

**Agenda Setting in European Union Environmental Policy:  
Commission “Management” of Industry Associations**

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Presented at the Seventh Biennial International  
European Community Studies Association Conference  
May 31- June 2, 2001  
Madison, Wisconsin

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During the last half of the 1990s, reviews of the European Union’s 5<sup>th</sup> Environmental Program took into account the important area of waste management. These discussions were caused, in large part, by the realization that there was a growing amount of waste that was being either inefficiently or ineffectively recycled. The limited options available for dealing with the materials left after consumption led the consumers, interest groups, member states and the organizations of the Union in a search for appropriate policy responses. One of the Union’s first responses was 1994’s Directive on Packaging and Packaging Waste. The directive imposed significant recycling rates on member states and also called on industry to “take back” much of the material it produced free of charge from the consumer. Legislation to manage other waste streams in other waste has followed on. In 1996, the Commission proposed a directive which required high recycling rates for “end-of-life” vehicles as well as take back requirements on automobile manufacturers. Finally, the Commission just this past year has proposed two directives relating to the recycling of waste from electronic equipment, ranging from washing machines and computers to cell phones and electric razors. In these directives the Commission has highlighted several important themes: the prevention of waste, product design that enhances the ease of recycling the component materials, a waste hierarchy, factoring in the environmental costs of the production of a product, as well as producer responsibility.

The Commission’s success in pushing the waste packaging directive through the organizations of the Union rested in large part on its ability to forge alliances with industry. But at the same time, the Commission was able to play on splits inside the industrial associations responsible for representing business interests, which allowed the Commission to realize its own interests. Speaking in 1999, the managing director of European Packing Network (EUROPEN), Julian Carroll argued that the Commission would have a much tougher time regulating in the waste management field against the large firms and industrial associations involved in the car manufacturing and the production of electronic and electrical goods, and he noted that “whereas the fragmented packaging industry didn’t have the clout to oppose rules it thought wouldn’t work, global automotive and electronics giants are not such an easy pushover” (*Packaging Magazine*, 15 July 1999:6). The paper will examine the above mentioned cases, the waste packaging directive, the end-of-life vehicles directive and the proposed directive on waste electrical and electronic equipment. The paper acknowledges that the Commission relies heavily upon the contributions of industrial associations and large firms in the construction of directives and that the Commission actively seeks to build transnational alliances with industrial organizations. But I will argue that the Commission has the ability to play upon internal divisions in these industry associations which allows it to put forward environmental directives that place significant burdens on the members of these associations. The paper will first turn to the theoretical debate surrounding the Commission as a policy entrepreneur and agenda setter, with special consideration given to the relationship between the Commission and the industrial associations. The next section of the paper discusses Commission preferences, formulated by an amalgam of action programs, directives, studies and reviews. The paper will then turn to an analysis of the three cases, suggesting that the Commission is able to provide an “upgrade of the

common interests” through its agenda setting powers. Finally, a conclusion that argues the Commission is engaged in a process of integration through small steps. Innocuous items such as plastic wrapping, plastic car bumpers, and circuit boards from cell phones have been used by the Commission to further its supranational aims.

### **Theoretical Imperatives**

Interest groups have traditionally been viewed as important to the integrative process and the construction of a supranational polity. Haas (1958) argued that the increased interest group activity at the supranational level would be one of the keys to assessing the development of the Union. The importance of this activity signaled the shifting of expectations from the national to the supranational level, a new locus of lobbying activity. Lindberg noted that interest groups were not initially very active at the supranational level, but argued that if the organizations of the Union became more active through the formulation of common policies, groups could be expected to shift their attention from the national level upwards (Lindberg, 1963: 99-101).

Interest intermediation in the Union has been theorized in many different ways, from the openness and competitiveness akin to pluralism (Streeck and Schmitter, 1991) to a more closed and quasi-corporatist model suggested by Andersen and Eliassen (1991). Between these two end points lie a gamut of approaches. Policy communities and networks (Boons, 1993), advocacy coalitions (Sabatier and Jenkins-Smith, 1993; Sabatier, 1998) and epistemic communities (Zito, 1995; Radaelli, 1999) have all been posed as keys to understanding policy making in the Union. Each suggests limits to pluralist conceptions of interest group struggle and influence, suggesting that limited numbers of groups have influence over the construction of policy, in part because they hold resources necessary for making decisions and in part because they have cultivated access to decision makers. Policy communities and networks are loose constructions where constellations of actors are more or less organized into fairly regular patterns of resource exchange. The small number of actors and close interest alignment enhances their ability to succeed in influencing government organizations. Advocacy coalitions consist of groups pushing a particular approach or policy option, where epistemic communities suggest that a small, ideologically cohesive groups are able to effectively construct policy based on a key set of ideas (Haas, 1992). Epistemic communities are especially instructive when examining the Environmental Directorate of the Commission, given that organizations acceptance of the principles of sustainability and ecological modernization (Weale, 1992). The same argument applies to the Environmental Committee of the EP (Judge, 1993). Both advocacy coalitions and epistemic communities can share a concern over environmental principles, which potentially play an important role in the first drafts of any environmental directive. Zito (2000) presents a nice overview of entrepreneurship, citing Kingdon's (1984) argument that entrepreneurs seeks either material purposive or solidarity rewards. He also notes Robert's (1992) arguments that entrepreneurs shape issues for consideration, popularize and draw attention to the issues at stake, inventors that devise innovative solutions to overcome opposition, and finally brokers that make deals and build support for their chosen solution. Zito argues that entrepreneurial coalitions may include groups that do not have a set of coherent ideas and that an “entrepreneurial coalition” stresses persuasion, but that the role of ideas is not predominant. Instead, politics is important, as entrepreneurs must build a coalition to support their policies. Entrepreneurs tend to be more

successful when they have influence with institutional structures and favorably institutional rules, when experts are tied to the formal institutions, when complex issues can be linked or there is incomplete information, and when policy ideas can be offered that do not directly challenge the norms of the policy making institutions (2000:41-47). However, by the time the Commission officially proposes an environmental directive, “green” ideals are not the sole, nor perhaps even the main, thrust behind the Commission’s eventual proposals.

The Commission’s (and Union’s) relatively open structure has been cited by many (Pollack, 1997; see also Liefferink, *et. al.*, 1993; Baker and Jenkins, 1994) as important in that it allows access for “diffuse” interests such as consumer groups, women’s groups and environmentalists. The Commission has fostered and promoted organizations to represent these interests at the supranational level. Access to the organizations of the Union was vital to the passage of environmental legislation in the past, especially when environmental groups can cooperate and bring collective pressure on the Commission, as well as the EP. The core seven environmental groups traditionally involved in lobbying the Union were the European Environmental Bureau (EEB), the World Wildlife Fund (WWF), the Transport and Environment (T&E), Birdlife International, the Friends of the Earth (FoE), and the Climate Change Network. In the case of the packaging directive, the *Bund für Umwelt and Naturschutz Deutschland (BUND)* was also very active (Mazey and Richardson, 1993; Dalton, 1994; Greenwood, 1997). The influence of environmental groups may be most notable in one of two ways. Firstly, they influence groundswell support for the Union’s environmental policies, as *Eurobarometer* polls have documented a consistently favorable public opinion, albeit expressed in a diffuse way. That is to say, that environmentalism comes in general support of protection, which is taken by policy makers in a diffuse way in order to press environmental legislation. Secondly, the relatively weak influence of environmental groups, can be explained by the fact that they often cannot provide the resources that the Commission needs in preparing legislation, and their chance to influence policy often comes at the end of the legislative process, largely through the EP. Environmental groups may be most immediately effective “after the fact,” pointing out the effects of environmental degradation to the policy makers and the general public (Lenshow, 1997??).

