



**For Better or for Worse? The EU's 'Better Regulation' Agenda  
and the Environment**

**A Report by the Institute for European Environmental Policy (IEEP)**

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## EXECUTIVE SUMMARY

There are many different interpretations of the term ‘better regulation’. For some it means more effective and/or efficient regulation, while for others it simply means cheaper or less regulation. In the EU, the better regulation agenda was originally focused on the first, broader definition, as highlighted in the Commission’s 2001 *European Governance* White Paper. This aimed to strengthen the effectiveness, efficiency, coherence, accountability and transparency of EU policies, while ensuring greater engagement of stakeholders and citizens in their development.

However, a major turning point came earlier this year with the review of the EU’s Lisbon Strategy aimed at making the Union the most competitive, knowledge-based economy in the world by 2010. Despite the addition in 2001 of an environmental dimension to Lisbon, the threat of increasing global competition has now narrowed the focus of the Strategy exclusively to boosting growth and jobs. The Review made clear that sustainable development and Europe’s social model were to take a back seat in the interests of the more immediate goal of strengthening industrial competitiveness. Better regulation was to be interpreted as less and cheaper regulation in order to cut short-term business costs.

To take this forward, the Commission has taken initiatives in three areas:

- ‘Simplifying’ many of the 80,000 items of *existing* EU legislation – the *acquis communautaire*;
- Withdrawing a number of Commission proposals *already under consideration* by the Council and European Parliament;
- Strengthening the scrutiny of *proposals in the early stages of development* within the Commission.

Simplifying the EU’s environmental *acquis* through the repeal of obsolete laws, or the codification in one act of separate but related items of legislation and their amendments is a sensible move. But the Commission’s definition of simplification includes ‘recasting’ some legislation (ie amending some key provisions), and using a range non-legislative policy instruments. This could reduce the ambitiousness and effectiveness of environmental measures, and/or the transparency and accountability of the policy process. A further proposal to replace some current Directives with Regulations on the grounds that the implementation of the latter is less uncertain, appears not to have been well thought through.

In relation to withdrawing proposals already in the EU’s legislative pipeline, the Commission has scrapped almost a third of those tabled before 2004. Some of these have been overtaken by events, and some have no hope of getting agreement from the Council or European Parliament. But in addition, the Commission has stressed that henceforward ‘better regulation needs to be integrated in the design of policy and ...new legislative proposals...must seek to promote better regulation and contribute to competitiveness’. The Commission’s proposal to withdraw measures which do not directly contribute to improved competitiveness threatens to sideline other important EU objectives, including many environmental ones. Moreover, the Commission has called for further ‘economic assessment’ of six other proposals, including draft legislation on fluorinated greenhouse gases and cross-border waste shipments, even though both proposals are already at their second reading stage in the European

Parliament. Rather than just an ‘economic analysis’, these proposals should undergo a full impact assessment covering all environmental and social impacts, as well as economic ones.

As regards tightening the scrutiny of proposals under development, the Commission’s system of integrated impact assessment (IA) is given a key role. However, after three years in operation, IA in the Commission has produced disappointing results. A range of studies has shown that:

- Commission Guidelines on IA are not fully respected by Commission DGs;
- the assessment and quantification of economic impacts has been emphasised at the expense of environmental, social and international impacts, limiting the contribution of IA to more coherent EU policies;
- costs of legislation are assessed far more than the benefits; and
- short-term considerations overshadow the long-term.

Most significantly, there have been attempts to re-tool the IA system as an instrument exclusively to promote competitiveness.

Moreover, the establishment within the Commission of High Level Advisory Groups, and Commissioner steering groups raises a number of challenges for the EU’s environment policy. Large policy areas where DG Environment currently leads (eg climate, vehicle emissions, waste, chemicals) will now be subject to greater influence by other DGs through these mechanisms, in particular DG Enterprise, whose priorities are not necessarily environmental.

