legislation.<sup>3</sup>

The study was carried out in two main phases. In the first part of the work, the study team gathered information through desk research on waste issues as well as on the activities of current EU agencies. The team also carried out a survey of Member State officials and stakeholders, followed by selected interviews with the respondents and with officials of EU agencies. In addition, a first informal workshop hosted by the European Commission provided additional information for the study. The input and comments received provided vital information for the study and also prompted the study team to broaden its approach and look at possible other institutional settings, in addition to an agency.

The second phase of work identified and then analysed the possible tasks that an agency for waste implementation could carry out. These tasks were identified on the basis of information gathered in the first phase, in particular the review of the work of existing agencies as well as the input provided by Member State officials and stakeholders through the survey, two informal workshops and the interviews. These possible tasks for a new agency were analysed in terms of a set of criteria provided by the European Commission. On the basis of the results of this analysis, a brief description and preliminary budget for an EU waste implementation agency were developed.

The following sections of this introduction and summary review the key results of the analysis presented in the full report. They first provide an overview of the implementation gap identified through the initial information gathering, followed by an overview and analysis of the new tasks that could be carried out to address this gap. The proposed description, mandate and budget of the agency are then summarised.

### 1.1 The implementation gap

#### The waste challenge

Across the EU, more than 2.9 billion tons of waste was generated in 2006, or about 6 tons per inhabitant, according to data reported by Member States to Eurostat under the Waste Statistics Regulation. Hazardous waste generation reaches almost 90 million tons.<sup>4</sup> The amount and composition of waste varies significantly across the EU, however. In the EU15, construction waste is the largest single category, while in the EU12, mining accounts for about half of all waste generated. Amounts generated vary significantly among Member States: for example, the level of household waste has reached over half a ton per inhabitant each year in a few Member States including Netherlands and Italy; in contrast, in Poland, Finland and other countries, household waste is less than half this level.

---

<sup>3</sup> The European Commission (DG Environment) awarded this feasibility study (Study Contract DG ENV.G.4/ETU/2008/0080r) to a consortium led by Milieu Ltd of Brussels, in partnership with AmbienDura of Olhão, Portugal; FFact Management Consultants provided further expertise, as did Mr Matthieu Wemaëre, the senior legal expert for the project. The study began in December 2008 and finished in November 2009.

<sup>4</sup> Waste generation data from Eurostat:

[http://epp.eurostat.ec.europa.eu/portal/page/portal/waste/data/waste\\_statistics](http://epp.eurostat.ec.europa.eu/portal/page/portal/waste/data/waste_statistics) (accessed April 2009)

While more than half of all EU waste goes to landfills, waste treatment practices also vary greatly among countries. For example, in Belgium, Denmark, Germany, the Netherlands and Sweden, less than 10% of municipal waste is sent to landfills; in contrast, in Bulgaria, Malta, Lithuania and Romania, over 90% is sent to landfills. The EU15 has at least 63,000 waste management facilities, and the EU12 at least a further 7,400, according to data reported by Member States to Eurostat. These numbers are installations requiring a permit under the Waste Framework Directive. The number of waste facilities and sites are likely to be significantly higher due to the existence of a suspected large number of facilities and sites lacking permits, which should be subject to enforcement measures.

Another common issue is the dramatic increase in waste shipments in recent years, both within the EU and to third countries. For example, between 1995 and 2005, EU15 exports of waste paper increased more than five-fold and those of waste plastic, seven-fold.<sup>5</sup> The rising number of shipments brings new risks that illegal waste shipments are made. In recent years, media reports have highlighted illegal exports of hazardous waste from the EU to developing countries that lack adequate waste management facilities, as well as electrical and electronic waste illegally shipped as second-hand goods.

Thus, not only is waste management a major challenge across the EU: its implementation and enforcement in many parts of the EU fall significantly below legal obligations. The waste sector, together with nature protection, has accounted for the largest share of environmental infringement cases brought before the ECJ in recent years – and environment in turn represents almost one-quarter of all infringement cases. Most of the infringement cases on waste involve bad application of EU legislation and thus imply direct risks for the environment and human health. The high level of complaints indicates that European citizens are concerned over the current implementation and enforcement of EU waste legislation – and they turn to the Commission level for redress of the problems.

### **Enforcement difficulties**

A review of recent reports prepared for IMPEL and for the European Commission underlines the dimensions of enforcement problems.<sup>6</sup> These reports highlight a series of problems within Member States concerning their enforcement of the Landfill Directive and the Waste Shipment Regulation:

- The high number of authorities involved: national enforcement of waste legislation can depend on a large number of government bodies, including environmental officials, police, customs and the judiciary, as well as several levels of government; in many MS, these bodies have divided competences and suffer from poor communication and coordination
- Low priority for waste enforcement in many Member States
- Lack of administrative and enforcement capacity, including a lack of knowledge of inspection methods

<sup>5</sup> EEA (2009), *Waste without borders in the EU?* EEA Report N° 1/2009.

<sup>6</sup> See section 5 for the list of the reports reviewed, many of which can be found on the following web sites:

- <http://ec.europa.eu/environment/waste/shipments/reports.htm>
- [http://ec.europa.eu/environment/waste/landfill\\_index.htm](http://ec.europa.eu/environment/waste/landfill_index.htm)
- <http://www.bipro.de/waste-events/>
- <http://ec.europa.eu/environment/impel>

- Poor understanding of EU legislation and documents
- Lack of guidance, harmonisation and standards
- Lack of prosecution for crimes, often compounded by low fines and sentences

The extent and depth of the problems vary greatly across Member States, and many examples of good practice exist. Nonetheless, the IMPEL and Commission reports emphasize that problems are widespread. A further obstacle to good enforcement is the need for greater cooperation among Member States, especially regarding waste shipments.

Some organisations have sought to tackle these issues, and notably the IMPEL cluster on Transfrontier Shipments of Waste (IMPEL TFS). This network focuses on waste shipments, one of the most important areas of waste legislation where greater enforcement is needed. While Member States have underlined the value of IMPEL's work, participation in the network and its projects is voluntary and their impact is diminished when countries with significant problems do not participate.

In their responses to the questionnaire for this feasibility study, stakeholder responses emphasised the importance of the problem, and most of the responses from Member State officials acknowledged it. The responses also provided a series of suggestions for action, which have been incorporated in the analysis for this study (see section 1.2 below).

### **Other needs**

The questionnaire responses also helped to identify needs in related areas. These include *training* for Member State officials to improve enforcement and implementation. Based on the survey responses, it appears that some Member States currently have extensive training programmes, while others organise training on an *ad hoc* basis. The responses from both Member State officials and stakeholders cited as a broad goal that training should seek to put in place a more uniform application of waste requirements across the EU.

A further need is the preparation of technical *guidance* to assist Member States, industry and other stakeholders in the proper implementation of EU waste legislation. In their responses to the survey, both Member State officials and stakeholders identified a series of areas where guidance is needed, ranging from key definitions to technical approaches that can assist waste planning.

The EU has an extensive body of waste legislation, consisting of over 60 legal acts including the new Waste Framework Directive adopted in 2008. This legislation sets broad objectives and regulates waste management facilities as well as key waste streams and shipments of waste. This legislation will, however, require regular updates to keep abreast of scientific and technical developments as well as to incorporate lessons from its evolving implementation. *Support for updating EU legislation* is needed for preparatory steps such as the analysis of scientific, technical and legal issues; the assessment of environmental, economic and social impacts; and consultation with stakeholders.

In their responses to the survey, Member State officials and stakeholders also identified a series of other areas for attention, including gathering better information for information and also providing a helpdesk on interpreting EU waste legislation. (The analysis of possible tasks addresses these areas: see section 1.2 below.)

## The legal context

The legal structure of the European Union provides the context for any new initiative to support the implementation of EU waste legislation, including the analysis of possible tasks for a Waste Implementation Agency (or other institutional setting).

Under the EU Treaties, Member States have primary responsibility – and the obligation – for the proper application of EU law; the European Commission has a duty to monitor that such application is done in a complete, correct and timely manner, in its role as “Guardian of the Treaties” (Article 17 of the Treaty on European Union).

Proper Member State application of EU law involves the following three steps:

- Transposition of directives
- Implementation, including the provision of necessary institutions and budgets
- Enforcement, including measures to promote compliance (e.g. information), measures to monitor compliance (environmental monitoring, facility inspections, etc.), and responses to non-compliance (e.g. legal sanctions).

Member States are competent to choose the procedural rules that are deemed most appropriate for the implementation and enforcement of rights and obligations created by EU law (National Procedural Autonomy principle). However, they must ensure that rights and obligations arising from EU law are effectively protected (“*effet utile*”, ECJ Case C-106/77, Simmenthal), and this requires proper implementation and enforcement measures.

EU waste legislation sets clear obligations for Member States to ensure that any waste is managed and shipped in an environmentally sound and controlled manner, including through inspections. For instance, national authorities must conduct appropriate periodic inspections pursuant to article 13 of the current Waste Framework Directive 2006/12/EC.

The Court of Justice has moreover established in its case law an obligation of result for Member States to enforce EU waste legislation.<sup>7</sup> In taking into account the duration, quantity and extent of individual infringements, the Court has concluded that an administrative practice can constitute a failure of a consistent and general nature to fulfil obligations<sup>8</sup> laid down by EU waste law. In particular, the Court stressed that a number of infringements can reveal a general tendency among local authorities to tolerate non-compliant situations. Therefore, from a series of factual situations there can be a situation of structural non-compliance on the part of the Member State, *inter alia*, where there is a significant deterioration in the environment without any action being taken by national authorities. The case-law clarifies that Member States are legally required to put into place effective enforcement measures in order to address the structural problems, as illustrated by several individual case of non-compliance.

In the area of EU waste legislation, proper application needs to be scrutinized on the ground at waste management facilities and sites, including possible illegal sites and unauthorized landfills. The Commission lacks full investigatory powers in this regard. When verifying complaints from

<sup>7</sup> Including: Case C-365/97 *Commission v. Italy* of 20 April 1999; Case C-494/01 *Commission v Ireland* of 26 April 2005.

<sup>8</sup> Case 21/84 *Commission v France* [1985] ECR 1355, paragraphs 13 and 15; Case C-187/96 *Commission v Greece* [1998] ECR I-1095, paragraph 23; and Case C-185/96 *Commission v Greece* [1998] ECR I-6601, paragraph 35, Case C-387/99 *Commission v Germany* [2004] ECR I-0000, para 42, Case C-494/01 *Commission v Ireland* of 26 April 2005;

citizens about possible infringements, the Commission is therefore confined to relying on often contradictory information provided by national authorities, complainants and other parties.

In its case law, the Court therefore also acknowledges the difficulties encountered by the Commission in its capacity of Guardian of the Treaties: each infringement case has to be brought before the Court; the Commission must rely on the arguments brought forward by the Member States' authorities or complainants and cannot make any on-the-spot investigations; the Commission has no means to remedy the basic underlying structural problems but can only wait for a judgement on each specific infringement. For that reason, the Court recalled in *Commission v. Ireland* of 26 April 2005 that it is primarily for the national authorities to conduct the necessary on-the-spot investigations, in a spirit of genuine cooperation and in accordance with the duty, incumbent on each Member State under Article 4(3) of the Treaty on European Union, to facilitate attainment of the general task of the Commission, which is to ensure that the provisions of the Treaty as well as provisions adopted there under by the institutions are applied. In addition, the Court has said that in cases where the Commission has produced enough evidence of the infringement alleged, it is for the Member State in question to challenge in substance and in detail the data produced with regard to individual breaches but also the consequences flowing thereof, failing which the allegations must be regarded as proven.<sup>9</sup> The Court however has in recent judgments shown a tendency to tighten the requirements for the Commission to provide more sound evidence on alleged Member States' failure to properly implement.<sup>10</sup>

Despite these legal requirements and principles, the implementation and enforcement of EU environmental legislation in general and waste legislation in particular remain a challenge in a number of Member States, as highlighted in a recent Commission Communication.<sup>11</sup> The Commission has taken a number of steps to ensure better implementation, including the pursuit of "horizontal" cases before the ECJ, i.e. where a large number of individual cases of incorrect application demonstrate a structural implementation deficit in that Member State.

These problems are also a concern for the European Parliament, which has called for the Commission to review the non-binding Recommendation (2001/331/EC) on minimum criteria for environmental inspections; to propose, before the end of 2009, a Directive on environmental inspections; and also to report by then on the possibility to establish a "Community environmental inspection force".<sup>12</sup>

Thus, this crisis in the implementation and enforcement of EU waste legislation in particular has prompted a search for new initiatives and solutions.

### **Addressing the implementation gap**

A new Waste Implementation Agency – or a similar initiative using a different institutional setting – needs to address the implementation gap described here. Any new proposal needs to address the following broad goals:

<sup>9</sup> Case C-494/01, see also Case *Commission v. Italy*, [1999] *op. cit.*

<sup>10</sup> See in particular ECJ judgments: *Commission v France* C- 280/02, and Advocate General Opinions in joined cases *Commission v. Finland*, C-335/07 and *Commission v. Sweden*, C- 438/07; *Commission v. United Kingdom*, C-390/07.

<sup>11</sup> Commission Communication COM (2008) 773 final of 18 November 2008 on implementing EC environmental law.

<sup>12</sup> European Parliament, Resolution on the review of Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States (B6□0580/2008)

- The first and most important, of course, is the protection of human health and the environment: this is stated clearly in EU waste legislation, for example in Article 1 of the new Waste Framework Directive (2008/98/EC);
- A second goal, closely tied to the first one, is ensuring a level playing field across the EU for the actors in the waste field;
- A third over-arching goal is that of the EU's Better Regulation initiative, whose objectives include designing regulation to increase benefits for EU citizens, to reinforce the respect and effectiveness of rules and to minimise economic costs.<sup>13</sup>

To achieve these goals, initiatives need to respond to the different dimensions of the implementation gap. These dimensions, described in Part I of this report, include the following:

- Insufficient capacity for enforcement, inspections and controls in a large part of the EU
- Organisational problems hindering enforcement, such as poor coordination among national bodies with responsibilities for inspections and controls
- More generally, a low priority and a lack of resources in national authorities for the implementation of EU waste legislation
- Poor capacity for the technical preparation of waste management plans and programmes
- Differences between Member States in interpretation of EU legislative requirements
- As a result of these and other shortcomings, problems arise in many Member States including:
  - Illegal waste dumping at a significant scale
  - Large numbers of landfills and other facilities and sites that do not meet EU requirements
  - Illegal waste shipments
  - Poorly working producer responsibility schemes, waste management plans and others

The problems vary greatly across the EU and the lack of independent bodies at EU level to monitor and ensure an adequate and uniform level of inspections and controls means that these problems persist. Thus new initiatives will have to understand these issues in depth and provide a range of responses.

## 1.2 Tasks for a possible waste implementation agency

The assessment of options for a possible Waste Implementation Agency analyses possible individual tasks across three key dimensions. The first is to identify possible tasks that address the implementation gap: in other words, what specific actions are needed?

The set of possible tasks was identified based on inputs from Member State officials and stakeholders via the questionnaire and interviews as well as the review of existing EU agencies. These options follow the main areas identified in the Technical Specifications for the study: training, enforcement, and updating and clarifying EU legislation, described in the following pages. In addition, the analysis identified other possible key options, which are also presented.

The second dimension considers the institutional setting: who will do this work?

Here, the review considered three possibilities:

---

<sup>13</sup> See for example: European Commission, Better Regulation for Growth and Jobs in the European Union, COM(2005) 97 final of 16.3.2005



- An EU Agency
- Commission offices (similar to the existing Food and Veterinary Office under DG SANCO)
- European networks for Member State cooperation

This dimension goes beyond the analysis foreseen in the Technical Specifications for the study: it was added to address comments made by Member State officials in the questionnaire responses and in interviews, in which the creation of a new EU institution was questioned.

The third dimension for analysis is the detailed assessment based on key criteria provided in the Technical Specifications for the project. These criteria include:

- Environmental effectiveness
- Organisational and technical issues
- Economic and financial questions
- Legal issues
- Political questions

The following sections provide a brief overview of the results for each type of task. Part II provides further description of each task and the analysis.

### **Enforcement tasks**

Four options for possible enforcement tasks have been identified.

1. *A European body for carrying out direct inspections and controls* would perform quality controls of national enforcement and implementation systems and of waste management facilities, sites and operations in Member States. This European body would carry out on-site inspections for several purposes: assessing national enforcement systems; following up gaps in information; and following up complaints brought by citizens and stakeholders. The body could adopt emergency and interim legally binding measures in the event that its inspectors, while carrying out on-site inspections, identify a situation likely to present serious risks for the environment or for human health.

2. *Peer reviews of MS enforcement systems.* These regular review visits would assess the effectiveness of MS enforcement systems. The reviewers could come from an independent EU office, such as an EU agency or Commission services: this would be similar to the approach currently used by an office of the Commission, DG SANCO's Food and Veterinary Office (FVO), which undertakes reviews of Member States systems to control food safety and animal and plant health. Where FVO identifies shortcomings in Member State controls, the country must prepare an action plan to address the problems; FVO then tracks its implementation. Alternatively, a peer approach could be used, with some or all of the reviewers coming from other Member States.

3. *Coordinated control and inspection activities.* Under this option, joint control and inspection activities would engage enforcement personnel from different Member States. The work would be planned jointly with participating Member States, and Member States would lead individual activities. The activities could include joint inspections of waste management facilities, sites and operations and joint actions on waste shipments: the joint work would use a 'cradle-to-grave' approach that monitors the whole waste chain. This option would be similar to the Joint Deployment Plans carried out by the Community Fisheries Control Agency (CFCA). In addition, IMPEL's transfrontier shipment network (IMPEL-TFS) organises joint controls of waste shipments using a 'cradle-to-grave' approach. A key difference is that IMPEL projects are voluntary, while these activities would cover all Member States.

4. *Information exchange.* Under this task, regular meetings of MS enforcement officials would be organised to exchange information on enforcement issues and share experiences and best practices on enforcement. The approach would be similar to ECHA's Forum for enforcement on chemical issues or the Enforcement Group for the EU Wildlife Trade Regulations (the latter is coordinated by the Commission). Reports and background documents could support this information exchange, and the work might extend to voluntary, pilot joint enforcement activities. To some extent, the IMPEL network now carries out similar activities for transfrontier shipments of waste.

Both the analysis as well as comments from Member State officials in the workshops highlighted the need for a set of common, agreed standards for inspection to support all of these tasks (and in particular tasks 2 and 3, the reviews and coordinated inspection activities).<sup>14</sup>

### **Assessment of the enforcement tasks**

The matrix below provides an overview of the assessment of the four enforcement tasks in terms of four key criteria: environmental effectiveness; technical and organisational aspects; economic costs; and legal aspects.

The first two options – the European body for direct inspections and the reviews of MS enforcement systems – are considered potentially the most effective in terms of addressing environmental problems, including establishing a more level playing field across the EU.

These options operate using very different approaches and thus their effects will differ. A European body for inspections would make direct interventions to tackle serious problems identified by European citizens to the European Commission and Parliament, such as illegal waste dumping or illegal waste shipments. As a result, this option could bring relatively quick results for these specific cases. The threat of inspections from a European body in the long term is expected to spur Member State actions to improve enforcement.

The reviews of MS enforcement systems would assess national systems and identify areas for improvement. The results will improve national systems as a whole and would go further than individual sites and cases; however, the action would be indirect and thus would take more time to bring results on the ground than option 1.

Option 3, coordinated inspections, will undertake direct interventions. Here, actions will be planned together with Member State bodies and may not focus on the most serious individual cases. The joint activities should have a system-wide result, helping to strengthen Member State capacities and identify training and other needs.

All the options would require staff with expertise in enforcement: this would be particularly important for option 1, as the European body would have its own inspectors; it is less important for option 4, as the main work carried out centrally would be coordination of meetings and carrying out related analysis.

In terms of the institutional setting, the European body for direct inspections of facilities and sites would be most effective if carried out by the European Commission, as here it would have a clear EU role. It would be less effective for a European network to host this European body, as this would mean that a network bringing together Member States would carry out direct inspections

---

<sup>14</sup> A recent study for the European Commission has proposed standards for inspections of waste shipments. See: IEEP, Bio and Ecologic, Study on inspection requirements for waste shipments: final report, 12 August 2009

within the same countries. Although an EU Agency could legally host the body, at least two key reasons indicate that this would be less effective than having the Commission host it. First, Member State representatives would make up the majority of the management board: these representatives are likely to be national officials. This means that Member State interests could feature on the board, even though the agency itself would be an independent legal body. These interests might limit the ambition of a programme of direct inspections and controls of facilities and sites across the EU. In contrast, the Commission has a strong, independent role to protect EU interests as Guardian of the Treaties.<sup>15</sup>

**Table 1. Assessment of the enforcement options**

Task	Environmental effectiveness*	Technical and organisational aspects	Economic costs	Legal aspects
1. European body for direct inspections and controls	+++ Focuses on sites and facilities; Directly tangible results and solutions to specific environmental problems achieved in short-term: compliance with EU environmental legislation achieved directly.	<i>Staff:</i> enforcement experts <i>Setting:</i> most effective if carried out by COM; least if hosted by a European network <i>Synergies:</i> fewer	€€€ All costs borne by EU budget	Legislation needed for its creation
2. Reviews of Member State enforcement systems	+++ Focuses on enforcement systems Results in terms of raising the overall level of enforcement across the EU achieved in longer term: compliance with EU environmental legislation achieved indirectly	<i>Staff:</i> need expertise in enforcement activities <i>Setting:</i> most effective if carried out at EU level (COM or agency) <i>Synergies:</i> strong, e.g. with training and guidance	€€ All costs borne by EU budget	Legislation needed for EU-organised reviews Agreements among MS needed for reviews organised by a European network
3. Coordinated inspections and controls	++ Direct results for sites and facilities: indirect results on enforcement systems Extent of MS participation in the joint activities may vary	<i>Staff:</i> need expertise in enforcement activities, methods and management <i>Setting:</i> all institutional settings possible. For a European network in particular, MS participation may vary <i>Synergies:</i> strong, e.g. with training and guidance	€€ Coordination costs borne by EU budget; joint activities should not impose additional costs on MS	Legislation needed for EU-organised activities Agreements among MS needed for activities organised by a European network.
4. Information exchange	+ Indirect results on enforcement systems	<i>Staff:</i> need expertise in coordination, in enforcement and in cross-country analysis <i>Setting:</i> all institutional settings possible <i>Synergies:</i> strong, e.g. with training and guidance	€ Lowest-cost enforcement task	No legal obstacles foreseen

<sup>15</sup> Moreover, the Commissioners, while nominated by Member States, are approved by the European Parliament and take up full-time European office: Member State interests are represented separately by the Council.

\* Please note the environmental effectiveness analysis assumes that the most effective institutional setting is in place.

Options 2, 3 and 4 all have strong synergies with other tasks, including with each other and with tasks for training and guidance: for example, knowledge gathered in these enforcement tasks could be used to strengthen all types of training programmes. In contrast, fewer synergies are seen for option 1, though here too there could be advantages, for example for training on enforcement.

All of the tasks could be carried out together. A recommended combination could be to set up a European body for direct inspections of facilities, sites and operators together with the establishment of an agency for the other enforcement tasks.

Initiatives to set up new structures or mechanisms at EU level, such as a European body for inspections and a system for reviews of Member State enforcement are naturally more costly than to continue more established approaches, such as coordinated inspections and controls or an information exchange between Member States. The precise costs will depend on the level of activity that will be carried out: chapter 12 provides more detailed cost estimates for the activities.

All of the options appear to be legally feasible, and no legal barriers were seen in terms of hosting the options in any of the three institutions settings – an EU agency, the European Commission or a European network. New legislation would, however, be needed to put in place the enforcement options, except possibly for an information exchange (option 4).

In the first three options, activities might reveal possible causes for infringement procedures against Member States: here clear guidelines will be needed on how the Commission uses information gathered, in order to avoid a ‘chilling effect’ on the work.

Chapter 8 provides further detail on the enforcement tasks and the results of the analysis.

## **Training**

Three options have been identified for training tasks.

*1. Direct training* of Member State officials through centrally organised courses: this work could build on a review of existing MS training courses, which would be used to develop a common curriculum. The courses would cover two broad topic areas: approaches and techniques for enforcement; and methods to support implementation, including waste management planning (e.g. waste management plans, waste prevention programmes, etc.). Several current EU agencies support training activities in their fields.

*2. Train-the-trainers.* Under this option, courses would be given to national trainers, who then would in turn train officials in their Member State. The development of the curriculum and courses would otherwise follow an approach similar to the first option. Among existing EU agencies, the Community Fisheries Control Agency is setting up a train-the-trainers programme for MS fisheries inspectors.

*3. Coordinate and facilitate MS training programmes.* Under this option, exchanges would be arranged so that MS officials could attend and use courses developed in other parts of the EU. Some current IMPEL projects, such as inspector exchange programmes, have similar elements.

## Assessment of the training options

In the analysis, no legal barriers are seen for any of the options. And the options could be carried out under all three institutional settings. Moreover, all three options will help to strengthen MS capacities and also bring a more uniform understanding of EU waste legislation.

The analysis suggests that all three options would work to enhance skills across the EU and overcome differences in interpretation of EU waste legislation. The first approach, direct training, would go furthest in these terms and thus would be the most effective. Its impacts on the environment would be indirect, however, and may take some time to be evident. It would be the most costly of the three training tasks. Moreover, its results would depend on the extent of training courses carried out. Direct training would most likely be undertaken in only a few languages, and this would limit its reach.

**Table 2. Assessment of the training options**

Task	Environmental effectiveness*	Technical and organisational aspects	Economic costs	Legal aspects
1. Direct training	++ Will enhance skills across EU; results limited by language restrictions and small share of all EU waste officials trained per year; indirect results for environment	Staff: Experts in enforcement and implementation of EU waste legislation Setting: All Synergies: Strong, e.g. with enforcement and other tasks	€€ All costs borne by EU budget	No legal obstacles foreseen
2. Train-the-trainers	++ Will enhance skills across EU; results depend on MS follow-up; will reach a high number of officials; indirect results	Staff: Experts in enforcement and implementation of EU waste legislation Setting: All Synergies: Strong, e.g. with enforcement and other tasks	€ Initial training borne by EU budget; in-country training by Member States	No legal obstacles foreseen
4. Coordinate and facilitate MS training programmes	+ Will enhance skills across EU; results depend on MS activities; differences will be overcome more slowly than other options; indirect results for environment	Staff: Expertise in EU waste legislation and public administration Setting: All Synergies: Fewer synergies	€ EU budget would only support coordination; MS would bear other costs	No legal obstacles foreseen

The second approach, training trainers, would reach more Member State officials via in-country training. It would cost less overall and be more cost-effective; however, uncertainties here include the extent of in-country follow-up as well as the quality of the final training.

The third approach would likely have the least results. In particular, it would work slowly in terms of harmonising different Member State training programmes, and thus in terms of assuring a common understanding of EU waste legislation.

\* Please note the environmental effectiveness analysis assumes that the most effective institutional setting is in place.

Both the first and second options would have strong synergies with other tasks, such as those on enforcement and the preparation of guidance. It is possible to carry out all three options together: indeed, a combined approach may prove to be the most effective.

### **Updating and clarifying EU waste legislation**

Three main options are identified in this field.

*Support to the Commission for the updating of EU waste legislation:* this will involve provided support on technical and scientific issues as well as support on the assessment of economic, social and environmental impacts, as well as other preparatory activities. While most updates expected in coming years are likely to focus on technical issues, they could nonetheless have important economic implications as well as results in terms of environmental protection.

*Guidance to support enforcement.* Here, an Agency would develop detailed guidelines for inspectors in Member States, as well as review and update existing guidelines. This work would build on and consolidate existing work carried out by all relevant enforcement and inspection bodies.

*Guidance to support waste management.* This task would develop guidance for Member States for the development and implementation of plans, programmes and strategies to support implementation of EU waste legislation: this will include waste management plans and other requirements specified in the legislation. Here too, the task would build on and consolidate initial guidance that has been developed on some of the key themes. Moreover, guidance documents would be regularly updated to take account of lessons learned as well as the progress made by Member States.

### **Assessment of the options for updating and clarifying EU waste legislation**

The task to support the updating of EU waste legislation will help the Commission prepare more effective updates and changes to this body of law. This task will thus directly support the goal of better EU legislation. In the analysis, this task could be performed well by an agency as well as by the Commission: in the latter case, however, the Commission might contract work to external experts. This would mean that the knowledge gathered would not be institutionalised. The analysis raised questions about the role of an EU network in carrying out this task: although the network would be an independent organisation, it would be created by Member States. Assigning this task to the network might blur the clearly defined roles of the Commission and the Member States for proposing and approving new EU legislation.

Guidance documents will support Member States in improving their enforcement and implementation of EU waste legislation; they will also help to put in place a more uniform understanding of the legislation and its requirements. All three institutional settings could carry out this work.

All three tasks will have important synergies with other key tasks, including training (here, they could be integrated into training programmes) as well as supporting initiatives for enforcement. All of the options will have fairly effective, indirect results for the environment.

**Table 3. Assessment of the options for updating and clarifying EU waste legislation**

Task	Environmental effectiveness*	Technical and organisational aspects	Economic costs	Legal aspects
1. Support to the COM for updating EU waste legislation	++ Will help to develop more effective technical and other updates; results for environment are indirect	<i>Staff:</i> Expertise on specific areas of waste legislation <i>Setting:</i> Effective if carried out by an agency; COM may contract work externally; legal questions if hosted by a European network <i>Synergies:</i> Strong, esp. with training	€ All costs borne by EU budget	No legal obstacles seen for agency or COM Legal questions for a network to carry out work
2. Guidance to support enforcement	++ Will support stronger and more uniform enforcement in MS; indirect results for environment	<i>Staff:</i> Expertise on enforcement <i>Setting:</i> All <i>Synergies:</i> Strong, e.g. with training and enforcement tasks	€ All costs borne by EU budget	No legal obstacles seen
3. Guidance to support waste management	++ Will support stronger and more uniform management actions (e.g. plans and programmes) in MS; indirect results on environment	<i>Staff:</i> Expertise on specific areas of waste legislation and management <i>Setting:</i> All <i>Synergies:</i> Strong, e.g. with training and enforcement tasks	€ All costs borne by EU budget	No legal obstacles seen

### Other key tasks

Suggestions provided by Member State officials and stakeholders, in particular through the survey for this study, helped to identify a set of additional tasks that could be carried out to address the implementation gap. These include the following.

- 1. Assessment and monitoring of waste management plans and waste prevention programmes.* This task would support the European Commission in its work to monitor and assess waste management plans. The task could also involve the monitoring and assessment of other plans and strategies, such as waste prevention programmes.
- 2. Gathering and analysing data on recycling.* Several key pieces of EU waste legislation have quantitative targets for Member States to meet: many of these are recycling targets. Here, the work would support analysis of the achievement of the recycling targets in EU waste legislation.
- 3. Improving overall waste data.* Several responses as well as comments in the first informal workshop emphasised the need to improve European data on waste. This task would identify data gaps and take steps to address these gaps.
- 4. Gathering and analysing data for enforcement.* At present, few data sets on enforcement are collected on a regular and consistent basis across the EU. Such data would strengthen the enforcement tasks outlined above. This task would identify specific areas where data on enforcement and implementation will be valuable – including for other tasks to be carried out – and it would set up the data collection methods as well as databases.

\* Please note the environmental effectiveness analysis assumes that the most effective institutional setting is in place.

5. *Help desk/knowledge centre on waste.* This activity would support Member States by providing a European help desk that officials could contact with questions on the interpretation of EU waste legislation and on its implementation. This work will require in-depth knowledge of the legislation and of key approaches for its implementation.

### Assessment of the other key tasks

All of these tasks would work indirectly: they would provide information to support implementation and enforcement work in Member States or strengthen other tasks proposed at EU level. Task 1 will directly support the Commission in its work. In other words, most of these tasks have strong synergies with other work.

**Table 4. Assessment of the other key options**

Task	Environmental effectiveness*	Technical and organisational aspects	Economic costs	Legal aspects
1. Support for assessment of waste mgmt plans, waste prevention programmes	<p style="text-align: center;"><b>+</b></p> <p>Will strengthen COM assessments and identify best practice</p> <p>Indirect results for environment</p>	<p><i>Staff:</i> Waste management experts</p> <p><i>Setting:</i> Most effective if carried out by an agency; COM might contract work to outside experts; legal issues for the network</p> <p><i>Synergies:</i> With training and guidance; possibly with reviews of enforcement systems</p>	<p style="text-align: center;"><b>€€</b></p> <p>Costs borne by EU budget</p>	<p>Legislation not needed to put task in place</p> <p>Not appropriate for the European network (MS network would then assess own progress)</p>
2. Gathering and analysing data on recycling	<p style="text-align: center;"><b>+</b></p> <p>Will strengthen reviews of MS progress to targets in waste legislation</p> <p>Indirect results for environment</p>	<p><i>Staff:</i> Statistics and recycling expertise</p> <p><i>Setting:</i> Most effective if carried out at EU level; by or with offices currently working on waste data (EEA and Eurostat)</p> <p><i>Synergies:</i> With training and assessment work</p>	<p style="text-align: center;"><b>€</b></p> <p>Costs borne by EU budget</p>	<p>No legal obstacles, but more effective if Waste Statistics Regulation is revised</p> <p>Not appropriate for the European network (MS network would assess own progress)</p>
3. Improving overall waste data	<p style="text-align: center;"><b>+</b></p> <p>Will strengthen information base for reviews, assessments and policy evaluation</p> <p>Indirect results for environment</p>	<p><i>Staff:</i> Statistics and waste expertise</p> <p><i>Setting:</i> Best carried out by offices currently collecting waste data</p> <p><i>Synergies:</i> Few</p>	<p style="text-align: center;"><b>€</b></p> <p>Costs borne by EU budget</p>	<p>No legal obstacles, but more effective if Waste Statistics Regulation is revised</p>
4. Gathering and analysing data for enforcement	<p style="text-align: center;"><b>++</b></p> <p>Will strengthen information base for reviews, assessments and coordination of enforcement activities</p>	<p><i>Staff:</i> Expertise in enforcement and statistics</p> <p><i>Setting:</i> Most effective if carried out at EU level</p> <p><i>Synergies:</i> Strong, esp. with enforcement activities</p>	<p style="text-align: center;"><b>€</b></p> <p>Costs borne by EU budget</p>	<p>No legal obstacles, but more effective if Waste Statistics Regulation is revised</p>
5. Helpdesk/knowledge centre on waste	<p style="text-align: center;"><b>+</b></p> <p>Will support more uniform implementation and enforcement of EU waste legislation in MS</p>	<p><i>Staff:</i> Expertise across all areas of EU waste legislation</p> <p><i>Setting:</i> All</p> <p><i>Synergies:</i> Strong, e.g. with training and guidance</p>	<p style="text-align: center;"><b>€</b></p> <p>Costs borne by EU budget</p>	<p>No legal obstacles foreseen</p>

\* Please note the environmental effectiveness analysis assumes that the most effective institutional setting is in place.