While the Union may be relatively more open to diffuse interests than are many member state governments, it is open to all interest groups, including business groups. Cowles argues that industrial groups have privileged access to the Commission (1995, 1996). It was difficult for environmental groups to get equal time at the Commission, and this was all the more so as the Commission began to privilege industrial associations whose interests were much closer to the political levels of the Commission. This was especially the case as DGXI was beginning efforts to shed its image as a hotbed of environmental radicalism (Cini, 1997: 82; Peterson and Bomberg, 1999:177). Industry associations are privileged players in the policy making process: they have passages to the core organizations in the policy construction phase; they have the resources to pursue their interests through the legislative process; and they participate in the implementation phase. Business influence was (and is) conditioned by several factors. The greater an association’s status, the more effective it could be. This largely turns on three factors, their economic resources and the degree of expertise and the amount of information they possessed. These factors related to “input” into the political process. Associations were also important to the Commission for their ability to assist it in implementing directives. The more cohesive an association, as measured by its ability to reach positions and enforce them association-wide, the more reliable a bargaining partner the Commission considers it. For an

“overloaded” Commission, the ability of these associations to carry out policies is crucial, especially in light of the “implementation” gap in the Union. Grant (1997) recognized the importance of industry associations in the implementation of directives, suggesting this assured industry participation in the Union’s decision making process. In periods where the Commission has been less active legislatively, such as the 1990s, the Commission worked to build a business constituency. For firms it became clear that specialized technical expertise were necessary and the advantages of direct representation in Brussels were clear. Firms needed to deal directly with the Commission to establish positive reputation in the policy making process and that reliable sector specific and pan-European information was sought by the Commission (Coen, 1997). While multiple channels of influence remained important, national channels were becoming less important than in the past for large firms. The Commission, not the member states or other Union organizations, was the most important body to influence.

As a resource poor organization, the Commission relies on information provided by industrial associations. This dependency allows industrial groups access and gives them the opportunity to have early input into the construction of legislation. This opportunity allows interest associations to press for their issues and interests. Industry associations are also able to exert influence throughout the entire policy making process. Again, their financial resources allow them to press their demands at both the national and supranational level during Council negotiations. While the EP has the reputations the most environmentally friendly of the organizations of the EU, MEPs are not immune to the pressures and arguments of industrial associations during the various readings of legislation. The ability to exert influence during the construction of legislation is important, but their involvement is also sought for another key aspect of Union governance, the implementation of directives. While member states are formally charged with the implementation of policy, it is often the case in the waste management policy area that industry associations and private firms actually implement policy. The Commission cannot implement policy on its own, and must, consequentially, take into consideration the ability to implement directives during the creation of the directives. For their participation industry associations receive the opportunity to be a player in the process; chance to ensure that regulatory standards are kept reasonable, practical, doable, or pragmatic; keep involved in the legislative process with the ability to place pressure on other organizations; be involved in the implementation of the directive.

For the most part, industry associations are willing to assent to the Commission’s preferences for higher standards and support the EU’s regulatory initiatives as a result of industry’s desire for common rules and the avoidance of even higher (member state) standards. In the waste management policy sector it is often the case that the Commission’s final directive may not be incredibly environmentally ambitious, but at the same time it usually moves significantly beyond what industry deemed necessary. The Commission is usually able to offer a mixture of “carrots and sticks” to industry. Certainty in the operating environment is important, as it reduces uncertainty and allows for cost predictability. Cooperative participation in the creation of the regulation is better than having it imposed with little influence. They become “stakeholders” in the decision making process and have a vested interest in assuring its successful implementation. Industrial associations are also able to minimize the influence of environment groups and/or member state governments that may be seeking higher standards. The Commission is also able to threaten industry associations by suggesting that failure to reach agreement at the supranational level may allow member states to set individual (often higher)

standards. This also raises the specter of an incomplete internal market. The Commission is also able to play upon the coalition nature of most peak industrial associations. Many are composed of different, often competing, sectors of a single industry. The cost of getting regulation often means accepting rules that may differentially effect sectors, where the entire association accepts the overall regulatory scheme even though parts of association may bear a significant share of the costs.

### *The Commission as Entrepreneur and Agenda Setter*

The “pulling” interest groups into “European” policy making is part and parcel of entrepreneurship and agenda setting. Policy entrepreneurship and agenda setting are closely related phenomenon, with the former laying out the broad parameters of the policy debate, whereas agenda setting is more specifically involved with the actual “physical” construction of legislation. This section will focus on the Commission’s attempts to, through its agenda setting powers, achieve an “acceptable” compromise between single market and environmental concerns in the directives. The Commission, through the use of its formal and informal powers, was able to construct, even if imperfectly, directives that highlighted its most immediate concerns, upgrading the Union’s environmental regulations, but one that also underscored its secondary concerns, that of protecting the internal market. The “ideal” circumstances for Commission agenda setting exist when the key actors are formally non-political, such as national and supranational civil servants and when disputes are resolved in relatively obscure committees staffed by “expert” bureaucrats. The rationality governing decisions is then technocratic and consensual, where the usual “give and take” characteristic of political decisions is lacking (Lindberg, 1963; Lindberg and Scheingold 1970, 1971; Peters, 1994; Peterson, 1995, Peterson and Bomberg, 1999). In all three of the cases the Commission was able to set the Union’s agenda and realize its core preferences even though these conditions were not present.

The Commission can set the agenda through the use of its formal powers, the “hard” powers given to it through the treaties that established the Union’s organizations and its operating rules. The Commission also has informal, or “soft” powers, which are exercised relationally. These soft powers largely rely on the ability to persuade, cajole, accommodate or threaten other actors in the policy process, whether they are private firms, interest associations, government officials or member states. The ability of the Commission to set the agenda for the Union is conditioned in four major ways (Pollack, 1997). Firstly, the ability of the Commission is limited by the preferences of the other major actors. The distribution and intensity of member state preferences is crucial. The preferences of other actors can play a role, as the wishes of other supranational organizations and interest groups matter, too. In negotiations with the Council, the greater the differences amongst the member states, the greater is the Commission’s agenda setting ability. The more intensely member states hold their preferences, the more difficult it may be for the Commission to set the agenda. Secondly, institutions impact on the Commission’s agenda setting ability. The greater the degree of the Commission’s use and manipulation of the rules under which decisions are made, the greater the Commission’s agenda setting ability. The ability of the Commission to use the power to initiate legislation is vital in setting the agenda, if for the simple fact that discussions must begin with the Commission’s proposal. Beyond this, the Commission’s ability to accept EP amendments is important as it impacts on the ability of the

member states in the Council to discuss different policy options. The Commission's formally guaranteed, but informally operated, position in negotiations is also fostered by its power to clarify its position during Council meetings and provide encouragement to member state arguments that correspond to Commission preferences. The Commission, in the process of bargaining over a directive, also has the power to set the agenda through agreements reached on the implementation of a directive, which can be managed through reviewing targets, standard setting, and subsequent legal action.

Beyond the ability to lead a divided Council by initiating directives, the Commission has additional means to set the agenda. A third way the Commission can lead is through information asymmetries. If the Commission has a great advantage in the quantity and quality of information, will have great agenda setting capabilities. In the case of the directive, the ability of the Commission to control the agenda was limited, as it did not have an information "monopoly." However, new information generated while the directive was under discussion was of great value for the Commission. The Commission was able to use information generated by industry and member states to bolster their argument. Both the content of information, as well as its timing, enhanced the Commission's agenda setting ability. Fourthly, the greater the ability of the Commission to create transnational allies, the greater the Commission's agenda setting ability. In the case of the waste packaging directive and the end of life vehicles directive, the Commission was successful in generating alliances. At the same time, the Commission's ability to play upon differences in the alliance was instrumental in creating a political "space" that enhances its agenda setting abilities. In the 1990s the Commission was seeking out industry representatives in order to raise its profile even more. Industry representation is through Euro-federations operating at the Union level, "half way house" associations that have a combined membership of Euro-federations and national associations, national associations that operate at the Union, too, and individual firms. The ability of these associations to exert influence depends upon several factors. When industry was able to speak in a unified voice, its ability to exert influence was great. The size of the firm matters, as multinationals are able to operate more effectively than small and medium enterprises. A high degree of fragmentation inside the federation or association may hinder its ability to reach common positions that it can take to the Commission. Related to this, the better an industrial sectoral is defined, the more definitively an association can speak. Finally, the degree of promotion and regulation of business activity also influences the ability of associations to present their case. If associations are responsible for the implementation of the directive, their arguments will be heeded by the Commission.<sup>1</sup>