### ***The response of the environmental policy community***

Environmental policy makers in the EU and the Member States have already responded by taking active steps to improve environmental regulation. Some countries have adopted strategic approaches to better regulation, for example, in the UK, Netherlands, Denmark and Canada. In the EU, Environment Commissioner Stavros Dimas has stressed that the seven Thematic Strategies to take forward the EU’s 6<sup>th</sup> Environmental Action Programme already incorporate better regulation principles. However, while acknowledging that environmental policies at Member State and EU levels often could be better designed and implemented, it is important not to be too defensive, nor to go too far in seeking lighter regulation. In relation to the Thematic Strategies, the EU’s future environment policy is being driven in the general direction of ‘less and looser’, with many of the proposed alternative policy approaches untested, or difficult to apply at EU level.

A more self-confident response is needed. It is important to emphasise that robust environmental protection and the creation of wealth and jobs are not *per se* incompatible. Moreover, there is a need to reclaim the term ‘better regulation’, and revert to its original definition, which places as much emphasis on effectiveness as on cost-cutting. It needs to embrace, for example, more coherent regulation which integrates the environment into sectoral policies; better implementation of existing legislation; and, stronger, more balanced stakeholder and citizen participation. Finally, it needs to be recalled that the objectives of the EU are broader than competitiveness alone. The overarching principle of sustainable development set out in Article 2 of

the Treaty serves to emphasise the equal importance of other environmental and social values. These are key to reducing the credibility gap between the EU and its citizens.

### ***Key Messages***

- The meaning of ‘better regulation’ has narrowed and is now often interpreted as *de*-regulation and used as a cloak for those seeking to roll back social and environmental protection measures.
- Better regulation originally had a broader meaning and was focused on a range of ways to improve the efficiency, effectiveness and transparency of policies. In the environment field, it should be seen as regulation of sufficient rigour to achieve desired environmental objectives without unnecessary administrative or other burdens to business or administrations. Extensive regulation may be needed in some cases; whereas in others, alternatives to regulation may be more appropriate.
- Simplifying the EU’s environmental *acquis* through repealing obsolete acts and codifying sets of related acts in many respects is much needed.
- However, the wider use of some alternative instruments could reduce the effectiveness of environmental measures, or the transparency and accountability of the policy process.
- The proposal to replace some Directives with Regulations appears not to have been well thought through.
- The Commission’s proposal to withdraw draft legislation already in the pipeline which does not directly contribute to improved competitiveness threatens to sideline other important EU objectives, including many environmental ones.
- Proposals ‘called in’ for further assessment should undergo a full impact assessment rather than just an ‘economic analysis’.
- In the EU, environmental policy has been put on the defensive through:
  - new high-level Commissioner Groups screening environment-related measures for their competitiveness impacts;
  - the ‘simplification’ of existing environmental laws that could reduce their scope and effectiveness; and
  - attempts to co-opt the Commission’s impact assessment system to focus mainly on short term-economic costs while downplaying longer term environmental and social impacts.
- There are several examples of where the control of traditionally ‘environmental’ measures is moving away from DG Environment. This includes the screening of activities by High Level Groups, the balance of impact assessments, and the involvement of a cross section of Directorates-General in the development of the seven Thematic Strategies.
- Environmental policy makers in the EU and the Member States have responded by taking active steps to improve environmental regulation. Some countries have

adopted strategic approaches, which provides a good framework for assessing business impacts and directing regulatory change as opposed to an *ad hoc* approach.

- Better regulation, and in particular simplification, should not prevent Member States from setting more ambitious environmental commitments/targets where permitted, or from using the flexibility allowed in EU Directives.
- The environmental policy community should not be too defensive in responding to the better regulation agenda. There is a danger that this will weaken the forthcoming 6EAP Thematic Strategies.
- It is important to emphasise that environmental protection and the creation of wealth and jobs are not *per se* incompatible.
- There is a need to revert to the original definition of better regulation, to include, for example, more coherent regulation, better implementation; and more balanced stakeholder and citizen participation.
- The objectives of the EU are broader than competitiveness alone. The overarching principle of sustainable development serves to emphasise the equal importance of other environmental and social values.

## 1 INTRODUCTION

There are many different interpretations of ‘better regulation’. For some it simply means ‘less’ regulation, for others ‘cheaper’ regulation, while for yet others ‘more effective’ or ‘efficient’ regulation. At the EU level, the better regulation agenda was initially targeted at improving the effectiveness, efficiency and transparency of EU legislation and the way in which it is developed. More recently, however, its focus has been narrowed in order to align it more closely with the objectives of the Lisbon Strategy – to create more jobs and economic growth.