The first two tasks support the Commission in its assessments of Member State actions required under the EU waste legislation (plans and programmes for option 1 and recycling targets for option 2). As such, a European network of Member States is not seen as an appropriate institutional setting: this would be akin to Member States reviewing themselves. Both tasks could be carried out by the Commission: however, if the option 1 is contracted to outside experts, the knowledge gained will not be well retained within a central institution.

Options 2, 3 and 4 would strengthen data. Options 2 and 3 are closely related to data collection and assessment carried out by Eurostat, EEA and EEA's Topic Centre: to be most effective, these institutions should remain closely involved. Option 4 represents a largely new area of data, on enforcement issues. Here, synergies are stronger with the enforcement, training and guidance tasks, and this work could be carried out effectively by a new agency.

While none of the tasks require new legislation, those for data gathering (options 2, 3 and 4) may be most effective if the Waste Statistics Regulation is revised.

### 1.3 Proposal for a waste implementation agency

This study recommends a broad-based initiative in which all of the tasks described above would be carried out. A central element of this proposal is the creation of a new EU Agency. This new agency would carry out most of the tasks identified: the analysis presented in the section above and in its tables shows that an agency would be the most effective institutional setting for many tasks to address the implementation and enforcement gap. The agency's technical expertise would support Member States in improving the implementation and enforcement of EU waste legislation as well as support the Commission in the updating of legislation and in other work.

**Table 5. Proposed allocation of tasks among institutions**

	EU Agency	Commission offices	European networks	Other	Notes
<b>Training</b>					
Direct training					
Train-the-trainers					
Coordination/exchange					
<b>Enforcement</b>					
Information exchange					
MS reviews					
Coordinated activities					
Eur. body for direct inspections					
<b>Guidance/updating</b>					
Support: updates to leg.					
Guidance: enforcement					
Guidance: implementation					EEA/ETC
<b>Other tasks</b>					
Assessment: MS plans					EEA/ETC
Data on recycling					Eurostat & EEA
Data to support enforcement					
Overall waste data					Eurostat & EEA
Helpdesk/knowledge centre					

**Note:** Dark green indicates lead organisation and light green supporting organisations

In carrying out a broad range of tasks, the agency would become a centre of knowledge and information on waste issues. Moreover, it would realise important synergies among the tasks it carries out, and the knowledge it gathers would be institutionalised.

As an 'EU' or 'Community' Agency, Member State representatives would make up the majority of its management board, and this will help strengthen working relations between the agency and Member State bodies. At the same time, the agency would be an independent, European entity.

The agency would organise coordinated inspection activities by the Member States, it would carry out reviews of Member State enforcement systems and it would also organise an information exchange on enforcement. The agency would also carry out all the tasks for training presented above, all of the tasks for guidance and support for the updating of legislation, as well as many of the other key tasks. The tasks for training and enforcement, while listed separately in the table, would be combined into two coherent and integrated work programmes.

The table above identifies the tasks for the agency, as well as those that would be allocated among the different institutional settings.

One key task is assigned to the Commission: the European body for carrying out inspections and controls. As noted above, the analysis suggests that this body would be most effective if placed with the Commission; possibly less effective if managed by an Agency; and less effective still if managed by a European network.

A European network could play an important role in supporting a series of tasks, notably those for information exchange on training and enforcement, as well as information exchange on enforcement as well as the coordination of joint enforcement activities among Member States. A network could also support work to gather information related to enforcement. Thus, a network would become a key partner for a new Waste Implementation Agency.

The Agency would have the following mission:

#### **Proposed mission statement**

The European Waste Implementation Agency is dedicated to promoting uniform, effective implementation and enforcement of EU waste legislation across the European Union in order to protect human health and the environment. The Agency's activities support the EU Member States and European Commission in their respective roles.

#### **Staff needed**

It is estimated that the Agency would require less than 50 professional staff members: of these, about 20 would work on enforcement tasks and a further 12 on training. They would be supported by a further 11 management and support staff.

The task of direct inspections would require 15 operational staff: in the recommended approach, this work would be attributed to the Commission (DG Environment). In total, the Commission would need more than 20 additional staff, including support staff. The secretariat of the European network would need 2 new staff members, while a total of 5 full-time equivalent staff in Member States would work through the network. EEA, its Topic Centre and Eurostat would need 1.75 new staff members in total.

## Budget estimate

A budget estimate was developed based on estimates for the individual tasks together with assumptions for overheads (such as IT equipment), building rental and other costs developed from an analysis of the budgets of existing EU agencies.

The total annual cost for this proposal is estimated at 16.4 million Euros. The new agency would account for most of this cost: about 11 million Euros per year. The second largest budget line is for the Commission, which would require more than 4 million Euros per year in additional costs, mainly for the work of the European body for inspections.

In addition, the agency would require an additional 1.6 million Euros in estimated start-up costs in its first two years.

It should be emphasised that these are estimates. Key areas of uncertainty include the amount of work carried out by each staff member, the possible synergies among tasks and also the specific level of staff salaries, which varies among EU agencies. For this reason, the figures presented here should be seen as estimates. Taking into account the various uncertainties, the actual budget could range up to 25% above or below these estimates.

In this form, the new agency would be one of the EU's smaller 'Community' agencies: the largest, the Office for Harmonisation in the Internal Market (Trade Marks and Designs), OHIM, based in Alicante, Spain, has 600 staff. The box on the following page provides a brief overview of EU agencies and highlights several that carry out similar work to what is proposed for the waste implementation agency. Further information on existing EU agencies can be found in Annex V. In addition, the review of specific tasks in Part II draws on and refers to the activities of existing agencies.

## The results expected

This proposal assumes that the work carried out through the enforcement actions would include the following:

- The European body for direct inspections and controls of facilities and sites would visit each Member State at least once each year, and in addition would carry out at least five further inspections per year in response to citizen complaints and other information.
- Each year, 9 full Member State reviews will be carried out plus 18 specific reviews (i.e. on specific areas of legislation).
- Coordinated inspections and controls would be carried out with the participation of at least 15 Member States each year.

For the training actions:

- Close to 500 Member State officials would receive direct training.
- About 60 Member State trainers would each year be trained in at least two courses each. They would then reach a further 500 Member State officials each year.

Actions in other areas would include the following:

- Support would be provided to update six pieces of technical legislation per year.
- Four guidance documents on enforcement would be prepared or revised each year.
- Four guidance documents on implementation would be prepared or revised each year.
- About 30 prevention plans and around 300 waste management plans to be assessed per year (many of these plans are prepared at regional level).

### The archipelago of European agencies

In many areas of EU policy, effective implementation and application require coordinated action as well as in-depth technical knowledge. For this reason, the EU has established over 30 decentralised bodies, commonly referred to as European agencies, which can be divided into four main types:

- ‘Community’ Agencies, which handle technical issues related to EU legislation and policy, thus allowing the European Commission to focus on its core functions – the management board for these agencies includes representatives of the Member States, of the Commission, of the European Parliament and potentially of key stakeholders as well;
- Executive Agencies that assist the Commission in the management of the Community’s financial support programmes – these temporary agencies report directly to the Commission;
- Common foreign and security agencies; and
- Criminal and police cooperation agencies.

This study focuses on the first type of agency, the so-called ‘Community’ agencies.

Each agency deals with specific tasks in a defined area of EU policy. Several existing agencies already work in the key areas of activity being reviewed in this study: enforcement, training, guidance and support for updating EU legislation. In the area of *enforcement*, for example, several models currently exist for agency activities:

- The European Chemicals Agency (ECHA) co-ordinates a Forum for enforcement on chemical issues, a body for the exchange of information, including on minimum criteria and best practices for enforcement as well as on common enforcement challenges.
- The Community Fisheries Control Agency (CFCA) co-ordinates national inspectors, vessels and aircraft in joint activities to control EU fishing requirements. Member States lead the separate joint actions.
- Several agencies regularly review and assess Member State control and inspection systems: this is the case for the European Maritime Safety Agency (EMSA). (Similar work is also carried out by DG SANCO’S Food and Veterinary Office (FVO), a wing of the Commission based in Ireland.)
- EMSA also reviews and inspects private bodies, the maritime classification societies, and participates in some Member State inspections of ships.

Several agencies organise *training activities*, and several prepare guidance: the latter is an important task, for example, for ECHA’s work to support the implementation of REACH. ECHA also operates a helpdesk that supports national REACH helpdesks.

Several agencies provide technical support for the *updating* of EU legislation, including ECHA, EMSA and the European Food Safety Agency (EFSA).

Some agencies have further powers, for example to adopt certain legally binding decisions (e.g. ECHA for specific areas of waste legislation). In addition, agencies can open their membership to countries in the European Economic Area, EU Candidate Countries and as well as countries that participate in the European Neighbourhood Partnership.

In 2005, the Commission called for an inter-institutional agreement to establish a common structure for agencies (COM(2005) 59). This agreement did not see progress, and in 2009 the Commission started a review of agencies with the goal of launching a dialogue on the role of agencies (COM(2008) 135). The proposal for a Waste Implementation Agency made here fits within the structure proposed by the Commission in 2005 and its powers are similar to those of existing agencies. For these reasons it is expected that this proposal will fit within the conclusions of the Commission’s current review and the subsequent dialogue.

Through these actions, the proposed agency and related initiatives are expected to tackle all of the elements of the implementation gap that have been identified (see the table on the previous page). In many areas, the work will have direct results: for example, the inspections of facilities and sites will directly address problems at landfills that do not meet EU requirements and with illegal shipments. In other cases, the work will have an indirect influence: for example, training activities and new guidance documents will strengthen plans for waste management. The work will support the Commission in several areas, including for the updating of EU waste legislation.

The previous sections noted that the implementation gap varies significantly across the EU: the results of this proposal are expected to be strongest in Member States and regions where the gap is currently the greatest.

**Table 6. Areas where the proposed agency and related initiatives are expected to address the implementation gap**

KEY ELEMENTS OF THE IMPLEMENTATION GAP	Results expected
<b>Overall issues</b>	
Uneven playing field across the EU	
Low priority for implementation and enforcement in some MS	
Lack of human, budget and technical resources in some MS	
<b>Key areas of bad application seen in some MS</b>	
<ul style="list-style-type: none"> <li>Landfills that do not meet EU requirements</li> </ul>	
<ul style="list-style-type: none"> <li>Unauthorised landfills</li> </ul>	
<ul style="list-style-type: none"> <li>Other facilities that do not meet EU requirements</li> </ul>	
<ul style="list-style-type: none"> <li>Illegal waste shipments</li> </ul>	
<b>Potential areas of bad application</b>	
<ul style="list-style-type: none"> <li>Poorly working producer responsibility schemes</li> </ul>	
<ul style="list-style-type: none"> <li>Poor planning (waste management, prevention)</li> </ul>	
<ul style="list-style-type: none"> <li>Targets (e.g. reducing landfilling) not met</li> </ul>	
<b>Enforcement problems seen in some Member States</b>	
Organisational issues:	
<ul style="list-style-type: none"> <li>Lack of resources for enforcement</li> </ul>	
<ul style="list-style-type: none"> <li>Divided competence; poor co-ordination</li> </ul>	
<ul style="list-style-type: none"> <li>For some: enforcement powers limited</li> </ul>	
<ul style="list-style-type: none"> <li>Need for greater permitting / enforcement links</li> </ul>	
Technical capacity	
<ul style="list-style-type: none"> <li>Poor understanding of EU legal documents</li> </ul>	
<ul style="list-style-type: none"> <li>Lack of attention to waste chain</li> </ul>	
<ul style="list-style-type: none"> <li>Poor knowledge of enforcement techniques</li> </ul>	
Low levels of prosecution; low fines and sentences	
Different MS priorities and approaches to enforcement	
Low levels of joint enforcement activities among MS	
<b>Other implementation problems seen in some Member States</b>	
Poor capacity on technical issues	
<ul style="list-style-type: none"> <li>Methods of analysis: LCA, cost-benefit, etc.</li> </ul>	
<ul style="list-style-type: none"> <li>Planning: waste management; prevention; etc.</li> </ul>	
Differences in MS interpretations of EU legislation	

Note: dark green = direct effect; light green = indirect effect

As a result of the agency's actions, environmental and health benefits could be expected in several areas, and in particular in terms of:

- supporting a reduction in greenhouse gas emissions
- reducing current environmental and health costs related to illegal waste site
- reducing environmental and health costs related to illegal waste shipments

**Table 7. Overview of the environmental, economic and social results of the proposal**

<b>Environmental</b>	
Emissions of greenhouse gases	(+) The agency and related initiatives will support stronger implementation and enforcement of measures that reduce greenhouse gas emissions, especially from landfills
Contamination of soil and groundwater	(+) Stronger implementation and enforcement of measures that protect soil and groundwater, in particular from illegal sites and activities not meeting standards
Air emissions	(+) In addition, a small decrease in air emissions will be seen
<b>Economic</b>	
Administrative costs of an agency and related initiatives	(-) Detailed in section 12.4
Improving enforcement and implementation in some MS	(-) An agency's actions increase costs in some Member States, in particular those with poor implementation
Better capacity in some Member States	(+) The agency and related initiatives will strengthen capacity in many Member States (and in particular in those with poor implementation), increasing the effectiveness of regulatory actions
Synergies from better cooperation among MS	(+) The proposal is expected to increase synergies as well as exchange of experience among Member States, making implementation and enforcement more effective
Reducing clean-up costs	(+) The clean-up costs for remedying environmental and health damage related to e.g. illegal and sub-standard waste facilities and sites are often significant and will be reduced through better implementation and enforcement of EU waste legislation
Level playing field for industry	(+) The activities of the agency and related initiatives will establish a more level playing field across the EU for the waste management industry; this in turn may reduce costs of waste management overall and increase access to valuable secondary raw materials
Innovation	(+) Better enforcement and implementation of waste requirements will support innovation in waste management approaches and technology. In addition, the agency will bring together expertise to support the Commission to ensure that future legislation is effective and supports innovation
<b>Social</b>	
Health in EU Member States	(+) Stronger implementation and enforcement will reduce health impacts from illegal sites and activities not meeting standards
Health in third countries	(+) Stronger implementation and enforcement will reduce health impacts from illegal waste shipments to third countries

Proper implementation and enforcement of EU waste would ensure these environmental and health benefits, as well as the related economic benefits. Moreover, stronger implementation and enforcement would reduce the future burden on Member State governments and taxpayers for the eventual clean-up of illegal and improper waste activities.

The creation of the agency will also address the current lack of a level playing field for waste management across the EU, providing benefits for European companies in waste management. Moreover, the proposal would create new opportunities for companies to innovate and would also increase access to valuable secondary raw materials.

The table above summarises these key results of the proposal.

### Two possible alternatives

The analysis also explored two possible alternatives. The first would be a smaller and less ambitious agency that has a slightly lower budget than the recommended proposal. The second alternative explores an initiative in which an agency is not created.

- A. An agency with less ambitious programmes on training and enforcement, i.e. carrying out fewer tasks (the tasks for other institutions would remain the same). This would require fewer than 40 total staff in the reduced agency; the staff requirements for other institutions would remain the same as in the recommended approach. Here the total cost is lower, just under 12 million Euros per year.
- B. An initiative where no agency is created: rather, an even more reduced set of tasks are carried out by the Commission services and by a European network. This is the least ambitious approach: for example, it does not include coordinated inspection activities nor a European body for inspections. Alternative B would have even less staff and the lowest costs: about 6 million Euros per year.

**Table 8. Key weaknesses of the two alternatives considered**

<p><b>Alternative A</b></p> <ul style="list-style-type: none"> <li>• No direct training carried out by agency: fewer Member State officials receive training</li> <li>• Understanding of EU waste legislation will not be as uniform across the EU</li> <li>• Participation in coordinated inspection activities may not be as strong: as a result, enforcement overall will be weaker</li> </ul>
<p><b>Alternative B</b> (<i>In addition to the issues listed for alternative A</i>)</p> <ul style="list-style-type: none"> <li>• Lack of synergies among activities</li> <li>• A central office will not accumulate knowledge and expertise to support implementation and enforcement of EU waste legislation</li> <li>• Uncertainty of long-term funding for European network</li> <li>• Without a European body for direct inspections, major problems at facilities and sites will be addressed more slowly</li> <li>• Lack of helpdesk will further weaken steps towards a uniform understanding and application of EU waste legislation</li> </ul>

The key differences in results between these alternatives and the recommended proposal are outlined in the table below. Under alternative A, some actions will not be carried out and the overall work to overcome the gap in enforcement and implementation would proceed more slowly than in the recommended approach.

Under alternative B, major structural and effectiveness problems are seen in terms of addressing the gap in enforcement and implementation.

## 1.4 The structure of this report

The remainder of this final report presents the overall results of the feasibility study. It is organised in four main parts.

- **Part I** outlines the current gap in the implementation and enforcement of EU waste legislation.
- **Part II** discusses specific tasks that a Waste Implementation Agency could carry out to overcome the gap. These include tasks in the areas of enforcement, training, support for the updating of EU legislation and clarification of the legislation through guidance, as well as a few other possible areas of activity. This analysis looks at two other possible institutional settings for these tasks, in addition to an EU agency: Commission offices and European networks of Member States.
- **Part III** proposes a description of a possible Waste Implementation Agency, including an outline for its mission, mandate, task descriptions, staff and other resources needed as well as the profile and expertise of staff required. This analysis also considers how the different the institutional settings might work together: in other words, how tasks and activities carried out by an agency could be supplemented by other new tasks and activities undertaken by the Commission offices and by European networks.
- **Part IV** provides an overview of how these new initiatives might improve the current implementation gap.

The summaries of the informal workshops held for the study, an overview of the information gathered in the first phase of work and a series of detailed budget tables can all be found in the separate **Annexes** to the report.



## **I. The Implementation Gap**



## 2. The implementation challenge

Over the years EU waste legislation has developed into a comprehensive set of rules and policy objectives. These aim at managing waste in such a way that rational use is made of scarce resources and that waste does not harm human health or the environment. Member States have to transpose EU waste directives into national legislation, implement these rules and make sure that local actors, such as local authorities, operators of plants and citizens apply these rules. The European Commission supervises the process of transposition, implementation and enforcement. (The following section reviews the respective legal responsibilities of the Member States and Commission.) Implementing waste legislation is thus an important task involving a large number of actors and stakeholder.

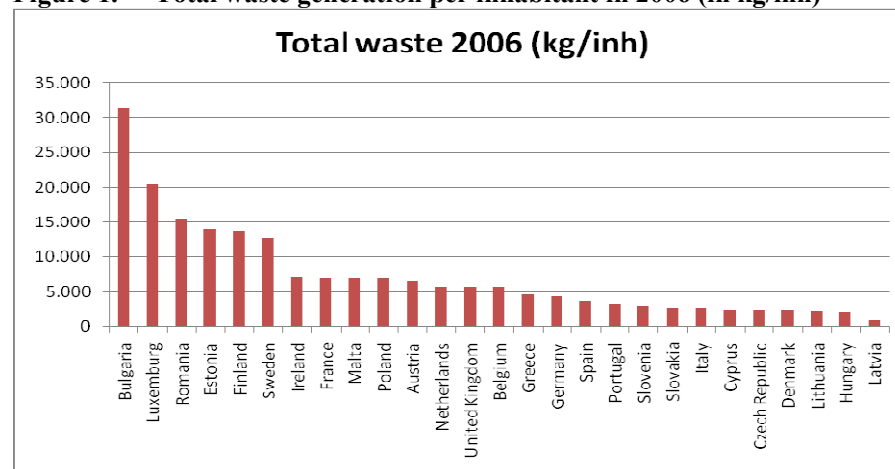
This section provides a short description of the implementation challenge. It provides illustrations of the complexity and magnitude of the challenge. While it also provides some indications of the current shortcomings in meeting this challenge, no attempts are made to quantify the potential impact of these failures to implement EU legislation in terms of environmental damages or costs as data to do so are insufficient.<sup>16</sup> It could be observed, however, that clean-up costs for remedying environmental and health damage from illegal or sub-standard waste management are often significant; better implementation and enforcement of EU waste legislation can help to reduce these future costs.

### 2.1. Amount of waste generated

All activities of businesses and consumers generate waste. The amounts, characteristics and composition as well as the sources generating waste differ considerably within the EU.

Eurostat has established a dataset on waste generated and treated in the EU for the years 2004 and 2006 based on the requirements laid down in the Regulation 2002/2150 on waste statistics. This Regulation aims at providing for a framework for the establishment of harmonised data collection and reporting on waste across the EU, covering all sectors of the economy and all waste types. Even though much progress still needs to be made on harmonising further these data, the results provide a reasonable overview of the main issues and trends in waste management in the EU.

**Figure 1. Total waste generation per inhabitant in 2006 (in kg/inh)**



Source: Eurostat

<sup>16</sup> Most of the data presented in this section come from the statistics regarding the year 2006 as collected by Member States under Regulation N° 2002/2150 on waste statistics and collated and published on the Eurostat website: [http://epp.eurostat.ec.europa.eu/portal/page/portal/waste/data/waste\\_statistics](http://epp.eurostat.ec.europa.eu/portal/page/portal/waste/data/waste_statistics) (accessed April 2009)

The total amount of waste generated in 2006 by the EU27 amounts to approximately 2.9 billion tons, or nearly 6 tons per inhabitant, based on the data reported by Member States to Eurostat under Regulation N° 2002/2150. Figure 1 (above) presents the total generation of waste per inhabitant for the different Member States.

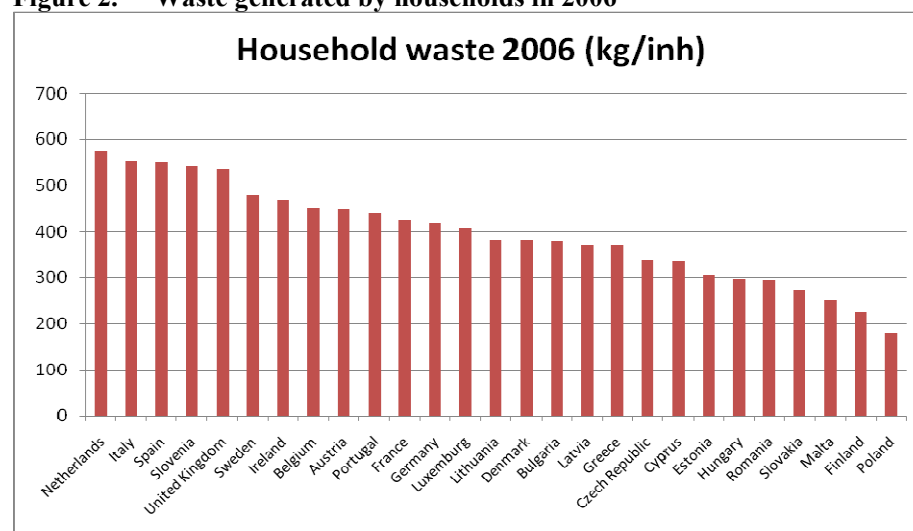
These figures show striking differences in the amounts of waste generated per inhabitant. The generation of waste as presented in the statistics is influenced by a number of factors including:

- Structure of the economy,
- Level of wealth,
- Technology used in the industry,
- Differences in definitions and collection of data.

In most cases it is not possible to clearly identify why the data between Member States differ so much and it is beyond the scope of this report to explore this aspect in depth. However, the differences illustrate the challenges of managing waste, including the related challenge of obtaining reliable information about the state of play in the Member States. Moreover they illustrate the different situations Member States are confronted with when implementing EU legislation. As an example the data for Bulgaria and Luxemburg (the two countries showing the largest amounts of waste generated per inhabitant) and Latvia (with the lowest amount per inhabitant) illustrate some of the factors that influence waste levels in different Member States.

Most of the waste generated in Bulgaria is mining waste. Mining activities typically generate very large amounts of waste materials, such as overburden and steriles. Due to the large mining sector in Bulgaria, which generates more than 90% of the waste in the country, total waste in Bulgaria was more than 242 million tons in 2006. The main waste stream in Luxembourg is construction and demolition waste. For Latvia one of the striking elements is that according to Eurostat statistics for this country, waste from households represents 68% of the total amount of waste generated in the country, suggesting that only limited data for waste from other sources are included.

**Figure 2. Waste generated by households in 2006**



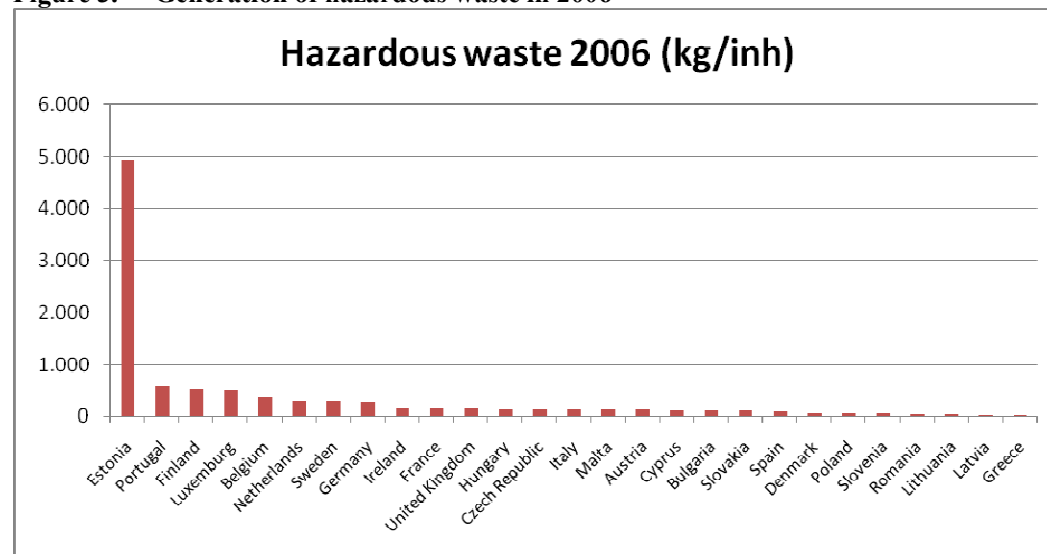
Source: Eurostat

The total amount of waste generated by households in the EU27 was 209 million tons in 2006, or 424 kg per inhabitant. In the Netherlands households generate 576 kg per inhabitant, whereas in Poland this is only 180 kg per inhabitant. The generation of household waste as presented in the statistics is influenced by a number of factors, including:

- Consumption patterns and lifestyle,
- Level of wealth,
- Differences in definitions and collection of data.

For household waste, Member States and Eurostat have made considerable efforts to harmonise data definitions and collection. However, due to differences in the way household waste and similar waste from businesses are collected in the different Member States it has proven to be impossible to fully harmonise the delimitation between these two categories, even though these data presented above are amongst those which show the largest degree of harmonization.

**Figure 3. Generation of hazardous waste in 2006**

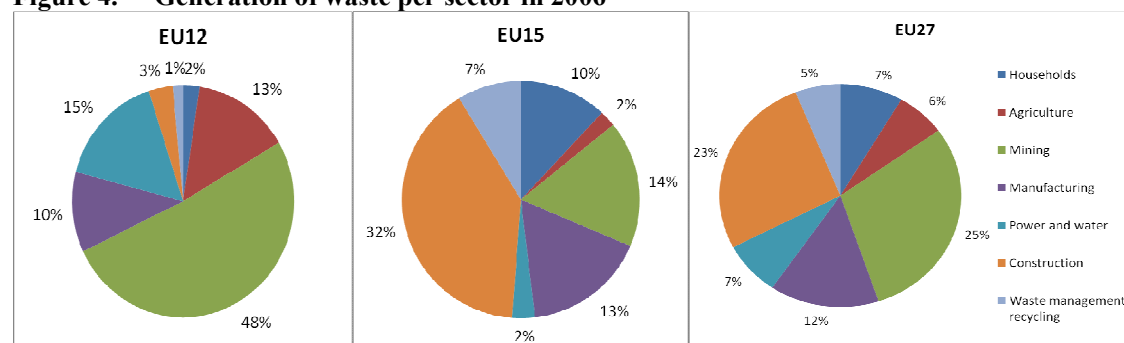


Source: Eurostat

In total nearly 89 million ton of hazardous waste was generated, or 180 kg per inhabitant. In Estonia the amount of hazardous waste generated is extremely high (4900 kg per inhabitant) due to the large share of hazardous waste from power generation in that country, where a heavily polluted fuel is used widely. On the contrary, in Greece the amount of hazardous waste generated per inhabitant is rather low with only 25 kg per inhabitant in 2006. Again these differences may, apart from differences in industrial structure and use of technology, also be influenced by differences in definitions and data collection.

Figure 4 gives an overview of the sources of waste generation for the EU27 and for the EU12 and EU15 separately. For the EU 27 the largest sectors are mining with 25% and construction with 23% of all waste generated. Waste from households only represents 7% of the total amount of waste generated. The differences between EU12 and EU15 are mainly:

- The dominance of waste from the mining industry in the EU12 countries, due to the large amounts of these wastes generated in Bulgaria and Romania,
- The large difference in the shares of waste from construction activities, which account for 32% of the total in the EU15 and only 3% in the EU12,
- The difference in the shares of household waste: 10% of total waste in the EU15 and only 2% in the EU12,
- The relatively large importance of waste from waste management and recycling in the EU15 compared to only 1% in the EU12, probably reflecting the difference in development of the waste management- and recycling industries between these groups of countries.

**Figure 4. Generation of waste per sector in 2006**

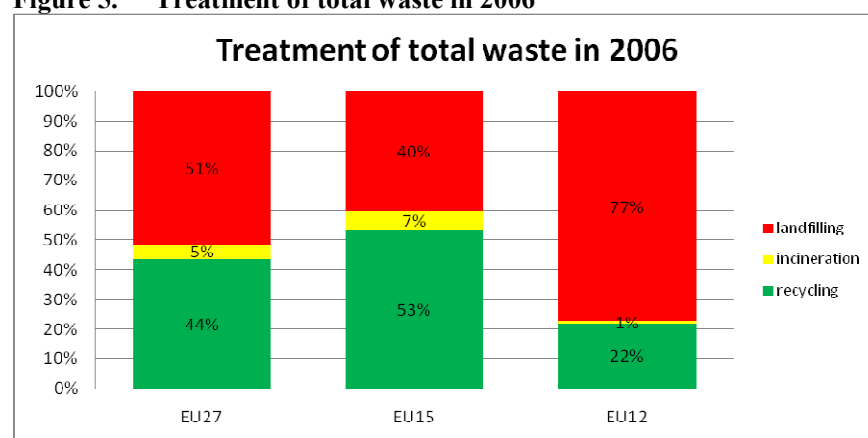
Source: Eurostat

## 2.2. Waste treatment

The EU Waste Framework Directive (Directive 2008/98/EC) established in Article 4(1) a hierarchy of waste treatment which specifies the following priority order in waste prevention and management legislation and policy:

- Prevention,
- Preparing for re-use,
- Recycling,
- Other recovery, e.g. energy recovery, and
- Disposal.

Due to a lack of collection structures for separate collection, adequate sorting and treatment capacity, very large proportions of waste are still being disposed of. Figure 5 illustrates treatment of total waste in the EU27 in 2006.

**Figure 5. Treatment of total waste in 2006**

Source: Eurostat

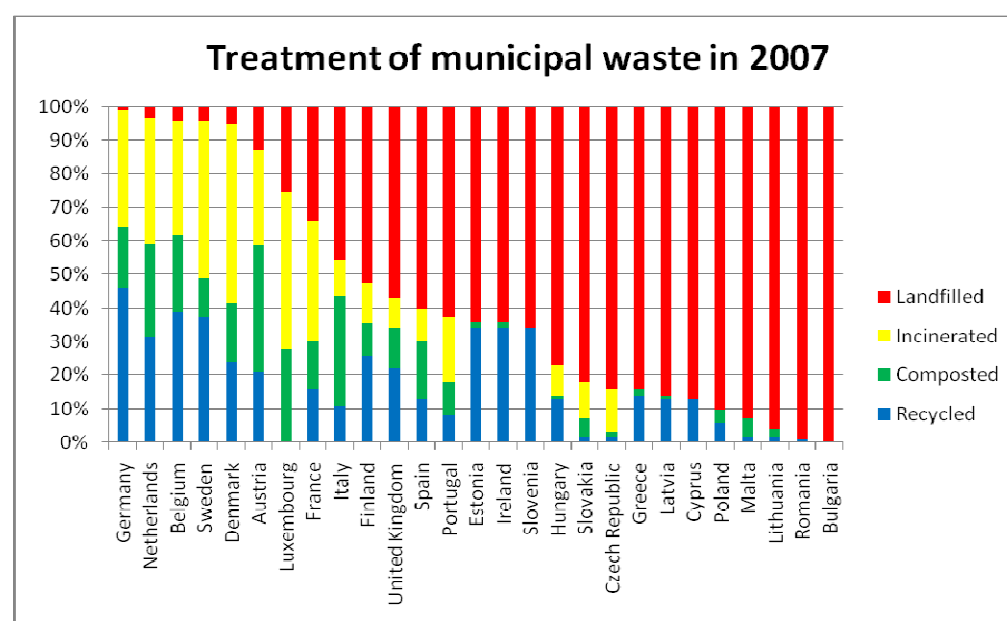
Of the total 2.9 billion tons of waste generated in 2006 in the EU27, 51% went to landfills and 44% was recycled. In the EU15, 53% of the waste was recycled and 40% was sent to landfills – whereas in

the EU12 only 22% was recycled and 77% was sent to landfills. It should be noted that this high dependency on landfills in the EU12 has several causes. For some types of waste, e.g. certain wastes from mining, there are few other possibilities for treatment. For other waste types, e.g. municipal solid waste, the alternatives are more abundant. However, also for this waste type treatment is still far from optimal as illustrated in figure 6, where the data for 2007 are presented.