The following sections of the paper will consider the following: the first section will trace the development of the Commission's preferences in the waste management sector. The focus will be on themes important to the Commission, the balance between the environment and trade, the emphasis on producer responsibility, and the desire to have a more integrated approach to the production process. The second section will look at the three cases by considering the initial drafting of the directives. Analysis of the cases will stress the two factors important to agenda setting, the generation of information and the construction of transnational alliances, both necessarily closely interrelated. The first part of the chapter will examine the influence of the industrial lobby on the directive. In all three cases, the Commission actively sought out the input of industrial associations from the very beginning, allowing them access to drafting sessions. From this privileged vantage point, the industrial lobby was able to insert language that favored its position or remove ideas detrimental to its interest. While the Commission relied heavily on

organized industry interests to construct the directives, this was not to say that industry interests solely dictated the terms of the directive. The Commission was able to exploit differences amongst the industrial associations which forced industry to deal more constructively with packaging, autos and electronic goods. Industry associations didn't really crave increase regulatory action on the part of the Commission, but accepted it as a cost of doing business in an integrated single market. The second part of the section will examine the Commission's formal powers, specifically the right to initiate legislation. The ability to write proposals is an obvious power, but one that is often overlooked. It is fundamentally important, as negotiations follow from the initial premises laid out by the Commission. The section will consider how the Commission was able to write its preferences into the directives, setting environmental standards that forced industry to reconsider both how it recycled its products and how it produced them.

### **Establishing Commission preferences**

The activity of the Union on environmental issues in the 1980s was impressive, both rhetorically and legislatively. Environment principles were recognized as important in the treaties that govern the Union and were therefore taken on by the Commission as an important area of legislative initiative. The 1980s were the heyday of environmental legislation, with numerous directives passed integrating the environment tightly into the *acquis* of the Union (Judge, 1993; Pollack, 1994). This trend continued into the 1990s, with more legislation than ever being put into effect (Jordan, Brouwer and Noble, 1999). The idea of the waste packaging directive was to deal with the remnants of packaging after the fact, with rather limited attempts at prevention.<sup>2</sup> Both the end of life vehicles directive and the WEEE directive traces a trajectory of trying to deal with waste before its creation by encouraging the developing of integrating the environment into the production process in an attempt to be more pro-active. It is setting these policy parameters that entrepreneurship comes into play. By shaping issues in ways that fit the Commission's preferences and popularizing them by selling them to both the member states and the industrial association, the Commission was able to propose directives that met both the internal market and environmental demands.

Waste management in the 5<sup>th</sup> Environment Action Program moved beyond command and control type regulation in attempts to change behavior of industry and consumers. This was done by mixing voluntary approaches and financial incentives with traditional regulatory practices in efforts to encourage the prevention of waste. Producer responsibility remained as a key environmental theme, a carryover from the previous action programs. Attempts were initiated to encourage the construction of markets for secondary goods, a problem that resulted in the wake of the waste packaging directive. The gradual movement from the waste packaging directive to the directive on electronic goods also shows the Commission's desire to deal with waste before its creation by encouraging the developing of integrating the environment into the production process. The Commission also gave heightened awareness to the implementation of policies, as the Commission had recently completed studies on the several environmental directives, concluding that implementation was slow, often ineffective and usually incomplete. Finally, all these themes were once again revisited in the construction of the 6<sup>th</sup> Environment Action Program, completed in 2001. The importance of these studies, directives, reviews and action programs are to provide evidence for the Commission's thinking and approach to waste



management.

The notion of producer responsibility (or the concept of the polluter pays principle) is the cornerstone of environmental regulation, and was in existence well before treaty incorporation. It was referred to in the 1<sup>st</sup> EAP and was initially set out in a 1975 Commission communication to the Council. The widespread acceptance of the principle was first seen in a Council resolution to the 4th EAP. While the resolution did not legally bind member states to the principle, the Council of Ministers nevertheless suggested that all member states comply. The principle was based on the “simple” idea of charging polluters the costs of environmental damage. These charges would encourage polluters to search for production processes that pollute less and that make more rational use of environmental resources, or to develop products that entail less waste. The principle was to be achieved through the use of charges as well as the imposition of environmental standards. The effectiveness of the principle rested on the ability of both the EU, and the member states, to implement it.<sup>3</sup>

Two difficult environmental principles to achieve, both politically and practically, are the prevention and precautionary principles. The prevention principle was included in the SEA, which argued that prevention is better than cure; the “best environmental policy consists in preventing the creation of pollution or nuisances at the source, rather than subsequently trying to counteract the events” (Commission, 3<sup>rd</sup> EAP, quoted in Jans, 1996). The principle allowed for early intervention to protect the environment. It first made its appearance in the 3<sup>rd</sup> EAP, which said that if the prevention principle was to have full effect, the public and to decision makers required full information in order to enhance the quality of their decisions. The 3<sup>rd</sup> EAP stated that procedures for judgement needed to be formulated and introduced through environmental impact assessments, and decision makers needed to be fully aware of them. The implementation of the adopted measures must be monitored to ensure their correct application. If circumstances or new information arises, then the EAP argued, environmental measures should be adapted to reflect these changes. The 6<sup>th</sup> EAP furthered these arguments, where despite the efforts of the previous EAPs, little has been done to reduce the rising tide of waste volumes. The focus now needs to be on waste prevention both in quantitative (i.e. volumes) and qualitative (i.e. hazardousness) terms. For policy makers, this is a great challenge which requires the decoupling of waste generation from economic growth. Waste prevention is closely linked with improving resource efficiency, influencing consumption patterns, and reducing the overall levels of waste. It also requires accounting for waste associated with products throughout their life cycle, from production, through use, and finally to the point where the product becomes a waste. Waste prevention needs to be done at the source, meaning that finding ways of extending product life-spans, using less resources in products, shifting to cleaner and less wasteful production processes. It also requires influencing consumer choice and demand in the marketplace in favor of less wasteful products and services (CEC, 2001b).

The encouragement of recycling is seen by the Commission as a vital theme in the Union’s environmental policy; waste which cannot be prevented should be recovered as far as possible, with preference being given to recycling. This reduces society’s demand for virgin raw materials and also raises citizen awareness about implications of their consumer choices. The Community’s approach on recycling has been to focus on ‘priority’ waste streams,

such as packaging waste and end-of-life vehicles, as well as in the WEEE directive, by putting forward legislation that set recycling targets to be met by member states. These targets imply an emphasis on producer responsibility, requiring them to manage their products when they become wastes as well as reduce the content of hazardous substances in the products. To do this successfully there is a need to take into account environmental impacts and takeoffs. There is also a need to consider economic and social aspects, too. The aim is to recover and recycle wastes to sensible levels, “the point where there is a net environmental benefit and it is economical and technically feasible” (CEC, 2001b:38) To achieve this the strategy on waste recycling should: identify which wastes should be recycled as a priority, based on criteria which are linked to the resource management priorities; formulate policies and measures that ensure the collection and recycling of these priority waste streams occurs, including indicative recycling targets and monitoring systems to track and compare progress by Member States; identify policies and instruments to encourage the creation of markets for recycled materials (CEC, 2001b).