Assuming that better regulation will make Europe a more attractive place to invest and work presupposes that regulation *per se* has a negative impact on economic growth and jobs. However, research has shown that this is not necessarily the case. The recent ‘Prague Statement’<sup>1</sup>, issued by the Heads of European Environment Protection Agencies, for example, provides a statement of evidence for the contribution that good environmental regulation makes to competitiveness. That said, not all environmental measures *can* contribute to growth and jobs, however, and some measures to protect the environment and human health *do* increase short-term costs to business. These will always be more visible than the long-term and diffuse benefits to society as a whole, or the equally long-term costs of not taking action, for example in the field of climate change. But this should not be a reason for inaction. Indeed, the EU has an obligation under the Treaty to promote environmental and social protection, and raise the quality of life within its Member States.

The vital importance of the ‘better regulation’ agenda for the future direction of the EU’s environment policy was dramatically illustrated at a special meeting of all 25 European Commissioners on 20 July this year. Environment Commissioner Stavros Dimas was obliged to defend in front of his colleagues the seven ‘Thematic Strategies’ intended to flesh out the EU’s Sixth Environmental Action Programme. The strategies, under development for the past three years, are intended to set the strategic direction of the EU’s environmental policy for the next twenty – but the charge was that they threatened the over-riding Lisbon priorities of growth and jobs. The Commission’s ‘crisis meeting’ had been summoned by Commission President Jose Manuel Barroso, following intensive lobbying by the EU industry association UNICE, which had expressed particular concern at the costs to industry of one of the strategies – CAFE – intended to tackle inner-city air pollution.

In the event, Dimas won the day and the Thematic Strategies were given the green light for publication. However, the two that have been published to date – on air quality (CAFE) and the marine environment respectively – are less ambitious than had been hoped, and the remaining five unpublished strategies could also be watered down before they emerge during the course of the next few months.

The environmental policy community has understandably expressed serious reservations about the implications of Lisbon and the ‘new look’ better regulation agenda, and it is continuously trying to fight its corner by providing evidence that environmental regulation and competitiveness can go hand in hand. There are areas of legislation that clearly can be improved, both in their design at EU level and in



their implementation by the Member States – and this report points to a number of good examples.

But there is a danger that in its anxiety to respond to the better regulation agenda, environmental policy makers may give away too much ground, and end up weakening environmental measures. Moreover, the terms of the debate need to revert to the earlier, wider definition of better regulation and address other key issues – crucial for effective environmental protection - that have recently been eclipsed, such as better policy implementation, coherence, participation and the transparency of decision-making. Critically, the balance between all three pillars of sustainable development – environmental, social and economic - needs to be central to ‘better’ regulation.

The purpose of this report, therefore is to describe the wide range of better regulation initiatives that have recently been launched at EU level, and explore their implications for the future direction and effectiveness of the EU’s environment policy. It highlights examples of how better regulation is being taken forward in relation to the environment at EU-level and in some Member States, and makes the case for a broader definition of the terms of debate.

## 2 THE EU'S BETTER REGULATION AGENDA

### 2.1 Background

The origins of the EU's 'better regulation' agenda lie in two key initiatives. The first was a Commission White Paper issued by the former Prodi Commission in 2001 on 'European Governance'<sup>ii</sup>. This aimed to improve EU policies by strengthening their transparency, coherence, effectiveness and efficiency, while at the same time boosting public participation and accountability in the process of their development. The Commission's 'governance' initiative sought to address the widespread public disenchantment with the European 'project' demonstrated by particularly low-turnouts in the 1999 European elections.

The second was the so-called 'Lisbon Strategy'. Launched by the EU's Member States in March 2000 at the European Council in Lisbon, it aimed to make the EU the most competitive, knowledge-based economy in the world by 2010, and introduced a number of new mechanisms for policy development aimed at achieving this. The following year, reflecting the Treaty commitment to sustainable development, an environmental dimension was added to the Lisbon Strategy by EU leaders at their meeting in Gothenburg in June 2001.