On average in the EU27, 22% of municipal solid waste was recycled in 2006, 17% was treated via composting or digestion of biowaste, 20% was incinerated and 42% was sent to landfills. The picture differs however considerably between Member States.

In Member States such as Germany, the Netherlands, Belgium, Sweden and Denmark, less than 10% of the municipal waste was sent to landfills in 2007. In Bulgaria, Romania, Lithuania, Malta and Poland more than 90% of the municipal waste went to landfills.

**Figure 6. Treatment of municipal waste in 2007**



Source: Eurostat

Waste is being treated via a large variety of waste treatment methods. Table 8 gives an estimation of the number of waste installations operating in the EU27. The total number of installations exceeds 70 000. Most of these are installations for recycling (more than 50 000). There are just over 10 000 landfills in operation and also approximately 10 000 installations where waste is being incinerated. For incinerators, it should be noted that the numbers include both dedicated waste incinerators, such as incinerators for municipal solid waste, installations for the co-incineration of waste, such as cement kilns or power plants, as well as industrial installations where wastes and residues from industry are being incinerated, such as wood scraps from the timber industry used in boilers for producing heating on factory premises.

**Table 9. Waste treatment installations in operation in 2006**

	Incineration with energy recovery (R1)	Other incineration (D10)	Recycling (R2 - 11)	Landfilling (D1, D3 - 5, D12)	Land treatment, release into water (D2, D6, D7)	Total
EU15	4 086	3 775	47 593	7 183	114	62 751
EU12	1 084	125	3 089	3 103	40	7 441
EU27	5 170	3 897	50 682	10 286	154	70 189

Source: Eurostat

All these installations need to have a permit or registration and need to use measures or apply techniques to assure that their operations do not harm human health or the environment. There is insufficient information to assess how many of these installations:

- Do have the necessary permits,
- Use methods and techniques that are adequate to prevent or reduce impacts on the environment, and
- Respect the conditions in their permits.

Neither is there sufficient information to quantify the magnitude of the impact of these installations on the environment. However the sheer number of installations illustrates the large implementation challenge the supervision of their operations implies.

### 2.3. The increase in transboundary movements of waste

Transboundary movement of waste is regulated via Regulation N° 1013/2006. This Regulation specifies the procedures to be applied when shipping waste from one country to another and these vary depending on the type of waste and on the country of destination. Procedures for shipments within the EU27 or involving OECD countries may differ from those applicable to exports to developing countries. Also the procedures are different for hazardous waste than for non-hazardous recyclable waste. Rules may include bans on shipment of certain wastes to certain countries, including for hazardous waste to non OECD countries or to countries that have indicated they do not want to receive certain wastes. There may also be a 'prior informed written consent procedure' for wastes that present a certain level of risk. After notification the authorities involved may decide if the shipment can proceed or not. The simplest procedure only requires that during transport certain information should accompany the shipment, in particular the contract between the company that sends the waste and the company that will receive the waste as well as information about the type of waste, its origin and destination and the type of treatment it will undergo at its destination (Annex VII of the Regulation).

In a recent report<sup>17</sup> the European Environment Agency found an increase of waste exported with notification by the countries of the EU15 from 2.5 million tons in 1997 to 8.3 million ton in 2003. Most of these exports were intra-EU15 shipments for recovery. The amounts of non-hazardous waste (Green listed waste) shipped for recycling increased considerably, according to the same EEA report: between 1995 and 2005, intra-EU15 trade in waste paper grew with 41% and or waste plastic with 11%. In the same period the extra-EU15 trade in waste paper grew with 550% and that for waste plastic grew 700%, mainly due to increased exports to China. It shows that shipment of these wastes has increasingly become a global business and that more and more of this material is being recycled outside the EU in developing countries.

Shipment of waste is not necessarily a problem for the environment. It may even be quite beneficial if it allows an increased level of environmentally sound recycling to take place. Recycling capacity is not necessarily located close to the place where the recyclable waste is generated and shipment of these materials may solve discrepancies between demand and supply. However, environmentally sound

<sup>17</sup> EEA (2009), *Waste without borders in the EU?* EEA Report N° 1/2009



recycling should be guaranteed in the country of destination, otherwise the EU would simply export its environmental problems to other parts of the world. The EEA report gives some examples of environmentally unsound management, including of electric and electronic waste in Africa, showing the need of close supervision of shipments. Recent incidents illustrate these problems, such as the illegal dumping of highly toxic waste from the ship *Probo Koala* in Ivory Coast in 2007, causing major environmental damage, several casualties and several thousands of people having to use medical services.

Activities to enforce rules for transboundary shipments of waste require cooperation between enforcement bodies of different countries. Some Member States are quite active in enforcement of these provisions. Moreover, IMPEL, the voluntary organization in which environmental enforcement bodies and agencies in Europe cooperate, has set up a network for shipments of waste: the Transfrontier Shipment network (TFS- network). The network organizes a number of activities including exchange of inspectors and joint inspection activities. During the Enforcement Actions project<sup>18</sup>, that run from end 2006 till spring 2008, 22 EU countries and Croatia, Serbia and Switzerland participated in a total of 168 inspection actions. During these actions 14 000 transports were checked, of which more than 2 000 involved transboundary shipments of waste. Out of these, 15% of the shipments did not comply with the Regulation. For about 6% of total shipments, the violation was an illegal shipment; for the other cases, the violation involved administrative mistakes or omissions in the papers that should accompany the shipment. It should be noted that these data do not provide a representative picture of the real magnitude of illegal shipments.

#### **2.4. Problems in the transposition and application of EU waste legislation**

Once adopted, EU Directives have to be transposed into national law by the Member States. Regulations, though they apply directly and do not need transposition, may require Member States to adopt certain national implementing measures. This transposition is the first step in implementing EU legislation. The next step is the institutional actions for implementation.

Implementation and enforcement are the responsibility of the Member States. The European Commission, in its role as “Guardian of the Treaty”, has to assure that Member States do this according to the provisions as in EU legislation (see section 4). The Commission does this task on the basis of information it gets from Member States and others. Member States are required to inform the Commission about the progress of implementation. Moreover, citizens and organisations can bring complaints to the Commission, as well as petitions to the European Parliament, concerning poor implementation of EU legislation.

If the information the Commission receives indicate a case of late or incorrect transposition or bad application of EU legislation, it may start a legal procedure (infringement procedure) against the Member State as specified in Article 258 of the Treaty on the Functioning of the European Union. Infringements of environmental law are a large proportion of the total infringement cases the Commission takes up. Environmental cases represented 494 (23%) out of 2171 cases that were open by May 2008<sup>19</sup>. Table 9 provides an overview on the nature of the infringements.

Cases of non-communication arise when a Member State has not informed the Commission in time about the implementation of a specific piece of EU legislation. Cases of non-conformity indicate that the Commission has received national implementing measures, but that these measures contain elements that do not correspond to the requirements in the EU legislation or that certain elements are missing. Cases of bad application imply that the way the legislation is applied in the Member State does not correspond with the requirements in the EU legislation. This last category is the most serious case, since it may have direct impact on the quality of the environment. Examples of bad application

<sup>18</sup> Data from the report ‘Learning by Doing’, IMPEL-TFS enforcement Actions I, Enforcement of EU Waste Shipment Regulation, 2008.

<sup>19</sup> Website of DG environment.

can include the fact that illegal landfills or certain installations emitting more pollutants than allowed are still operational. It may also concern cases where recycling targets are not being met.

**Table 10. Infringement cases open<sup>20</sup> by May 2008**

Type of infringement	Environmental cases	All cases
Non communication	69	681
Non conformity	141	394
Bad application	284	1 097
Total	494	2 172

Source: DG Environment

Additional information about the evolution of environmental infringement cases is given in Table 10. In 2006 and 2007, waste cases accounted for 19% of all new environmental infringement cases – the second highest category behind nature protection (26%).

**Table 11. Waste cases as a share of new environmental infringement cases**

Year	New environmental cases started	Of which waste cases
2006	421	80 (19%)
2007	479	93 (19%)

Source: DG Environment

Another aspect of the infringement cases is that the Commission has adopted a mechanism to group similar cases of bad application into what are called horizontal cases. In earlier years infringement cases of bad application often dealt with very specific situation, e.g. the operation of a specific landfill site. By grouping cases these resources are better used and have larger impact. These horizontal cases are cases where action is started against a Member State because of systematic and persistent insufficiencies in the implementation of waste legislation or because of the existence of a large number of illegal landfills.

Citizens and organizations have increasingly become aware of environmental problems in their surroundings. They may take action by issuing complaints to the Commission and petitions to the European Parliament if they are of the opinion that EU legislation is violated – and an increasing number have been received in recent years. In 2007, 103 complaints related to environmental problems were submitted to the Commission, 22% of all the complaints the Commission received. Environmental issues were the subject of 38% of the petitions submitted to the European Parliament.

The high number of infringements, complaints and petitions reflect a serious gap in implementation of EU legislation. Moreover, the complaints and petitions poses a problem for the management of these cases. The Commission does not have the possibility to investigate the facts of a case on the ground, but has to rely on information that is provided by either Member States or by citizens and organisations that put such information to the Commission. It is often difficult to confirm the information that is provided. Moreover, the Commission at times lacks the scientific and technical knowledge to fully assess information that is provided. With the increasing complexity of cases put to the Commission these information problems are becoming more prominent.

<sup>20</sup> Open infringement cases means cases for which the Commission has undertaken at least the first step of the legal procedure as foreseen by Article 226: sending a letter of formal notice.

## 2.5. Differences in Member State capacities

One important concern is that Member States have very different capacities in place for the implementation and enforcement of EU waste legislation. To gain information on this issue, the study's questionnaire asked stakeholders for their views. Of the 12 responses, six saw 'very large differences' and five, 'large differences' in capacity among the Member States (see table below).

**Table 12. Stakeholder views of difference in Member State capacities to implement and enforce EU waste legislation**

	Very large differences among Member States	Large differences among Member States	Minor differences among Member States	Almost no differences among Member States
Stakeholders	6	5	0	1

The questionnaire also asked stakeholders to comment on these differences. Some comments referred to divergences in approach for specific legislation, such as the landfill directive. One industry association, however, said their members had experienced differences in implementation across many areas of waste legislation, from those for facilities such as the landfill and incineration directives to requirements for producer responsibility, such as the WEEE Directive.

Another response referred to differences between EU15 and EU12, noting that the targets under the landfill directive for reducing specific waste streams posed the latter countries a major challenge as many did not have a national waste policy and had little experience in alternatives for waste treatment. Moreover, in some of the small new Member States, one official had responsibility across several directives.

Several stakeholders referred to differences within Member States, in particular those where the regions had a strong role in waste management. One respondent stated a national, specialised agency such as ADEME in France ensured a more consistent and effective approach for implementation and enforcement. Another respondent replied that many municipalities are not prepared for recycling targets.

The questionnaire also asked stakeholders whether differences in Member State capacities and enforcement led to distortions in competition. A number of stakeholders replied that they do. One referred to differences in enforcement efforts as well as sanctions and differences in interpretation of legislation as well as capacity for implementation. Another stakeholder referred to differences in the use of economic instruments, in the standards for waste treatment facilities and in controls of these facilities.

One other concern mentioned in the responses is that controls and inspections can more easily focus on licensed facilities that provide information, rather than unlicensed facilities.

## 2.6. Review of key points

This brief overview of waste issues has highlighted the following points:

- The tasks of implementing and enforcing EU environmental legislation have become a major challenge for Member States. Management of waste in a large part of the EU does not take place in an environmentally sound manner.

- Large parts of the waste generated in the EU is managed in an illegal way directly contravening EU waste legislation and subject to infringement proceedings and Court cases, whether the waste is illegally dumped within the EU or illegally shipped outside the EU.
- Some parts of generated waste, although not illegally managed, are not managed in the optimal way, as large amounts of waste that go to landfills could be handled by options that are higher on the waste hierarchy, if installations and collection systems were available. Moreover, Member States differ considerably in their level of success of achieving high recycling and recovery levels. These elements indicate that Member States will face a considerable challenge in implementing the waste hierarchy established in the 2008 Waste Framework Directive.
- A high number of installations treat waste in the EU. Inspection and enforcement of the permit conditions of these installations is a large and complex task, and there are large discrepancies in levels of enforcement and inspections between Member States.
- Increasing amounts of waste are shipped over national borders, posing a further task for enforcement. While some Member States have addressed this issue, further steps are clearly necessary, as recent exercises have detected large numbers of illegal shipments.
- A further problem is that Member States appear to have major differences in their capacities to implement EU waste legislation.
- There are large differences in the amounts of waste generated in Member States and the composition of these wastes. Each Member State has to a certain extent unique challenges.

These problems indicate a need for strengthening the capacities of many Member States to better implement EU waste legislation. Moreover, the prevalence of these problems and the lack of precise EU-wide information suggest a need to strengthen capacities at EU level and in particular to establish new EU initiatives for implementation and enforcement of waste legislation.

The following section reviews legal issues concerning the implementation and enforcement of this legislation, and in particular it considers the roles and responsibilities of the European Commission and the Member States, in order to assess the current situation and the roles of these actors in possible new initiatives.

### 3. Enforcement: current needs, current EU-wide activities

The previous section highlighted the large number of infringement cases currently underway in the waste sector. These affect approximately one-third of all Member States. This section looks at some of the reasons behind this large number of cases. In particular, the goal is to:

1. Identify difficulties experienced by MS in their efforts to implement and in particular to enforcement the waste sector requirements; and
2. Assess the reasons for those difficulties.

The Waste Shipment Regulation and most waste directives – including the Waste Framework Directive, the Directive on Hazardous Waste, the Directive on the Incineration of Waste, the Directive on Port Reception Facilities, the Directive on the Landfill of Waste, the WEEE Directive and the IPPC Directive – contain references to the need for a sufficient inspection regime and enforcement level or require Member States to take the necessary measures, but do not provide any details or set (minimum) requirements (See Annex VI). The only instrument at EU level in relation to environmental inspections is the Recommendation on Minimum Criteria for Environmental Inspections 2001/133/EC (RMCEI). As the desk study on key EU waste legislation (Annex VI) shows, provisions in relation to the training of officials and decision-makers are included in the RMCEI only.

In the Commission's proposal for the revision of the WEEE directive, new requirements for the Member States on inspections and monitoring are included (Article 20); minimum requirements for monitoring shipments of WEEE are listed in Annex I of the recast proposal.

Provisions on reporting by the Member States to the European Commission on illegal activities, on cases of non-compliance and on national staff for enforcement activities are only seen in the Waste Shipment Regulation (Annex IX, Table 5 and Article 50 (6)).

Information on current enforcement activities and problems in Member States is available from a number of sources, including reports from IMPEL and the European Commission (specific reports are cited in the following pages). These reports focus on some of the most important legislation in terms of enforcement concerns, such as the Waste Shipment Regulation and the Landfill Directive, and thus provide an overview of the situation across the EU. Many details, however, are not available in these reports, including information on the enforcement of some areas of waste legislation.

A further issue is that the different pieces of waste legislation may be implemented and enforced at different levels and by different authorities within the Member States. In 2006 IMPEL has published an overview report<sup>21</sup> of the organisation of environmental inspectorates. This report however does not differentiate among the different environmental laws, though it shows the complexity of how environmental inspectorates are organised in the different Member States.

As a result, this overview focuses on the two pieces of legislation where information is most complete: the Landfill Directive and the Waste Shipment Regulation.

---

<sup>21</sup> IMPEL, 'Short overview of the organisation of inspection in IMPEL Member States, Norway, acceding and candidate countries', 2006

### 3.1. Review of existing literature

#### Environmental authorities

Depending on the structure of the Member States, the actual implementation and enforcement of EU waste legislation can be performed at national, regional or local level.

In centralised countries, the main responsibilities and competences are usually assigned to a national body, such as the Ministry of Environment (MoE), to an Inspectorate that is part of the MoE, or to a national agency that is closely linked to the MoE. The national organisation can have regional or local offices, but overall questions as strategy, resources, training, data systems, legal powers and priorities are set at national level. This is for example the case in the Netherlands and Portugal for the Waste Shipment Regulation.

Enforcement at regional level is commonly seen in Member States that have a strong decentralised system or have a federal structure. This structure can be found in Germany, Spain and Belgium. One risk is that a lack of communication and coordination between the regions could lead to differences in implementation and enforcement of the waste legislation.

In some Member States the municipalities or local authorities are responsible for the implementation and enforcement of waste rules, causing even a wider variety in implementation and enforcement level. For example, France and Sweden have implemented this model.

#### Involvement of other services

Inspecting and enforcing waste legislation is not just a task for environmental competent authorities. Law enforcement in general is a task for the police, and this includes environmental law. The actual activities and available resources of police forces in the field of waste enforcement vary considerably between the Member States. Some police forces have specialized environmental units and/or trained police officers. This is case in for example in France, Portugal, Italy, the Netherlands and in some regions of Belgium. These units can initiate their own enforcement actions, for example based on intelligence, complaints or cases detected during surveillance. In other Member States, the police have a less pro-active role in waste law enforcement or none at all, and they only react once a request for collaboration has been issued by the environmental authorities.

Especially in relation to transfrontier waste shipments, where controls at borders and of import and export documents are essential, Customs play a key role. Their role too varies between the Member States. In a few number of Member States, Customs agencies have designated units and/or specialized officers responsible for controlling waste shipments (sometimes these units work on other environmental trade issues, such as wildlife trade and hazardous goods). Customs can perform controls at borders and at terminals (alone or together with other services), check customs declarations and develop profiles for their data systems to select possible suspicious shipments. This kind of risk profiling is performed in the Netherlands and in some federal states in Germany. However, in most Member States the Customs are not actively performing inspections related to waste law, or do so only when requested by the environmental authorities for special enforcement actions.

The links between these services and environmental authorities is important and in many cases are not well structured or laid down. As each service has its own knowledge, information and competences, it is vital to combine these as efficiently as possible. This sometimes happens by a Memorandum of Understanding, by law or other forms of inter-service collaboration, but not frequently.

In relation to criminal prosecution, the Ministries of Justice and Public prosecutors are important actors as well. In many countries there is a lack of coordination between the offices responsible for the

criminal prosecution and the competent authorities for waste legislation. Administrative prosecution is commonly done by the competent authorities themselves.

### **Cross-border implementation and enforcement of environmental law**

Most EU Member States are members of the European Network for Implementation and Enforcement of Environmental Law (IMPEL)<sup>22</sup>. This network facilitates operational collaboration between various authorities in relation to improved permitting and inspection, controls of transfrontier shipments of waste and better environmental legislation.

IMPEL has also developed tools such as inspection manuals and assessments, organised exchange programmes for inspectors, undertaken peer reviews between Member States and assessed new EU environmental legislation in terms of its practicability and enforceability.

Bilateral agreements between Member States are also in place; some have been arranged by operational working agreements and at least one by a Memorandum of Understanding. Operational agreements are quite common; for example between Portugal and Spain, Ireland and the UK (Northern Ireland), Austria and Hungary. A Memorandum of Understanding is in place between the United Kingdom and the Netherlands.

### **In relation to specific pieces of waste legislation**

Due to a lack of information regarding the actual implementation and enforcement of waste legislation in general, we have used available reports for this desk study that relate to specific pieces of waste regulation.

#### Directive 1999/31/EC on the landfill of waste

In 2007 a series of awareness raising events were organised by the European Commission in the 10 new Member States at the time, concerning the implementation of Directive 1999/31/EC on the landfill of waste. In May 2007 a report<sup>23</sup> with the outcomes of these events was published.

The report identified as an overall problem concerning the implementation of the Landfill Directive the low priority for waste management and a related lack of administrative capacity to deal with waste management matters. This causes long planning and permitting procedures and a lack of capacity for monitoring and controlling of landfills.

Responsibilities and competences in the waste management sector are typically divided between different authorities and at different levels; this and the reluctance of local authorities to cooperate were identified as further obstacles.

The report found that EU legal documents and legal instruments are not always completely understood by the competent authorities, thus creating space for diverging interpretations of the provisions. Issues such as treatment prior to landfill, requirements for basic characterisation and technical construction requirements for landfills, raised questions and created room for discussion or resulted in diverging practices in different Member States. Lack of guidance, harmonisation and common standards further complicate this problem; for example the need for more guidance on the waste versus non-waste discussion and the lack of standards for sampling and analysing laboratories.

---

22 See IMPEL's website: <http://ec.europa.eu/environment/impel/>

23 BiPRO, 'Organisation of awareness-raising events concerning the implementation of Directive 1999/31/EC on the landfill of waste', reference ENV.G.4/SER/2006/0049, 30 May 2007 (available at: [http://www.bipro.de/waste-events/doc/land\\_report.pdf](http://www.bipro.de/waste-events/doc/land_report.pdf))

And finally the prosecution of cases of non-compliance is an obstacle. Either prosecution of violations rarely takes place or fines are relatively low. Most environmental inspectorates do not have the competence to impose administrative fines; therefore good collaboration with the police is required to start criminal prosecutions.

The European Commission continued with a second series of awareness-raising events concerning the application and enforcement of EU legislation on Landfills that took place in 2008 in Italy, Portugal, Greece, Spain, United Kingdom, Finland and Bulgaria. The report<sup>24</sup> of these events was published 30 November 2008.

A number of common challenges and deficits were listed. This desk study will only mention the points in relation to implementation and enforcement systems. First of all, a lack of collaboration among municipalities was mentioned. The study also identified a lack of clear requirements for limits, sampling and analysing, problems with enforcing and implementing the acceptance criteria decision, unclear definitions, and difficulties interpreting the requirement for pre-treatment.

Among the shared priorities of the Member States were harmonisation of standards and requirements and guidance and clarification on sampling, analysing methods and limit values. The EU Commission was therefore asked to give support in the area of clarifying interpretation and definition problems and technical / engineering matters. One of the recommendations for the Member States was to enhance control and inspection measures.

From 16 July 2009, all EU Member States that have not been granted extensions must ensure that sub-standard landfills that existed before the introduction of the Landfill Directive comply with its requirements. Member States are also required by this date to reduce the amounts of biodegradable municipal waste sent to landfills by half of 1995 levels. Both requirements increase the need for effective enforcement.

It can be concluded that the lack of implementation of legislation concerning landfills is not just an issue for the 'new' Member States but one for the 'old' Member States as well.

#### Waste Shipment Regulation 2006/13/EC

In line with the awareness raising events for the Landfill directive, a similar series of events have been organised concerning the application and enforcement of EU legislation on shipments of waste.

In 2007 the events were held in Germany, Spain, Estonia, Poland, United Kingdom, Belgium, Greece and Malta. These events thus took place in both EU12 and EU15 countries. The report<sup>25</sup> also identified problems and deficits in implementation of the waste shipment rules as well as characteristics of enforcement structures in certain Member States. While some of the Member States are considered to have implemented a high level of enforcement and a well developed structure for cooperation and controls, other Member States were assessed as having a low level of implementation and enforcement. Examples of good practise include: close cooperation within authorities at national level and with neighbouring countries (UK, DE, BE, NL); the 24-hour availability of environmental inspectors and emergency numbers for customs officers to use in case of suspicious cases (EE); and the provision of guidance material and databases to authorities (UK, DE, BE<sup>26</sup>) Other reports that

<sup>24</sup> BiPRO, Organisation of awareness-raising events concerning the application and enforcement of Community legislation on Landfills, reference 070307/2007/481226/MAR/G4, 30 November 2008 (available at: <http://www.bipro.de/waste-events/doc/Final%20Report%20LANDFILL.pdf>)

<sup>25</sup> BiPRO, 'Organisation of awareness-raising events concerning the application and enforcement of Community legislation on shipment of waste', reference ENV.G.4./SER/2006/0050, 30 May 2007 (available at: <http://www.bipro.de/waste-events/doc/Final%20Report%20SHIPMENT.pdf>)

<sup>26</sup> Flanders region of Belgium



contain information about enforcement structures for the WSR enforcement and implementation are IMPEL TFS project reports<sup>27 28 29</sup>.

Enforcement of the WSR in the Member States is organised in different ways. Some have organised it at national level (e.g NL and PT), others have decentralised the responsibilities and competences to regional inspectorates or to local authorities (DE, FR, PL). In some Member States it furthermore depends if it concerns shipments of waste into the country or region, out of the country or region or in transit through the country or region.

Also, waste management and waste controls have a low priority on the political agenda, resulting in limited or no resources and enforcement staff to prevent and control illegal waste shipments. Due to other priorities, waste shipment controls are not part of the regular daily work of environmental inspectors.

Divided competences, roles and responsibilities and the involvement of various authorities from different countries require an efficient cooperation and exchange structure at regional, national and cross-border level. It appears that information is not being shared and decision takings procedures are delayed as a result of the many authorities involved. The role of countries where waste in transit is being checked can be especially complicated.

Related to this is also the lack of or limited powers of police, customs and environmental authorities to perform checks. In cases where no suspicion has arisen, police and customs hardly have any powers to stop and check a shipment. Environmental authorities lack powers to perform controls during the transport itself, namely to stop or detain a vehicle.

The lack of guidance material and difficulties in interpreting certain provisions of the regulation are causing inconsistency between and even in Member States. For example, there is no or little experience in and knowledge of how to perform targeted inspections and/or joint controls.

Similar as for prosecuting violations of the landfill directive provisions, non-compliance with the WSR is seldom prosecuted and fines are considered low.

What makes the waste area even more complicated for inspections and enforcement is the involvement of many intermediates in the waste chain. In some cases they do not reside in the same Member State, thus making it difficult to follow and trace waste shipments when communication and information exchange between authorities is poorly organised.

## **Review of key points**

While this review has focused on only two pieces of EU legislation, the following enforcement problems are commonly seen:

Due to the different ways of implementing and enforcing EU waste law, the effectiveness per Member State varies greatly. Member States have set different priorities for implementation and enforcement of EU waste law, which affects the resources available for the work. And as tools and competences for inspectors and enforcers vary, the results and impact of their action also show different results.

<sup>27</sup> IMPEL TFS Seaport Project II, 'International Cooperation in enforcement hitting illegal waste shipments', June 2006 (available at: [http://ec.europa.eu/environment/impel/pdf/seaport\\_2\\_report2.pdf](http://ec.europa.eu/environment/impel/pdf/seaport_2_report2.pdf))

<sup>28</sup> IMPEL TFS Verification Project II, 'Is what you see, what you get?', June 2006 (available at: [http://ec.europa.eu/environment/impel/pdf/tfs\\_report.pdf](http://ec.europa.eu/environment/impel/pdf/tfs_report.pdf))

<sup>29</sup> IMPEL TFS Enforcement Action Project phase I, 'Learning by Doing', May 2008 ([http://ec.europa.eu/environment/impel/pdf/eea\\_1\\_final\\_report.pdf](http://ec.europa.eu/environment/impel/pdf/eea_1_final_report.pdf))

Despite some examples of good practice, enforcement overall is far from strong in the EU. In many cases, enforcement of non-compliance behaviour has a low (political) priority, again resulting in limited resources.

The current enforcement structures are very much focussed on inspecting facilities, rather than the so called chain enforcement or joint enforcement. There is a clear need for better cooperation among authorities within Member States. This refers to cooperation between similar authorities working in regions or at municipality level, but also cooperation between different authorities.

Besides the need for greater cooperation within Member States, also the cooperation across Member States could be improved. As the waste market is an international market, monitoring this sector also requires an international approach. This will first of all lead to a more uniform implementation and create a more level playing field. Secondly it will improve the exchange of information, experiences and best practices. And thirdly it will enable inspectors to verify if waste is treated in accordance with EU waste law standards, even if this takes place outside their jurisdiction.

Another common issue that has been identified is the low level of prosecutions. In few cases, the company or responsible person being suspected of non-compliance behaviour is being prosecuted. In the cases where this has happened, the fines and/or sentences are relatively low.

And finally the lack of guidance and training on implementing waste legislation has been recognized as an obstacle for an effective and uniform implementation and enforcement of EU waste law.

### **3.2. Preliminary results from the survey**

The current level of enforcement and options to strengthen it were prominent topics in the questionnaires for Member State officials and stakeholders.

Most stakeholder responses highlighted the major differences in enforcement across the EU. One response stated that: “Investigations, inspections and controls vary between counties – in some they do not exist, in others they are burdensome and bureaucratic. In some countries, enforcement is not comprehensive, leading to bad regulation.”

Another stakeholder noted major differences in terms of “the types of facilities to inspect, the way that they are inspected and the time spent on the inspection”. According to a third response, there are “different priorities in different MS and in some, waste laws are not a priority at all.”

#### **Current enforcement activities in the Member States**

Eight responses from Member State officials provided some data on the number of inspections carried out. The responses often cover different categories of inspections and classes and are thus difficult to compare.

A response from a medium-sized EU15 country reported 27 inspections per year of waste management facilities, and in addition a total of 23 days of co-ordinated transport inspections carried out in 2008. Another medium-sized EU15 country, however, reported almost 4500 total transport inspections. A response from a large EU15 also referred to a high level of activity: over 34,000 inspections of waste management facilities in a recent year, including over 1500 detailed audits. A small EU12 country also reported a high level of inspections: over 1200 carried out in 2008 in 650 waste treatment companies.

These responses suggest that the extent of inspection and control activities indeed vary significantly across the EU. For this topic in particular, it is however difficult to make generalisations. For one, the information provided may refer to quite different types of controls and inspections. In addition, the number of inspections should be tied to the extent and type of waste activities: the size of the country in terms of population and economic development as well as its industrial should influence the type of waste activities; controls of waste exports may need to be much higher in Member States with large ports.

The study team intends to investigate this topic further in the telephone interviews with selected Member State officials.

### **Co-operation within Member States**

Several Member State responses refer to close co-operation among government bodies involved in enforcement. For example, several respondents mentioned the use of agreements such as memoranda of understanding among enforcement bodies; in a few Member States, these appear to be used widely to ensure co-operation among different agencies.

In other Member States, co-operation occurs mainly in the context of specific enforcement projects.

In a few Member States, national enforcement bodies organise regular meetings: one example is an annual briefing for local authorities on developments in waste legislation.

One Member State notes, however, that “all supervision authorities are rather overburdened with general duties”, reducing the resources for inter-agency co-operation. Another referred to the role of government agencies at different levels (regional, provincial and local) as well as the involvement of five national law enforcement bodies, and noted a memorandum of understanding only between two of these five.

### **Co-operation among Member States**

The questionnaire also asked Member State officials about co-operation on enforcement. Most of the responses referred to co-operation in the context of IMPEL and in particular the IMPEL-TFS network for transfrontier shipments of waste and its projects.

A few responses mentioned exchange programmes carried out under IMPEL.

Other Member State responses identified co-operation programmes in smaller areas. One example is the EUDIN (European Data Interchange for Waste Notification System) project among Austria, Belgium, Germany and the Netherlands. This project will allow transporters to provide data on waste shipments in these countries.

Another response referred to discussions in the environment committee of the Baltic Environment of Ministers. Other international groups and organisations mentioned include INTERPOL’s Pollution Crime Working Group and the Africa e-waste project organised by the Secretariat of the Basel Convention: in both cases, it is not clear if the co-operation is with other Member States or with third countries.

Several responses mentioned co-operation with neighbouring Member States. In one case, bilateral co-operation between two EU15 countries appears to be quite broad and includes officer exchanges and joint inspections and investigations. This co-operation focuses on enforcement of the Waste Shipment Regulation – as do most of the co-operation activities reported.

At the same time, a few responses from the Member States were blank, and two responses – one from an EU15 Member State official and the other from the EU12 – reported that no joint enforcement activities have been carried out.

### **Areas for action: stakeholder proposals**

The stakeholder responses contained a variety of suggestions for EU actions to improve enforcement.

Several responses called for greater resources at Member State level and a higher priority for enforcement – and also mentioned the need for efficient judicial follow-up. A further comment is the need for stronger sanctions.

Stakeholders had several suggestions for EU actions. Other stakeholders referred to common guidance and common methods established at EU level for inspections, including for sampling and analysis. In a similar vein, several responses called for a harmonisation in the quality and frequency of inspections across Member States. One suggestion, for example, called for each directive to specify a minimum level of inspection.

Several stakeholder responses instead called for greater exchange of information, for example within a “forum for enforcement” as well as between neighbouring countries.

At a further level of action, another stakeholder suggested formalising the IMPEL network, making its co-operation mandatory for Member States and developing it into an agency. A further comment proposed an EU inspection force and another, the co-ordination of waste shipment inspections at EU level.

Other responses called for greater information activities, such as a “database of waste offenders to be accessible to all national and regional agencies” and an electronic database of waste shipments for all Member States. Another response called for simplified reporting via common web-based mechanisms.

These stakeholder proposals are in effect similar to many of current enforcement activities undertaken by existing EU agencies working in other policy areas (see section 9).

### **Areas for action: Member State responses**

The responses from Member State officials provided a range of suggestions for actions and activities to improve enforcement. Several Member States suggested greater exchange of information and experience on enforcement.

Other responses went further, and called for initiatives to ensure more consistent implementation and enforcement methods. Here, many responses called for greater training and guidance (these topics are addressed in the next two sections). A related suggestion was the development of standardised checklists for inspections, and a similar proposal called for standard methods for enforcement, training and analysis.

Many responses focused on transboundary shipments as a key area for attention, though others referred to waste enforcement more generally.

One Member State response suggested that an agency could develop a common pool of expertise on enforcement; moreover, by taking on a co-ordinating role an agency could ensure more consistent enforcement practices across the EU. Two responses suggested that an agency could monitor and report on Member State implementation of EU waste legislation.

Another comment noted that “An EU wide Agency means that the EU has a single point of contact to speak authoritatively and uniformly to non-EU partners about waste shipments, and in fulfilling the EU obligations with regards to the Basel Convention”.

At the same time, some Member State responses questioned the need for an agency. Some suggested that existing networks, such as IMPEL, could undertake any new EU initiatives. (One response simply commented that “enforcement in [their Member State] is working very well”.)



## 4. Training, guidance and other areas: current activities and needs

The previous section highlights the need to improve enforcement in many parts of the EU. This section reviews current activities and needs in a series of areas can support better implementation and enforcement:

- Training
- Guidance for implementation and enforcement
- Support for the updating for legislation
- Other key areas identified by Member States and stakeholders

This section is based in particular on information provided by Member States and stakeholders in the survey, in follow-up interviews and in the informal workshops.