The Green Paper on Integrated Product Policy (COM/2001/68 final) need to integrate green designs into products. The Commission’s Green Paper on IPP built on extensive consultations and studies with the idea of presenting ideas for strengthening product-focused environmental policies with an eye toward fostering the growth more environmentally friendly products. greener products. To achieve IPP the Commission argued that a mix of approaches would need to be used. Firstly, an effort needed to be undertaken to assure that prices were compatible with market. The Commission proposed ideas for discussion included: differentiated taxation such as reduced VAT rates on eco-labelled products, an extension of the producer responsibility concept to new areas, and the use of state aid policy within the New Guidelines on State Aid for Environmental Protection. Secondly, the demand for greener products needed to be stimulated, and the Commission proposed that the best way to achieve this was to raise consumer awareness. To do this consumers must be provided with easily accessible and understandable information. Finally, emphasis needed to be placed on environmentally friendly designs where negative environment impact of a product could be minimized or even prevented. Possible ways to improve eco-design, argued the Commission, included: improving the generation and flow of life-cycle information, encouraging eco-design guidelines, integrating environmental considerations into the standardization process. Important in this process would be a new method for considering the life-cycle aspects, where “Product Panels” would be created where groups of relevant stakeholders would meet to devise solutions to particular problems (CEC, 2001a).<sup>4</sup>

Finally, implementation of directives was taking on increased importance inside the Union, especially since reports back from the member states, as well as the Commission’s own internally generated reports were documenting a relative lack of progress. In the DGXI’s second annual survey on the overall state of the implementation of environmental directives, the body was forced to conclude that, “despite some positive results, in general the quality of the environment is not improving, despite 30 years of environmental legislation (DGXI, 2000:38). The Commission went on to cite one of the major factors in this failure was the slow implementation of environmental legislation, which the Commission felt was reflected in the high number of infringement procedures against member states. While continuing to argue that

new legislation was certainly required, the key focus in the future should be on implementation. Here, member states must fulfil their legal obligations to the Union, and the Commission went on to note that citizens, industry and NGOs also have important roles to play. The Commission went on to argue that the main principles of the 5<sup>th</sup> EAP remained valid, but that the “need for integration, the need to broaden the range of instruments and involve actors at all levels have lost nothing of their importance” (DGXI, 2000:38).

As far as the waste management sector was concerned, the story was quite the same. The Commission issued a report entitled “The Implementation of Community Waste Legislation” (COM 1999/752), which looked at the implementation of four directives for the period 1995 to 1997.<sup>5</sup> The response from the member states was less than overwhelming. Under Directive 91/692/EEC Member States are required to submit reports, drawn up on the basis of questionnaires. Questionnaires relating to Directives 75/439/EEC on used oils, 75/442/EEC on waste and 86/278/EEC on sewage sludge were adopted by Commission Decision 94/741/EC of 24 October 1994. While not legally obliged to send reports, member states were invited to do so in order to ensure continuity with previous reports. The aim of this report was to enable Member States and the Commission to assess the progress made in implementing the waste management directives and, at the same time, provide the general public with information on the state of the environment. Reports from member states comprise the main source of information for the Commission’s own report. Its success, therefore, depended largely on the quality and punctuality of the national information. Member States had to submit their reports by 30 September 1998. The Austrian, Finish and Danish reports arrived close to the date required, October 1998. Other member states their reports later, sometimes after considerable delay. The member states in this category were: Belgium, France, Germany, Ireland, Luxembourg, the Netherlands, Sweden and the United Kingdom. On the other hand, Greece, Italy, and Spain did not send any of the requested reports. Portugal has not sent the report on waste, hazardous waste and waste oils and the Netherlands have not sent the report on sewage sludge (status May 1999). For these cases the Commission started procedures under Article 226 EC Treaty (CEC, 1999).

### **Waste packaging directive**

The Union’s Waste and Waste Packaging Directive was written largely in response to the German *Verpackungsverordnung (VVO)*, the intention of which was to protect the environment by mandating package producers and retailers take back packaging they produced or sold. The law required nearly all packaging material be collected, recovered and recycled. The targets set in the *VVO* were high, resulting in massive stockpiles of “secondary raw materials” that Germany could not process domestically. Germany began to export these recycled materials across the European continent, sometimes at “negative prices.” Reacting to this flood of materials, several member states pleaded with the Commission of the European Union to enact legal proceedings against Bonn, arguing that Germany was subsidizing goods and therefore violating the rules of the internal market. At a minimum, these same member states, as well as the industries affected,

wanted legislation that would set Union-wide standards which would relieve these member states of the burden of recycled German plastics and paper.

Packagers supported the Commission's directive on the expectations that it would "do something" about the deleterious effect Germany's *DSD* was having on the internal market. The Commission was able to build a consensus on the directive that centrally included protection of the common market with the support of industry. Neither the packaging industry nor the Commission wanted significant constraints placed on the single market, but the former was willing to accept some regulation. Even though the packaging associations grumbled about many of the targets involved in the directive, they accepted these targets in the expectation of the greater benefits resulting from barrier-free trade. Regulation was acceptable if the Union's standards were lower than in Germany. Union standards would also prevent a fragmentation of the market where the potential of different national programs with varying standards could be avoided. They also diminished the chances that higher German standards would become the norm. The Commission was able to build a network of support by formally including industry groups in negotiations over the initial drafts of the directive. The Commission also met informally with packaging associations at numerous packaging conferences over the fall, winter and spring of 1991 and 1992.

Several industrial organizations were involved in the drafting of the directive, giving them a privileged position in the decision making process. Between 1990 and 1993 about 280 organizations or individuals had contacted the Commission over the packaging directive, of which over 70% were from trade and industry. Environmental groups accounted for only about 6% of all contacts (Porter, 1994; cited in Greenwood, 1997). The environmental groups that did have contact with the Commission were badly outresourced, especially in one area that the Commission found most important, that of information. Environmental groups simply were not able to match the resources available to industry.<sup>6</sup> Nancy Russotto {head of} suggested that the Association of Plastic Manufacturers Europe (AMPE) "guided the Commission in its preparation" (*High Performance Plastics*, January, 1991). It is difficult to underestimate the impact that industry had in the construction of the directive's final draft. As a consequence, environmentally ambitious articles in the directive were toned down, evoking criticism by environmental groups. Business efforts were partially responsible for getting the packaging directive onto the Commission's radar. However, industrial associations were only moderately effective in exerting influence, despite their tremendous resources and privileged position in the policy making process. Business associations were given a privileged position in the negotiating process through their inclusion in the creation of the directive, but it was the Commission, in the end, that had the final say on the proposal. With access to policy makers comes political influence, but this doesn't guarantee the final say on all particulars. The divergent interests of business associations made it easier for the Commission to exert its own preferences in the directive.

The creation of the a negotiating forum between the Commission and industry groups suggests the importance of initiating legislation, as well as the important role agenda setting places on the construction of transnational alliances.<sup>7</sup> Initial drafts of the packaging directive were considered in three rounds of consultations between April and November of 1991. The

intention of the Commission was to create a forum for discussion at the Community level, as well as allowing it to gather information. Representing the Commission were members of the waste division of the DGXI. Representing industry were several business and trade associations, such as Union of Industrial and Employers' Associations (UNICE), the European Federation of Retail Traders (CECD), the Federation of European Wholesale and International Trade Association (FEWITA), and European Multiple Retailers Association (GEDIS). Two groups, the "Packaged Consumer Goods and Industries Coordination Group" and the "Ad Hoc Packaging Legislation Group" were specifically formed to enhance industry presence and involvement in the discussions on the early drafts of the directive (Mazey & Richardson, 1993a).<sup>8</sup> There were four broad camps in the business alliance, raw material suppliers and packaging converters, packers and fillers, retailers and wholesalers, and waste management and recyclers (Porter, 1997). While these groups did align themselves this way for the purposes of negotiation, they were at the same time fighting over how to distribute the costs of the new directive. Alliances were created amongst glass suppliers and converters, packagers and fillers, retailers and wholesalers against those of cardboard or paper, plastics or tetrapaks.<sup>9</sup>

By the time the proposal was forwarded to the Council some of the targets in the directive had been lowered. Overall, however, recycling and recovery targets remained relatively stringent: a 60% recycling rate and 40% recovery rate for each material. The waste hierarchy of prevention, recovery, recycling, and disposal remained part of the directive. However, the directive now had provisions for allowing "thermal recycling," which allowed the incineration of packaging for the recovery of energy.<sup>10</sup> The final draft also included a clause that allowed member states to promote the objectives of the treaty through the use of economic instruments. The targets proposed by the Commission were well below those proposed by environment leading member states, specifically Germany, Denmark and the Netherlands. At the same time, however, the targets were well above those proposed by the remaining members of the EU12. Significantly, some industrial associations applauded the targets, agreeing that they could be easily achieved. Glass and paper fell into this category. However, other organizations argued that the targets were unrealistic and far too demanding. The sector that complained the most vociferously against the targets was plastics.