One of the decisions taken at Lisbon was that the EU's institutions and its Member States should 'set out by 2001 a strategy for further co-ordinated action to simplify the regulatory environment, including the performance of public administration, at both national and Community levels.' Subsequently, an Action Plan for Simplifying and Improving the Regulatory environment was issued by the Commission in 2002<sup>iii</sup>. This was a wide-ranging document aimed at both the EU institutions and the Member States, reflecting many of the conclusions of a high-level group of Member State experts – the so-called Mandelkern Group on Better Regulation - that had reported the previous year<sup>iv</sup>. The Commission's Action Plan was accompanied by two other initiatives on, respectively, improving public consultation on Commission legislative proposals<sup>v</sup>, and on introducing a system for assessing the likely future economic, social and environmental impacts of Commission proposals<sup>vi</sup>.

At this stage, the 'better regulation agenda' was focused on the wider considerations highlighted by the European Governance White Paper. Thus the Commission's Action Plan and its accompanying Communications together made proposals in relation to:

- Improving transparency and public consultation
- Better integration between policy sectors through *ex ante* impact assessment.
- Improving the transposition and implementation of EU measures in the Member States.
- The use of alternative policy instruments.
- The need to simplify and clarify the corpus of EU legislation (the *acquis communautaire*).

Moreover, work within the Commission was also proceeding on improving the monitoring, reporting and *ex post* evaluation of the actual impacts of EU legislation on the ground – one of the issues highlighted by the Mandelkern Group. This broad

approach to improving the effectiveness, efficiency and transparency of EU measures was sensible and largely uncontentious.

The turning point for what is now taken as ‘better regulation’ came earlier this year with the review of the Lisbon Strategy. The aim of what had previously been referred to as ‘the Lisbon Strategy for economic, social and environmental renewal’ within the space of just one week became simply ‘Working together for growth and jobs’<sup>vii</sup>. Sustainable development and Europe’s social model were to take a back seat in the interests of the more immediate goal of strengthening industrial competitiveness. The environment could only be a priority if it contributed directly to growth and jobs, through ‘win-wins’ like boosting new environmental technologies or cutting business costs through energy efficiency measures. Key elements of the environmental dimension added to Lisbon by the Gothenburg European Council - such as the protection of biodiversity, curbing pollution from mounting road traffic, and tackling environmental hazards – were quietly forgotten<sup>viii</sup>. As the focus of Lisbon narrowed, so too did the definition of better regulation. Rather than providing a strategic framework for a whole range of significant actions, such as transparency and implementation, it became a key weapon in the battle to secure the growth and jobs that lie at the heart of the EU’s revised Lisbon Strategy. A Commission Communication in March 2005<sup>ix</sup> spoke of ‘injecting more commitment and urgency into striking the right balance between the policy agenda and the economic costs of regulation’.

The new meaning of better regulation was re-emphasised in both the ‘Integrated Guidelines on Growth and Jobs’, which would guide the development of National Reform Programmes in the Member States, and in the Community level counterpart - the Community Lisbon Programme<sup>x</sup>. Both placed better regulation under the objective of ‘Making the EU an attractive place to invest and work’. Improving the regulatory environment was seen as one of the two most important policy levers (the other being completion of the internal market) to attract more inward investment, generate employment and accelerate growth. Improving legislation, it is argued, would provide the right incentives for business, cut ‘unnecessary costs’ and remove obstacles to adaptation and innovation.

### **Box 1: Deregulation as a Threat to the Environment**

The agenda on ‘improving’ regulation can go to extremes, leading to increasing threats to the environment. In recent years a new government in British Columbia, Canada, has repealed or reformulated a number of environmental laws to make the Province more business-friendly. This has resulted in a range of consequences, such as the elimination of public reporting of polluters and increases in illegal hunting. However, the most far-reaching change is the adoption of the ‘Significant Projects Streamlining Act’. This allows the government to waive most environmental protection measures for projects that it considers are significant<sup>xi</sup>. The result is that there is now serious concern that not only will the public and natural environment not get the protection they need, they are also under much greater risk than in previous years.