### 4.1. Current training activities and needs

EU waste legislation does not specify requirements for training of Member State officials, though this subject is mentioned in the Recommendation (2001/331/EC) on minimum criteria for environmental inspections (RMCEI). (See Annex VI for a review of the legislative requirements.)

At EU level, IMPEL carries out workshops and inspector exchange programmes that provide a form of training; awareness raising events organised by the European Commission can also provide some training. However, these activities are not structural as they are part of individual projects, and common training curriculum is lacking.

#### Current national training activities

The initial desk study did not find information on current training activities in the Member States. For this reason, the questionnaire asked Member State officials to provide information on such activities. The information received thus provides a valuable overview of current activities, at least for Member States where officials provided responses. In addition, both the questionnaire to Member State officials and that to stakeholders also asked about priority areas for new EU training initiatives.

The responses do show that the extent of training varies considerably across Member States. In some Member States, training appears to be quite limited – in one, it is organised on an *ad hoc* basis; another response states that regular organised training does not occur. Other Member States have formal programmes. While not all responses provided detailed, one Member State does have courses specifically for enforcement personnel on practical methods for inspections, controls and investigations such as interrogation techniques and sampling methods.

While the responses show differences among Member States, a clear pattern between EU15 and EU12 does not emerge: in both categories, it appears that some Member States have extensive training programmes while others have only limited activities.

A further question asked about the use of common training materials and cooperation among Member States on training. Here, many responses cited the programmes undertaken by IMPEL. One EU12 response also mentioned training provided through the TAIEX programme. Several responses mentioned cooperation with other Member States, such as officials from other Member States who had provided training. Two responses mentioned joint training with neighbouring countries (the responses indeed came from neighbouring countries).

Here too, the extent of cooperation appears to vary significantly, as two responses, one from the EU15 and one from the EU12, stated that no joint programmes had been undertaken with other Member States.

**Table 13. Summary of responses regarding national training activities**

EU-15	
MS 1.	Training of officials on international waste shipments and treatment of waste and hazardous wastes once a year.
MS 2.	Ad hoc training when new legislation occurs.
MS 3.	A wide variety of training activities for authorities.
MS 4.	Workshops when need is identified. Training on ad hoc basis. Most practical training is "on the job training". Offices have a formal induction programme on EU and national legislation and practical application and enforcement.
MS 5.	From 2001-2007, almost 50 training activities at national level for over 400 officials. Further activities at regional level.
MS 6.	No general training on national or regional level, but many organizations in specific waste management fields organize meetings for exchange of information.
MS 7.	Enforcement officials trained through 15 specific courses, including: interrogation techniques, sampling methods, reporting skills, legal issues.
MS 8.	Structured training programmes including on waste legislation for inspection staff, on hazardous waste, on compliance with the Landfill Directive, on controls for transfrontier shipments of waste
EU-12	
MS 9.	Workshops for national officials, environmental inspectors and customs officers. Workshops, seminars, one-day meetings organized for local authorities in the field of waste legislation, occupational safety, management of hazardous waste.
MS 10.	Approximately 25 long-lasting courses (40 hours) and 50-75 brief courses (4-6 hours) on waste issues are organized per year. Topic vary
MS 11.	No programme and no regular organised training. Exchange of experience via IMPEL/TFS.

### Needs for EU-wide training: Member State responses

Both the questionnaire to Member State officials and that to stakeholders asked about the priority needs for EU-wide training programmes for Member State officials.

Many responses from Member States called for training to ensure more even application of EU waste legislation, and several of these identified individual directives as priorities, including the Landfill Directive and the WEEE Directive.

Many responses also called for more training to support enforcement, in particular for the Waste Shipment Directive. A few of the responses from Member State officials stated that enforcement requirements are being interpreted differently. One response called for greater use of exchange programmes for officials.

Two responses called for training on broader issues, such as promoting a "recycling society" and on waste reduction and eco-design.

Only one Member State response stated that EU-wide training did not appear to be necessary, contending that problems could be addressed in discussions at EU level. Another response, however, suggested that existing institutions or networks such as IMPEL could provide training, and thus a new agency should not be necessary.



## Needs for EU-wide training: Stakeholder responses

One stakeholder noted that many Member State authorities had insufficient human resources for waste management. A participant at the workshop also emphasised that having sufficient officials working on waste is precondition for effective training.

Several responses spoke of the need for more uniform practices across the EU. For example, several stakeholders called for efforts to reduce differences in implementation and enforcement of legislation. For example, an industry association called for training on EU waste legislation, stating that its application can vary significantly across the EU.

Stakeholders identified enforcement as a key area for EU-wide training to improve Member State capacities. A response from an industry association stated that “Industry would welcome an improved [and] effective enforcement system.” Another response mentioned the need for better co-operation among officials, including those for permitting facilities and those who inspect them. Moreover, officials at different levels need training in the use of databases and other systems that can assist enforcement work.

A further comment referred to the need for training on shipments of waste, in particular of WEEE to third countries, so that inspectors can distinguish waste from second-hand products.

Another stakeholder emphasised the need for training to reach regional and local officials, who often are the ones that directly work on waste issues. One approach (also proposed at the workshop) suggested is to “train trainers” in each Member State, and this will also help to reach officials who only speak national languages. In addition, one respondent called for training to reach local NGOs and waste management enterprises, as these groups work directly with the public and can communicate waste issues effectively.

The stakeholder responses identified various additional topics for EU-wide training. These include the following:

- Life cycle assessment to prioritise waste management
- Common data methods (e.g. To assess waste generation levels and to calculate recycling rates)
- Collection systems (sites and household collection)
- Cost benefit methods
- Material market development
- Combining services for municipal and commercial waste
- Waste prevention methods and plans
- Extended producer responsibility

## Final considerations

All the stakeholder responses and nearly all the Member State responses acknowledge a need for new training initiatives at EU level. This need is also implied in responses on other topics, such as Member State comments regarding differences in enforcement approaches.

Better EU-wide training can be an important step to assist Member States in improving their implementation and enforcement of EU waste legislation. However, one stakeholder response mentioned an important point: some Member States lack sufficient personnel working in the sector; adequate human resources are needed at the appropriate levels (national, regional and local) for training to make a difference.

## 4.2. Guidance for implementation and supporting the updating of legislation

EU waste legislation calls for the development of guidance to assist Member States and operators in implementation and compliance. For example, the 2008 Waste Framework Directive states that the Commission may develop guidelines to “specify in certain cases when substances or objects become waste” (Preamble (24)), to assist Member States in the development waste prevention programmes (Art. 29(5)), and for the interpretation of the definitions of recovery and disposal (Art 38(1)).

Even where there are no specific legislative requirements, the development of guidelines can help to ensure more consistent implementation and enforcement of legislation across the EU.

This section presents the comments from questionnaire responses regarding priority topics for European guidelines. Both Member State officials and stakeholder organisations identified numerous areas for the development of guidance, and both indicated that this is an important need to strengthen implementation. The table below indicates the areas and topics cited most frequently.

**Table 14. Key areas and topics for guidance**

Area	Suggested topics	Share of responses citing the area	
		MS officials	Stakeholders
Definitions	Waste/non-waste By-products Waste/second-hand items	Most responses	Frequently cited
Waste plans	Waste management plans Waste prevention plans Meeting recycling targets	Many responses	Few
Enforcement	Illegal waste shipments EU co-operation	Many responses	None

Many respondents in both groups identified the issue of the definition of waste (vs. non-waste and by-products) to be a pressing area for guidance. One Member State response noted the following: “The starting point for all EU waste legislation is the definition of waste in Article 1(1)(a) of the existing Waste Framework Directive... A priority, therefore, is the need to ensure a consistent interpretation of the definition of waste.”

A number of Member State officials also called for guidance to support the development of waste plans, such as waste management plans and waste prevention plans to implement the new Waste Framework Directive and other waste legislation. Only a couple of stakeholders referred to this area, though one response called for the development of guidance on the use of economic and voluntary instruments at national level.

Many Member State responses also called for guidance on issues related to enforcement, such as the management of illegal waste shipments in general and co-operation across Member States on prosecution of these shipments. A number of responses also said that guidance on the classification of waste in shipments – for example, for shipments of mixed ‘green’ waste – would be valuable.

A few responses called for further work under the IPPC, including the translation of BREFs into more European languages.

The other suggestions covered many topics, and some referred to very broad issues. For example, the issues identified in stakeholder responses include the following:

- Waste Shipment Regulation

- Landfill Directive and waste acceptance criteria
- Extended producer responsibility and responsibilities in waste management.
- Application of the waste hierarchy

Other responses called for the development of common methodologies for waste data. One stakeholder stated that no common method is used to calculate recycling rates.

Another stakeholder made a comment that goes beyond guidance, calling for the development of common documentation in the key areas such as: waste management and on-site auditing; waste documentation and records tracking criteria; and waste shipment and disposal records.

### **Updating the European List of Waste**

In its original form, the European Waste Catalogue contained 642 entries for waste types of which 236 were identified as being hazardous waste in the Hazardous Waste List (European Waste Catalogue, Decision 94/3/EC, and the Hazardous Waste List, Decision 94/904/EC). After implementation Member States notified 540 cases where they considered that the lists should be modified or complemented. In many cases, Member States introduced additional wastes into their national implementing measures.

A lengthy process was needed to update the European lists, involving more than 10 committee meetings, some of them taking several days, to discuss all these notification and to prepare a revision of the list. The preparation also required extensive technical information prepared by the Member States and the Commission as well as a large number of formal and informal consultations with stakeholders had to be organized. The result was the New European List of waste which now contains 839 entries for waste types of which 408 are identified as being hazardous wastes (Decision 2000/532/EC and related Decisions).

Recently the Commission has published a study on the current status of the implementation of the List (Ökopol, Review of the European List of Waste, November 2009). This study also explores the needs for further amendments and clarifications. In replies to a questionnaire, Member States indicated some 300 cases where they would see benefit from amending the list. A second revision is likely to again involve a substantial amount of work. The study also identified the need for further guidance on EU level for the application of a number of aspects related to the use of the list by authorities and economic operators.

### **4.3. Updating EU waste legislation**

In updating EU waste legislation, the European Commission, the European Parliament and the Member States will need to meet new environmental challenges in a cost-effective manner, respond effectively to citizens' concerns, and adapt to the scientific and technical progress which in this sector can develop rapidly. The European Commission holds the right of initiative for EU legislation.

The preparation of proposals and updates for EU waste legislation, however, requires technical preparation and support. Scientific and technical analysis may be needed, in particular for amendments that respond to scientific progress. In the context of the European guidelines on good governance, new proposals will need to undergo an impact assessment of their environmental, social and economic

impacts, based on the European Commission's requirements in this area.<sup>30</sup> Broad stakeholder consultation is another important step.<sup>31</sup>

The length and complexity of the process of updating EU waste legislation can be seen in the review process for the List of Waste, describing in the box below.

### **Future updates**

It is not possible at this stage in the study to estimate the number of type of updates that will be needed for EU waste legislation in coming years. One important task may be an update of the list of waste, described in the box on the previous page.

At the same time, the European Commission emphasised at the informal workshop with Member State officials and stakeholders that this body of legislation is seen essentially complete: no major new legislative proposals are under consideration. Rather, EU waste legislation will need regular updating, in particular to take into account the results of scientific and technical progress in this field.

### **Results from the survey**

Resources and expertise are needed to properly undertake each of these steps. In the survey, Member State officials and stakeholders were asked which preparatory tasks and work they saw as most important, and in which areas the Commission should strengthen its technical capacities.

The responses from both Member State officials and stakeholders emphasised that current tasks and work to prepare EU legislation – such as technical and scientific analysis and impact assessments – were valuable and should continue: they did not, however, identify the most important among these. Several responses praised the technical and scientific work of the European Commission's Joint Research Centre in Seville.

The respondents identified a series of areas for further work and technical capacities. For example, several stakeholders commented on the need for improving the quality of waste statistics. Both Member State officials and stakeholders called for greater attention to social and economic issues in impact assessment. For example, responses from both sides called for closer attention to waste markets: one stakeholder emphasised that these markets can change quickly and that greater knowledge of their dynamics is needed.

One Member State official called for incorporating the lessons learned from enforcement actions, including lessons from negative judicial decisions as these can indicate a need to update and reinforce a piece of legislation. This response also called for greater consultation with officials directly involved in the enforcement and implementation of legislation, in order to ensure that new measures can be effectively applied.

A Member State official and a stakeholder called for more in-depth treatment of technical issues, including technological advances (which can make certain aspects of legislation obsolete) as well as the complexities of industrial facilities.

Another response called for greater legal study, in particular of the implications of recent ECJ cases for the body of European waste legislation.

<sup>30</sup> See the European Commission's web pages on impact assessment and its guidelines for assessment: [http://ec.europa.eu/governance/impact/index\\_en.htm](http://ec.europa.eu/governance/impact/index_en.htm) and [http://ec.europa.eu/governance/impact/docs/key\\_docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/governance/impact/docs/key_docs/iag_2009_en.pdf)

<sup>31</sup> The European Commission addressed consultation methods in a 2002 Communication: [http://ec.europa.eu/governance/impact/expert\\_en.htm](http://ec.europa.eu/governance/impact/expert_en.htm)

Other responses called for greater consultation: one from a Member State wanted further discussions with national legal and technical experts when legislation is drafted; a response from a stakeholder called for greater transparency and consultation on matters decided in comitology, as “non-essential” amendments can have significant economic impacts.

In sum, while the responses are wide-ranging, many call for greater technical capacities and further work in the preparation of EU waste legislation.

#### **4.4. Other areas of activity**

Several questionnaire responses identified possible additional areas to be considered for a European waste implementation agency.

One response suggested that an agency provide a help desk that Member State officials could use for the interpretation of EU waste legislation. Another response from Member State officials suggested that an agency ensure consistent application of EU waste legislation by carrying out regular “audits” of Member State actions. A stakeholder had a similar comment, suggesting regular “benchmarking” reports on Member States. (These last two suggestions are similar to that of reviews of Member State enforcement, a task described in Part II.)

One Member State official suggested that an agency could develop and put in place an EU-wide information system for monitoring of and reporting on waste. This system could seek to establish a “cradle to grave” analysis for individual waste streams. It would allow Member State agencies to share intelligence and target shipments and operators of concern

One stakeholder response saw a broad goal for an agency: driving the development of a “new recycling society”, a goal that reflected in the new Waste Framework Directive and whose pursuit remains fragmentary. Another stakeholder response called on an agency to develop a global observatory on waste policies.

Other comments focused on how an agency should operate. One stakeholder emphasised the need for the agency’s independence vis-à-vis both the Commission and Member States. Another suggested a close relationship with national agencies that implement waste legislation – the European and national levels should work closely together and ensure that rules are implemented at the level closest to the public.



## 5. Legal issues concerning the implementation of EU waste legislation

*“The European Union is founded in law, pursues many of its policies through legislation and is sustained by respect for the rule of law. Its success in achieving its many goals as set out in the Treaties and in legislation depends on the effective application of Community law in the Member States. Laws do not serve their full purpose unless they are properly applied and enforced”<sup>32</sup>.*

### 5.1. Background on Member States’ obligation to implement EU law

According to the EU Treaties, Member States have primary responsibility for the proper application of primary European law (Treaties) and secondary law, whereas the European Commission can monitor whether such application is done in a complete, correct and timely manner as “Guardian of the Treaties” (Article 17 of the Treaty on European Union).

According to Article 4 of the Treaty, Member States must ensure fulfilment of their obligations arising from the Treaties and secondary law and must cooperate with the Commission in its role of “Guardian of the Treaties”.

Secondary law may take the form of Regulations, Directives and Decisions (article 288 of the Treaty on the Functioning of the European Union, TFEU).

- A Directive shall be binding, as to the result to be achieved, upon each Member States to which it is addressed, but shall also leave to the national authorities the choice of forms and methods.
- A Regulation is binding in its entirety and is directly applicable. It creates rights and obligations that apply to all, whether governmental or non governmental bodies, public or private entities. It does not need to be transposed into Member State national law and, usually, no national implementing measures are required with the notable exception of the designation of national authorities competent for implementation and enforcement.
- A Decision is used as a legal instrument for implementing EU policies with specific addressees. It is binding in its entirety upon those to whom it is addressed (Member States or individuals) and cannot be applied in an incomplete, selective or partial manner. Normally, a Decision is not to be transposed if it sets out sufficiently the means by which the desired result is to be achieved.

Proper application of EU legislation, whether rights are established by a Regulation, a Directive or a Decision, includes, where relevant and necessary, transposition, implementation and enforcement of EU requirements.

- “Transposition” refers to adoption or amendment of national laws, rules, and procedures so that the requirements of EU environmental legislation, particularly those adopted in the forms of Directives and (where necessary or appropriate) Regulations and Decisions that create rights and obligations, are fully incorporated and reflected into the national legal order.
- “Implementation” refers to the provision of institutions, e.g. the designation of competent authorities, and budgets necessary to carry out national laws and regulations transposing EU legislation. This includes human resources and technical means to enforce EU requirements.

<sup>32</sup> Commission Communication (COM 2007) 502 final “A Europe of results” – Applying Community Law

- “Enforcement” refers to the provision of the necessary controls, compliance measures, including sanctions, to ensure that EU requirements and national laws are being complied with fully and properly on the territory of Member States, even where there are transboundary effects. Enforcement may include various elements, such as:
  - Measures to promote compliance: any activities that facilitate or encourage voluntary compliance with environmental requirements. The administration actions aim at informing economic agents about legal obligations that the agents have to comply with and to provide support (guidance, recognition of compliance, financial and other incentives etc) to facilitate compliance.
  - Measures to monitor compliance: the collection and analysis of information on compliance status. This is done through ambient and emission monitoring, pre-inspection and on-site inspection reviews by the agents empowered by law, and other ways of data gathering, including industrial self-monitoring.
  - Non-compliance responses: interventions of the public competent authorities once a breach of the legislation is noticed. Whereas measures to promote compliance and monitoring measures have a more preventive and positive incentive character, non-compliance responses have a reactive and coercive character. The non-compliant act or omission, or at least the suspicion of a non-compliant behaviour, is needed to trigger the application of a non-compliance response. The non-compliance response aims at restoring legality of operations and recovering costs of environmental damage or benefits gained as a result of non-compliance. If non-compliance responses have a punitive nature, such as penalties or imprisonment, they are considered as “sanctions”.

## 5.2. The role of Member States in the application of EU law

The European Union and its Member States have a shared competence to take measures to protect, preserve and improve the quality of the environment (Article 191 of the Treaty on the Functioning of the European Union), subject to the respect of the subsidiarity and proportionality principles (Article 5 of the Treaty on European Union).

“Environment protection” is to be understood broadly. It leaves an ample scope for EU action in order to take a great variety of both substantial and procedural measures (access to environmental information, education, promotion of clean technologies, permitting obligations, restrictions to use certain hazardous substances, obligation to clean up contaminated soils...). It covers implementation and enforcement measures, including sanctions.

EU environmental legislation based on Article 192 TFEU provides for minimal requirements for the protection of the environment, leaving thus to the Member States some margin of discretion concerning the choice of forms and methods that are necessary to achieve the environmental objective that is pursued, depending on the legal form of EU action (Directive, Regulation or Decision). According to Article 193, Member States can adopt more stringent protective measures in areas where the EU has adopted legislation based on article 192, including procedural measures for improving implementation and enforcement. Such measures shall go into the same direction as the EU measure, with the view to better achieving the objective laid down by the latter, and must be compatible with the Treaties, in particular with the provisions on the free circulation of goods.

Because its primary objective is to protect the environment, EU waste framework legislation is based on article 192 TFEU:



- The Waste Framework. Directive on waste 2006/12/EC provides for the framework EU legislation
- Directive 91/689/EC on hazardous waste, and
- Decision 2000/532/EC providing for a List a waste.
- Regulation (EC) 1013/2006 concerning transboundary shipments of waste within and outside the Community.

Directive 2006/12/EC will be repealed and replaced in 2010 by a new Waste Framework Directive adopted on October 20, 2008 (Directive 2008/98/EC), that incorporates the provisions on hazardous waste as well as the procedure to update the List of Waste.

EU waste legislation that addresses product-related waste streams is based on Article 114 TFEU (for instance the amended Directive 94/62/EC on packaging and packaging waste, as well as the RoHS Directive 2002/95/EC), or may have a double legal basis (articles 192 and 114) such as, for example, the Directive 2006/66/EC on batteries and accumulators.

Article 114 TFEU provides the legal basis for Community harmonisation measures aiming at the establishment and proper functioning of the Internal Market. Any Community harmonisation measure based on Article 114 should aim at achieving a high level of protection by virtue of Article 114 (3) in relation to health, safety, environmental protection and consumer protection.

A complete and accurate transposition of Community harmonisation measures is required by the date of transposition. The Commission is particularly vigilant in ensuring that national transposition, implementation and enforcement measures do not create any obstacle to the free movement of goods through arbitrary discriminations or disguised restrictions on trade. That includes national transposing measures

The margin of manoeuvre left to Member States for deviating from or adding on EU harmonization measures is very limited, even for the adoption of more stringent measures, including procedural measures for implementation and enforcement. Under Article 114 (4) and (5) TFEU, the Commission may allow a Member State to either maintain or introduce national measures which are incompatible with Community harmonisation measures based on Article 114 (1) provided that the Member State can demonstrate that the national measure is justified on the grounds of major needs referred to in Article 30 TFEU, or is related to the protection of the environment or the working environment and is subject to the conditions laid down in Article 114 (6) to (9).

The conditions for introducing new national measures are more stringent than for maintaining a measure already in place. Article 114 (5) requires that the new national measure should be based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonization measure.

Within the limits provided by the Treaty provisions as interpreted by the ECJ, Member States are competent to choose the procedural rules (National Procedural Autonomy principle) that are deemed most appropriate for the implementation and enforcement of rights and obligations created by EU law whether it is based on article 192 (environment protection) or 114 (Internal Market). Implementation and enforcement are usually regarded by Member States as a matter of subsidiarity. However, they must ensure that rights and obligations arising from EU law are effectively protected (“*effet utile*”, ECJ Case C-106/77, Simmenthal). Such an effective protection of rights created by EU law is meaningless if proper implementation and enforcement measures are not taken at national level.

Whereas a number of environmental Directives and even some Regulations are rather silent with respect to the way EU requirements are to be implemented or enforced, it must be noted EU waste legislation provides for clear obligations for Member States to ensure that waste are managed and shipped in a environmentally sound and controlled manner, including through inspections.

Firstly, Article 4 of the current Waste Framework Directive 2006/12/EC requires from Member States to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment. This provision is now reflected in Article 13 of the new Waste Framework Directive 2008/98/EC. In addition, Article 36 of the new Waste Framework Directive 2008/98/EC will also require from Member States to adopt enforcement measures as “necessary measures” to prohibit the abandonment, dumping or uncontrolled management of waste, as well as penalties applicable to infringements of the provisions of the Directive. Member States have to take all necessary measures to ensure that penalties, which must be effective, proportionate and dissuasive, are implemented.

Secondly, national authorities shall conduct appropriate periodic inspections pursuant to article 13 of the current Waste Framework Directive 2006/12/EC. Article 34 §1 of the new Waste Framework Directive provides that establishments or undertakings which carry out waste treatment operations, establishments or undertakings which collect or transport waste on a professional basis, brokers and dealers, and establishments or undertakings which produce hazardous waste shall be subject to appropriate periodic inspections by the competent authorities. Article 34 §2 adds that inspections concerning waste collection and transport operations shall cover the origin, nature, quantity and destination of the waste collected and transported. This additional requirement should be read and applied in close conjunction with relevant provisions<sup>33</sup> laid down by the Regulation (EC) 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, which requires from Member States to Member States must take the necessary steps to inspect, sample and monitor waste shipments. Checks on shipments shall include the inspection of documents, the confirmation of identity and, where appropriate, physical checking of the waste.

### 5.3. The role of the Commission as Guardian of the Treaties

Being the Guardian of the Treaties, the Commission is given the authority and responsibility to ensure respect for Community law, verifying that Member States effectively respect the Treaty rules, in taking account of their margin of discretion with respect to the legal basis and legal form of EU legislation.

In such capacity, the Commission checks the legal conformity of national transposing measures. This is a legal control that is of crucial importance in order to ensure legal certainty when enforcing the rights and obligations of those concerned. It is therefore very important that the national legislative measures to implement Community legislation are systematically, analytically and promptly checked to detect at an early stage any potential conformity problem.

The Commission has also to check whether the national transposing measures are effectively applied on the ground. It can review the implementation by Member States of Community legislation on the basis of implementation reports, through informal and formal contacts with Member States’ authorities.

Another source of information on how EU legislation is applied are petitions submitted to the European Parliament and oral/written questions raised by members of the Parliament to which the Commission is to respond to, and this may lead to some questions for clarification addressed to member States.

---

<sup>33</sup> See in particular article 50 §§ 1 and 2 of Regulation (EC) 1013/2006: “1. Member States shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of their national legislation relating to prevention and detection of illegal shipments and penalties for such shipments.

2. Member States shall, by way of measures for the enforcement of this Regulation, provide, inter alia, for inspections of establishments and undertakings in accordance with Article 13 of Directive 2006/12/EC, and for spot checks on shipments of waste or on the related recovery or disposal. (...).”

Finally, the attention of the Commission can be drawn on factual situations of bad application of EU legislation through the complaint procedure. Complaints can be submitted by any citizen. They are registered in a central complain registry maintained by the Secretariat General of the Commission. Such registration gives procedural rights to the complainant, and the Commission is obliged to scrutinize the complaint from both a practical and legal viewpoints.

The Commission can institute infringement proceedings set out in Article 258 and, in case a ruling from the Court is not respected, Article 260 TFEU, asking Member States to correct an absent or wrong transposition or incorrect application of the law.

Infringement procedures are usually launched to address the following situations:

- Non communication: A Member State fails to adopt and communicate within the deadlines national provisions transposing a directive
- Non conformity: A Member State's national provisions transposing a directive are not fully in conformity with EU Law
- Bad application: A Member State fails to apply or to enforce one or several provisions of the EU legislation on the ground i.e. designation of areas, inspection procedures, elaboration of plans, programmes, or reports...

The Commission can bring the matter before the Court of Justice, seeking a declaration of an infringement of EU law by the Member State under Article 258 TFEU. It can apply to the Court a second time seeking the application of financial sanctions until the first ruling of the Court is respected in accordance with Article 260 TFEU.

However, the Commission encounters a number of difficulties when monitoring the application of EU environmental legislation.

### **Lack of powers to investigate on the ground**

Firstly, the role of the Commission as Guardian of the Treaties lies with the scrutiny of legal conformity only.

When investigating possible non compliance situations, the Commission has no systematic means to control the day-to-day practical application of EU legislation by national authorities. It has no direct contact with polluters, or local authorities in charge of enforcement, no direct access to factual data or capacity to look at the situation on the ground.

Hence, the Commission must largely rely on arguments and documentation provided by third parties. Before issuing a formal letter of notice, which marks the first step of the infringement procedure under Article 258 TFEU, the Commission is obliged to rely on information provided by the Member State authorities who are obviously reluctant to provide anything that could constitute evidence of their failure to properly apply EU legislation. This is also the case when the Commission requests Member State authorities to provide information or documentation for the purpose of checking allegations made by complainants. It is not uncommon that the information provided by a Member State is subsequently contradicted by further evidence from complainants. Notwithstanding the fact that EU inspections can be conducted in the areas of competition, regional policy, fisheries and veterinary policies, the Commission does not have inspection powers or staff empowered with the prerogative to control the effective application “on the ground” of EU environmental legislation.

As a result, in this situation it is difficult for the Commission to act effectively as the Guardian of the Treaties because it lacks powers to investigate the actual situation. This is particularly the case in the area of EU waste legislation as proper application needs to be scrutinized on the ground (e.g. at potentially illegal dump sites or uncontrolled landfills), in order to require Member State authorities to

take measures that can either prevent damage to occur or remediate the damage if it has already occurred. In effect, the Commission is restricted to the verification of allegations from complainants and petitioners only on paper.

### Further issues

Secondly, in the context of formal infringement procedures under articles 258 and 260 TFEU, the Commission has limited resources to scrutinize all national transposing measures as well as complaints from citizens in a timely manner.

The Commission cannot take preventive or interim measures, including financial penalties, even on a purely conservatory basis, against a Member State or directly against a person who is likely to cause or having already caused an environmental damage.

At the end of the administrative procedure, once a reasoned opinion is dispatched, the Commission can decide to adopt a decision to launch a case before the ECJ if the Member State remains non-compliant. However, making an application before the Court is subject to a decision to be taken by the administrative hierarchy of the Commission where political trade-offs may affect the normal continuation of the proceeding.

Beyond these considerations, it is a fact that infringement proceedings are lengthy, as it may take sometimes several years between a request for information is addressed to Member States until a the judgment is made by the ECJ. As such, infringement procedures have no deterrent effect. Even if the Court can take interim measures against a Member State, this happens rarely because the damage already occurred at the time such decision could be taken.

However, in several judgements concerning EU waste legislation, the ECJ took the opportunity to reaffirm the obligation for national authorities to conduct the necessary on-the-spot investigations, as a mean to ensure that waste are managed in a controlled manner, as well as to stress each Member State's duty to facilitate the general task of the Commission in its role of Guardian of the Treaties.

## 5.4. Illustrative ECJ Case Law on implementation of EU waste legislation

In its Case *Commission v. Italy* of 20 April 1999 (case C-365/97), the Court ruled that Article 4 of the Waste Framework Directive 2006/12/EC actually sets out the principal objective of that directive, namely the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste, which the Member States were obliged to observe in their performance of the more specific obligations imposed on them by Articles 5 to 11 of the Directive concerning planning, supervision and monitoring of waste-disposal operations<sup>34</sup>. In the same case, the Court specified that, whilst Article 4 does not specify the actual content of the measures which must be taken in order to ensure that waste is disposed of without endangering human health and without harming the environment, it is none the less true that it is binding on the Member States as to the objective to be achieved, whilst leaving to the Member States a margin of discretion in assessing the need for such measures. From the fact that a situation is not in conformity with the objective of article 4, then, the direct inference may not in principle be drawn that the Member State concerned has necessarily failed to fulfil its obligation under that provision to take the requisite measures to ensure that waste is disposed of without endangering human health and without harming the environment. However, the Court noted that if that situation persists and leads in particular to a significant deterioration in the environment over a protracted period without any action being taken by the competent authorities, it may be an indication that the Member States have exceeded the discretion conferred on them by that provision.

<sup>34</sup> see Joined Cases 372/85 to 374/85 *Traen and Others* [1987] ECR 2141, paragraph 9, and *Comitato di Coordinamento per la Difesa della Cava*, cited above, paragraph 12

In relation to that obligation of result that rests upon national competent authorities to ensure that the environment is protected through appropriate measures, including monitoring and enforcement measures, Article 13 of the Waste Framework Directive 2006/12/EC provides that establishments or undertakings carrying out licensed or registered waste management operations shall be subject to appropriate periodic inspections by the competent authorities.

In its judgment of 26 April 2005, *Commission of the European Communities v Ireland* (ECJ EC v. Ireland Case C-494/01), the Court ruled that Ireland's failure to fulfil EU waste requirements or to take enforcement measures constituted a breach of EU law. This judgment is important in as far as the Court found a "general and persistent" breach on the basis of several isolated infringements. With the exception of Article 12 of the Waste Framework Directive 2006/12/EC, the procedure did not concern the absence of or incorrect transposition of its provisions, but the obligation to create the necessary legal and administrative framework for the proper application and enforcement of its provisions, including on inspections. In taking into account of their duration, their quantity and their extent, the Court deduced from individual infringements that an administrative practice can constitute a failure of a consistent and general nature to fulfil obligations<sup>35</sup> laid down by EU law. In particular, the Court stressed that the number of infringements revealed a general tendency among local authorities to tolerate non compliant situations.

According to a well settled ECJ Case Law, it is incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled. It is the Commission's responsibility to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled, and in so doing the Commission may not rely on any presumption<sup>36</sup>. But, in this Irish Case, the Court said that "in the context of the investigations in which the Commission seeks to establish whether or not Community law has been infringed, it is primarily for the national authorities to conduct the necessary on-the-spot investigations, in a spirit of genuine cooperation and in accordance with the duty, incumbent on each Member State under Article 10 of the then EC Treaty, to facilitate attainment of the general task of the Commission, which is to ensure that the provisions of the Treaty, as well as provisions adopted there under by the institutions, are applied"<sup>37</sup>.

In ruling that way, the Court somehow reversed the burden of proof. Where the Commission has produced enough evidence of the infringement alleged, it is for the Member State in question to challenge in substance and in detail the data produced and the inferences drawn, failing which the allegations must be regarded as proven<sup>38</sup>.

In a more recent case (*Commission v Spain*<sup>39</sup>), the Court took the same line concerning national inspections to control the size of fishes and recognized the Spain's failure to comply with EU fishery rules (which provide for more stringent inspection requirements).

From the above, it results that Member States have an obligation of result to enforce EU waste legislation. They have to demonstrate that they have taken active steps and appropriate measures to conduct on-the-spot inspections and shall cooperate with the Commission. This means that national authorities shall provide assistance to the Commission when scrutinizing complaints concerning alleged violations of EU waste legislation on their territory. Finally, further to a settled ECJ Case Law, Member States must ensure that any violation of EU waste legislation is effectively punished through effective, proportionate and dissuasive sanctions.

<sup>35</sup> Case 21/84 *Commission v France* [1985] ECR 1355, paragraphs 13 and 15; Case C-187/96 *Commission v Greece* [1998] ECR I-1095, paragraph 23; and Case C-185/96 *Commission v Greece* [1998] ECR I-6601, paragraph 35, Case C-387/99 *Commission v Germany* [2004] ECR I-0000, para 42.

<sup>36</sup> Case 96/81 *Commission v. Pays-Bas* (1982), ECR I-1791, para 6; case C-494/01 (2005), *Commission/Ireland* ECR I-3331, para 41; case C-150/07 (2009), *Commission/Portugal* ECR I-0000, para 65.

<sup>37</sup> Case 96/81 *Commission v. Pays-Bas* (1982), ECR I-1791, para 7; Case *Commission v. Italy*, [1999] op. cit. , para 85

<sup>38</sup> Case *Commission v. Italy*, [1999] op. cit.