Beyond the groups working with the Commission in consultations, other groups were interested in the issue area and were involved in intensifying industry interest over the directive. The European Organization for Packaging and the Environment (EUROPEN) was an extension of the British based Industrial Council for Packaging and the Environment (INCPEN) which, by the end of 1993, could boast of representing more than 600 companies in all sectors of the packaging chain. The European Recovery and Recycling Association (ERRA)<sup>11</sup> was another prominent Union level packaging organizations that rose to particular importance due to its ability to provide the Commission with original research. The Packaging Chain Forum (PCF) was a formation that coalesced in an effort to keep informed on the proceeding negotiations. The leading groups in the organization were: the European Brands Association (AIM), APME, Beverage Can Manufacturers Europe (BCME), Confederation of Food and Drink Industries in the EEC (CIAA), ERRA, EUROPEN, Fédération Européen des Activites du Dechet (FEAD), and the Secrétariat Européen des Fabricants d'Emballages Métalliques Légers (SEFEL). These

were essentially federations of national associations or of the firms themselves. The development of these associations pointed to a transformation in Union-level interest associations. No longer were firms or sectors content to allow broad based alliances, they created more concentrated structures that allowed industry to track the directive's movement, influence developments in the Commission, and to avoid lowest common denominator decisions that were typical of past efforts (Porter, 1997).

In these opening consultations, the Commission also invited two environmental interest groups, the European Environment Bureau (EEB) and the Bureau of European Consumers Unions (BEUC). They were invited to two of the three meetings, but simply could not compete with industry groups. Like most environment groups, they simply did not have the material resources to maintain a significant presence in Brussels. The participation of the EEB was also problematic for many environmental groups, who view the EEB as far too conciliatory toward industry and tainted by the fact that it was often the recipient of Union funding. "Hard core" environmental groups felt that the EEB was too "close" to the Commission, and therefore not able to serve as a reliable spokesperson for environment interests (Lieverink, *et. al.*, 1993). Echoing *BUND's* response to the *VVO* in Germany, Greenpeace and the Friends of the Earth (FoE) argued that the directive did little for the environment and did nothing to prevent the production of more packaging. While cooperation amongst the groups existed, it was limited in effectiveness and largely presented itself in the form of information exchange and joint press releases.

The evidence environmentalists were able to present only served to slow down the movement toward some sort of agreement, but lacking solid, incontrovertible evidence that reuse was the best economic and environmental option, they were doomed to lose. Beyond their inability to present as much scientific evidence as industry groups could, environmentalists struggled in presenting their arguments against packaging. From an "ideological" perspective, trying to do away with a "throwaway society" was not going to be easily done. Environment groups were of one mind on the issue, "all packaging is waste,"<sup>12</sup> but they were not all that interested in the directive from the beginning. According to the *BUND*, recycling was only a second best option. The best course of action was the avoidance of waste by "nil packaging" or through the use of refillable products. *BUND* described the DSD's recycling guarantee as labeling fraud. These objections to recycling carried over to the packaging directive as a whole. Most groups echoed *BUND's* domestic assessment of the *VVO*, that this was a compromise better left unmade. They simply did not like the directive as the quantitative targets were not high enough. Qualitatively, the directive did very little to encourage reuse and nothing to prevent the generation of waste. Environmental groups were of little use to the Commission in getting the directive implemented. Indeed, their activities would only become a hindrance in Union environmental governance.

The Commission benefitted from its relationship with the industry associations. It relied heavily on information and data from industry groups to produce the directive, given the inability of DGXI to produce data independently able to. Industry groups were also important for lobbying purposes, either nationally or supranationally (Nugent, 1995; Héritier, 1996; Pollack, 1996; Nugent 1997). This alliance provided the Commission with vital support for the directive

and offered a valuable counterweight to pressures from environmental groups, the European Parliament, and most important, the higher standard member states of the Council of Ministers. But the construction of an alliance wasn't enough, there needed to be some ability to "control" the alliance. The Commission was able to exert influence over the alliance due to the internal divisions amongst the industry groups. These divisions could be exploited and the Commission could exert its power to interject its environmental preferences into the directive. The Commission needed industry's assent to the directive, although it did not necessarily require its total agreement on the directive's qualitative and quantitative targets. The targets did place a significantly regulatory burden on packagers. Furthermore, the Commission was able to argue that the prevention of waste was part of the directive and that the waste hierarchy did upgrade protection of the environment. But most importantly, these environmental protections did not compromise the integrity of the market. The alliance benefitted the Commission as it could claim credit for introducing legislation that could solve a growing problem, one that member states were seemingly unable to solve amongst themselves, thereby bolstering the reputation of the Commission.

### **End of life vehicles directive**

In the case of the end of life vehicles directive, the input of industry associations was encouraged and supported by DGXI. These groups were continually consulted during the construction of the directive and were influential in setting some of the targets of the directive.<sup>13</sup> [may need to highlight this with a bit more info, need a few pages from the ENDS data to find out more about this] After a series of meetings with various industry associations, a consensus was achieved over vehicle dismantling and treatment endorse the principles concerning maximum reuse of components, maximum recycling, minimum waste disposal. Industrial associations were also in broad agreement in establishing minimum Community standards for the treatment of end of life vehicles, a widely distributed network of authorized discarding/dismantling points, completed by a more centralized infrastructure for further treatment, and in setting up a system of adequate controls. Their preference goes to a Community instrument, which leaves sufficient flexibility to the Member States for the establishment of measures related to the practical handling of end of life vehicles and at the same time introduces uniform conditions in the internal market in order to limit competition distortions and export of end of life vehicles to countries with lower environmental standards.

While this general consensus amongst industry associations was important in allowing the Commission to move ahead with the directive, it masked disputes that existed between various factions inside the policy sector. For the most part, steel recyclers were only effected in a small way by the proposed directive, and indeed could be seen as the primary beneficiaries of the legislation. They quickly recognized that the proposal would improve recycling opportunities for their particular material. The European Committee for Motor Trade and Repairs also responded positively to the proposed directive, noting that it would stimulate the motor trade and repair industry, which would have positive effects on employment, investments and competition. Most

of the firms in this sector, generally small and medium-sized industries (SMEs), felt that the investments needed to limit environmental degradation were affordable and achievable by most operators. The European Association of Craft, Small and Medium-sized Enterprises were generally accepting of the Commission's arguments relating to potential financial and administrative burdens related to the certification system required in the directive and other national associations of small and medium-sized recycling enterprises expressed support for a European system for the management of end of life vehicles that mimicked the system existing in the Netherlands, which the Commission deemed to be in line with the general requirements of the proposal.

On the other hand, the Association of European Automobile Manufacturers (ACEA) and some organizations linked to material production did not consider the Union action necessary in this area. Their argument rested on the ground that end of life vehicles did not provide a real and specific threat to the environment (ACEA, 1998). Following on this logic, they argued that there was no need for the EU to intervene in this area, and that any problems related to such vehicles could be more effectively handled by the private sector through redesign, reengineering and other efforts that would allow for enhanced recyclability of old autos. Beyond this, the ACEA argued, voluntary agreements between industry and various member state governments were more than effective in terms of handling waste from soon to be discarded vehicles. Consequentially, they questioned the need for setting mandatory targets as well as the defining different targets for re-use, recovery and recycling. However, a few automobile manufacturers were more supportive of the proposal and were willing to work with the Commission in achieving the targets mandated in the directive (CEC, 1997)<sup>14</sup>.

