

The Role of Brussels in Waste Legislation throughout the European Union

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1. Introduction

ESWET – the European Suppliers of Waste to Energy Technology – groups European companies that own core technologies for Waste-to-Energy plants, build and supply them. Its prime focus is therefore the EU Institutions. ESWET represents its Member companies in all matters regarding the EU Legislation affecting the various aspects of Waste-to-Energy activities.

But why exactly is ESWET active in Brussels?

The EU's influence on environmental legislation in Europe is hard to understate. It is assumed that over 80 % of all legislation touching environmental issues in the EU is actually derived from EU Directives or other EU actions.

Is Brussels that powerful? Can the EU be a vector for environmental protection or is it a forum where lobbyists dominate to maintain a maybe questionable status quo?

The EU Institutions enact the most ambitious environmental legislation on the planet, nudging the world's largest trading bloc to develop environmentally-friendly technologies. At the same time, many initiatives launched by the EU, even when translated into legally-binding measures in the Member states, remain little more than good intentions.

As Secretary General of ESWET, Mr. Patrick Clerens has extensive experience in the dialogue that stakeholders (NGOs, media, lobbies, representations) such as ESWET maintain with the EU, which is itself composed of various bodies, that do not always share the same interests. This paper will therefore explain the role and powers of each of the three major EU Institutions (Commission, Parliament and Council) and give examples of their action – successful or not – in the field of Waste legislation that affects the whole EU.

2. European Commission

Considered the *Guardian of the Treaties*, the European Commission is the executive arm of the Union. Composed of unelected officials, nowadays recruited among a huge pool of highly-capable professionals from all over the EU, the Commission is the prime receiver of the nickname *Brussels*.

Headquartered in the European District of Brussels, it exerts an oversight on virtually every activity that a government would undertake but with a fraction of the workforce.

In fact, the Commission's staff (civil servants, officials) is about 23,000, [1] to manage a bloc of roughly 500 million inhabitants. In comparison, the US Federal Government, an arguably leaner public administration in proportion to what is found in most European welfare states, employs 3 million people, of which 150,000 are under the headings of financial and other government administration. [2]

The Commission is staffed by technocrats who overlook everything from Trade, Agriculture, Environment, Employment & Social Affairs to Climate Action, to give only some examples of Directorates-General. This makes it a faceless, seemingly knowledgeable and almighty administration.

The reality is that the Commission must reconcile many diverging views and many different national situations on any given topic. With relatively few in-house staff, it must rely on armies of external consultants, experts and stakeholders to gather even basic information.

Each country nominates a high-profile politician to serve as Commissioner, each of which becomes a kind of minister with a specific portfolio. Theoretically separated from their own Member state, the Commissioners and the President of the Commission (currently José Manuel Barroso) have the mandate to represent the European *Community* interest on the global stage as well as between Member States competing with each other.

Some Member states nominate more capable Commissioners than others. Sometimes, the nomination is an occasion to *get rid* of a prominent figure in a Member state's political scene. In other cases, the nomination is a strategic choice to ensure that a *national* has final oversight over a nationally important sector (economic & financial affairs, agriculture, industry, competition).

The Commission is central to the EU because it has the right of initiative for legislation, meaning that it is the EU body that consults, researches and drafts legislative proposals which must then be agreed upon by the Parliament and the Member states. The Commission also has large discretionary powers to implement legislation that has been agreed upon; these powers can sometimes be modulated by the other Institutions.

For environmental questions, the Directorate-General for Environment has as primary mission to protect, preserve and improve the environment for present and future generations. In this matter, it deals with the questions of Waste Management in order to seek reduction in waste generation while striving to improve the environmentally-sound management of waste.

The reality however is that Waste Management is essentially a local competence which is subject to national oversight. The Commission can therefore initiate legislation to improve waste management, but the success depends on its *subsidiaries* – Member states and in this case local authorities – and their way of implementing it to guarantee a level playing field.

In the case of existing legislation that needs to be adapted for actual implementation, the Commission has discretionary powers to shape and establish rules within the framework agreed upon by the two other, more *political* institutions.

Example of Commission action in the field of Waste Management

The Waste Framework Directive is a far-reaching legislation proposed by the Commission and voted by Parliament and Council. As for any legislation encompassing complex sectors, its technical provisions can only be determined by specialists, but accountability is still necessary. Many aspects of the Waste Framework Directive were therefore left to a Technical Adaptation Committee (TAC), chaired by the Commission and gathering the Member states. Tasks such as laying down End-of-Waste Criteria, establish detailed rules on the application and calculation methods for verifying compliance with the Recycling targets or specifying the application of the R1 Formula were therefore left to this body, to advise the Commission on implementing these technical parts of the legislation.

The TAC gathers representatives from Member states and specific sub-groups can also include stakeholders from the concerned Industry or an environmental NGO. However this Committee's opinion does not necessarily need to be taken into consideration by the Commission.