<sup>39</sup> Case C-189/07 *Commission v Spain* (22. December 2008)

Despite this, implementation and enforcement of EU waste requirements remain a challenge in a number of Member States. Quite recently, the ECJ issued horizontal cases related to illegal landfills in France and Italy. In its judgements of 29 March 2007 (Case C-423/05, Commission v France) and 26 April 2007 (Case C-135/05, Commission v Italy), where it ruled that both countries have failed to ensure that waste is disposed of in landfills managed in accordance with the Waste Framework Directive 2006/12/EC (in particular its article 4) and the Landfill Directive 1999/31/EC and found that thousands of sites in France and Italy have been identified as illegal landfills.

## **5.5. Recent EU initiatives to improve implementation of environmental legislation**

### a) The establishment and work of the IMPEL Network

The Community's Sixth Environmental Action Programme called for the establishment of a body responsible for the implementation and enforcement of environmental law, which resulted in the creation of a voluntary intergovernmental network of experts so-called IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law). In 2008 the IMPEL network changed from an informal network into a non-profit association. The main tasks of IMPEL are to facilitate the exchange information and experiences on environmental law implementation and enforcement and to arrange for training of inspectors and promote sharing of know-how and best practices on environmental implementation and enforcement issues. IMPEL works a lot on waste issues, including on transboundary movements of waste (IMPEL-TFS, including TFS Seaport projects, verification of waste destination project, and database to register interpretations of the waste Shipment regulation (EC) 1013/2006). To some extent, the intergovernmental organization of IMPEL reflects the Member States' concerns with subsidiarity and loss of sovereignty associated with the idea of creating EU environmental inspections. Such concerns are also reflected in the manner Member States agreed on non binding criteria for environmental inspections. (The next stage of the project will look in greater detail at the work of IMPEL-TFS.)

### b) Minimum criteria for environmental inspections in the Member States:

In their respective Resolutions of 14 May 1997 and 7 October 1997, the European Parliament and the Council stressed the need to fix criteria and/or minimum guidelines for inspections performed in Member States and possible ways to enable Member States to supervise their implementation. This led to the adoption in 2001 of a non legally binding Recommendation 2001/331/EC on minimum criteria for environmental inspections (RMCEI) according to which inspection should entail checking that installations comply with EU environmental requirements and monitoring the impact of installations on the environment.

In its Staff Working Paper annexed to the Communication dated 14 November 2007, the Commission reported on the implementation of the RMCEI, where it notes that the information provided by the Member States was often incomplete or difficult to compare. This report also emphasizes that few Member States have fully implemented the Recommendation. However, the Commission acknowledges that the Recommendation had positive impacts on inspection systems in as far as some Member States started to reform their inspection procedures and practices. The Commission Communication suggests that, in order to improve its implementation and strengthen its effectiveness, the Recommendation should be amended. In particular it should be considered to broaden its scope so that it covers as far as possible all environmentally significant activities. The definitions relevant to inspections should be clarified. The further development of criteria for the planning of inspections should be considered. A reporting system that is as simple and clear as possible should be established to provide comparable information on how inspection systems are working and whether they achieve the objective of improving compliance with environmental legislation.

However, the Commission made it clear that, due to this very general and descriptive nature of the criteria, it does not seem appropriate to transform them into legally binding requirements.

In contrast to the position of the Commission, the European Parliament adopted the Resolution of 10 October 2008 on the review of the RMCEI where it urges the Commission to come forward, before the end of 2009, with a Directive on environmental inspections and to report by then on the possibility to establish a “Community environmental inspection force”.

c) The Commission Communication (COM 2007) 502 final “A Europe of results” – Applying Community Law, and Commission Communication COM (2008) 773 final of 18 November 2008 on implementing EU environmental Law:

Acknowledging the challenge of applying a considerable *Acquis Communautaire* in 27 Member States, this Communication suggests ways to improve the application of Community law, also from the perspective of the Commission acting as Guardian of the Treaties. It builds upon the Commission Communication of 2002 on Better Monitoring of the Application of Community law and follows the broad lines set out in the Strategic Review of Better Regulation that was released in 2006.

This Communication focuses on the prevention of violations of EU law through an increased attention paid to implementation throughout the policy cycle and training of national authorities in European law. It suggests non contentious modalities for resolving implementation problems through a better exchange of information with the Member States concerned, leaving them the possibility to provide clarification and enough time to remedy, within set deadlines, the identified problems.

Following up on this Communication, the Commission put forward another Communication to address the application of EU environmental law in a more specific manner<sup>40</sup>. It outlines current challenges, which include the need to improve the timeliness and correctness of national implementing legislation, in particular the need to effectively control waste facilities.

As regards use of the Commission’s enforcement powers under articles 258 and 260 TFEU, the Commission sets out sector specific criteria for identifying those infringements which justify being addressed more intensively and more immediately. These cover key shortcomings in national implementing legislation, systemic failures, such as widespread tolerance of illegal landfilling, fundamental deficits in implementation such as non-adoption or non submission of waste management plans or programmes. Consequently, the Commission calls upon the prioritized treatment of horizontal infringement cases, including complaints, in the waste sector, in particular where citizens are, on a significant scale, or repeatedly exposed to direct harm or serious detriment to their quality of life.

The prevention of bad application cases, the new working methods through information exchange and problem solving as well as the prioritization of complaints and infringements are also outlined in the Commission 25<sup>th</sup> annual report on the monitoring of application of EU Law (COM (2008) 777/4). It puts a particular emphasis on the role of inter-institutional dialogue, highlighting the need for continued pro-active co-operation between the Commission and the Member States which would be expected to produce the best possible results.

---

<sup>40</sup> Commission Communication COM (2008) 773 final of 18 November 2008 on implementing EC environmental Law





## 6. An overview of the implementation gap

The previous sections provide an overview of the current gap in the implementation and enforcement of EU waste legislation, including some of the main causes. This section reviews and classifies these problems, which a set of new actions at EU level would seek to address.

Here, it is valuable to start with a view of the broad goals for such an Agency or initiative. It would support Member States in the implementation of EU waste legislation to achieve the following goals:

- The first and most important, of course, is the protection of human health and the environment: this is stated clearly in EU waste legislation, for example in Article 1 of the new Waste Framework Directive (2008/98/EC).
- A second goal, closely tied to the first one, is ensuring a level playing field across the EU for the actors in the waste field
- A third over-arching goal is that of the EU's Better Regulation initiative, whose objectives include designing regulation to increase benefits for EU citizens, to reinforce the respect and effectiveness of rules and to minimise economic costs.<sup>41</sup>

The first two goals reflect the over-arching problems described in the previous sections: human health and environment is not protected to the level specified in EU waste legislation; moreover, the playing field across the EU is not currently level.

Further problems that emerge from the analysis is that in some Member States, the implementation and enforcement EU waste legislation is given a low priority; tied to this, human and financial resources are not sufficient. This has an important implication, as activities proposed in the following sections for training, enforcement and other areas will not have effect if a Member State lacks personnel and resources.<sup>42</sup> Thus, any new EU initiatives should at least indirectly seek to address these issues.

In legal terms, poor implementation can be classified into three main categories (sections 2 and 5):

- Non-communication
- Non-conformity
- Bad application

The focus here is on the third area, bad application.

It should be underlined that the problems identified are not seen uniformly across the EU: rather, they vary across the Member States, and indeed there may be differences among regions within Member States. These problems are believed to be acute in some. However, in-depth country assessments of implementation and enforcement problems are not available: the information provided here (based on the analysis in Part I) is based on a series of overview reports prepared for the European Commission and the IMPEL network.

The table below highlights specific areas of bad application as well as the shortcomings in implementation and enforcement systems that have caused them.

The problems themselves range from landfills and other facilities that do not meet EU standards to illegal landfills to illegal waste shipments. This report has not had the role of reviewing and classifying all the problems across the EU. The table below, however, provides a rough overview of key categories.

<sup>41</sup> See for example: European Commission, Better Regulation for Growth and Jobs in the European Union, COM(2005) 97 final of 16.3.2005

<sup>42</sup> This point was made by a participant at the informal workshop in April.

**Table 15. Key elements of the implementation gap**

<b>Overall issues</b>
Protection of human health and the environment is not assured
Uneven playing field across the EU
Low priority for implementation and enforcement in some MS
Lack of human, budget and technical resources in some MS
<b>Key areas of bad application seen in some MS</b>
<ul style="list-style-type: none"> <li>• Landfills that do not meet EU requirements</li> </ul>
<ul style="list-style-type: none"> <li>• Unauthorised landfills</li> </ul>
<ul style="list-style-type: none"> <li>• Other facilities that do not meet EU requirements</li> </ul>
<ul style="list-style-type: none"> <li>• Illegal waste shipments</li> </ul>
<b>Potential areas of bad application</b>
<ul style="list-style-type: none"> <li>• Poorly working producer responsibility schemes</li> </ul>
<ul style="list-style-type: none"> <li>• Poor planning (waste management, prevention)</li> </ul>
<ul style="list-style-type: none"> <li>• Targets (e.g. reducing landfilling) not met</li> </ul>
<b>Enforcement problems seen in some Member States</b>
Organisational issues:
<ul style="list-style-type: none"> <li>• Lack of resources for enforcement</li> </ul>
<ul style="list-style-type: none"> <li>• Divided competence; poor co-ordination and collaboration</li> </ul>
<ul style="list-style-type: none"> <li>• For some: enforcement powers limited</li> </ul>
<ul style="list-style-type: none"> <li>• Need for greater permitting / enforcement links</li> </ul>
Technical capacity
<ul style="list-style-type: none"> <li>• Poor understanding of EU legal documents</li> </ul>
<ul style="list-style-type: none"> <li>• Lack of attention to waste chain</li> </ul>
<ul style="list-style-type: none"> <li>• Poor knowledge of enforcement techniques</li> </ul>
Low levels of prosecution; low fines and sentences
Different MS priorities and approaches to enforcement
Low levels of joint enforcement activities among MS
<b>Other implementation problems seen in some Member States</b>
Poor capacity on technical issues
<ul style="list-style-type: none"> <li>• Methods of analysis: LCA, cost-benefit, etc.</li> </ul>
<ul style="list-style-type: none"> <li>• Planning: waste management; prevention; etc.</li> </ul>
Differences in MS interpretations of EU legislation
<b>Need to provide support for the updating of EU legislation</b>
<ul style="list-style-type: none"> <li>• Improving EU waste statistics</li> </ul>
<ul style="list-style-type: none"> <li>• More in-depth econ., social assessment</li> </ul>
<ul style="list-style-type: none"> <li>• better knowledge of waste markets</li> </ul>
<ul style="list-style-type: none"> <li>• knowledge of scientific and technical advances</li> </ul>
<ul style="list-style-type: none"> <li>• consultation</li> </ul>

Many of these problems are linked to difficulties in enforcement. These difficulties, described especially in section 3, include:

- organisational issues – such as the problem that competences for inspections and other activities in several MS are divided among several enforcement bodies that are poorly coordinated
- technical capacity, including a lack of knowledge of EU documents and of inspection and control methods
- poor prosecution and low fines where violations are discovered
- a lack of common standards for enforcement in the area of waste

- a lack of joint activities among Member States to address shared problems, in particular those related to transboundary shipments of waste.

Other problems are seen on the side of implementation, including the development and carrying out of policies. Issues highlighted in the questionnaire responses include the need for better knowledge of tools for planning and assessment such as life-cycle analysis and cost/benefit analysis. More generally, some MS need assistance in developing and putting in place strategies and plans such as those for waste management, waste prevention and other areas.

In Part II of this report, the review of possible tasks for a Waste Implementation Agency will consider the effects that these tasks might have in terms of the different elements of the implementation gap described here. This list of implementation problems will also be used in Part IV, which describes the potential results of a Waste Implementation Agency.



## **II. The tasks for a possible Waste Implementation Agency**



## 7. Assessing the individual tasks

### 7.1. The dimensions of the analysis

The assessment of options for a possible Waste Implementation Agency involves a review across three key dimensions.

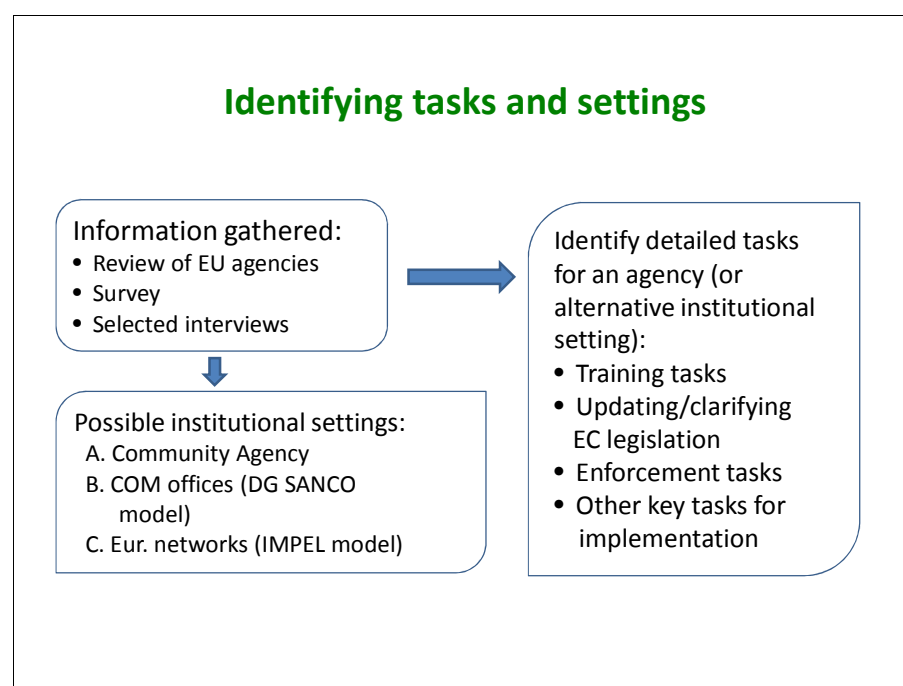
The first dimension involves identifying different possible tasks to address the implementation gap: in other words, what specific actions are needed?

The second dimension considers the institutional setting: who will do this work?

This dimension was added to the assessment following the comments of Member State officials in the first informal workshop as well as in their survey responses and interviews. Here, the analysis considers whether other possible settings, in addition to an EU Agency, could carry out specific tasks more cost-effectively. The specific settings are described below.

Analysis of the information gathered in the first phase of work was thus used to identify both detailed tasks for a possible agency as well as institutional settings (see the figure below).

**Figure 7. Identifying tasks and settings**



The third dimension for analysis is the detailed assessment based on key criteria provided in the Technical Specifications for the project. These criteria include:

- Environmental effectiveness
- Organisational and technical issues
- Economic and financial questions
- Legal issues
- Political questions

The following sections describe the individual tasks and provide key highlights in terms from the detailed assessment. For example, one issue that emerges from the analysis is that valuable synergies can emerge when a single institution carries out a range of tasks.

## 7.2. The Institutional setting

This feasibility study focuses on the activities and approach for a possible Waste Implementation Agency. At the same time, the study explores other possible institutional settings. It does so for two main reasons. First, at the informal workshop in April and in their survey responses and in interviews, several Member State officials indicated their support for new European initiatives to strengthen the implementation of EU waste legislation – but not for a new agency *per se*. These officials questioned whether a new agency would be the best institutional setting. Second, our background research has identified alternative models for institutional mechanisms that could perform many of the tasks foreseen for an agency, such as DG SANCO's Food and Veterinary Office, part of the European Commission.

For these reasons, the analysis for the study considers three possible institutional settings. The following sections will review different possible tasks for a Waste Implementation Agency and also consider if two other institutional settings could carry these tasks effectively.

### A. EU Agency

Agencies handle technical issues related to EU legislation and policy, thus allowing the European Commission to focus on its core functions. At present, there are over 20 such Agencies (Annex V provides an analysis of these agencies).

The analysis also considers whether existing agencies could carry out some of these tasks. For example, the European Environment Agency has carried out assessment and information activities, and through its Topic Centre on Sustainable Production and Consumption, formerly the Topic Centre for Resources and Waste Management has also prepared guidance for waste management plans. However, as the following sections will show, existing agencies have mandates and expertise for few tasks.

An Agency would be created by a Regulation. Its work would be overseen by a Management or Executive Board: each Member State would nominate one representative; other participating countries (e.g. EFTA or Candidate countries) would also; the Commission would be represented by several board members. (Some existing agencies have other representatives, for example from industry, NGOs, the European Parliament and neighbouring countries.) Following the structure used in existing agencies, technical committees would oversee activities for specific areas of work. The Agency would be led by an Executive Director and have a permanent staff, together with its own offices.

### B. Commission offices

Currently, Commission services already carry out some activities to assure implementation and facilitate enforcement of EU waste legislation.

Instead of creating an agency to address implementation and enforcement challenges, the mandate and work of Commission services could be extended. The Food and Veterinary Office, a division of DG SANCO based in Ireland, provides an example of this approach: this office of the Commission has specific set of tasks for enforcement of EU food safety legislation.

Possibilities could include allocating more staff to the Commission services or to enhance the possibilities to hire specific expertise e.g. via service and consultancy contracts. Another possibility is



---

to create an Executive Agency, a body with a fixed term that carries out specific spending programmes on behalf of the Commission.

### C. European networks for cooperation

Another possibility would be to organise and manage the activities through a European network for cooperation among Member States, with the support of the European Commission. One possibility is that the existing IMPEL network could be expanded for this purpose. The European network would have an important difference from IMPEL, however: it should be created with all Member States as members. IMPEL, in contrast, is voluntary: most but not all Member States participate in its work, and participation in individual projects can also vary.

It should be noted that none of these institutional settings would change the Commission's role and competence under the EU Treaties, including its role as Guardian of the Treaties. Thus, activities to support the Commission in updating legislation would only provide technical opinions and recommendations. The adoption of proposals for legislative instruments and the adoption of Commission's own competence legislation remain the task of the Commission as set out by the Treaties. (Moreover, the official interpretation of EU law lies with the Court of Justice.) At the same time, some activities may not be appropriate for some institutional settings: this is a topic for the legal assessment of each task.

Whichever the institutional setting, it is expected that any new initiatives would be carried out in close co-operation with the Commission. For example, training material may be reviewed by the Commission to ensure consistency with the EU legislation.

Part III of this report provides a description of a possible Waste Implementation Agency, as per the Technical Specifications of the study. This Part also explores how an agency could work together with initiatives carried out by other institutional settings, in order to provide an effective – and cost-effective – response to the implementation gap described in Part I.



## 8. Enforcement options

EU environmental law does not serve its full purpose, that is to effectively protect the environment and human health, unless it is properly enforced. Enforcement of EU environmental law shall be understood broadly: it requires the provision of the necessary controls, including inspections of waste treatment facilities, waste shipments and of operators that must comply with the EU waste legislation in these and other areas; and compliance measures, including sanctions, to ensure that EU requirements and national transposing measures are effectively being complied with fully and properly on the territory of each and every Member States in such a way that it enhances a uniform application of EU environmental law on the ground and guarantees a level playing field throughout the EU.

It is important to point out the differences between enforcement overall, inspections and non-compliance measures. Enforcement may include various elements, such as measures to facilitate and promote compliance, including guidance on EU environmental law, as well as measures to monitor compliance through the collection and analysis of information on compliance status, including by conducting pre-inspections, inspection audits and on-site inspections. In that respect, inspections are performed to determine if a certain situation is in compliance with the law or not. Beyond the assessment of a specific situation, monitoring results and inspection findings can also help assess the quality, appropriateness and effectiveness of the applicable legislation itself and related strategies on which it is based. Answers to questions about the enforceability and practicability of provisions arising from monitoring results can therefore be used for updating and clarifying legislation.

On the basis of monitoring results and inspection findings, where non-compliance is detected and follow-up actions are needed, enforcement implies strong non-compliance responses, including reactive and coercive measures such as sanctions that may take the form of financial penalties. Non-compliance measures are aimed at restoring legality of operations and recovering costs of environmental damage or private benefits gained as a result of non-compliance. In that respect, administrative and criminal sanctions foreseen by the law should, where possible, have a deterrent effect that contributes to creating the same level playing field for environmentally sound waste management across the EU.

Member States have primary responsibility for the enforcement of EU waste legislation, and the ECJ recognised they have an obligation of result to do so in an effective and efficient manner. Article 36 of the new Waste Framework Directive (2008/98/EC) requires that Member States adopt enforcement measures as “necessary measures” to prohibit the abandonment, dumping or uncontrolled management of waste, as well as penalties applicable to infringements of the provisions of the Directive. National authorities must also conduct appropriate periodic inspections pursuant to article 13 of the Waste Framework Directive 2006/12/EC (now reflected in Article 34 §1 of the new Waste Framework Directive) as well as spot checks of shipments of waste and of their related recovery or disposal (Article 50 of the Waste Shipment Regulation 2006/1013/EC).

However, recent studies and reports have shown the large gaps in the way EU waste legislation is enforced, including through inspections, and revealed a great variety of enforcement practices between the Member States (see Part I of this report). There are a number of reasons that may explain such enforcement gap: lack of political will or priority, lack of resources, knowledge, information guidance and experience and divided competences.

When monitoring the proper application of EU waste legislation in its capacity of Guardian of the Treaties, the Commission cannot fill in this enforcement gap, mainly because it has no systematic means to control the day-to-day practical application of EU legislation by national authorities, and it does not have direct contact with polluters, or other actors in the waste chain, or local authorities in charge of enforcement, nor direct access to factual data, nor the capacity to look at the situation on the ground.

In their responses to the questionnaire, both Member States' officials and stakeholders provided a number of suggestions for new EU initiatives that could strengthen enforcement. These included: creating a mechanism for greater exchange of information among Member States; setting minimum standards and detailed guidelines for enforcement actions; developing a common EU database to link and support enforcement actions; strengthening of institutional capacity and cooperation among Member States' competent authorities; reviews of Member States' enforcement practices and measures; and setting up an EU enforcement body with clearly defined powers. The following options were developed on the basis of these suggestions and on a review of enforcement activities carried out by existing EU Agencies. (The section on other tasks includes one of these options, a database for enforcement information.)

## 8.1. Option 1. European body for carrying out direct inspections and controls

The first option is the creation of a European body for carrying out direct inspections and controls.

This option would imply the following steps:

- the adoption of an EU inspection and control strategy in order to determine the national systems to be controlled, the Member States to be inspected and the priority areas to be dealt with (e.g. shipments of waste, recycling facilities, etc.);
- the establishment of common standards to be followed by the national inspectorates;
- the adoption of a multi-annual work program of inspections and the coordination of specific auditing activities through a central body; and
- hiring or designating a team of experienced waste inspectors at the EU level to perform the controls.

In order to review the national inspection systems, the European body would in particular perform the following activities:

- carrying out, in presence of national officials, on-site inspections of facilities and control the concrete implementation of the EU waste legislation by the operators, in order to illustrate how the national inspection systems concretely work;
- carrying out, in presence of national officials, on-site inspections where there is no communication of requested information (as done for example by EMSA for Maritime issues where there are gaps of information), or where the Commission has been informed of possible violations of EU waste law through complaint or infringement proceedings;
- adopting emergency and interim legally binding measures in the event that the European body inspectors, while carrying out on-site inspections, identify a situation likely to present serious risks for the environment or for human health;
- elaborating audit reports assessing the concrete implementation of the legislation by the operators as a concrete illustration of the national systems, and assessing the performance and the effectiveness of the national inspections systems;
- making these reports available to the Commission, to the Member States and to the public; and
- proposing follow-up measures to be adopted by the Member States and/or by the Commission in order to fill the gaps in the implementation of the EU waste legislation.

The European body for carrying out inspections and controls would be composed of permanent EU inspectors acting on the behalf of the Commission, either hosted by the Commission or by an EU agency, or coordinated through a network for European cooperation among Member States.

This option raises four important issues.

Firstly, the question of the legal feasibility of a European body for carrying out inspections and controls hosted at EU level (either by an agency or by the Commission): it should be noted that the setting up of a European body would necessarily require the adoption of a Regulation or Directive.

Such a text may be adopted under Articles 192(1) and 294 TFEU. Indeed the adoption of a secondary legislation text setting up a European body that would control national systems of inspection in the field of waste management would contribute to the objective of preservation, protection and improvement of the quality of the environment laid down by Article 191(1) TFEU. Furthermore it would allow reaching the objectives pursued by the two Waste Framework Directives (Directive 2006/12 and Directive 2008/98).

Although environmental policy is a field of shared competence, and enforcement is primarily the competence of Member States to whom secondary EU waste legislation is addressed, the adoption of an EU text in the field of enforcement of EU waste legislation would respect the subsidiarity principle: according to this principle, the EU may regulate the enforcement of the legislation where the objective pursued cannot be sufficiently achieved by the Member States and may, by reason of the scale or effects of the proposed action, be better achieved by the Community (Article 5 of the Treaty on European Union). In the present case, given the huge gaps in the implementation by the Member States of the EU waste legislation, and given the disparities existing between the Member States in this field, it appears that national actions are not sufficient and that an action at the EU level, through an European body of inspectors, would be more efficient to achieve the goal pursued, i.e. a better level playing field for environmental protection.

The legislation to set up a European body for carrying out direct inspections and controls would have to be adopted in accordance with Article 294 TFEU. In effect, the Commission would not be competent to adopt such a text under Decision 1999/468/EEC on the comitology procedure: first, the adoption of such a text is not provided for either by Directive 2006/12, or by Directive 2008/98; secondly, the adoption of such a text goes further to just implement of Directive 2006/12, or Directive 2008/98. For this to happen, a qualified majority of Member States should vote in favour of the establishment of this European body and decide that it would be empowered to conduct inspections of facilities and sites without their prior consent.

Secondly this option raises the question of the links with the infringement procedure. If the European body is hosted by the Commission, the information will be directly collected by the Commission. In this case, the information may be used by the Commission in the framework of the infringement procedures under articles 258 and 260 TFEU. There is no legal mean to prevent the Commission, as Guardian of the Treaties, from using the information it legally gathers regarding the application of EU law by Member States in the framework of these proceedings. If hosted by the Commission, it is likely that the Member States would perceive the creation of such European body as an extension of the Commission prerogatives to investigate on Member States' infringements. As a matter of coherence and legality, the prerogatives of the European body should be compatible and complementary to the powers already assigned to the Commission pursuant to EU Treaty provisions and existing institutional arrangements relating to infringement procedures. This can be achieved through the secondary legislation that would be necessary to create such body.

If the European body is hosted by an EU agency, it is likely and necessary that the information will be reported to the Commission, in order to allow for action (infringement procedure) in case of structural deficiency in the implementation of the EU waste legislation. However, the legal instrument setting up the Agency may provide that the information is communicated to the Commission only in case of serious structural breach of the legislation, after the preventive means of action having failed (e.g. adoption of a new national plan for inspections, support by the agency for the adoption of national guidance documents, help in the implementation of the national plans, etc.).

If the European body is coordinated and supervised by a network of Member States authorities, the communication of the information collected to the Commission is less likely. However, under the principle of loyal cooperation (article 4(3) Treaty on European Union), the Member States participating in the network would have to share the data with the Commission. As for the agency, the network could provide the Commission with information gathered only in case of serious structural breach of the legislation, after the preventive means of action having failed.

Thirdly the question arises whether the on-site inspections would be carried out on a random basis or according to pre-established criteria, and with or without the consent of the Member States.

Concerning the consent of the Member States, the inspections will be more effective if they are performed without their consent. However, in practice, if the European body is coordinated and supervised through a network of Member States' authorities, it is likely that the consent of the Member States will be required.

As to the basis of the inspections, random inspections may be carried out. However, this may not be the most effective option. Indeed, it may be more useful to identify priority areas and priority sites given the state of the environment in these areas and sites. Therefore, objective criteria to determine the sites and the areas to be inspected in priority should be developed in that case. Inspections may be linked to valid complaints raised by citizens: in this case, the European body would provide a direct link between citizen complaints and EU actions.

Fourthly, a question arises regarding the effectiveness of different institutional settings for the European body. In terms of the institutional setting, the European body for direct inspections of facilities and sites would be most effective if carried out by the European Commission, as here it would have a clear EU role. It would be less effective for a European network to host this European body, as this would mean that a network bringing together Member States would carry out direct inspections within the same countries. Although an EU Agency could legally host the body, at least two key reasons indicate that this would be less effective than having the Commission host it. First, Member State representatives would make up the majority of the management board: these representatives are likely to be national officials. This means that Member State interests could feature on the board, even though the agency itself would be an independent legal body (see section 12.2 for an overview of the management board). These interests might limit the ambition of a programme of direct inspections and controls of facilities and sites across the EU. In contrast, the Commission has a strong, independent role to protect EU interests as Guardian of the Treaties.<sup>43</sup>

The analysis of this option identified a series of results, including the following:

- This option could bring a major improvement in terms of enforcement across the EU;
- The threat of inspections and infringement proceedings could foster to the improvement of Member States national enforcement systems;
- It would be necessary to adopt new EU legislation to set up the European body , though no overall legal barriers are foreseen;
- The European body would be most effective if hosted by the Commission. .

## 8.2. Option 2. Reviews of Member States' enforcement systems

This option would involve comparing and reviewing enforcement systems, including methods and procedures for inspections as they are implemented on the ground. The form of the reviews can range from a peer approach to a more centralised one: either reviews are carried out by the Member States themselves, or they are supervised by a European network of Member States' competent authorities, or such reviews are facilitated by an EU body which either already exists (e.g. by enhancing and extending tasks of an existing agency or the Commission services) or a new one (e.g. a new Agency). Even within these various institutional options, there is a wide range of possibilities: for example, the Commission or an Agency could undertake reviews only using their own officials; or it could involve Member States officials who would participate in the missions.

<sup>43</sup> Moreover, the Commissioners, while nominated by Member States, are approved by the European Parliament and take up full-time European office: Member State interests are represented separately by the Council.

If it involves an EU institution (e.g. the Commission or an Agency), this option would resemble the activities of the Food and Veterinary Office (FVO) of DG SANCO for the assurance of proper Member State controls of EU food safety and quality requirements, or the work of EMSA for Marine Safety Policy requirements. FVO undertakes different types of missions to review Member State control systems: some focusing on specific food lines and others on national food safety enforcement overall (see the box below). EMSA is empowered to monitor the functioning of national inspection systems for port state control and to assess the classification of companies that develop technical and design standards for the construction of ships as well as the certification process whereby it can be demonstrated that these standards are met.

A third example is seen in IMPEL, which currently undertakes the so-called IRI reviews (IMPEL Review Initiative), the purpose of which is to test a voluntary scheme for reporting and offering advice on inspectorates and inspection procedures in participating Member States.

### **The FVO reviews of food safety controls**

The Food and Veterinary Office (FVO) is a division of DG SANCO (the Directorate-General for Health and Consumers). Since 1997, FVO has been responsible for ensuring that EU legislation on food safety, animal health, plant health and animal welfare is properly implemented and enforced. The main work of the office is to review the effectiveness of inspections and controls in Member States as well as in cooperating third countries with significant exports of food to the EU.

FVO reviews national control systems through visits to carry out audits, inspections and reviews. In general, the office carries out two types of activities: general country reviews; and audits and inspections that focus on specific food chains, such as meat used in baby food, or specific types of control systems. In its plans for 2009, FVO scheduled 9 general reviews and over 130 audits and inspections in Member States, together with over 100 other further audits and inspections in EFTA countries, EU Candidate Countries and third countries including Canada, Indonesia and Ukraine: thus a total of over 250 inspections were planned. The office however keeps its programme flexible to be able to respond to emergencies and other unforeseen circumstances. FVO's missions typically include visits to the key national offices in charge of food safety and related topics; on occasion, FVO officers visit facilities such as slaughterhouses: the goal is not to control the facilities themselves, as to learn from the visit how national inspectors carry out their work (moreover, FVO officers need to be accompanied by national inspectors, as they do not have legal powers to enter and inspect facilities).

When an FVO review, audit or inspection identifies a need for better national controls, the problem is specified in FVO's inspection report. In response, the Member State or country should prepare an action plan for improvement. Where FVO has found that previous recommendations have not been implemented, it can prepare an infringement case against the Member State. (A group within FVO is dedicated to co-ordinating work to monitor national follow-up to recommendations and action plans.) In addition, if FVO identifies an immediate threat to consumer, animal or plant health, it may take emergency measures (called safeguard measures), such as banning the sale of a type of food whose safety is not assured.

Source: European Commission (Directorate-General for Health and Consumers), *Programme of Audits and Inspections 2009*

Depending on the institutional option chosen, the Commission services, or the Agency, or Member State officials working via the network would visit government bodies in the Member State under review in order to assess their activities, scrutinize monitoring data and, with the consent of the Member States concerned, receive access to selected waste treatment facilities to inspect the concrete

implementation of the EU waste legislation by the operators involved in the waste chain. A Member State review may either look at the country's waste enforcement overall or focus in-depth on a specific enforcement areas, such as waste shipments. If reviews would be supervised by an EU institution (e. an Agency or the Commission services), this would allow taking a more stringent approach whereby inspections could also be carried out without the consent of the Member States concerned. Reports of the reviews could be communicated to the Commission for information.

This option would require common standards for reviews that may be agreed by the Member States themselves or at EU level. In the latter case, such common standards could take the form of a declaration that is not legally binding (e.g. a Recommendation); alternatively, they could be legally binding – and indeed they could be included in the legal instrument that would establish an Agency.

The Recommendation for Minimum Criteria for Environmental Inspections (RMCEI) may serve as a basis for setting common standards, including specific criteria for the selection of sites that may be inspected, for the implementation and enforcement of waste treatment requirements. Moreover, a combination of legally binding principles could be combined with detailed modalities in the form of guidelines. Whatever their form, the standards could involve topics as information gathering, risk analyses, inspection programmes and strategies, training, coordination between involved authorities, reporting, reacting to incidents, complaints and the carrying out of checks before authorising a facility or renewing an authorisation. The standards – and the reviews that use them – will need to strike a balance between establishing a level playing field across the EU and allowing different Member State approaches that achieve good enforcement. Such common standards should be regularly updated.