While the Commission certainly solicited suggestions from the automotive sector, it did not want to wait for industry to regulate itself through a comprehensive plan, given the decidedly mixed nature of the interest organizations involved in the negotiations over the end of life vehicles directive. In its writing of the directive, the Commission noted that the activities of the member states and industry associations represented an improvement over the past, but efforts in the area needed to be further encouraged. The results achieved via the member state initiatives were not sufficient to confront the environmental and the internal market dimension of the problems. This was also a consequence of the fact that none of the voluntary agreements included measures which required state action to do things like requiring a "certificate of destruction" for de-registering vehicles or the permitting requirements for treatment facilities. The Commission noted that none of the national agreements ensured that the envisaged quantified targets would be met or other commitments complied to. Finally, voluntary actions have been started only in a number of Member States (in particular those where vehicles are produced), and there is no evidence that similar actions will be started in the other Member States in a reasonable (CEC, 1997: 10)

The Commission's initial proposal took two points as its aims, to ensure a high level of environmental protection and the need to preserve the functioning of the internal market. The goals of the directive was to prevent the creation of waste and to promote the re-use, recycling and recovery of vehicles and their component parts without recourse to landfilling or incineration without energy recovery. Using the principle of the polluter pays principle, the main elements of



the proposal were to prevent hazardous waste by requiring manufacturers and suppliers of materials and equipment to make an effort to reduce the use of dangerous substances at the vehicle design stage. The directive banned crushing, dumping or incinerated heavy metals, such as lead, mercury, cadmium, and hexavalent chromium, contained in vehicles placed on the market after 1 January 2003. These metals must either be recycled or eliminated from new vehicles. The question of PVCs was left open for the time, although the Commission explicitly noted that it would examine the scientific data on PVCs and, if necessary, submit a later proposal. The directive required the collection of old vehicles. Economic operators would be required to set up a system for collecting all vehicles taken off the road, and from January 1<sup>st</sup>, 2000 all vehicles would need to be taken to licensed processing centers. A certificate of destruction confirming that the vehicle was taken to a licensed dismantling and processing installation would be required for de-registration. This would be done by the last owner to date. These installations would only obtain a license if they met certain environmental requirements. The owners of non-recyclable vehicles may claim the cost of taking their vehicle to a professional dismantling installation from the manufacturer, thereby keeping the producer responsibility idea intact.

In order to facilitate the movement of vehicles and to ensure the free flow of goods and services in the market and prevent barriers to trade, member states will be required to recognize and accept the certificates of destruction issued by another state. In order to prevent the production of waste, vehicles taken off the road must comply with quantitative re-utilization, recycling and recovery criteria: by 2005, the rate of re-utilization or recovery must be 85% of the weight of the vehicle and the rate of re-utilization/recycling must be 80%; by 2015, the rate of re-utilization/recovery must be 95% and the rate of re-utilization or recycling 85%. Objectives beyond 2015 have yet to be set. Finally, manufacturers would be required to supply information on the rate of re-utilization, recycling and recovery achieved during the past year, figures which must be verified by the member states.

The Commission was once again able to overcome the resistance of industrial associations largely because it could appeal to the collective interests of industry, namely that unified regulatory standards needed to be put into place. The benefits to the market were the main point of argument for the Commission, citing the fragmented and diverse nature of the regulatory efforts at the member state level. The Commission did not (in the end) get everything it wanted, as manufacturers were able to lower some standards, achieve an exemption for “historic” vehicles, as well as a longer time frame by which to meet the recycling objectives. However, the standards proposed by the Commission were not easily achieved, as the Commission was gently pushing the envelope in terms of what was required of automobile recyclers. The Commission’s ability to call for producer responsibility and “take back” requirements, on the other hand, placed tremendous financial burdens on the industry and suggests that the ability to frame issues as an entrepreneur provides a powerful tool.

## **Waste Electrical and Electronic Equipment (WEEE)**

Work began on the Directive on waste electrical and electronic equipment (WEEE) in 1994, just as the waste packaging directive was clearing its legislative hurdles, including one of the first ever attempts at conciliation. The experience of the earlier directive had an influence on initial attempts to write the directive, most importantly the realization that an even more inclusive approach needed to be taken. While industrial associations had been influential in the drafting process with packaging, the Commission decided to take this one step further with the WEEE directive. Rather than trying to mandate recycling targets, the Commission organized a priority waste stream group charged with reaching an agreement on how responsibilities for recovering end-of-life electrical and electronic waste should be assigned. The group included members from industrial associations as well as environmental and consumer groups. The group's work began in January 1994, with a deadline of July 1995. While the group was able to meet this time line, the final document left most important decisions for the European Commission to decide. It was also unable to reach a consensus on whether legislation or voluntary measures are needed to harmonize the differing approaches to electronic waste recovery which are taking shape among member states, or on numerical targets (ENDS Report #245, June 1995: 41).

The group was unable to reach agreement at its final meeting on 10-11 July 1995, largely due to the diverse nature of the participants. Much in the final document was amended with statements that the points under discussion were not fully agreed to, together with lists of alternative measures that could potentially be taken. The document did not suggest what type of EC action is needed. At a minimum, it said, clearly defined quantitative levels for recovery and recycling should be set, although specific technical solutions and timetables for action need to vary to reflect different national circumstances. One of the key issues on which agreement could not be found was who should be responsible for recovering electronic waste. As a whole, industry preferred a "shared responsibility" approach where all participants in the chain, including citizen consumers, would share the burden. Most member states, environmental and consumer groups favored provisions for producer responsibility. At the Commission's insistence, the document outlines prevention, recovery and disposal targets for 12 product groups. However, these were demoted to an annex, and again were not agreed by the group as a whole. The report says that an indicative target range, varying by product category, group or sector, should be set at Union level. The group also acknowledged that there may be added costs for achieving increased recovery levels, and three options were suggested. Industry's preference is a charge on end-users when discarding a used item, which it argued, would be the most transparent and cost-efficient way of raising funds. However, member states and environmental and consumer groups favored a levy on new products. The third option is a local waste tax. The group left the decision to the Commission, though it pointed out that it would be unrealistic to seek a single solution for all products and sectors. Large items from commercial users may be treated very differently from small items from domestic sources (ENDS Report #247, August 1995: 40).

However, according to Clair Snow of the UK's Industry Council for Electronic Equipment Recycling (ICER), any statement in the document needed unanimous agreement. She suggested that there was actually more consensus than suggested (ENDS Report #247, August 1995:40). Importantly for the Commission was a disputed statement suggesting that general

principles for waste minimisation should be fixed at the Union level in order to avoid distorting the market. Most members of the group consider that the Union should legislate; industry interests want a harmonized approach across Europe. As is usually the case, the UK representatives objected to Union-level action, which should be undertaken only if market distortions were to occur. But with several Member States on the verge of enacting laws to minimize electronic waste, the group said their effects can hardly fail to spread to other countries (ENDS Report #247, August 1995:40).

As in the case of the waste packaging directive and the end of life vehicles directive, initial Commission action was based on a perceived crisis in the amount of materials heading either to the landfill or the incinerator. About 6.5-7.5 million tons of electronic waste were estimated to come about in the EU15 each year, which amounted to about 4% of total municipal solid waste. Concerns also existed over the hazardous substances found in many electronic products, including heavy metals in batteries and brominated flame retardants in plastics. The Commission placed a great deal of emphasis on diverting materials containing hazardous substances away from incineration and landfill (ENDS Report 266, pp 44).<sup>15</sup> In July, of 1997 DGXI decided to press ahead with the Directive. Preliminary consultation with industry was expected in September, with a view to producing an initial draft before the end of the year. The decision followed a study by AEA Technology which found recycling electronic goods to be technically possible and environmentally beneficial. The report says that although current recovery costs are high, they are likely to fall in the future. The study suggested that targets could be set separately for different product groups, or as a single target for the entire sector, but the AEA concluded that the best option may be to copy the packaging directive and set an overall target together with recovery and recycling floors for different product groups and that product refurbishment should not count towards recycling targets. As far as the recovery rates were concerned, a number of collection trials in Europe have shown typical recovery rates to be 30-40% for large items such as washing machines and televisions and 10% for small items.