In the case of the R1 Formula, a Guidance Document has been elaborated to determine its calculation. Many meetings took place between the Industry representatives, an NGO and Member states to finally reach a consensus document in September 2010. Notwithstanding the experts' consensus, the Commission decided to modify the proposed Guidance shortly before publishing it in June 2011, using its implementing powers at its own will. Months of negotiation and the compromise reached were hence put into doubt because the approved proposal, while essentially similar to the compromise, does not reflect the scientific agreement reached by the experts. Therefore France decided not to implement or use this non-binding Guidance.

While in many cases the Commission largely ratifies and publishes the result of an EU-wide consensus, it still has discretionary power to shape the EU policies it believes are in the EU's best interests.

3. European Parliament

The only EU body that is directly elected by European citizens is composed today of 754 deputies (a number that should go down to 750 in 2014 (next elections) when the number per country will be reshuffled) referred to officially as *Member of the European Parliament*, or MEP. These politicians elected for a 5 year mandate hail from each Member state and a vast array of political parties, arranged in the Parliament under encompassing Political Families or Political Groups rather than by country.

But does the European Parliament have the same role as a national parliament, playing the legislative role of checking and balancing the executive? The answer is as ambivalent as answering the question of where is the Parliament based.

While the official seat of the European Parliament is in Strasbourg, its informal home is Brussels. MEPs spend on average one week per month in Strasbourg and two weeks per month in Brussels. Plenary sessions are normally held in Strasbourg, while a fully-suitable hemicycle seats all 754 MEPs in Brussels from time to time for *mini-plenary* sessions. The Brussels seat of the Parliament also has a critical role as it is where the Committee Meetings are held.

Questions of efficiency and symbolism left aside, the fact of having two seats means a yearly additional cost of 180 million Euro and an extra 19,000 tonnes of CO₂ per year for buildings maintenance and transportation. [3]

The Parliament really comes to life in Committee Meetings, where legislative proposals are debated extensively and where the exchange of views is the most open. Small groups of MEPs (less than 70) meet in Committees that have a specific purpose, e.g. to discuss Agricultural, Energy or Environment matters. Members of the European Parliament usually sit in the Committees discussing the topics on which they are the most knowledgeable. It is normally among them that a Rapporteur is identified to examine a legislation.

In the case of the Waste Framework Directive, for instance, it was the Environment Committee of the Parliament who was in charge of reviewing the Commission Proposal and to make amendments. The input from the Responsible Committee takes the form of a Report – drafted by the Rapporteur and amended by the other Committee Members. A similar exercise is also undertaken in Committees having a lesser stake in the matter but whose input can be useful, in which case these Committees provide an Opinion. This Report is then given to the Plenary, who rarely rejects a proposal having already been agreed upon by MEPs of various countries and political families. The Parliament's legislative resolution constitutes the approval or rejection of the Commission's proposal; most often the Parliament suggests modifications to reflect the political mood and public opinion.

Examples of Parliamentary action in the field of Waste Management

While the Parliament may not propose legislation, it can reshape a proposed Directive, provide a visionary appeal or reflect popular sentiment.

An example where the Parliament's weight was felt for Waste-to-Energy was during the discussion on the Renewable Energy Directive. Aimed at promoting the use of energy from renewable sources, this draft Directive was including the biodegradable fraction of waste as a renewable energy source under the heading *biomass*. Some MEPs, upset at what they perceived as a *gift* for incineration, therefore sought to remove our technology from the eligibility list by introducing the condition that only *separated collected* biodegradable waste was to be considered a renewable energy. Essentially, this would have meant that anaerobic digestion of source-separated waste would yield renewable energy, but that the same bio-waste, combusted as residual waste in a Waste-to-Energy plant, would count as a fossil fuel.

Thanks to pro-active lobbying and productive discussions with other MEPs, who did not share this view, this amendment was rejected; maintaining a level playing field in waste management and avoiding what would have been a deformation of science with far-reaching consequences as biogenic CO₂ is carbon-neutral, no matter where it comes from.

In another example, the Parliament becomes the public's loudspeaker: it analyses petitions, some of which are against waste treatment facilities. The Parliament has a Committee to examine petitions from EU citizens who believe that the European legislation – and their well-being – has been neglected, e.g. through landfill operation practices or where a Waste-to-Energy plant is planned. The Rapporteur examined these cases and concluded that petitions against Waste Incineration were the result of a NIMBY – Not In My BackYard – feeling, not the whistle blow of a proven disregard for EU legislation or public health risk. The views of the Rapporteur gathered support from many political parties, but many dissident voices refused to endorse the measures recognising that Waste-to-Energy was not to blame, yet again reflecting the underlying opposition to our technology in many parts of society.