Notwithstanding the institutional setting, such an option could involve the following activities to be undertaken:

- The definition the scope, modalities (including frequency) and institutional arrangements of review processes, including the conditions under which officials from either Member States or an EU body can participate in the review of activities of other Member States
- Agreement on common standards on the basis of which would be undertaken
- Establishment of a rolling work plan identifying priority issues/data/facilities subject the reviews
- Arrangement for visits in country for conducting the reviews at governmental organizations (and sites)
- The sharing of experience and know-how, through regular reporting meetings and well as through the detachment of national officials
- Preparation and distribution of review findings
- Agreement on follow-up measures, such as action plans for improvement in the event negative results were found
- The management, from an administrative viewpoint, of the practical organization of the reviews through a office in charge of coordinating activities and centralizing data and findings
- The revision of the common standards reflecting enforcement best practices in the light of experiences gained through the reviews

The analysis of this option identified a series of results, including the following:

- It will be effective in contributing to a more level playing field in terms of enforcement activities across MS
- Results in terms of improved protection of the environment and human health will be seen over the longer term, as Member States improve their enforcement systems following reviews
- The reviews will focus on systems, and thus will provide a more in-depth look at issues within Member States than Option 1. Moreover, the combination of general and specific reviews can assess enforcement of all EU waste legislation.
- For an Agency and most likely for COM-led reviews as well, new legislation would be needed to put the review system in place
- For reviews organised by a European network, agreements would be needed or reviews would be on a strictly voluntary basis, an approach that would limit their effectiveness



- A central body is expected to go further into greater depth in terms of review work and also in following up on the findings
- MS may be wary of reviews as findings could be linked to infringement procedures: procedures for the use of the findings will need to be established (as, for example, in the case of FVO – see the box above)

### 8.3. Option 3. Coordinated control and inspection activities

Another option is to hold joint control and inspection activities involving personnel across different Member States. These activities would be similar to the CFCA Joint Deployment Plans organised by the Community Fisheries Control Agency (CFCA), which are described in the box below. They would be based on an EU wide enforcement strategy including inspection activities. Joint activities could be coordinated by the Commission services, or by an existing or new EU Agency, or by a European network.

Depending on the institutional setting chosen, Member State inspectors would either act as national inspectors or as Community inspectors: in case of action at the intergovernmental level, Member State inspectors would act as national inspectors, while in case of action at the EU level, they may operate as EU inspectors on a provisional basis when performing controls outside their own Member State.

#### The Joint Deployment Plans coordinated by CFCA

The role of the Community Fisheries Control Agency (CFCA), created in 2005, is “to strengthen the uniformity and effectiveness of enforcement by pooling EU and national means of fisheries control and monitoring resources and co-ordinating enforcement activities” (CFCA web site).

The agency’s main activity is to organise Member State inspection and enforcement activities via *Joint Deployment Plans* (JDPs). Each plan focuses on enforcement in a single European sea or for a specific marine species. Recent plans have covered: bluefin tuna; the North Sea; and the Baltic Sea. For each plan, the Agency coordinates preparatory work and hosts planning meetings. In EU waters, Member States provide the inspectors, vessels, aircraft and other means to carry out the plans: the idea is to coordinate existing MS means so they are more effective. In each plan, specific activities are organised into separate “campaigns”, and each campaign is led by a Member State, with the Agency providing a staff member who assists the MS coordination centre for the campaign. MS inspectors can be given the power as ‘Community inspectors’, which allows them to carry out activities in other Member States.

In a few cases, the Agency has chartered vessels to carry out controls of EU fishing in international waters.

In the 2008 North Sea Joint Deployment Plan, for example, Member States have led a series of separate campaigns, each about two weeks in length. Each campaign included inspections both on land and at sea. The overall goal of the plan is the recovery of North Sea cod stocks. The North Sea JDP continued over several years; through early 2009, over 20 campaigns had been completed. In each campaign, inspectors can enter the fishing zones of other Member States and board any fishing vessels.

Sources: CFCA web site, <http://www.cfca.europa.eu> (accessed March 2009); CFCA, Joint Deployment Plan (JDP) NORTH SEA ([http://www.cfca.europa.eu/northsea/index\\_en.htm](http://www.cfca.europa.eu/northsea/index_en.htm), accessed March 2009)

An EU inspection and enforcement strategy would lay down the priorities and adopt benchmarks for conducting control and inspection activities. Joint Deployment Plans (JDPs) would give effect to a specific control and inspection programmes setting out specific objectives and priorities for the Member States concerned, but also include EU wide common goals. JDPs could include inspections of pre-selected waste treatment sites and co-ordinated controls in specific territorial areas where illegal shipments may occur. The Plans would apply a ‘cradle-to-grave’ approach, verifying the total waste chain, from point of generation, collection, transport and treatment at all its actors involved.

The joint activities could follow an approach similar to the fisheries controls organised by the CFCA: individual Member States would co-ordinate specific enforcement activities involving inspectors from several, usually neighbouring countries. Equipment would be provided by the participating Member States. The agency would support overall planning and preparation. A similar approach could be used for joint waste inspections.

As part of the JDPs, the enforcement capacities and methods of participating Member States could be briefly reviewed, either formally or informally. Training and other capacity building activities could then be integrated with the Plans (as is done by the CFCA). The joint plans thus would have several results: first, carrying out joint enforcement activities to address problems that cross Member States’ national boundaries; second, strengthening capacity to improve enforcement systems within individual Member State; and third, establishing links among enforcement bodies across the EU, which should reinforce ongoing co-operation.

Notwithstanding the institutional setting chosen, such an option could involve the following practical activities to be undertaken:

- Adoption of an EU wide Enforcement Strategy (through legally or non legally binding decisions);
- Elaboration of JDPs
- Coordination of planning through a central office, secretariat or body;
- Detailed planning for individual actions (carried out by the lead MS with central support);
- Co-ordinated, joint inspection and control activities carried out by MS inspectors;
- Review of the results and lessons learned;
- Sharing experience and know-how gained through reports, joint meetings and follow-up actions.

Additional activities could be linked to the JDPs:

- Training and capacity building for participating MS inspection officials
- Elaborating guidelines on enforcement best practices in the light of experience gained through the implementation of JDP and audits;

The analysis of this option identified a series of results, including the following:

- This option will be most effective if organised by a strong central office with sufficient resources for effective planning: as a result an agency or the Commission would most effective institutional settings
- The option has strong synergies with training activities and with the preparation of guidance for enforcement
- Legislation will be needed to set up the option, in particular to set up co-operation and exchange of inspection activities – e.g. inspectors from one Member State participating in inspections in another: the designation of ‘Community inspectors’ for the duration of operations may be needed
- A European network may have lower ambition than an Agency or the Commission; also, inter-governmental agreements may be needed to set up operations and this option may be less effective in ensuring strong participation from all Member States

- For all options, there will be a question of ensuring strong and uniform Member State participation: this will be best ensured by organising the joint inspections at EU level under legislation

#### 8.4. Option 4. Information exchange to improve enforcement

Facilitating the exchange of information and sharing experiences and best practices on enforcement, including minimum requirements for inspections of waste treatment facilities and of other activities such as waste transportation and transboundary shipments, treatment installations, in particular incineration and landfilling facilities, is the first option. This option closely links to some proposed training activities with which synergies may be maximized for the purpose of improving a proper application of EU waste legislation by national competent authorities.

This task could be performed by an EU Agency, whose role would then be limited to facilitating and coordinating such cooperation activities. As an example, ECHA co-ordinates the Forum for enforcement on chemical issues pursuant to the REACH Regulation, a body which provides for the exchange of information, including on minimum criteria and best practices for enforcement as well as on common enforcement challenges. This task could also be undertaken in other institutional settings, for instance through a network for Europe, which would arrange thematic workshops on enforcement, for example to exchange views and share best practices on public authorities' enforcement procedures and strategies, including inspection methods. In other words, this option would lead to an improvement of the existing arrangements for IMPEL, which may differ only to the extent that an EU body would facilitate Member States' cooperation. On the other hand, the Commission could lead this activity: in this case, the system may be similar to the Enforcement Working Group set up under the Wildlife Trade Regulations.

Notwithstanding the institutional setting, such an option could imply the following activities to be undertaken:

- Regular meetings of national competent authorities in charge of enforcement;
- Establishment of a work programme identifying priority enforcement issues to be tackled or procedures to be improved;
- Organization of thematic workshops on enforcement matters with country case studies;
- Elaboration of background documents and reports on enforcement issues and cooperation activities, including best practices guidelines on enforcement;
- Organisation of joint inspection activities on a voluntary basis;
- Sharing of information on monitoring results and inspection findings, in particular on activities or installations having negative transboundary impacts;
- Exchange of views on opportunities to promote and monitor compliance in a more uniform manner across the EU, including on non compliance measures (sanctions and penalties) to avoid any forum shopping.

The analysis of this option identified a series of results, including the following:

- It will contribute to a more level playing field in terms of enforcement activities across MS
- Sharing information may be difficult for some MS for fear of COM responses; at the same time, this may help prevent infringement proceedings
- Using an Agency for this option is the least cost-effective institutional setting due to its higher fixed costs (this could be mitigated for an agency that engages in many activities)
- This activity would have strong synergies, however, with options 2 and 3

## 8.5. Overview of the assessment results

The matrix below provides an overview of the assessment of the four enforcement tasks in terms of four key criteria: environmental effectiveness; technical and organisational aspects; economic costs; and legal aspects.

The first two options – the European body for inspections and the reviews of MS enforcement systems – are the most effective in terms of addressing environmental problems, including establishing a more level playing field across the EU. The third option, coordinated inspections and controls, follows.

These options operate using very different approaches and thus their effects will differ. The European body for inspections would make direct interventions to tackle serious problems identified by European citizens to the European Commission and Parliament, such as illegal waste dumping or illegal waste shipments. As a result, this option would bring relatively quick results for these specific cases. The threat of inspections from a European body may in the long term spur Member State actions to improve enforcement.

**Table 16. Assessment of the enforcement options**

Task	Environmental effectiveness	Technical and organisational aspects	Economic costs	Legal aspects
1. European body for inspections and controls	+++ Focuses on sites and facilities; Directly tangible results and solutions to specific environmental problems achieved in short-term: compliance with EU environmental legislation achieved directly.	<i>Staff:</i> enforcement experts <i>Setting:</i> most effective if carried out by COM; least if hosted by a European network <i>Synergies:</i> fewer	€€€ All costs borne by EU budget	Legislation needed for its creation
2. Reviews of Member State enforcement systems	+++ Focuses on enforcement systems Results in terms of raising the overall level of enforcement across the EU achieved in longer term: compliance with EU environmental legislation achieved indirectly	<i>Staff:</i> need expertise in enforcement activities <i>Setting:</i> most effective if carried out at EU level (COM or agency) <i>Synergies:</i> strong, e.g. with training and guidance	€€ Most costs borne by EU budget	Legislation needed for EU-organised reviews Agreements among MS needed for reviews organised by a European network
3. Coordinated inspections and controls	++ Direct results for sites and facilities: indirect results on enforcement systems Extent of MS participation in the joint activities may vary	<i>Staff:</i> need expertise in enforcement activities, methods and management <i>Setting:</i> All. For a European network in particular, MS participation may vary <i>Synergies:</i> strong, e.g. with training and guidance	€€ Coordination costs borne by EU budget; joint activities should not impose additional costs on MS	Legislation needed for EU-organised activities Agreements among MS needed for activities organised by a European network.
4. Information exchange	+ Indirect results on enforcement systems	<i>Staff:</i> need expertise in coordination, in enforcement and in cross-country analysis <i>Setting:</i> all <i>Synergies:</i> strong, e.g. with training and guidance	€ Lowest-cost enforcement task	No legal obstacles foreseen

The reviews of MS enforcement systems would assess national systems and identify areas for improvement. The results will improve national systems as a whole and would go further than individual sites and cases; however, its action would be indirect and thus would take more time to bring results on the ground than option 1.

Option 3, coordinated inspections, will undertake direct interventions. Here, actions will be planned together with Member State bodies and may not focus on the most serious individual cases. The joint activities should have a system-wide result, helping to strengthen Member State capacities and identify training and other needs.

All the options would require staff with expertise in enforcement: this would be particularly important for option 1, as the European body would have its own inspectors; it is less important for option 4, as the main work carried out centrally would be coordination of meetings analysis.

In terms of the institutional setting, the European body for inspections would be most effective if carried out by the European Commission, as here it would have a clear EU role. It would be difficult for a European network to host the European body for inspections, as this would mean that a network bringing together Member States would carry out direct inspections within the same countries. For an EU Agency, Member State representatives would make up the majority of the management board (see section 12.2 for further details); while an agency is an independent legal body, a European body of inspectors here could be less ambitious than one hosted by the Commission.

Options 2, 3 and 4 all have strong synergies with other tasks, including with each other and with tasks for training, guidance: for example, knowledge gathered in these enforcement tasks could be used to strengthen all types of training programmes. In contrast, fewer synergies are seen for option 1, though here too there could be advantages, for example for training on enforcement.

Moreover, tasks 2, 3 and 4 would have strong synergies if carried out together, as all three focus on enforcement systems and methods in Member States. The first task has fewer synergies with the others, as it involves a direct intervention from the European level.

Initiatives to set up new structures or mechanisms at EU level, such as a European body for inspections and a system for reviews of Member State enforcement are naturally more costly than to continue more established approaches, such as coordinated inspections and controls or an information exchange between Member States. The precise costs will depend on the level of activity that will be carried out: chapter 12 provides more detailed cost estimates for the activities.

All of the options appear to be legally feasible, and no legal barriers were seen in terms of hosting the options in any of the three institutions settings – an EU agency, the European Commission or a European network. New legislation would, however, be needed to put in place the enforcement options, except possibly for an information exchange (option 4).

In the first three options, activities might reveal possible causes for infringement procedures against Member States: here clear guidelines will be needed on how the Commission uses information gathered, in order to avoid a ‘chilling effect’ on the work.

## 8.6. Expected results

All of the enforcement options are expected to have results in terms of addressing existing problems of bad application, such as illegal landfills and illegal waste shipments, and thus addressing the uneven playing field that currently exists (see the table below).

Option 1, for an exchange of information, will have as best an indirect effect on these problems and on some of the underlying causes.

In contrast, option 2 (reviews of Member State enforcement systems), while having an indirect effect, could bring results across the problems identified. This is because the reviews could look at in depth at a range of issues, including the organisation of national enforcement agencies, their technical capacity and the techniques and priorities used; moreover, this option could also address other problems in enforcement, such as low levels of prosecution and sanctions for violations: in other words, this option in particular would review a whole national system. Moreover, the reviews could be extended to other areas, such as understanding whether there are enforcement problems regarding producer responsibility schemes as well as the interaction between planning and enforcement. As noted previously, however, the most effective mechanism for reviews would be managed by either an agency or by Commission offices: a European network would likely set up less ambitious reviews, which moreover may have a strong voluntary element.

**Table 17. Expected results of the enforcement tasks**

KEY ELEMENTS OF THE IMPLEMENTATION GAP	Enforcement			
	Exchange info	Reviews of MS	Coordinated inspections	EU body for inspections
<b>Overall issues</b>				
Uneven playing field across the EU				
Low priority for implementation and enforcement in some MS				
Lack of human, budget and technical resources in some MS				
<b>Key areas of bad application seen in some MS</b>				
• Landfills that do not meet EU requirements				
• Unauthorised landfills				
• Other facilities that do not meet EU requirements				
• Illegal waste shipments				
<b>Potential areas of bad application</b>				
• Poorly working producer responsibility schemes		<i>Reviews</i>		
• Poor planning (waste management, prevention)		<i>could</i>		
• Targets (e.g. reducing landfilling) not met		<i>address</i>		
<b>Enforcement problems seen in some Member States</b>				
Organisational issues:				
• Lack of resources for enforcement				
• Divided competence; poor co-ordination				
• For some: enforcement powers limited				
• Need for greater permitting / enforcement links				
Technical capacity				
• Poor understanding of EU legal documents				
• Lack of attention to waste chain				
• Poor knowledge of enforcement techniques				
Low levels of prosecution; low fines and sentences				
Different MS priorities and approaches to enforcement				
Low levels of joint enforcement activities among MS				
<b>Other implementation problems seen in some Member States</b>				
Poor capacity on technical issues				
• Methods of analysis: LCA, cost-benefit, etc.				
• Planning: waste management; prevention; etc.				
Differences in MS interpretations of EU legislation				

The reviews will have a largely indirect effect: their results may take some time to be seen. In contrast, both Options 3 and 4 can have a direct impact on problems such as enforcement of unauthorised landfills and illegal waste shipments. Option 3, coordinated inspections across Member States, will have an indirect effect on capacity problems: the joint activities can help to strengthen capacity in Member States where it is weaker.

Option 4, a European body for inspections, has as noted above an intervention approach. It will not assist Member States directly in improving their organisational and technical capacities for enforcement. On the other hand, control activities carried out by the European body could result in infringement procedures: this threat may encourage Member States to improve national enforcement.





## 9. Training options

Training is an important tool to improve the implementation of EU waste legislation. Training will help to establish a more uniform as well as a deeper understanding of the legal provisions; moreover, training can enhance the practical implementation of the legislation and promote its more uniform enforcement across Member States. Moreover, training in these areas can support joint enforcement efforts involving several Member States.

EU waste legislation does not specify requirements for training of Member State officials, though this subject is mentioned in the Recommendation (2001/331/EC) on minimum criteria for environmental inspections (RMCEI). (See Annex VI for a review of the legislative requirements.)

Section 4 showed that current training programmes within Member States vary greatly, from *ad hoc* training courses to extensive formal training programmes. Moreover, in both the interviews and the survey conducted for this project, Member State officials and stakeholders cited as a broad goal that training should seek to put in place a more uniform application of waste requirements across the EU. Moreover, the respondents generally agreed that training at EU level was a priority.

A new initiative at EU level could focus on two areas. First, general training on implementing EU waste legislation, including specific pieces of legislation (WEEE, ELV, Landfill and Waste Framework Directive and the Waste Shipment Regulation) would promote a more common understanding of the provisions and definitions. Second, training courses could develop the skills of waste inspectors, for example on topics such as inspection methods, use of intelligence, threat assessment, investigation skills, administrative controls and sampling. This type of training will support the inspection and proper enforcement by Member State officials; it should improve the overall quality of inspections across the EU and make them more uniform. At EU level, such training activities are only performed within the IMPEL network.

Training should not focus on environmental authorities only, but also other law enforcement bodies that play a role in waste law enforcement.

This section considers three options for training:

- Direct provision of training courses
- Train-the-trainer programmes
- Coordination and facilitation of Member State training programmes

These options are not exclusive: two or (possibly) all three could be undertaken together.

### 9.1. Option 1. Direct training

These are trainings developed for and given to Member State officials directly by the Agency or other institution. Several EU agencies currently organise training activities.

In the field of maritime safety for example, such training is currently undertaken by EMSA. This agency works together with Member States to organise relevant training activities. The priorities for EMSA's training activities are determined yearly by a committee of representatives of the EU Member States, Norway and Iceland.

In the area of fisheries controls, the CFCA work programme includes training for Member State officials as part of the Joint Deployment Plans that this Agency organises. Joint Deployment Plans coordinate national means of control and inspection which are pooled by the Member States. So in this

case, the training is provided for inspectors that take part in specific EU wide enforcement actions. In addition, CFCA is organising a train-the-trainers programme.

Another EU training initiative is seen in the area of food safety (see the box below).

### **Better Training for Safer Food**

This programme trains Member State officials involved in controls in the areas of food safety, animal health and welfare and plant health. Its goal is to ensure a high level of competence and expertise among controlling authorities, and in turn to ensure compliance with EU rules.

The programme is administered by the Executive Agency on Health and Consumers (EAHC), which manages also several other programmes for DG SANCO (Health and Consumer Affairs). The Agency, based in Luxembourg, has about 40 staff members. It was originally created in 2005 for a five-year term, which was extended in 2008.

In 2009, ten types of training courses are given in the EU, and five others outside the EU. The topics range from hazard analysis to veterinary checks at seaports to Avian influenza control. Individual courses are given at locations across the EU; in 2009, about 5000 MS officials are expected to receive training. Staff members of MS Competent Authorities do not pay fees to attend training courses.

When the programme was set up, it was decided to assign its management to an executive agency, as this would allow the Commission to focus on core functions. While EAHC administers the programme, the training itself is given by contractors chosen via open tender.

Source: EAHC, web pages and documents available at: <http://ec.europa.eu/eahc/food/food.html>

The activities involved in organising direct training on waste will likely include the following:

- Identification of a series of training courses (involving a review of the needs plus discussions with Member States, Commission and possibly other stakeholders)
- Potentially, a survey of Member State training work to identify best practices that can be used as models
- For each training course, preparation of the programme, materials and related plans
- Engagement of trainers
- Organisation of the courses
- Regular follow-up activities, including evaluation of the results

Several key issues will have to be decided, including the languages in which training is offered.

Key results from the analysis including the following:

- No legal obstacles are seen for any institutional setting
- Organising the training programme at EU level, via an Agency or through the Commission offices would provide greater long-term certainty for the programme
- An agency would have a longer start-up time, however ; moreover, no existing EU agencies are seen that could take over this work
- Commission services could manage the work; alternatively a new Executive Agency reporting to the Commission could do so, similar to EAHC's activities under DG SANCO
- If European networks are used to organise training, this would like draw on MS with more advanced training programmes, and thus place a higher burden on these countries
- One key organisational issue – for all options – will be the interaction between existing MS training programmes and the new EU programme (for example, EU training should save resources by drawing on best practices at MS level)

- Direct training on implementation issues will have synergies with tasks for updating and clarifying EU waste legislation
- Direct training on enforcement methods will have synergies with enforcement tasks

## 9.2. Option 2. Train-the-trainer programmes

In train-the-trainer programmes, core curricula would be developed for each course. These would be taught to national trainers, who in turn will train their officials in their Member State. This approach is more focussed on the training of regional and local officials, in their own language.

The model is used by the CFCA. In order to assist Member States to better fulfil their obligations under the rules of the common fisheries policy, the CFCA developed a core curriculum for the training of the instructors of the fisheries inspectors of the Member States (see the box below).

### Training programmes at the CFCA

The Community Fisheries Control Agency (CFCA) is integrating two types of training into its work.

In the first type, the agency provides direct training for national fisheries inspectors who work in coordinated enforcement activities under the Joint Deployment Plans. These inspectors are designated as Community inspectors during the activities of a JDP, and the training seeks to ensure that they follow the same rules and procedures in their enforcement work, even though they come from different countries. (If the capacity of a participating MS needs strengthening, the Agency may arrange for additional training sessions for its inspectors.) In most cases, the Agency's staff has given these training courses.

Second, the agency is setting up in cooperation with Member States a common core curriculum for the training of fisheries inspectors. A training of trainers programme will start its work in 2010. For this programme, the CFCA has carried out a review of Member State training programmes to identify best practices for the key topics that will be included in the core curriculum (e.g. risk analysis, inspection methods). The best national training courses for each topic will be used in the common core curriculum. The agency will then organise training courses for national trainers, who would in turn teach the courses in their Member States. For the core curriculum, the Agency expects to use MS trainers as well as outside experts, though CFCA staff may give some of the courses.

The activities involved in organising train-the-trainer programmes will likely include the following:

- Identification of a series of training courses (involving a review of the needs plus discussions with Member States, Commission and possibly other stakeholders)
- Potentially, a survey of Member State training work to identify best practices that can be used as models
- For each training course, preparation of the programme, materials and related plans
- Engagement of trainers
- Organisation of the courses
- Regular follow-up activities, including evaluation of the results

Overall, this approach will provide training for fewer Member State officials than direct training – but these officials would in turn organise training in their countries. Most likely, training for the trainers could all be in one or at most two EU languages. Among the key organisational issues are the following questions: will the activity support the organisation of national training programmes,

including the translation of training materials? How will the different national training activities be evaluated?

The key results of the analysis by and large mirror those for direct training:

- No legal obstacles are seen for any institution setting
- The quality of the final training (i.e. that given by the newly trained trainers in the MS) may vary: evaluation programmes may want to review this
- Organising the training programme at EU level, via an Agency or through the Commission offices would provide greater long-term certainty for the programme
- An agency would have a longer start-up time, however ; moreover, no existing EU agencies are seen that could take over this work
- Commission services could manage the work; alternatively a new Executive Agency reporting to the Commission could do so, similar to EAHC's activities under DG SANCO
- One key organisational issue – for all options – will be the interaction between existing MS training programmes and the new EU programme (for example, EU training should save resources by drawing on best practices at MS level)
- If European networks are used to organise training, this would like draw on MS with more advanced training programmes, and thus place a higher burden on these countries
- Training trainers on implementation issues will have synergies with tasks for updating and clarifying EU waste legislation
- Training trainers on enforcement methods will have synergies with enforcement tasks (this will apply in particular for EU options, such as an Agency or using Commission offices)
- This option could be combined with the previous one: for example, direct training could be provided while training the trainers programmes starts; new training courses could be developed and tested first through direct training and then moved to training-the-trainer programmes
- Combining the two options may bring several advantages: training a larger number of MS officials more cost-effectively; ensuring good training in national languages; developing courses and testing them at EU level

### 9.3. Option 3. Coordinate and facilitate MS training programmes

In this case the training courses are developed and given by the Member States themselves. An EU agency provides assistance in coordinating the trainings and facilitating trainings, for example in the form of exchange programmes, and in financing exchanges.

This model is seen on a smaller scale in current IMPEL projects, such as inspector exchange programmes. The content of these programmes are arranged by the Member States, while the costs for travel and accommodation are funded via EU funding programmes. IMPEL also organises workshops to facilitate the exchange of best inspection and enforcement practices.

The activities involved in this option could include the following:

- Review of current national training programmes and identification of best practices
- Organisation of an expert group of Member State officials to exchange information on training methods and programmes and plan exchange activities
- Support for exchange programmes, such as the working visits for inspectors and trainers from one Member State to provide training in another, as well as the participation of prospective trainers in courses provided by another Member State
- Translation of MS training materials for use in other countries

The initial results of analysis include the following:

- No legal obstacles are seen for any institution setting

- The quality of final training may vary
- The agency would have a longer start-up time, and indeed an interim solution might be necessary before it becomes operational; no existing agencies seen that could take over this work; however, it would provide greater long-term certainty for the programme
- Using Commission services would also provide greater long-term certainty; alternatively a new Executive Agency could support the Commission in this work
- If European networks are used, there might be place a greater burden on MS with more advanced training programmes, as they would probably lead exchanges
- For this option, few synergies are seen with tasks in other areas

#### 9.4. Summary of the assessment results

In the analysis, no legal barriers are seen for any of the options. And the options could be carried out under all three institutional settings. Moreover, all three options will help to strengthen MS capacities and also bring a more uniform understanding of EU waste legislation.

**Table 18. Assessment of the training options**

Task	Environmental effectiveness	Technical and organisational aspects	Economic costs	Legal aspects
1. Direct training	++ Will enhance skills across EU; results limited by language restrictions and small share of all EU waste officials trained per year; indirect results for environment	Staff: Experts in enforcement and implementation of EU waste legislation Setting: All Synergies: Strong, e.g. with enforcement and other tasks	€€ All costs borne by EU budget	No legal obstacles foreseen
2. Train-the-trainers	++ Will enhance skills across EU; results depend on MS follow-up; will reach a high number of officials; indirect results	Staff: Experts in enforcement and implementation of EU waste legislation Setting: All Synergies: Strong, e.g. with enforcement and other tasks	€ Initial training borne by EU budget; in-country training by Member States	No legal obstacles foreseen
4. Coordinate and facilitate MS training programmes	+ Will enhance skills across EU; results depend on MS activities; differences will be overcome more slowly than other options; indirect results for environment	Staff: Expertise in EU waste legislation and public administration Setting: All Synergies: Fewer synergies	€ EU budget would only support coordination; MS would bear other costs	No legal obstacles foreseen

The analysis suggests that all three options would work to enhance skills across the EU and overcome differences in interpretation of EU waste legislation. The first approach, direct training, would go furthest in these terms and thus would be the most effective. Its impacts on the environment would be indirect, however, and may take some time to be evident. It would be the most costly of the three training tasks. Moreover, its results would depend on the extent of training courses carried out. Direct training would most likely be undertaken in only a few languages, and this would limit its reach.

The second approach, training trainers, would reach more Member State officials via in-country training. It would cost less overall and be more cost-effective; however, uncertainties here include the extent of in-country follow-up as well as the quality of the final training.

The third approach would like have the least results. In particular, it work slowly in terms of harmonising different Member State training programmes, and thus in terms of assuring a common understanding of EU waste legislation.

Both the first and second options would have strong synergies with other tasks, such as those on enforcement and the preparation of guidance. It is possible to carry out all three options together: indeed, a combined approach may prove to be the most effective.

**Table 19. Expected results of the training tasks**

KEY ELEMENTS OF THE IMPLEMENTATION GAP	Training		
	Direct training	Train Trainers	Co-ordinate
<b>Overall issues</b>			
Uneven playing field across the EU			
Low priority for implementation and enforcement in some MS			
Lack of human, budget and technical resources in some MS			
<b>Key areas of bad application seen in some MS</b>			
• Landfills that do not meet EU requirements			
• Unauthorised landfills			
• Other facilities that do not meet EU requirements			
• Illegal waste shipments			
<b>Potential areas of bad application</b>			
• Poorly working producer responsibility schemes			
• Poor planning (waste management, prevention)			
• Targets (e.g. reducing landfilling) not met			
<b>Enforcement problems seen in some Member States</b>			
Organisational issues:			
• Lack of resources for enforcement			
• Divided competence; poor co-ordination			
• For some: enforcement powers limited			
• Need for greater permitting / enforcement links			
Technical capacity			
• Poor understanding of EU legal documents			
• Lack of attention to waste chain			
• Poor knowledge of enforcement techniques			
Low levels of prosecution; low fines and sentences			
Different MS priorities and approaches to enforcement			
Low levels of joint enforcement activities among MS			
<b>Other implementation problems seen in some Member States</b>			
Poor capacity on technical issues			
• Methods of analysis: LCA, cost-benefit, etc.			
• Planning: waste management; prevention; etc.			
Differences in MS interpretations of EU legislation			

## **9.5. Expected results**

The options for direct training courses and for training-the-trainers are expected to have direct results in terms of addressing poor technical capacity in terms of enforcement techniques as well as in terms of methods for other areas of implementation, such as planning (see the table above). Such problems vary across Member States: in some they are acute; in others they are less of a concern (in particular those with strong national training programmes). In contrast, the option to co-ordinate national training programmes will have a more indirect impact in these areas.

By strengthening national capacities, the training options will have an indirect result on other parts of the implementation gap. For example, training may strengthen enforcement in some countries and as a result, reduce cases of unauthorised landfills and illegal waste shipments. Direct training and training the trainers, by providing a more uniform understanding of EU waste legislation, will help to reduce the uneven playing field in the EU. The effects will be indirect – and partial. Training activities along will not overcome the gap in these areas.





## 10. Options for updating and clarifying EU legislation

A clear and more uniform understanding of EU waste law will enhance the implementation of the rules on the ground. Moreover, it will also contribute to a more level playing field. In the questionnaire for the study, out of 12 stakeholder responses, 8 indicated that ‘updating and clarifying legislation’ – i.e. both updating legislation as well as guidance – was a ‘very important’ area for a possible EU waste agency; 2 others indicated it was ‘important’. For the 11 Member State responses, a total of 9 indicated that this was ‘important’ or ‘very important’.

**Guidance.** Many Member States and stakeholders struggle with definition and interpretation issues of the EU waste law; for example waste versus non-waste or hazardous versus non-hazardous. More technical guidance on these issues would assist the regulators, operators of waste management facilities and other actors involved in the waste chain. Furthermore the Member States clearly indicated the need for further guidance to support their development of waste plans and strategies such as waste management plans and waste prevention plans, as well as common guidance for carrying out inspections and other enforcement activities.

A third key area mentioned is the need for more guidance on enforcement such as the management of illegal waste shipments in general and co-operation across Member States on prosecution of these shipments.

Guidance at EU level could therefore be developed at two levels: on the one hand, guidance to support enforcement; on the other hand, guidance to support implementation, such as in the areas of definitions as well as to assist Member States (at both national and regional level) to develop waste plans and strategies.

Updating EU legislation is an extensive process that involves – in addition to the institutional pathways for co-decision or comitology decisions – preparatory steps such as the analysis of scientific, technical and legal issues; the assessment of environmental, economic and social impacts; and consultation with stakeholders. In their responses to the questionnaires, both Member State officials and stakeholders acknowledged the importance of these preparatory steps. Moreover, many responses called for deeper assessments.

A key area is to provide support for the assessment of potential economic and social impacts, in particular for the purpose of better law making within the comitology framework. In this process industry stakeholders in particular called for stronger work in the area of market analyses. Assessments in terms of the enforceability and practicability aspect of legislation were also listed as a priority. Here, feedback from inspectors and enforcers in the field can be valuable for the regulatory cycle, when new legislation is developed or existing legal instruments are begin updated.

Another area of work is to provide technical support for the regular updating of existing EU waste legislation to technical and scientific progress. Moreover, the Commission could also be supported in updating EU legislation in order to remain in line with evolving international legislation and agreements.

This section reviews three different options:

- Support for the Commission for the updating of EU waste legislation
- Guidance to support enforcement
- Guidance to support waste management

These three options are not mutually exclusive: an agency (or other institutional setting) could work on all three.

## 10.1. Option 1. Support to the Commission for the updating of EU waste legislation

An EU agency could assist the Commission in the updating process of legislation in relation to market analyses, technical aspects, performing (extended) impact assessments and facilitating feedback from the enforcers.

The activities to be undertaken for updating EU waste legislation include:

- Assessment of the current waste management practises in Member States regarding the subject of the piece of legislation;
- Identification of option for improvement of the situation;
- Analysis of the costs and benefits of action and lack of action;
- Preparation of proposals for legislative texts;
- Dialogue with stakeholders and Member States during the whole process as described above.

The current situation is that the Commission undertakes the major part of these activities by itself, supported for the information gathering and assessment by private contractors. Member States also may provide information to be used in this respect. Also the IMPEL Practicability and Enforceability assessments reports are used for improving EU legislation.

These activities could, however also be undertaken by an Agency. Several Agencies already do assist the Commission in other areas of policy. For example the results of FVO inspections are used to develop EU legislation. Where appropriate, FVO may highlight areas where the Commission may need to consider clarifying or amending legislation or areas where new legislation might be required. This work clearly shows the synergy between inspections at EU level and updating the legislation. The EMSA assists the Commission in the preparatory work for updating and developing EU legislation in the fields of maritime safety and security, the prevention of pollution and response to pollution cause by ships, in particular in line with the development of international legislation in that field. The support provided by EMSA is of a technical nature and can include the analysis of research projects carried out in this field.