The study concluded by suggesting that the cheapest scheme appeared to be collective and recovery through local authorities, rather than making producers directly responsible for collecting the products either at a retail outlet or a privately organized and operated collection scheme, as was the case with the waste packaging directive. One area where no agreement could be reached, and almost certain to cause problems in the construction of the directive, had to do with some key definitions. There was little consensus on what constituted an electronic good, one argument had it as anything that runs on electricity and uses a cord or batteries. But many sectors objected, arguing that this could logically be extended all the way to motor vehicles. The compromise reached suggested that lists of products be created, which could be periodically updated. As in the case of the end of life vehicles directive, and the waste packaging directive as well, it was recognized that there was a need to certify reproprocessors, if for nothing else to ensure that hazardous materials from electronic goods are properly managed at end-of-life (ENDS Report #271, August 1997).

After two and a half more years of wrangling, the Commission announced in June of 2000 its proposal on a directive on electrical and electronic waste. The Commission goal was designed to tackle the ever increasing waste stream of electrical and electronic equipment

through increased recycling of electrical and electronic equipment, which the Commission argued would limit the total quantity of waste going to final disposal. Environment Commissioner Margot Wallström noted that electrical and electronic equipment constitute one of the fastest growing waste streams in the EU, which made it all the more imperative to implement the key principles of EU waste management policy, "especially the prevention and the recycling of waste, in this area" (Commission Press Conference, Brussels, 13 June 2000: IP/00/602). Following Commission preferences, producers would be responsible for taking back and recycling electrical and electronic equipment. The Commission argued that this would provide incentives to design electrical and electronic equipment in an environmentally more efficient way, which takes waste management aspects fully into account. Consumers would not be held responsible for the costs of the take back, as they would be able to return their equipment free of charge. At the same time, the Commission also issued a directive that prevented the generation of hazardous waste by restricting the use of certain hazardous substances requires the substitution of various heavy metals and brominated flame retardants in new electrical and electronic equipment beginning in 1 January 2008. Wallström declared that the directive was a major step towards the objective of sustainable production and consumption. She noted that the Commission was pleased about the balance contained in the initiative, where the environment, consumers and industry all stand to gain from" (Commission Press Conference, Brussels, 13 June 2000: IP/00/602).

The new proposal, the Commission argued, fulfilled a key objective of the fifth environmental action program, that of the reduction in wasteful consumption of natural resources and the prevention of pollution. Again, following on the preferences of the Commission, the proposed directives underscored the importance of producer responsibility, which it deemed necessary to provide incentives for producers to take into account, even at the product design stage, the need to reduce the use of hazardous substances and to improve the recyclability of these products. The Commission noted in the proposal that electronic waste was increasing by 16-28% every five years, which was three times as fast as the growth of average municipal waste, as well as being one of the largest known sources of heavy metals and organic pollutants in municipal waste. In line with the polluter pays principle producers need to organize and finance the treatment, recovery and disposal of waste. The entry into force of the financing obligation will be delayed by five years to minimize the impact on producers of the financing requirement regarding waste from products put on the market before entry into force of the legislation ("historical waste").

Given that today more than 90% of electronic waste ended up in disposal or shredding facilities without any pre-treatment, the need to consider hazardous waste constituted one of the main objectives of the proposal. Proper pre-treatment and recycling can, however, only be achieved through separate collection of electronic waste. The proposal also called for separate collection and recycling systems for such waste, which holds the producers responsible for the collection of their waste. The motivation for this policy option rested on the goal of reducing the amount of electrical and electronic waste disposed of in landfills and incinerators. Accordingly, member states will have to organize this collection from private households. Producers will then take over the waste from designated collection facilities. From there the waste needs to be

channeled to certified treatment facilities, where further treatment according to the standards set out in the directive can be ensured. The treatment standards contain minimum percentages for the recovery of this waste. These would come into force no later than 2006, and would range between 60 and 80%, depending on the product category (CEC, 2000).<sup>16</sup>

The proposed directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment, based on Article 95 of the Treaty,<sup>17</sup> introduces a substitution requirement for those substances in electrical and electronic equipment, which pose the main environmental problems during disposal and recycling of such waste. This requirement will support ongoing efforts to substitute these substances by less harmful substances. In line with the directive on end-of-life vehicles the targeted substances include the heavy metals, lead, mercury, cadmium and hexavalent chromium. In addition, two types of brominated flame retardants, pbb and pbde, are required to be substituted by 1 January 2008. The substitution of pbb and pbde must not lead to a lowering of the fire safety standards. Accordingly, the directive provides for exemptions from the substitution requirement if such substitution is not possible (CEC, 2000).

Much as in the case of the waste packaging directive and the end of life vehicles directive, there were attempts to bring industrial and environmental groups, but the former would, over time, prove to be much more influential in the drafting of the directive. An overview of those consulted highlights the presence of industrial associations<sup>18</sup> and the absence of environmental interest groups. The Environmental Directorate and the Enterprise Directorate, spent considerable time consulting advisory commissions, as well as offering on-line consultations with industry associations and businesses, whose opinions on the proposed directive were directly solicited. The argument that industry was in control of the writing of the legislation and the legislative process needs to be tempered, if only because industry has objected to many components of the proposal. Industry objects to cost of the proposal, citing studies that shown implementation of the directive could cost millions of dollars and all but eliminate profits on goods where the profit margin is already very small (*AFX News*, 14 May 2001; *Financial Times* 6 April 2001). Industry also objects to the mandatory nature of the solution, suggesting that voluntary approaches may be the most useful. Already there are real breaks in the coalition of industry associations, which are between producers of large appliances (refrigerators, washing machines, even computers) and smaller products (toys, games, phones). There is also the split between products that use materials that are potentially hazardous, and those that do not. Much as in the case of the packaging directive, it appears that the business sector has accepted the fact that legislation is coming and that they need to react to it.<sup>19</sup> Jane Richardson, chief executive of Electronics Scotland, an industry association and lobbying group, noted that the WEEE would place significant burdens on the industry, but that they were “encouraging immediate and positive consultation with public and private bodies responsible for the implementation of the legislation to ensure clarity and to make sure that the sector can respond to the legislation within a very short timescale” (*Scotland on Sunday*, 25 February 2001).

But what bodes well for the Commission’s ability to act as a policy entrepreneur in terms of overall goals, and its tactical agenda setting ability to achieve these goals can be seen in the industrial associations’ desire to keep the market open. Speaking for the Engineering Employer’s Federation (EEF), a UK-based interest group, Dr. Mike McKiernan noted that “as currently

drafted, this directive will place impossible burdens in manufacturing without addressing significant environmental impacts. Unless it is applied uniformly right across Europe it will create significant competitive distortions” (*Electronic Times*, 16 April 2001). The single market argument is vitally important for industry and they have worked to ensure that the two directives maintain their separate legal basis. Speaking for the European Association of Consumer Electronics Manufacturers (EACEM) an official of the organization noted that combining them could lead to differential rules and would “damage the single market” (*AFX European Focus*, 25 April 2001).

## **Conclusions**

Through a brief analysis of three case studies, the waste packaging directive, the end of life vehicles directive and the WEEE directives, this paper has emphasized one point: that the Commission’s agenda setting abilities and its entrepreneurial role have allowed it to propose directive that provides for environment integration by small steps. Each of these directives forces producer responsibility, impels industry to move forward more quickly on integrated environmentally friendlier materials into the production process as well as the materials themselves, as well as encouraging the construction of markets for recycled goods. The Commission has been able to achieve these goals by playing off internal divisions in industrial associations and product sectors while at the same time offering out the prospects of an internal market where different member state regulations will not interfere with trade. The Commission’s role as a “regulatory” body needs to be stressed, as it relies on resources from industry associations, yet is able to, at the same time, offer them an important service. The Commission has taken relatively small policy area in an effort to construct the girthing for larger policy ends. The Commission is able to claim success on three different fronts. These directives become the practical underpinning for larger environmental goals such as sustainable development. At the same time, the Commission is also able to ensure the sanctity of the single market. Lastly, the Commission is able to realize its supranational goals.