4. European Council and Council of the European Union

Member states have – first and foremost – their national interest at heart. They are therefore represented at the EU level in two different but complementary ways. Member states define

the priorities in the summits of the European Council and agree on the proposed legislation in the Council of the European Union, meaning that they have a say both at the beginning and at the end of the decision-making process. This means that nothing happens in the European Union without the Member states, because any vision or initiative for the EU comes from their instructions, and they can also veto any concrete proposal.

At the top level, organised in a European Council, are the Heads of State and Government, the democratically elected politicians that all citizens recognise. The European Council summits are held four times a year in Brussels and are chaired by the President of the European Council, Herman Van Rompuy. The occasion for top level decision-makers to meet, brainstorm and decide, the summits set the political agenda to be developed afterwards by the Commission and voted by the Parliament and the Council of the European Union.

Another body, not to be confused, is the Council of the European Union, which also comprises Member States, but in this case from bottom up with a rotating Presidency held every 6 months by a different Member State (in September 2012: Cyprus). Every Member State has a Permanent Representation to the European Union (like an embassy), where it has a Permanent Representative (like an ambassador) and dozens of diplomats with knowledge of specific policy areas (Foreign Affairs, Environment, Energy, Agriculture, etc.). There are therefore 27 diplomats looking into environmental affairs, each with their own country's perspective, sometimes based on a long tradition or sometimes also according to the latest national political developments.

The legislation proposed by the Commission and examined by the Parliament makes its way also through the Council of the European Union, where it is first reviewed by the diplomats in charge of the sector. If these technicians agree, the legislation is adopted; otherwise it goes to the next level, to the Permanent Representatives, who are less knowledgeable of the topic but have a greater discretionary power. If the *ambassadors* fail to agree, the matter is referred to the Ministers and if needed, to the Heads of State and Government.

In all discussions involving the Member States, votes are taken by Qualified Majority, where each country has a different number of votes relative to its size. This voting weight comes from the Treaty and is the fruit of a high-level political compromise. Despite a large difference in population between Germany and France, they both have the same number of votes. And despite Germany having over 2 times more population than Poland, it only has 2 more votes (29 versus 27). Furthermore, other rules exist to balance votes and population.

Example of Member States input on Energy Efficiency Directive

The March 2007 European Council launched the vision of 20-20-20 by 2020. Reducing Greenhouse Gas emissions by 20 %, reaching a share of 20 % renewable energy and improving energy efficiency by 20 % by 2020 represented the soaring vision of the Heads of State and Government to save the planet by 2020. The reality is somehow different for these targets. Quick to introduce measures for CO₂ emissions and renewable energy, the Commission needed more time to propose an Energy Efficiency Directive, which it did in Spring 2011.

This Directive proposes among others that promotion of Cogeneration and of District Heating be made in Member States to help boosting energy efficiency and reducing primary energy use. The provisions from the Commission even wanted to make it mandatory for Power Plants and Industrial Installations (like Waste-to-Energy plants) to connect to and pay for the development of District Heating Systems.

When the Council of the European Union started examining the Commission proposal, it immediately stroke down the mandatory connection and funding of the District Heating

networks by utilities and industries, effectively watering down this far-reaching energy efficiency measure. The Commission also had plans to regulate the localisation of the heat sources close to heat usage points. However it is difficult in a legislative proposal to take into account concepts of heat transportation distance and useful temperature.

Energy specialists from the National Ministries, providing input to their diplomats in Brussels, therefore edited the Commission proposal to make it more easily implementable, which can also be interpreted by others as an effective dilution of the objectives.

5. Conclusion

The various institutions of the EU represent a diversity of interests on all imaginable topics. Famous stories of the EU attempting to curtail raw milk cheese, owning *mountains of sugar* or regulating cucumbers' shape quickly come to mind to evoke excessive regulation or financial blunder attributed to the EU. But the EU's influence goes far beyond what is often attributed to *Brussels*.

As a rule of thumb, national politicians blame Brussels when the public opinion turns against a measure they themselves agreed to. On the other hand, when national politicians agree to share EU funds (to which they contributed), they always claim that they fought and obtained more than they paid. Claiming victory over the EU bureaucrats for their citizens' benefits always makes nice headlines. In both cases, the EU is the one with the negative image.

Environmental protection and better waste management are desired by all, so the EU strives to create the opportunities and rules to make it happen. For instance, Member states agreed at the EU level to create a Directive to reduce landfilling, yet many countries are doing little efforts to implement it and will fall short of their targets.

Should Brussels be blamed for producing legislation that is dependent on the good-will of the Member states? Or should the Member states be blamed by Brussels and forced to pay a fine for failing to improve their own environmental standards?

In both cases, you can guess how national politicians will spin it!

6. References

- [1] http://ec.europa.eu/about/index_en.htm
- [2] <http://www2.census.gov/govs/apes/10fedfun.pdf>
- [3] <http://www.singleseat.eu/>