The analysis of this option identified the following key points:

- This option will be most effective if organised by a strong central office. This would provide a possibility to concentrate expertise in a stable setting. Organising through Commission services may in practice lead to the work being contracted out to external experts.
- The European network does not appear to be an appropriate setting: this would risk overstepping the role of the Member States in the legislative process, which is clearly defined in the Treaties.
- The option has strong synergies with training activities and with the activities to develop guidance for improvement of waste management. Also synergies with enforcement activities exist, because better legislation leads to better enforceability of the provisions, but this is an indirect impact.
- There is no need for specific legislation to implement these options. The end-result of work under this task will be a legislative proposal which will follow the normal decision making process within the EU institution.

## 10.2. Guidance for implementation and enforcement

This option can be divided into two areas: support to enforcement and support in relation to waste management. The development of guidance documents typically involves the following activities:

- Assessment of the provisions in a specific piece of legislation against problems with interpretation and implementation that occur in practise;
- Research to identify examples of good practise;
- Drafting of guidance documents;
- Dialogue with Member States and stakeholders during the development of the guidance documentation;
- Testing of the guidance documentation and regular monitoring of its usability and need for updating.

### *Option 2. Guidance to support enforcement*

To support the enforcement of EU waste legislation, an EU agency could develop guidance for interpreting certain provisions, clarifying definitions and describing key methods and approaches for enforcement work.

For the Waste Shipment Regulation, guidelines have been developed by the Waste Shipments Correspondents group, which is comprised of Member States officials: a total of seven guidelines are available (see: <http://ec.europa.eu/environment/waste/shipments/guidance.htm>). Several Member States have also published guidance on this topic. IMPEL TFS has published a manual for enforcement of waste shipments.

An EU agency could provide further guidance for enforcement in this area and – perhaps more importantly – for other waste sectors such as the inspection of waste management facilities (e.g. landfills and incinerators). Moreover, general guidance on inspections and enforcement could be part of the task.

The preliminary analysis of this option highlighted the following points:

- This option will be most effective if organised by a strong central office. This would provide a possibility to concentrate expertise in a stable setting. Organising this by re-enforcing the Commission services or via intergovernmental co-operation would be less effective.
- The option has strong synergies with training activities and enforcement activities. The guidance is specifically focussing on enforcement issues.
- There is no need for specific legislation to implement these options. The end-result of work under this task will be non-binding papers aiming to assist Member States and Stakeholders to better understand certain aspects and issues and help them improve their enforcement activities. This does not interfere with tasks of EU institutions under the Treaties.

### *Option 3. Guidance to support waste management*

In this case, an EU Agency would prepare guidance on waste management plans and strategies that are required by for example the Waste Framework Directive, such as strategies waste prevention and reduction. The goal is to help the Member States (and stakeholders) in their implementation process.

In the past, the European Environment Agency has prepared selected guidance to assist the implementation of waste legislation: for example, on biodegradable municipal waste (published in 2002).

The European Chemicals Agency prepares guidance on REACH for Member States and enterprises (ECHA also has a helpdesk on this topic). In a different model, Member States and the Commission worked together in the Common Implementation Strategy to prepare guidance across a broad range of topics for the implementation of the Water Framework Directive (the Commission supported this process through a framework consulting contract).

In their responses to the questionnaire, Member States and stakeholders suggested a broad range of topics for which guidance should be prepared, including the following:

- Strategies and plans for waste management, waste prevention and recycling
- Definitions of waste, by-products and second-hand items
- Use of economic and voluntary instruments
- Guidance on specific waste legislation
- Extended producer responsibility schemes
- Methodologies for waste data
- Development of common documentation, e.g. waste shipment records, disposal records and other areas

The analysis of this option identified the following key points:

- This option will be most effective if organised by a strong central office. This would provide a possibility to concentrate expertise in a stable setting. Organising this by re-enforcing the Commission services or via intergovernmental co-operation would be less effective.
- The option has strong synergies with training activities and with the activities to support the preparation of legislation. Also synergies with enforcement activities exist, because better legislation leads to better enforceability of the provisions, but this is an indirect impact.
- There is no need for specific legislation to implement these options. The end-result of work under this task will be non-binding papers aiming to assist Member States and Stakeholders to better understand certain aspects and issues and help them improve their enforcement activities. This does not interfere with tasks of EU institutions under the Treaties.

### 10.3. Summary of the assessment

The task to support the updating of EU waste legislation will help the Commission prepare more effective updates and changes to this body of law. This task will thus directly support the goal of better EU legislation. In the analysis, this task could be performed well by an agency as well as by the Commission: in the latter case, however, the Commission might contract work to external experts. This would mean that the knowledge gathered would not be institutionalised. The analysis raised questions about the role of an EU network in carrying out this task: although the network would be an independent organisation, it would be created by Member States. Assigning this task to the network might blur the clearly defined roles of the Commission and the Member States for proposing and approving new EU legislation.

Guidance documents will support Member States in improving their enforcement and implementation of EU waste legislation; they will also help to put in place a more uniform understanding of the legislation and its requirements. All three institutional settings could carry out this work.

All three tasks will have important synergies with other key tasks, including training (here, they could be integrated into training programmes) as well as supporting initiatives for enforcement.

All of the options should have effective but indirect results for the environment.

**Table 20. Assessment of the options for updating and clarifying EU waste legislation**

<b>Task</b>	<b>Environmental effectiveness</b>	<b>Technical and organisational aspects</b>	<b>Economic costs</b>	<b>Legal aspects</b>
1. Support to the COM for updating EU waste legislation	<b>++</b> Will help to develop more effective technical and other updates; results for environment are indirect	<i>Staff:</i> Expertise on specific areas of waste legislation <i>Setting:</i> Effective if carried out by an agency; COM may contract work externally; legal questions if hosted by a European network <i>Synergies:</i> Strong, esp. with training	€ All costs borne by EU budget	Legal questions for a network to carry out work No legal obstacles seen for agency or COM
2. Guidance to support enforcement	<b>++</b> Will support stronger and more uniform enforcement in MS; indirect results for environment	<i>Staff:</i> Expertise on enforcement <i>Setting:</i> All <i>Synergies:</i> Strong, e.g. with training and enforcement tasks	€ All costs borne by EU budget	No legal obstacles seen
3. Guidance to support waste management	<b>++</b> Will support stronger and more uniform management actions (e.g. plans and programmes) in MS; indirect results on environment	<i>Staff:</i> Expertise on specific areas of waste legislation and management <i>Setting:</i> All <i>Synergies:</i> Strong, e.g. with training and enforcement tasks	€ All costs borne by EU budget	No legal obstacles seen

#### 10.4. Expected results

The preparation of guidance documents will have an indirect result on a broad range of problems (see the table above).

Guidance on enforcement will help to strengthen capacities in some Member States, in particular regarding knowledge of enforcement methods. The guidance will also clarify issues regarding waste legislation and its application. As a result, the guidance will help to strengthen enforcement methods, in particular in Member States where they are weaker, thus reducing some of the problems seen such as illegal landfills and illegal waste shipments.

Guidance on implementation will assist Member States in areas such as developing waste management plans. The guidance could provide new technical methods as well as cost/benefit approaches and other methods of economic analysis. This should promote the development of stronger planning for the implementation of EU waste legislation.

Overall, work on guidance should help to disseminate a more uniform understanding of EU waste legislation across the European Union: as it is put into practice, it should assist in reducing the uneven playing field now seen across the EU.

The development of guidance could have strong synergies with work on enforcement and especially on training. For example, guidance documents could be an important part of a training curriculum.

Support for updating EU waste legislation will help to Commission and Member States develop better legislation. While this support will mostly affect technical updates, their implications for stakeholders – and for the environment – could be important. This task in particular will play a key role in terms of supporting the goal of Better Regulation.

**Table 21. Expected results of the tasks to prepare guidance on and support the updating of EU waste legislation**

KEY ELEMENTS OF THE IMPLEMENTATION GAP	Guidance/Updating		
	Support updating	Guidance: Enforcement	Guidance: Implementation
<b>Overall issues</b>			
Uneven playing field across the EU			
Low priority for implementation and enforcement in some MS			
Lack of human, budget and technical resources in some MS			
<b>Key areas of bad application seen in some MS</b>			
• Landfills that do not meet EU requirements			
• Unauthorised landfills			
• Other facilities that do not meet EU requirements			
• Illegal waste shipments			
<b>Potential areas of bad application</b>			
• Poorly working producer responsibility schemes			
• Poor planning (waste management, prevention)			
• Targets (e.g. reducing landfilling) not met			
<b>Enforcement problems seen in some Member States</b>			
Organisational issues:			
• Lack of resources for enforcement			
• Divided competence; poor co-ordination			
• For some: enforcement powers limited			
• Need for greater permitting / enforcement links			
Technical capacity			
• Poor understanding of EU legal documents			
• Lack of attention to waste chain			
• Poor knowledge of enforcement techniques			
Low levels of prosecution; low fines and sentences			
Different MS priorities and approaches to enforcement			
Low levels of joint enforcement activities among MS			
<b>Other implementation problems seen in some Member States</b>			
Poor capacity on technical issues			
• Methods of analysis: LCA, cost-benefit, etc.			
• Planning: waste management; prevention; etc.			
Differences in MS interpretations of EU legislation			

## 11. Options for other key tasks

The three areas described above were foreseen in the terms of reference for the study (though the specific tasks were developed based on information gathered and analysis carried out so far). From the questionnaires and the interviews several additional possible tasks were identified, based on comments from Member States officials and stakeholders concerning other possible areas where a Waste Agency could provide added value.

Three of the options focus on waste data. Currently a wide variety of data on waste management are gathered and assessed, but there are concerns about the quality of data, gaps in the area of enforcement data, and also gaps in interpreting and linking relevant and accurate data. Already two EU bodies (Eurostat and the European Environment Agency) play an important role in waste data gathering and assessment. Eurostat collects and publishes data on the basis of Regulation (EC) N° 2150/2002 on waste statistics. The data cover waste generation per type of waste and per source, waste treatment per type of waste and number and capacity of waste treatment installations.

The European Environment Agency assesses information on waste management in the EU, in its non-EU members of the agency such as Norway, and in collaborating countries in the Western Balkans. The agency publishes assessments and indicators. It is assisted by a Topic Centre on Sustainable Consumption and Production, which gathers and processes data and information on a number of subjects, including sustainable use of natural resources and sustainable waste management and prepares assessments and reports on a number of waste related issues, including reports on policy effectiveness. The Agency and the Topic Centre work together with EEA's member countries: each country appoints a national focal point and a national reference centre that serve as liaison between the Agency and the Member States. The flagship product of the Agency is a five yearly integrated assessment and outlook of the state of the European environment. The next version of this report is due in 2010.

EEA and the Topic Centre also produce a series of specialised studies. For example, they are currently studying waste prevention issues.

Better data and better assessments of these data are necessary to monitor progress, signal problems and assess the effectiveness of policies and measures.

The following tasks are reviewed:

- Assessment and monitoring of waste management plans, waste prevention programmes
- Data gathering for the assessment of separate collection and recycling targets
- Improving overall waste data
- Data gathering for enforcement
- Helpdesk function or knowledge centre on waste

### 11.1. Option 1. Assessment and monitoring of waste management plans and waste prevention programmes

The new Waste Framework Directive<sup>44</sup> requires Member States to develop waste management plans and waste prevention programmes. These are key instruments to foster improvement of waste management and to achieve the key objectives of waste management policy in the EU as a whole and in particular in its Member States. The Commission receives these plans and programmes and has to monitor if Member States have fulfilled their obligations under the Directive and assess if these plans

<sup>44</sup> Directive 2008/98/EC on waste

contain the elements required in the Directive. The information in the plans and programmes could also be used to identify good practice and be a source of information for developing guidance. This task is time consuming and it requires specific expertise to be able to assess the quality of the plans and programmes which is currently not sufficiently available within the Commission services.

Activities that could be part of this task include:

- Maintaining a database with information on the plans and programmes that have been submitted to the Commission with information on geographical coverage, coverage of subjects and expiry date;
- Assessments of individual plans and programmes to check compliance with the requirements in the Directive on waste;
- Assessments of specific aspects across different plans and programmes;
- Dissemination of results.

The analysis of this option identified the following key points:

- This option will be most effective if organised by a strong central office or by the Commission services themselves. A strong central office would provide a possibility to concentrate expertise in a stable setting.
- The European network does not appear an appropriate institutional setting: this would result in an organisation of Member States assessing Member State activities.
- The option has strong synergies with training activities, guidance on waste management and support of preparing legislation.
- There is no need for specific legislation to implement this option. If the assessments reveal failures in compliance with the legal provisions of the Directive on waste, the Commission would need to take action in accordance with the Treaties.

## 11.2. Option 2. Gathering and analysing data on recycling

Several EU waste directives contain quantitative targets. In most cases these are recycling targets, but also certain other quantitative targets are included, such as collection targets and targets for the reduction of biodegradable waste going to landfills. Such targets are found in the following legislation:

- The Waste Framework Directive (2008/98/EC)
- Landfill Directive (99/31/EC)
- Batteries Directive (2006/66/EC)
- WEEE Directive (2002/96/EC)
- End of Life Vehicles Directive (2000/53/EC)
- Packaging Directive (2004/12/EC)

Member States have to inform the Commission of their implementation of these directives via questionnaires or other forms of data transmission (set in regulations and decisions). The Commission verifies compliance with the targets on the basis of this information. Eurostat has created a data centre on waste data on its website where the data transmitted by Member States have been put together and made accessible to the public. In certain cases the European Topic Centre on Sustainable Production and Consumption has assessed these data.

Assessing Member States compliance with targets on recycling will involve the following activities:

- Collection of data from Member States on the basis of reporting obligations in EU Directives
- Assessment and evaluation of achievements against the targets
- Reporting of results

The analysis of this option identified the following key points. This option will be most effective if organised by a central office or by the Commission services themselves. A central office would



provide a possibility to concentrate expertise in a stable setting. Organising this task via intergovernmental co-operation would be inappropriate because it would imply that Member States would be directly assessing compliance with EU legislation; a task that should be done by the Commission. As Eurostat and EEA are already collect and assess waste data, they should be involved in carrying out this task.

There are synergies with the tasks on training, guidance for implementation and support for updating EU legislation. There is no need for specific legislation to enable setting up such a task.

### 11.3. Option 3. Improving overall waste data

All the activities that are identified as possible tasks in this report require data on the actual state of waste management in the EU. In order to assess if EU waste policy and legislation is meeting its environmental targets, a good information basis is required on the state of play regarding generation and treatment of waste.

The basis for gathering this information is laid down in the Waste Statistics Regulation (N° EC 2002/2150), which provides for a comprehensive legal framework for collection and transmission of data on generation and treatment of waste within the EU. In addition, the European Environment Agency collects specific additional data via its National Reference Centres in the Member States in order to assess the state of the environment and to assess effectiveness of policies.

Another field in which information is needed is information on the application of Internal Market related provisions in EU waste legislation. Several pieces of legislation, including the Packaging Directive and the Waste Shipments Regulations, have important Internal Market aspects and these currently are not assessed on a structural basis. Certain measures taken by Member States are implemented based on Article 114 TFEU (application of eco-design requirements, extended producer responsibility obligations). Their justification and impact are not monitored on a regular or permanent basis.

Activities that could be part of this task include:

- Analysis of existing data as collected via Eurostat and the European Environment Agency;
- Identification of data gaps and information needs and collection of data from other sources;
- Setting up and maintenance of databases on different aspects of waste management and enforcement subjects;
- Production of reports and assessments and dissemination of results.

The analysis of this option identified the following key points:

- A large overlap would exist with current activities of Eurostat, the European Environment Agency and the Topic Centre on Sustainable Production and Consumption; the added value of activities of an Agency would be limited;
- Thus, as Eurostat and EEA are already collect and assess waste data, they should be involved in carrying out this task.
- Synergies exist with the task of support of preparation of legislation as this task requires such additional information;
- There is no need for specific legislation to enable setting up such a task;
- Re-enforcing existing EU Agencies seems to be the best institutional setting provided that a close co-operation would be established with the entity that will take on the task of support of preparation of legislation.

#### 11.4. Option 4. Gathering and analysing data for enforcement

Another task was identified by respondents to the questionnaires: gathering new data and information to improve inspection and enforcement strategies. One action, for example, would be to make European risk and threat assessments to set common enforcement priorities and inform Member State enforcement actions. Some of this work is currently undertaken within IMPEL, though with Member State participation on a voluntary basis. Moreover, this existing work only covers part of the information needed to cover the information need to underpin effective enforcement strategies.

The type of information needed is not covered by the data and assessments as currently done by existing EU Agencies or institutions. It requires data from other sources, such as results of enforcement activities in Europe, risk assessment and risk appraisal of waste management activities; information on planning of enforcement activities etc.

Providing an EU information gathering and sharing system is thus identified as a possible key task. For example, an Agency could set up and manage an EU notification system for transfrontier shipments of waste. An EU-wide system would improve the quality of the data and the accessibility and thus provide a better insight in trends, flows and consequences of waste polices and thus the effect of waste law.

One similar example is the network for monitoring ships that travel along Europe's coasts and their cargo, SeaSafeNet, which EMSA is setting up. This will be linked to similar Member State information systems. The system is expected to support search and rescue operations as well as environmental and customs activities. EMSA's system is far more ambitious than the work proposed here, as it builds on strong databases that exist in a few Member States.

Collecting data to support enforcement would involve the following activities:

- Developing a data model for information on enforcement
- Collecting information on ongoing enforcement activities, agencies involved, results of activities
- Collecting information about risk assessment and risk appraisal to target enforcement actions
- Developing a database for this information
- Regular reporting on the results

The analysis of this option identified the following key points:

- This option will be most effective if organised by a strong central office. This would provide a possibility to concentrate expertise in a stable setting.
- The task is significantly different from existing data gathering and assessment carried out by Eurostat and EEA; moreover, the work requires strong knowledge of waste enforcement. As a result, these bodies need not play a central work in carrying out the task.
- The option has strong synergies with training activities, with the enforcement activities and to develop guidance for enforcement.
- Though this option could be put in place without new legislation, a revision of the Waste statistics regulation may be the most effective approach. However, installing a mechanism of exchange of information between Member States and the institution taking up this task would be required.

## 11.5. Option 5. Helpdesk function or knowledge centre on waste

Despite the development of guidelines, interpretation questions will continue to arise when applying and implementing the waste legislation. An Agency could act also as a helpdesk to help Member States (and possibly the private sector) with specific interpretation questions. An analogy is seen at the European Chemicals Agency, ECHA, which has established a helpdesk to support national REACH helpdesks and to support the operators affected by the REACH legislation that are based outside the EU.

Setting up a helpdesk or knowledge centre on waste might be a suitable way of fulfilling these information needs. Currently the information is only available via a wide variety of sources and its viability may differ. For information on waste data, Eurostat and the European Environmental Agency are good sources of information. For questions on interpretation of certain provisions, the Commission services would be the first to contact. A one-stop shop for such information might be useful.

Activities that could be part of this task include:

- Maintaining a database with information on waste management practises, legislation and auxiliary information;
- Collecting and replying to questions from stakeholders (helpdesk);
- Providing assistance on solving specific problems regarding implementation of EU waste legislation (knowledge centre).

The analysis of this option identified the following key points:

- This option will be most effective if organised by a strong central office. This would provide a possibility to concentrate expertise in a stable setting. Re-enforcing the Commission or organising this task via intergovernmental co-operation would be less effective.
- The option has strong synergies with all other activities.
- There is no need for specific legislation to implement this option.

## 11.6. Summary of the assessment

All of these tasks would work indirectly: they would provide information to support implementation and enforcement work in Member States or strengthen other tasks proposed at EU level. Task 1 will directly support the Commission in its work. In other words, most of these tasks have strong synergies with other work.

The first two tasks support the Commission in its assessments of Member State actions required under the EU waste legislation (plans and programmes for option 1 and recycling targets for option 2). As such, a European network of Member States is not seen as an appropriate institutional setting: this would be akin to Member States controlling themselves. Both tasks could be carried out by the Commission: however, if the option 1 is contracted to outside experts, the knowledge gained will not be retained well within a central institution.

Options 2, 3 and 4 would strengthen data. Options 2 and 3 are closely related to data collection and assessment carried out by Eurostat, EEA and EEA's Topic Centre: to be most effective, these institutions should remain closely involved. Option 4 represents a largely new area of data, on enforcement issues. Here, synergies are stronger with the enforcement, training and guidance tasks, and this work could be carried out effectively by a new agency.

While none of the tasks require new legislation, those for data gathering (options 2, 3 and 4) may be most effective if the Waste statistics regulation is revised.

**Table 22. Assessment of the other key options**

Task	Environmental effectiveness	Technical and organisational aspects	Economic costs	Legal aspects
1. Support for assessment of waste mgmt plans, waste prev. progs.	<p style="text-align: center;">+</p> <p>Will strengthen COM assessments and identify best practice</p> <p>Indirect results for environment</p>	<p><i>Staff:</i> Waste management experts</p> <p><i>Setting:</i> Most effective if carried out by an agency; COM might contract work to outside experts; legal issues for the network</p> <p><i>Synergies:</i> With training and guidance; possibly with reviews of enforcement systems</p>	<p style="text-align: center;">€€</p> <p>Costs borne by EU budget</p>	<p>Legislation not needed to put task in place</p> <p>Not appropriate for the European network (MS network would assess MS progress)</p>
2. Gathering and analysing data on recycling	<p style="text-align: center;">+</p> <p>Will strengthen reviews of MS progress to targets in waste legislation</p> <p>Indirect results for environment</p>	<p><i>Staff:</i> Statistics and recycling expertise</p> <p><i>Setting:</i> Most effective if carried out at EU level; by or with offices currently working on waste data (EEA and Eurostat)</p> <p><i>Synergies:</i> With training and assessment work</p>	<p style="text-align: center;">€</p> <p>Costs borne by EU budget</p>	<p>No legal obstacles, but more effective if Waste statistics regulation is revised</p> <p>Not appropriate for the European network (MS network would assess MS progress)</p>
3. Improving overall waste data	<p style="text-align: center;">+</p> <p>Will strengthen information base for reviews, assessments and policy evaluation</p> <p>Indirect results for environment</p>	<p><i>Staff:</i> Statistics and waste expertise</p> <p><i>Setting:</i> Best carried out by offices currently collecting waste data</p> <p><i>Synergies:</i> Few</p>	<p style="text-align: center;">€</p> <p>Costs borne by EU budget</p>	<p>No legal obstacles, but more effective if Waste statistics regulation is revised</p>
4. Gathering and analysing data for enforcement	<p style="text-align: center;">++</p> <p>Will strengthen information base for reviews, assessments and coordination of enforcement activities</p>	<p><i>Staff:</i> Expertise in enforcement and statistics</p> <p><i>Setting:</i> Most effective if carried out at EU level</p> <p><i>Synergies:</i> Strong, esp. with enforcement activities</p>	<p style="text-align: center;">€</p> <p>Costs borne by EU budget</p>	<p>No legal obstacles, but more effective if Waste statistics regulation is revised</p>
5. Helpdesk/ knowledge centre on waste	<p style="text-align: center;">+</p> <p>Will support more uniform implementation and enforcement of EU waste legislation in MS</p>	<p><i>Staff:</i> Expertise across all areas of EU waste legislation</p> <p><i>Setting:</i> All</p> <p><i>Synergies:</i> Strong, e.g. with training and guidance</p>	<p style="text-align: center;">€</p> <p>Costs borne by EU budget</p>	<p>No legal obstacles foreseen</p>

## 11.7. Expected results

These additional tasks are expected to have mainly indirect results. The assessment of Member State plans and programmes will help to reinforce these programmes and their implementation. In doing so, the assessment may help Member States achieve targets set in EU waste legislation.

Better data on recycling will help to address these targets, and also help the assessment of relevant plans and programmes.

A number of Member State officials and stakeholders highlighted the need for better overall waste data in their questionnaire responses and in other comments. This task will improve implementation and enforcement across the board: however, its results in specific areas are difficult to pinpoint.

Data for enforcement would directly support inspection and control activities – and thus should help to reduce the number of illegal waste facilities and illegal waste shipments across the EU. This data will also be valuable in supporting cooperation among Member States on enforcement. This task would have useful synergies with other tasks, including those on training, enforcement and guidance.

The helpdesk and knowledge centre would help Member States in a broad range of activities to implement and enforce EU waste legislation.

**Table 23. Expected results of the other tasks**

KEY ELEMENTS OF THE IMPLEMENTATION GAP	Enforcement				
	Assessing WMPs / WPPs	Data on recycling	Overall waste data	Data for enforcement	Helpdesk + knowledge centre
<b>Overall issues</b>					
Uneven playing field across the EU					
Low priority for implementation and enforcement in some MS					
Lack of human, budget and technical resources in some MS					
<b>Key areas of bad application seen in some MS</b>					
• Landfills that do not meet EU requirements					
• Unauthorised landfills					
• Other facilities that do not meet EU requirements					
• Illegal waste shipments					
<b>Potential areas of bad application</b>					
• Poorly working producer responsibility schemes					
• Poor planning (waste management, prevention)					
• Targets (e.g. reducing landfilling) not met					
<b>Enforcement problems seen in some Member States</b>					
Organisational issues:					
• Lack of resources for enforcement					
• Divided competence; poor co-ordination					
• For some: enforcement powers limited					
• Need for greater permitting / enforcement links					
Technical capacity					
• Poor understanding of EU legal documents					
• Lack of attention to waste chain					
• Poor knowledge of enforcement techniques					
Low levels of prosecution; low fines and sentences					
Different MS priorities and approaches to enforcement					
Low levels of joint enforcement activities among MS					
<b>Other implementation problems seen in some Member States</b>					
Poor capacity on technical issues					
• Methods of analysis: LCA, cost-benefit, etc.					
• Planning: waste management; prevention; etc.					
Differences in MS interpretations of EU legislation					



### **III. Description of a possible Waste Implementation Agency**





## 12. The outline of a new agency

Part II of this report describes and analyses a series of tasks to address the current implementation and enforcement gap concerning EU waste legislation.

Now in Part III – and in particular in this section – a broad-based initiative is proposed in which all of the tasks described in Part II would be carried out. A central element of this proposal is the creation of a new EU Agency. This new agency would carry out most of the tasks identified: the analysis in Part II shows that an agency would be the most effective institutional setting for most of the tasks to address the implementation and enforcement gap. The analysis also shows that creating an agency for waste implementation is legally feasible.

This section sets forth an outline for a Waste Implementation Agency. It identifies the key tasks that this agency would undertake, based on those analysed in Part II of this report, and it provides an overview of the staff and budget requirements. A mission statement for the agency is also proposed.

The Waste Implementation Agency would lead work on nearly all tasks described in the previous section. Other institutional settings, however, have specific strengths with regard to a few tasks. For this reason, the proposal calls for the European Commission, a European Network and existing EU agencies to take on or contribute to specific areas of activity.

The proposed Agency outlined here is the study's recommended approach. Section 13, which follows, briefly explores two alternatives for comparison: the first looks at a smaller, less ambitious agency, and the second alternative considers an initiative that works within existing institutional settings and does not create a new agency.

### 12.1. Allocation of tasks

In this recommended approach, all of the tasks explored in Part II would be carried out. A new EU Agency would undertake most of these, including all of the tasks for training, most of those for enforcement, most of those for guidance and support for the updating of EU waste legislation and several other key tasks as well (see the table below).

The Commission will take on one major new task: hosting a European body for inspections. As noted in Part II, this body would be most effective if hosted by the Commission. Here it would have a clear EU role. If a European network were to host this European body, this would mean that the network bringing together Member States would carry out direct inspections within the same countries. As a result, the ambition of the inspections is likely to be reduced. Although an agency could also legally host the body, the strong representation of Member States on its management board might limit the direct inspections and controls of facilities and sites across the EU (the box in section 12.2, below, provides further information on the management boards of existing agencies).

A European network could play an important role in supporting several tasks, notably those for information exchange on training and enforcement, as well as information exchange on enforcement as well the coordination of joint enforcement activities among Member States. A network could also support work to gather information related to enforcement. Thus, a network will become a key partner for the new agency.

**Table 24. Allocation of tasks among institutions**

	EU Agency	Commission offices	European networks	Other	Notes
<b>Training</b>					
Direct training					
Train-the-trainers					
Coordination/exchange					
<b>Enforcement</b>					
Information exchange					
MS reviews					
Coordinated activities					
European body for inspections					
<b>Guidance/updating</b>					
Support: updates to leg.					
Guidance: enforcement					
Guidance: implementation					Role for EEA/ETC
<b>Other tasks</b>					
Assessment: MS plans					Role for EEA/ETC
Data on recycling					Eurostat and EEA
Data to support enforcement					
Overall waste data					Eurostat and EEA
Helpdesk/knowledge centre					

**Note:** Dark green indicates lead organisation and light green supporting organisations

The EEA and its Topic Centre would have a supporting role in preparing guidance on implementation (the Topic Centre has in the past prepared guidance on waste management plans), and in the assessment of related Member State plans. Tasks to improve data, including data on recycling, would be carried out by Eurostat, which currently collects waste data, together with EEA, which carries out assessments based on this data. The new waste implementation agency, on the other hand, would lead on data to support enforcement, perhaps with support from European networks: this would be a new area for data collection and one closely related to enforcement work.

## 12.2. Mission, mandate and governance of a Waste Implementation Agency

The Agency would have the following mission:

### Proposed mission statement

The European Waste Implementation Agency is dedicated to promoting uniform, effective implementation and enforcement of EU waste legislation across the European Union in order to protect human health and the environment. The Agency's activities support the EU Member States and European Commission in their respective roles.

Its mandate would be to work under the supervision of the European Commission and Member States, and in cooperation with relevant Commission services, Agencies and a European network, to undertake activities with the following objectives:

- a) Promote better enforcement of EU waste legislation by Member States via training, exchange programmes and via information on and guidance for enforcement activities;

- b) Improve Member States' enforcement capacities via reviews of their enforcement systems and coordinated enforcement activities;
- c) Develop guidance on the interpretation and application of existing EU waste legislation with the view of its uniform application in the EU;
- d) Prepare studies to support the adaptation of existing EU legislation to scientific and technical progress, also with the aim to facilitate implementation via better regulation;
- e) Prepare studies that support the Commission in the assessment of Member State waste management plans and waste prevention programmes against the requirements in Directive 2008/98/EC on waste;
- f) Assess data and information to support the Commission in reviewing the achievements of Member States in reaching recycling and recovery targets as included in EU waste legislation;
- g) Assist Member States by operating a helpdesk and knowledge centre on issues related to implementation, application and enforcement of EU waste legislation

The management board of the agency will consist of one representative of each Member State, as well as several representatives from the European Commission (this would be similar to the structure of existing agencies – see the box below). It would be valuable for Candidate Countries<sup>45</sup> as well as EFTA countries<sup>46</sup> to participate in the agency: this would strengthen coordination on common issues, such as enforcement of waste trade requirements. For the Candidate Countries, participation in the agency's activities would strengthen their overall implementation of the *acquis* for waste. Thus, candidate and EFTA countries would also be members of the agency and each would nominate one representative to its board.

#### **The management boards of three existing EU Agencies: ECHA, EEA and EMSA**

The management board of the European Chemicals Agency (ECHA) has the following structure:

- 27 board members are nominated by the European Council (each Member State nominates one member)
- The European Commission nominates up to 6 board members
- The European Parliament appoints 2 independent persons as board members

The European Environment Agency has a similar structure. EEA has 32 member countries, including all EU Member States plus Iceland, Lichtenstein, Norway, Switzerland and Turkey: each nominates one member (typically a high-level official such as a director-general in the national ministry responsible for environment). The European Commission designates two members. The European Parliament appoints “two scientific personalities particularly qualified in the field of environmental protection ... chosen on the basis of the personal contribution they are likely to make to the Agency's work.” (Art. 8(1) of Regulation 401/2009).

The European Maritime Safety Agency has an Administrative Board whose members are comprised of representatives of each EU Member State and of Iceland and Norway, four members named by the European Commission and four members appointed by stakeholders (industry and trade unions).

Sources:

Web sites of ECHA ([www.echa.europa.eu](http://www.echa.europa.eu)), EEA ([www.eea.europa.eu](http://www.eea.europa.eu)) and EMSA ([www.emsa.europa.eu](http://www.emsa.europa.eu))  
REGULATION (EC) No 401/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (Codified version)

<sup>45</sup> The EU currently has three Candidate Countries: Croatia, the Former Yugoslav Republic of Macedonia, and Turkey

<sup>46</sup> The European Free Trade Association (EFTA) has four Member States: Iceland, Liechtenstein, Norway and Switzerland.

As regional and local governments play an important role in implementing EU waste legislation, the Committee of the Regions could nominate up to three regional or local government officials for the management board (the participation of regional and local representatives would mark a difference from the management boards of comparable existing EU agencies). The European Parliament would nominate a similar number of board members, who should be independent European experts on waste issues (analogous to ‘scientific personalities’ that the Parliament names to the EEA board). A European network and the European Environment Agency might each nominate an observer who participates in board meetings.

The Agency would work on the basis of a multi-annual work programme and a yearly work plan to be prepared by the director of the Agency and to be approved by the management board of the Agency.

### 12.3. Estimate of staff required

A rough estimate of the total staff and budget implications of a Waste Agency has been prepared, together with the staff and budget for related new initiatives carried out by other institutions. These figures have been calculated using the following information:

- Estimations of the staff time required for the different tasks;
- Estimations of cost for staff and operational costs based upon a comparison of such costs in selected other EU Agencies.

It should be noted that these estimates also depend on decisions regarding the level of activity that the Agency would undertake: for example, the number of guidance documents per year; number of Member States reviews, and the number of training activities organised. Recommended estimates for each of the key areas are described in this section.

The number of staff required for the different tasks is thus estimated based upon the activities to be undertaken. The figures presented here take into account only the operational (professional) staff required. The budget overheads and administrative support staff needed are then estimated as a function of the total number of operational staff.

It should however be kept in mind that these figures are preliminary and are presented for an initial discussion on the proposal. More detailed and accurate estimates would require further work on the basis of such discussion (and would be made following the completion of the current study). The actual amount of staff needed for the different options can only be determined in a more accurate way once decisions have been taken about the way forward, and thus will be made after the completion of this study. These data could differ significantly from the estimations presented in this section. These estimations are therefore presented to get an indication of the staff and cost implications of the different options.