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## Endnotes

1. These interests were also privileged in their implementation of the directive, through the special advisory committees (Commission officials and national experts) where environmental groups were excluded and openly complained that they had little influence there. Arguments over the importance of comitology remain suggestive, but given the fact that inter-institutional influence and power doesn't seem to be systematic limits its explanatory value. Arguments over of comitology and the role of special advisory committees may be suggestive of its importance and rising relevance to decision making in the Union. Arguments over comitology do call into question neofunctionalist and intergovernmentalist debates, and the question that needs to be raised is how comitology reflects on the institutionalist arguments. This is a vital question as debates over the course of implementation are not meaningless. But at the same time the project deals with the creation of the directive rather than its implementation.

2. Of course, the Commission desired to take more preventive measures, but was unable to pass them through a more recalcitrant Council.

3. To do so meant that they needed to make sure that those who are responsible were actually charged. Implementation of environmental directives, indeed most directives, has been a difficult task for the Commission. Rates of implementing environmental directives vary widely amongst member states, with the Germans, Dutch and Danes doing relatively well. Those member states on the Mediterranean tend to do less well.

4. On 8 December 1998, the Commission organised a Workshop on Integrated Product Policy in Brussels. The event attracted more than 180 participants from public authorities, industries, consumers and environmental organisations. The aim of the workshop was to initiate a brainstorming discussion on the definitions, objectives and priorities for the development of an Integrated Product Policy in the Community. On 8-9th March 2001, another IPP meeting took place in Brussels where members of the Commission, representatives from member states, and industry officials meet to discuss ideas and projects related to IPP.

5. Directive 75/442/EEC on waste, Directive 91/689/EEC on hazardous waste (replaced Directive 78/319/EEC), Directive 75/439/EEC on the disposal of waste oils, Directive 86/278/EEC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture.

11. Interviews, Commission and EP officials, May 1995.

7. The movement of the locus of activity from the national to the supranational level also jibes with neofunctionalist expectations, which would certainly stress both the formation of new

organizations designed specifically to lobby the Commission and the increased activity of pre-existing packaging associations.

8. The Confédération Européen du Commerce de détail (CECD) and the Groupement Européen des Entreprises de Distribution intégrée (GEDIS) were specifically mentioned by the Commission as important negotiating partners.

9. Interviews with ERRA and APME representatives made this clear. While they cooperated to try and keep standards manageable they also were in economic competition and spent much of their time “trying to cut each other’s throats.” Interviews with industry officials, June 1997.

10. The minimum level for incineration is 13 MJ/kg, which is the approximate value for paper and cardboard. Essentially, this allowed for the burning of every piece of packaging

11. In May of 1992 the ERRA announced that three new members had joined, Prisunic (F), PLM (Sw) and Viag (D), which brought its membership to 30. The organization represents members from the full cycle of packaging, from production to retail. The Confederation of European Paper Industries (CEPI) was a new organization created from the older CEPAC, held its first general assembly in November of 1992.)

12. Interviews, Commission and EP officials, May 1995.

13. The following is a list of the business organizations which were consulted in 1995, 1996 and 1997 before the final Commission proposal was released: EGARA (European Group of Automotive Recycling Associations); ACEA (Association of European Automobile Manufacturers); ACEM (Association of European Motorcycle Manufacturers); GEPVP (Groupement Européen des Producteurs de Verre Plat); EUROBAT (Association des Fabricants Européens d'Accumulateurs); EISA (European Independent Steelworks Association); APME (Association of Plastics Manufacturers in Europe), EUPC (European Plastics Converters); BLIC (Bureau de liaison des Industries du Caoutchouc), UEIL (Union Européenne des Indépendants en lubrifiants); COMITEXTIL (Coordination Committee for the Textile Industry in the EC); GPRMC (Groupement Européen des Plastiques Renforcés/Matériaux Composites); EUROFER (Sidérurgie); EUROMETAUX (Metaux non ferreux); BIR/EFR/EUROMETREC (Recovery and Recycling Associations); EAA (European Aluminium Association); BIR (Bureau International de la Recupération); CECRA/CLEDIPA (Comité Européen du Commerce et de la Réparation Automobile); FEAD (Fédération Européenne des Activités du Déchet); UNICE (Union of Industrial and Employers Confederations); UEAPME (Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises); CECOP (Comité Européen des Coopératives de Production et de Travail Associé)

14. . Motorcycle producers, as well as the federation of European Motorcyclists opposed the inclusion of two and three wheeled vehicles in the scope of this Proposal, on grounds that they were not included in the Priority Waste Streams project group, of the limited volumes and weight

of waste generated by such vehicles (two-thirds of such vehicles are under 50 cc) and of the significant differences with four-wheeled vehicles industry in terms of size of producers, economics of the product and organization of product distribution. The Commission recognized their arguments and exempted them from Articles 4 and 7.

15. In March of 1997, Environment Ministers gave their approval to the Commission's waste strategy, including a proposal to follow up the work of the five priority waste stream groups. However, Ministers side-stepped the question of whether producer responsibility - making manufacturers foot the bill, or shared responsibility, spreading the costs to other players such as retailers or even local authorities should be adopted as Union policy.

16. The WEEE directive is based on Article 175. This is an environmental clause. The implications are that member states are required to notify, and receive permission of the Commission, when they initiate national proposals that come into conflict with the directive. One of the interesting aspects of this case is that although the impact of the decision making process on environmental legislation has been diminished by through the use of co-decision for environment legislation, some problems still remain. Member states have different burdens depending on whether the legislation is based on Article 95 or Article 175 in terms of freedom of enacting national standards that go above the EU standards.

17. The EEE directive will regulate the conditions for placing electrical and electronic equipment on the EU market by harmonising product-related environmental protection requirements. The objective will be to address environmental protection while eliminating or avoiding barriers to trade and preventing distortion of competition due to possible divergent regulatory systems. As with all other Article 95-based New Approach Directives, the focus is therefore on protecting the public interest while improving conditions for the functioning of the Internal Market. At the same time, Article 95(4) of the EC Treaty explicitly states that "the Commission in its proposals ... concerning health, safety, environmental protection, and consumer protection, will take as a basis a high level of protection". Article 6 provides for the obligation to integrate environmental protection requirements into the definition and implementation of Community policies and activities, in particular with a view to promoting sustainable development. Thus in regulating the internal market for these products, the EEE directive aims to improve their overall impact on the environment, and thus provide an efficient use of resources and a high level of environmental protection compatible with sustainable development. It is a concrete example of the integration of environmental protection requirements into enterprise policy. (Enterprise Division of CEC)

18. AEA (American Electronics Association), AIE (Association Internationale des Entreprises d'Équipement Électrique), APME (Association of Plastics Manufacturers in Europe), CECED (Conseil Européen de la Construction Électrodomestique), CEFIC (European Chemicals Industry Council), CELMA (Federation of National Manufacturers Associations for Luminaires and Electrotechnical Components for Luminaires), CPIV (Standing Committee of the European Glass Industries), EACEM (European Association of Consumer Electronics Manufacturers)

ECTEL (European Telecommunications and Professional Electronics Industry), EECA (European Electronic Component Manufacturers Association), ELC (European Lighting Companies Federation), EUROMETAUX (Association Européenne des Métaux) EPTA (European Power Tool Association), ETNO (European Public Telecommunications Network Operators' Association), EUCOMED (European Confederation of Medical Devices Associations), EUPC (European Plastics Converters), EUROBIT (European Association of Manufacturers of Business Machines and Information Technology Industry), EUROM (European Federation of Precision Mechanical and Optical Industries), EUROPACABLE (European Conference of Associations of Manufacturers of insulated wires and cables), EUPC (European Plastic Converters), EURO COMMERCE (European Association of Consumer Electronics Manufacturers), EVA (European Vending Association), FEAD (Fédération Européenne des Activités du Déchet), GPRMC (Groupement Européen des Plastiques Renforcés/Matériaux Composites), ISWA (The International Solid Waste Association), JBCE (Japan Business Council Europe), ORGALIME (Liaison of European Mechanical, Electrical and Electronic Engineering and Metalworking), TIE (Toy Industries of Europe), UEAPME (Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises), UGAL (Union des Groupements de Commerçants Détaillants Indépendants de l'Europe)

19. Already reports have been produced by industry that lead free solder is possible. If this is the case, then one aspect of the hazardous waste directive on WEEE has already had an effect, even before its passage.