### Enforcement

*The European body for carrying out direct inspections and controls* would be hosted by the Commission itself, possibly in a new unit to be created within DG Environment. The following activities would be undertaken:

- the adoption of an EU control strategy in order to determine the national systems to be controlled, the Member States to be inspected and the priority areas to be dealt with (e.g. shipment of radioactive waste, recycling facilities, etc.);
- the establishment of common standards to be followed by the national inspectorates;

- the adoption of a multi-annual work program of inspections and the coordination of specific auditing activities through a central body; and
- the hiring of a team of experienced waste inspectors at the EU level to perform the controls.

At this point of time it is difficult to estimate the number of inspections that would be undertaken by the European body. They would carry out controls of a limited number of installations within the Member States to check the level of compliance. It is estimated that an effective team would require at least 15 inspectors for this operational work.

The *reviews of Member States enforcement systems* would involve the following activities:

- The definition the scope, modalities (including frequency) and institutional arrangements of review processes, including the conditions under which officials from either Member States or an EU body can participate in the review of activities of other Member States
- Agreement on common standards on the basis of which would be undertaken;
- Establishment of a rolling work plan identifying priority issues/data/facilities subject the reviews;
- Arrangement for visits in country for conducting the reviews at governmental organizations (and sites);
- The sharing of experience and know-how, through regular reporting meetings and well as through the detachment of national officials;
- Preparation and distribution of review findings
- Agreement on follow-up measures, such as action plans for improvement in the event negative results were found
- The management, from an administrative viewpoint, of the practical organization of the reviews through a office/secretariat in charge of coordinating activities and centralizing data and findings;
- The revision of the common standards reflecting enforcement best practices in the light of experiences gained through the reviews;

It is assumed that the overall enforcement system in each Member State will undergo a full review once every three years (i.e. 9 reviews per year). In addition, thematic reviews focussing on specific issues will be carried out for the Member States in the intervening years (i.e. 18 reviews per year). These activities would require six staff members within the Agency.

*Coordinated control and inspection* would involve the following practical activities:

- Adoption of an EU wide Enforcement Strategy (through legally or non legally binding decisions);
- Elaboration of JDPs
- Coordination of planning through a central office, secretariat or body;
- Detailed planning for individual actions;
- Co-ordinated, joint inspection and control activities carried out by MS inspectors;
- Review of the results and lessons learned;
- Sharing experience and know-how gained through reports, joint meetings and follow-up actions.

The activities will involve 10 joint inspection programmes per year; most of these programmes would run (intermittently) for several years. The agency activities would require 10 staff members, supported by one official from a Member State working under the European network as senior advisor.

An *information exchange and exchange of inspectors programme* would involve the following activities:

- Regular meetings of national competent authorities and other bodies with enforcement responsibilities;

- Establishment of a work programme identifying priority enforcement issues to be tackled or procedures to be improved;
- Organization of thematic workshops on enforcement matters with country case studies;
- Elaboration of background documents and reports on enforcement issues and cooperation activities, including best practices guidelines on enforcement;
- Organisation of joint inspection activities on a voluntary basis;
- Sharing of information on monitoring results and inspection findings, in particular on activities or installations having negative transboundary impacts;
- Exchange of views on opportunities to promote and monitor compliance in a more uniform manner across the EU, including on non compliance measures (sanctions and penalties) to avoid any forum shopping.

It is estimated this would require 4 staff members at the agency. These meetings would be organised in close cooperation with the European network, where the equivalent of one Member State official would be required (it is expected that the work would in practice involve several officials working part-time).

Work on the three enforcement tasks led by the Agency would in practice be closely linked. The group of Member State enforcement representatives would review plans and results of the reviews as well as the coordinated control and inspection programme. Where the reviews highlight areas for improvement in a Member State, activities carried out under the information exchange and under the coordinated control and inspection programme could help to strengthen technical capacity. Priority areas for training (and possibly guidance as well) could also be identified through the reviews.

## Training

*Direct training* is the most time demanding task in this area. The activities involved in organising direct training on waste will likely include the following:

- Identification of a series of training courses (involving a review of the needs plus discussions with Member States, Commission and possibly other stakeholders)
- Potentially, a survey of Member State training work to identify best practices that can be used as models
- For each training course, preparation of the programme, materials and related plans
- Engagement of trainers
- Organisation of the courses
- Regular follow-up activities, including evaluation of the results

It is estimated that the Agency would run 24 training courses per year requiring 6 members of staff.

For a *train-the-trainers programme* less staff is needed. The activities involved in organising train-the-trainer programmes will likely include the following:

- Identification of a series of training courses (involving a review of the needs plus discussions with Member States, Commission and possibly other stakeholders)
- Potentially, a survey of Member State training to identify best practices to be used as models
- For each training course, preparation of the programme, materials and related plans
- Engagement of trainers
- Organisation of the courses
- Regular follow-up activities, including evaluation of the results of training carried out in the Member States by the new trainers

It is estimated that the Agency would run 12 training courses per year require 3 members of staff.

For the *coordination and exchange programme* activities include the following:

- Review of current national training programmes and identification of best practices
- Organisation of an expert group of Member State officials to exchange information on training methods and programmes and plan exchange activities
- Support for exchange programmes, such as the working visits for inspectors and trainers from one Member State to provide training in another, as well as the participation of prospective trainers in courses provided by another Member State
- Translation of MS training materials for use in other countries

Based upon the organisation of three meetings per year and two exchange programmes per month, a total of three additional staff members are required within the Agency. Moreover these are supported by one staff member from a Member State working via a European network.

In practice, these three tasks would work in synergy as part of a coordinated training programme. For example, the technical group of Member State experts would also review plans and results of the direct training and train-the-trainer programmes. Moreover, the Agency's activities for training would be linked to its work programme on enforcement.

### **Guidance and updating of EU legislation**

*Support for the Commission to update EU waste legislation* would involve the following activities:

- Assessment of current practices in Member States
- Monitoring of technical and scientific advances
- Identification of options for improvement
- Analysis of costs and benefits of action and lack of action
- Preparation of proposals for legislative texts
- Dialogue with stakeholders and Member States during this process

Based on the assumption that approximately six pieces of technical legislation would require updating per year, it is estimated that this task would require three members of operational staff.

*Development of guidance* both for implementation of EU legislation and guidance on enforcement would involve the following activities:

- Assessment of legislation against problems as they occur in practise
- Identification examples of good practise
- Drafting guidance documents
- Dialogue with Member States and stakeholders
- Testing of guidance
- Monitoring of usability and need for updating

Each year, four sets of guidelines will be produced for both areas of work (i.e. enforcement and implementation) and existing guidelines will be updated. This would require four members of operational staff within the Agency. For the guidance on enforcement one Member State official working via the European network would serve as advisor.

### **Other areas of work**

The *assessment of waste management plans and waste prevention programmes* would involve the following activities:

- Maintenance of a database with status of plans and programmes
- Assessment and evaluation of individual plans and programmes
- Assessment of specific aspects across different plans or programmes
- Dissemination of results

It is assumed that there will be around 30 prevention plans and around 300 waste management plans to be assessed per year (many of these plans are prepared at regional level). This would require 5 members of staff in the Waste Agency. Support from the EEA and its Topic Centre for assessing relevant data will require 0.5 members of staff (total).

*Assessing Member State compliance with targets on recycling* will involve the following activities:

- Collection of data from Member States on the basis of reporting obligations in EU Directives
- Assessment and evaluation of achievements against the targets
- Reporting of results

This will require 0.25 members of staff within the Agency and 0.25 members of staff within the EEA/ETC for support in assessment of data.

*Collecting data to support enforcement* would involve the following activities:

- Developing a data model for information on enforcement
- Collecting information on enforcement activities, agencies involved, results of activities
- Collecting information about risk assessment and risk appraisal to target enforcement actions
- Developing a database for this information
- Regular reporting on the results

This will require 0.25 members of staff within the Agency and 1 official from a Member State working via the European network to do the conceptual work and develop the reporting mechanism. Also 0.25 members of staff would be required within the EEA/ETC for support of the process.

*Collecting additional data on waste management* would involve the following activities:

- Analysis of existing data from Eurostat, EEA
- Identification of data gaps, information needs and collection of data from other sources
- Setting up and maintaining databases
- Production of reports and assessments and dissemination of results

Within the Agency this will not require operational staff. However, the coordinator for information management within the Agency will liaise with Eurostat and EEA to propose improvements needed for waste data and to identify new areas of data that are needed. In Eurostat this work would require 0.5 additional members of staff.

The *help desk and knowledge centre* would involve the following activities:

- Maintaining a database on waste management, legislation and auxiliary information
- Collecting and replying to questions from stakeholders (helpdesk)
- Assistance on solving specific problems (knowledge centre)

These activities would require 3 members of staff within the Agency.

### **Overhead, management and administrative support staff**

Overhead, management and administrative support staff are estimated to be equivalent to 25% of the operational staff. This is in line with the situation in other EU Agencies.

For the Waste Implementation Agency – with 47.5 members of operational staff – this would imply 11 members of administrative support and overhead. This would include 1 director, 2 coordinators, 1 human resources officer, 1 IT officer and 6 staff members for administrative support. For the European body for inspections within the Commission Services, there would be 1 head of unit, 1 legal officer to follow up infringement cases (most likely within DG Environment), 1 officer for administrative organisation and 3 staff members for administrative support. To oversee the activities



by Member State officials working under the European network, 2 additional coordinators would be required within the secretariat.

**Table 25. Overview of staff requirements**

Task	Agency	Commission services	European networks	MS officials working in Eur. network	Other (EEA/ETC, Eurostat)	Total staff
<b>Enforcement</b>						
European body for inspections		15				15
MS reviews	6					6
Coordinated activities	10			1		11
Information exchange	4			1		5
<b>Training</b>						
Direct training	6					6
Train-the-trainers	3					3
Coordination/ exchange	3			1		4
<b>Guidance/ updating</b>						
Support: updates to leg.	3					3
Guidance: enforcement	2			1	0.25	3.25
Guidance: implementation	2				0.5	2.5
<b>Other tasks</b>						
Assessment: MS plans	5				0.5	5.5
Data on recycling	0.25				0.25	0.5
Data to support enforcement	0.25			1		1.25
Overall waste data		0.5			0.25	0.75
Helpdesk/knowledge centre	3					3
<b>Totals</b>						
Total operational	47.5	15.5	0	5.0	1.5	69.75
Admin and overhead	11	6	2	0	0	19
<b>Total staff</b>	<b>58.5</b>	<b>21.5</b>	<b>2</b>	<b>5</b>	<b>1.75</b>	<b>88.75</b>

### Total staff requirements

The table above provides an overview of the staff requirements discussed in this section. The Agency would have almost 50 operational staff. The Commission would need more than 20 new staff members – most of these for the European body for inspections, with others to support their work and also to work and coordinate with the Agency on other tasks. Through the European network, Member State officials would provide advice and coordination on several activities: here, a total of five professionals are needed, though it is expected that this will be spread among many officials working part-time through the network. EEA, its Topic Centre and Eurostat would need 1.5 new staff members in total.

These estimates do not include the time of Member State officials attending meetings. Nor does it include time spent on coordinated enforcement activities: here, it is expected that such activities will use existing enforcement resources, which would become more effective through cross-border coordination and action.

### Expertise required within the Agency

The Agency's operational staff members need to be experienced experts with at least 5 to 10 years of professional experience in the field of waste management and enforcement. Approximately 50% of the staff should have experience in enforcement. The remaining staff should be policy officers and administrators. It is expected that most of the staff will have a technical background, though the agency will also require some staff members with a legal background and several with an economics background. A skilled human resources officer will be needed. Also, at least one person should have a data management background.

## 12.4. Estimated budget

The total cost for the proposal is estimated at about 16.4 million Euros annually (see the table below). The new agency accounts for most of this cost, with a budget of about 11 million Euros per year. The Commission requires more than 4 million Euros per year in additional costs, most for the costs of the European body for inspections. Member States would have 0.4 million Euro costs for their staff to be attributed to the tasks to be done by them in the European Network.

The largest share of the costs goes for staff resources, though operational costs, building rental and other overheads are also important budget items (see Annex IV for details on the methodology and the budget).

**Table 26. Estimated budget for the proposal**

Institution	Annual budget (million Euros)
Community Agency	11
Commission services	4.1
European network secretariat	0.3
MS officials working in the network	0.7
Other (EEA/ETC, Eurostat)	0.3
<b>Total budget</b>	<b>16.4</b>

In the start-up period (the first two years), a new Agency will have higher costs that are related to:

- Initial recruitment of large number of staff
- Allowances to new staff to move to another country
- Training of new staff
- Initial investment in furniture, IT, office equipment and some equipment related to operational enforcement activities
- Development of methodologies and establishment of data bases

These additional costs are estimated to be equivalent to around 15% of the total annual budget: in other words, an additional 1.6 million Euros is needed for each of the first two years for the Agency

It should be emphasised that these are broad estimates, based on information available as well as a series of assumptions (see Annex IV for further details). Key areas of uncertainty for the budget include the following:

- The amount of work carried out per staff member
- Possible synergies among the tasks
- The level of staff salaries, which varies somewhat among existing EU agencies (for these calculations, an average of the agencies reviewed was used)
- The exact determination of the work to be attributed to the Agency and the different other institutions working together with the Agency

For this reason, the figures presented in this section should be seen as estimates. Taking into account the uncertainties listed here as well as other possible changes, the actual budget could range up to 25% above or below these estimates. On this basis, the overall number of new staff needed would range between 66 and 110; and the total budget between €14.1 and 23.5 million. As noted above, following discussions on this proposal, further work could then specify with greater accuracy the activities, staff requirements and overall budget needs.

## 12.5. Expected results

This section summarises and describes further the results of the actions to be carried out. It then links these results with the key areas of the implementation and enforcement gap identified in chapter 6 and discusses the broader results that may be achieved in terms of environmental and health.

### Immediate results

The following work would be carried out under the enforcement tasks:

- The European body for direct inspections and controls of facilities and sites would visit each Member State at least once each year, and in addition would carry out at least five further inspections per year in response to citizen complaints and other information.
- Each year, 9 full Member State reviews will be carried out plus 18 specific reviews (i.e. on specific areas of legislation). Thus, each Member State would receive a review mission each year; every three years, this would be a comprehensive review. Two meetings per year would share results of recent reviews with officials from all Member States.
- Coordinated inspections and controls would be carried out with at least 15 Member States each year. In addition, three meetings a year would be held to share results.
- The task for information exchange would organise meetings to address specific issues related to individual pieces of EU waste legislation: a total of 15 meetings per year would be held, involving officials from all Member States. A series of reports and analyses would be prepared for these meetings.

For the training tasks:

- An average of two *direct training* classes of two to three days each would be held each month for Member State officials, for a total of 24 training classes each year. The topics would vary: both enforcement and implementation issues would be covered. The agency might prepare about half a dozen 'core' courses and then several specialised courses. About 20 officials would attend each course: as a result, close to 500 officials would be trained each year (the numbers might be slightly less if some officials attend more than one course each year). This programme would seek to train officials working for national and regional waste management and waste enforcement bodies.
- For the *train-the-trainer* programme, an average of one course a month would be held, or a total of 12 each year. These courses would be longer than the direct training programmes: at least three days each. Moreover, attendance would be kept at a lower level: about 10 prospective trainers would attend each course. This programme would have the same core and specialised courses as the direct training. The goal is to train a few trainers for each Member State: about 60 officials would each year be trained in at least two courses each. These officials would then be expected to organise up to 10 training sessions each year, reaching a total of about 500 officials across the EU, including officials at national, regional and local levels (trainers in small Member States may not reach as many officials as those in medium and large ones).
- The *information exchange* would organise up to three meetings a year for Member State officials, which would review exchange programmes as well as the results of the training organised by the agency. Through this activity, an estimated two exchanges a month would be organised.

For updating legislation and providing guidance:

- Support would be provided to update six pieces of technical legislation per year
- Four guidance documents on enforcement would be prepared or revised each year
- Four guidance documents on implementation would be prepared or revised each year

In other areas:

- About 30 prevention plans and around 300 waste management plans to be assessed per year (many of these plans are prepared at regional level)
- New data would be provided to support assessment of recycling targets
- Overall waste data would be improved
- Data to support EU wide assessments and activities of enforcement would be produced
- A helpdesk would support Member State implementation activities

### Addressing the implementation gap

The tasks carried out by the waste implementation agency, together with those by other institutional settings, are expected to tackle directly many of the elements of the implementation gap that have been identified (see the table below).

**Table 27. Areas where the proposal is expected to address the implementation gap**

KEY ELEMENTS OF THE IMPLEMENTATION GAP	Results expected
<b>Overall issues</b>	
Uneven playing field across the EU	
Low priority for implementation and enforcement in some MS	
Lack of human, budget and technical resources in some MS	
<b>Key areas of bad application seen in some MS</b>	
• Landfills that do not meet EU requirements	
• Unauthorised landfills	
• Other facilities that do not meet EU requirements	
• Illegal waste shipments	
<b>Potential areas of bad application</b>	
• Poorly working producer responsibility schemes	
• Poor planning (waste management, prevention)	
• Targets (e.g. reducing landfilling) not met	
<b>Enforcement problems seen in some Member States</b>	
Organisational issues:	
• Lack of resources for enforcement	
• Divided competence; poor co-ordination	
• For some: enforcement powers limited	
• Need for greater permitting / enforcement links	
Technical capacity	
• Poor understanding of EU legal documents	
• Lack of attention to waste chain	
• Poor knowledge of enforcement techniques	
Low levels of prosecution; low fines and sentences	
Different MS priorities and approaches to enforcement	
Low levels of joint enforcement activities among MS	
<b>Other implementation problems seen in some Member States</b>	
Poor capacity on technical issues	
• Methods of analysis: LCA, cost-benefit, etc.	
• Planning: waste management; prevention; etc.	
Differences in MS interpretations of EU legislation	

Note: dark green = direct effect; light green = indirect effect

The table uses a qualitative approach, as it has not been possible to obtain quantitative data for a forecast of the results.<sup>47</sup> As the table shows, the proposal will address the main areas of the implementation and enforcement gap, both directly and indirectly. The implementation gap varies significantly across the EU: the results are expected to be strongest where the gap is currently greatest.

In addition to this gap in Member States, the proposal will also address the Commission's needs in terms of support for updating EU waste legislation.

### **Broader results in the areas of environment and health**

As a result of the agency's actions, environmental and health benefits could be expected in several areas. Three are seen as being particularly important:

- supporting a reduction in greenhouse gas emissions
- reducing current environmental and health costs related to illegal waste site
- reducing costs related to illegal waste shipments

Regarding greenhouse gas emissions, a waste agency will bring benefits by strengthening the implementation and enforcement of current EU waste requirements and objectives, and in particular requirements to increase waste recycling and recovery, including energy recovery.

At global scale, according to the Stern Report, the waste sector was responsible for about 3% of global greenhouse gas emissions in 2000 (p. 171).<sup>48</sup> In Europe, significant emissions reductions are possible. A 2004 study by Prognos for several European waste management associations estimated that the potential gains from full implementation of waste requirements was equivalent to at least 146 million tonnes of CO<sub>2</sub> emissions in the year 2020.<sup>49</sup> This would be about 19% of the EU target for reducing greenhouse gas emissions in that year. A major share of this reduction will come from the fall of methane emissions from landfills. This will be due first to the fall in biodegradable waste sent to landfills, required under the Landfill Directive. Moreover, this directive also calls for methane recovery at landfills, which will further cut methane emissions.

To achieve these results, however, full implementation and enforcement of EU legislation is required. A waste implementation agency could play an important role in supporting Member State and industry efforts to put in place current and future requirements and thus realise their full potential, also in terms of CO<sub>2</sub> reductions. Meeting these requirements will bring a further series of benefits, including energy recovery as well as promoting innovation in waste management and recovery. Moreover, it is possible that the waste sector could go further: the Prognos report notes that more stringent EU requirements would bring even greater reductions in greenhouse gas emissions.

A waste agency will also help to reduce environmental and health costs related to illegal landfills and other facilities. Illegal and unauthorised sites create a series of negative impacts, including air, water and soil pollution. In some cases, these can result in public health problems. For example, groundwater contamination may affect drinking water.

In addition, the cleanup of contaminated sites, including illegal and poorly managed landfills, can be extremely expensive. By strengthening enforcement in the Member States, a waste agency will reduce

<sup>47</sup> It should be noted that quantitative information on results is not available for existing EU agencies. European Court of Auditors, *The European Union's agencies: getting results*, Special Report No. 5, 2008

<sup>48</sup> Stern *et al*, Stern Review: the Economics of Climate Change, HM Treasury, 2008; available at: [http://www.hm-treasury.gov.uk/stern\\_review\\_report.htm](http://www.hm-treasury.gov.uk/stern_review_report.htm)

<sup>49</sup> Prognos AG *et al*, Resource savings and CO<sub>2</sub> reduction potential in waste management in Europe and possible contribution to the CO<sub>2</sub> reduction target in 2020, October 2008 (sponsored by BDSV e.v. *et al*); available from: <http://www.prognos.com/CO2-study.609.0.html>

the future costs of cleanup of illegal sites as well as the costs of health problems arising from poor waste management.

A waste implementation agency and related initiatives will also reduce the costs related to illegal waste shipments. These may include the costs of repatriating waste sent illegal to third countries; in addition, there will be health costs and cleanup costs in these third countries. Actions to improve EU-wide enforcement of the waste shipment regulations will play an important role in reducing such costs.

The table below summarises the main results of the proposal.

**Table 28. Overview of the environmental, economic and social results of the proposal**

<b>Environmental</b>	
Emissions of greenhouse gases	(+) Agency and related initiatives will support stronger implementation and enforcement of measures that reduce greenhouse gas emissions, especially from landfills
Contamination of soil and groundwater	(+) Stronger implementation and enforcement of measures that protect soil and groundwater, in particular from illegal sites and activities not meeting standards
Air emissions	(+) In addition, a small decrease in air emissions will be seen
<b>Economic</b>	
Administrative costs of an agency and related initiatives	(-) Detailed in section 12.4
Improving enforcement and implementation in some MS	(-) An agency's actions increase costs in some Member States, in particular those with poor implementation
Better capacity in some Member States	(+) The agency and related initiatives will strengthen capacity in many Member States (and in particular in those with poor implementation), increasing the effectiveness of regulatory actions
Synergies from better cooperation among MS	(+) EU initiatives are expected to increase synergies as well as exchange of experience among Member States, making implementation and enforcement more effective
Reducing clean-up costs	(+) The clean-up costs for remedying environmental and health damage related to e.g. illegal and sub-standard waste facilities and sites are often significant and will be reduced through better implementation and enforcement of EU waste legislation
Level playing field for industry	(+) The activities of the agency and related initiatives will establish a more level playing field across the EU for the waste management industry; this in turn may reduce costs of waste management overall and increase access to valuable secondary raw materials
Innovation	(+) Better enforcement and implementation of waste requirements will support innovation in waste management approaches and technology. In addition, the agency will bring together expertise to support the Commission to ensure that future legislation is effective and supports innovation
<b>Social</b>	
Health in EU Member States	(+) Stronger implementation and enforcement will reduce health impacts from illegal sites and activities not meeting standards
Health in third countries	(+) Stronger implementation and enforcement will reduce health impacts from illegal waste shipments to third countries

### **Monitoring and reviewing the results**

If the proposal is put in place, it will be important to set up mechanisms to measure its results. Indeed, it may be important to have a regular review of the agency's activities and their results – possibly every five years – together with an assessment of priorities for upcoming work.

The agencies' work in areas such as training, guidance and Member State reviews should address many of the key problems identified as part of the current gap in implementation and enforcement. As a result, the agency's goals and activities may change over the long term. While the development of a level playing field for enforcement and implementation across the EU now appears a distant prospect, once significant progress is made an agency might turn to other shared objectives for waste management in the EU, such as waste prevention.





## 13. Two alternative approaches

The previous section presents a recommendation for a new Waste Implementation Agency together with related initiatives carried out by other institutional settings. This section explores two alternatives.

The first alternative approach allocates a similar package of tasks to the Agency but with less ambitious programmes for training and enforcement: direct training of Member State officials would not be carried out, and the task of organising coordinated inspections would pass to the European network. Thus, the first alternative represents a less ambitious agency with slightly lower costs.

The second alternative explores an approach where no Agency is created. In this approach the tasks of are partly undertaken by the Commission services and partly by Member State officials in the context of a European Network (one candidate for this network would be IMPEL, whose structure would need to be expanded). This second alternative is the least ambitious approach.

### 13.1. Alternative A: A less ambitious agency

Under this alternative, the tasks on direct training, coordinated activities and the helpdesk would not be carried out. An agency would carry out most of the work, assisted by other institutional settings.

**Table 29. Allocation of tasks for a less ambitious agency (alternative A)**

	EU Agency	Commission offices	European networks	Other	Notes
<b>Training</b>					
Direct training					
Train-the-trainers					
Coordination/exchange					
<b>Enforcement</b>					
Information exchange					
MS reviews					
Coordinated activities					
European body for inspections					
<b>Guidance/updating</b>					
Support: updates to leg.					
Guidance: enforcement					
Guidance: implementation					Role for EEA/ETC
<b>Other tasks</b>					
Assessment: MS plans					Role for EEA/ETC
Data on recycling					Eurostat and EEA
Data to support enforcement					
Overall waste data					Eurostat and EEA
Helpdesk/knowledge centre					

In this alternative, the agency would have a reduced training programme that would focus only on training the trainers. For enforcement, the agency would carry out Member State reviews and also coordinate the exchange of information. It would not undertake coordinated inspections: here, a European network would organise a reduced set of activities. (The Commission would continue to host the European body for inspections.)

While the agency would carry out similar work on guidance and support for updating legislation as under the recommended approach, as well as most other tasks, it would not provide a helpdesk/knowledge centre.

The agency's mission statement would be the same as the one described in section 12. However, its mandate would be limited to the following elements:

- a) Promote enforcement of EU waste legislation by Member States via training, exchange programmes and via information on and guidance for enforcement activities
- b) Improve Member States' enforcement capacities via reviews of their enforcement systems.
- c) Develop guidance on the interpretation and application of existing EU waste legislation with the view of its uniform application in the EU
- d) Develop proposals for adaptation to scientific and technical progress of existing EU legislation also with the aim to facilitate implementation via better regulation
- e) Assess Waste Management Plans and Waste Prevention Programmes of Member States against the requirements in directive 2008/98/EC on waste
- f) Assess achievements of Member States in reaching recycling and recovery targets as included in EU waste legislation

New legislation – a regulation – would be needed to set up the agency and its work on Member State reviews. New legislation would also be needed to create and empower the European body for carrying out inspections.

### 13.2. Alternative B: Commission offices and European networks

Under this second alternative, a new agency would *not* be created. Fewer tasks would be carried out than under Package A. Commission offices would lead much of the new work, though European networks would have an important role to play.

**Table 30. Allocation of tasks for Alternative B**

	EU Agency	Commission offices	European networks	Other	Notes
<b>Training</b>					
Direct training					
Train-the-trainers					
Coordination/exchange					
<b>Enforcement</b>					
Information exchange					
MS reviews					
Coordinated activities					
European body for inspections					
<b>Guidance/updating</b>					
Support: updates to leg.					
Guidance: enforcement					
Guidance: implementation					Role for EEA/ETC
<b>Other tasks</b>					
Assessment: MS plans					Role for EEA/ETC
Data on recycling					Eurostat and EEA
Data to support enforcement					
Overall waste data					Eurostat and EEA
Helpdesk/knowledge centre					

A European network would undertake training, and its work would focus on training trainers. The Commission would play a role financing and overseeing these activities.

On enforcement, the Commission would undertake reviews of Member State enforcement systems. European networks would play an important role by coordinating exchanges and joint inspection activities. A European body for inspections would not be created.

The Commission would lead all work on preparing guidance and updating EU legislation, relying strongly on contractors. The EEA and the Topic Centre would have a role in the preparation of guidance on implementation, as in the other approaches.

The Commission would also lead the assessment of Member State plans (either relying on outside contractors or integrating this work into its reviews of Member States). A European network would lead work on data for enforcement.

Overall, this is the least ambitious of the three approaches. Moreover, in alternative B, a mission statement and mandate would be superfluous.

In this alternative, new legislation would be needed to set up the Commission's reviews of Member State enforcement systems. An agreement among Member State would be needed for the coordinated inspection activities carried out under the European network.

### 13.3. Comparing the approaches

In the first alternative, the Agency would carry out a less ambitious work programme on training and enforcement and would not provide a helpdesk/knowledge centre. The other tasks would be undertaken as for the recommended approach. The same method to estimate operational staff is used here for this smaller Agency. However, the share of overhead and support staff will be higher in than for the recommended approach. For the other institutions there will be no change as there is no redistribution of tasks.

In the second alternative (Commission + European network), tasks are carried out by European Commission staff and by Member State officials working through the network. The estimates of the number of staff required for the tasks remain the same as if they were done by the Agency.

#### Staffing levels

The next table compares the staff requirements for the three options.

**Table 31. Comparing staff resources for the recommended approach and the two alternatives**

Option	Agency	Commission services	European network secretariat	MS officials working in network	Other (EEA/ETC, Eurostat)	Total staff
Proposed agency	58.5	21.5	2	5	1.5	<b>88.75</b>
Alternative A: Less ambitious agency	36.5	21.5	2	5	1.5	<b>66.75</b>
Alternative B: Commission offices + European network	0	10	7	24.25	1.75	<b>43.25</b>

The recommendation has the highest level of additional staff resources in total. The less ambitious agency outlined in Alternative A would have less than two-thirds of the professional staff of the agency in the recommended approach, though staff in other institutional settings would remain the same. Alternative B would require less than half the total operational staff as the recommended approach: however, the level of ambition in terms of addressing the implementation gap is correspondingly lower.

## Budgets

The table below compares the different costs for the recommended agency and the two alternatives.

**Table 32. Comparing estimated cost of the recommended approach and the two alternatives**

Option	Agency	Commission services	European network secretariat	MS officials working in network	Other (EEA/ETC, Eurostat)	Total budget
Proposed agency	11.0	4.1	0.3	0.7	0.3	<b>16.49</b>
Alternative A: Less ambitious agency	6.9	4.1	0.3	0.7	0.3	<b>12.2</b>
Alternative B: Commission offices + European network	0.0	1.9	1.1	3.2	0.3	<b>6.5</b>

In alternative A, the less ambitious agency will cost less than two-thirds of the recommended approach. Costs for other institutions will remain the same, however, so the total costs will be only 25% lower. The start-up costs for the agency will also be lower: about 1.0 million Euros for the first two years compared to 1.6 million Euros for the recommended approach.

Alternative B is the least ambitious and also has the lowest cost: less than 60% lower than the recommended approach. Start-up costs will be significantly lower in this approach. However, Member States would have to bear more costs for the officials that would be working in the European Network. This would be € 2.1 million in stead of €0.43 million in case of the proposed Agency or alternative A.

## Results

The results of the recommended approach in terms of environmental improvements have been assessed on a qualitative level (section 12.5). The following key differences are seen for the two alternatives.

Alternative A would not include direct training of Member State officials. As a result, this would mean that 500 fewer officials would be trained each year. Member States capacities would improve more slowly, in particular where this improvement is needed most. Moreover, direct training would more than any other option strengthen a uniform understanding of EU waste legislation: this element would be significantly reduced.

The coordinated activities would be organised by a European network rather than by the agency. Here, it may be more difficult to ensure strong participation from all Member States, and the results in terms strengthening coordination would be reduced.

In alternative B, further differences are seen. One key element is that the European body for direct inspections would not be created: thus, direct actions would not be taken to identify and correct major

problems at individual facilities and sites. Improvements would take place more slowly, as enforcement systems improve in Member States where they are poor and as training strengthens capacities. A further difference is that the helpdesk would not be created: this would further slow the establishment of a uniform understanding and implementation of EU waste legislation.

The key differences for alternative B, however, relate to structural issues and in particular the fact that an agency would not be created under this approach. As a result, the synergy of concentrating several tasks in one institution would not be realised. Instead, this work would be spread among more agencies (and possibly also to external contractors to the Commission).

Moreover, a central body gathering knowledge and expertise on EU waste legislation would not exist. While the Commission and the secretariat of the European network would gain some of this expertise, overall it would most likely not be institutionalised. In the Commission, turnover of desk officers is more frequent than in an agency. Moreover, while alternative B foresees additional Commission staff to carry out the activities proposed, in practice the Commission might contract out some of the work to external experts. The European network would have a small secretariat and would rely strongly on the coordination of Member State expertise. This will mean that knowledge and expertise will remain diffuse.

A third concern relates to long-term funding. The implementation of much of the work will depend on Member States providing officials to work through the European network. Unless a mechanism is created to compensate Member States for the time that their officials spend on European actions, those countries providing officials for network activities would end up supporting a high share of the budget needs for the work. In this set-up, funding may depend on Member State contributions of staff and other resources: over the long term this support may not be certain.

**Table 33. Key differences in results between the proposal and the alternatives**

<p><b>Alternative A</b></p> <ul style="list-style-type: none"> <li>• No direct training carried out by agency: fewer Member State officials receive training</li> <li>• Understanding of EU waste legislation will not be as uniform across the EU</li> <li>• Participation in coordinated inspection activities may not be as strong: as a result, enforcement overall will be weaker</li> </ul>
<p><b>Alternative B</b> <i>(In addition to the points listed for Alternative A)</i></p> <ul style="list-style-type: none"> <li>• Lack of synergies among activities</li> <li>• A central office will not accumulate knowledge and expertise to support implementation and enforcement of EU waste legislation</li> <li>• Uncertainty of long-term funding for European network</li> <li>• Without a European body for direct inspections, major problems at facilities and sites will be addressed more slowly</li> <li>• Lack of helpdesk will further weaken steps towards a uniform understanding and application of EU waste legislation</li> </ul>

In sum, under alternative A some actions will not be carried out and the overall work to overcome the gap in enforcement and implementation would proceed more slowly than in the recommended approach. Under alternative B, in contrast, major structure problems are seen. This alternative would be much less effective in addressing the gap in enforcement and implementation.

As a result, many of the broader results that are seen for the recommendation in terms of environmental and health improvements would not occur under these alternatives, and in particular they would not be seen for Alternative B.