At the Community level a number of specific key actions (some of which were already in progress) were identified, to be taken forward by the Commission. They focused on:

- ‘Simplifying’ many of the 80,000 items of *existing* EU legislation;
- withdrawing a number of Commission proposals *already being considered by the Council and European Parliament*; and
- strengthening the scrutiny of *proposals under development* within the Commission.

The implications of each of these are considered below.

#### **Key Messages:**

- The meaning of ‘better regulation’ has narrowed and is now often interpreted as *de*-regulation and used as a cloak for those seeking to roll back social and environmental protection measures.
- Better regulation originally had a broader meaning and was focused on a range of ways to improve the efficiency, effectiveness and transparency of policies. In the environment field, it should be seen as regulation of sufficient rigour to achieve desired environmental objectives without unnecessary administrative or other burdens to business or administrations. Extensive regulation may be needed in some cases; whereas in others, alternatives to regulation may be more appropriate.

## **2.2 Existing EU legislation: Simplifying the acquis**

At the end of October 2005, the European Commission launched what it described as a ‘continuous and systematic process’ of simplifying the body of existing EU legislation – the so-called *acquis communautaire*<sup>xii</sup>. As a first step, it presented proposals for reviewing almost 300 areas of legislation – involving more than 1400 related legal acts - over the next three years (2005-2008). Among these are 18 Directives and 6 Regulations relating to waste, and a raft of other measures in environment-related areas such as industrial emissions, agriculture, energy, fisheries and maritime transport (see Table 1).

The Commission justifies this initiative on the basis that ‘(EU action) should not go beyond what is necessary to achieve the policy objectives pursued. It needs to be cost-efficient and take the lightest form of regulation called for. In this respect simplification intends to make legislation at both Community and national level less burdensome, easier to apply and thereby more effective in achieving their goals’. The needs of SMEs, with their more limited resources and expertise, are singled out for special attention (see Box 2 for example).

**Table 1: Simplification of Environment-related EU Legislation**

Sector	Scope	Simplification approach
Waste	Review of all 18 Directives and 6 Regulations	Repeal and revision as part of Waste Thematic Strategy
Industrial emissions	IPPC, Large Combustion Plants, VOCs. Ozone layer	Recast
Eco-auditing	Measures to facilitate participation of SMEs	Recast
Transport of dangerous goods		Recast and repeal
Maritime transport	Safety/pollution prevention/training	Codification
Radiation protection		Codification
Agriculture	Organic farming, energy crops, cross-compliance	Recast
Fisheries	Conservation, control, monitoring	Recast
Energy	Energy labelling of products	Recast

### **Box 2: UK - Risk Assessment and Compliance Assistance**

The UK Environment Agency's approach to 'modern regulation' aims at a proportionate, risk-based response, that will drive environmental improvements, reward good performance, but still ensuring that appropriate action will be taken on those who fail to meet acceptable standards. Specific components of the Agency's programme include:

- **Operator Pollution Risk Appraisal (OPRA)** is a risk assessment tool developed by the Environment Agency to determine the environmental hazards associated with a site and how well they are being managed. OPRA provides a transparent means by which operators can assess their own performance and see how they may be able to improve that performance. The methodologies take into account the potential hazard (location, emissions and operational complexity) and an operator management performance, to provide an environmental risk profile ([www.environment-agency.gov.uk/](http://www.environment-agency.gov.uk/)).
- **NetRegs** is a web-based system providing clear guidance on what businesses need to do to meet the requirements of environmental legislation (compliance assistance). A website, which is accessible freely without the need to register, provides practical, sector-specific guidance on the environmental responsibilities of SMEs. Currently NetRegs is used by 28,000 different visitors a month and receives 190,000 hits a month in total. ([www.environment-agency.gov.uk/netregs](http://www.environment-agency.gov.uk/netregs)).

Source: Department for Environment, Food and Rural Affairs, UK; the Environment Agency, UK.

The process of simplification is taking a number of different forms. Some of these are sensible and uncontroversial – for example:

- the *repeal* of old legislation which has become obsolete through technical progress or the introduction of new international rules or standards;
- the *codification* in one act of a number of separate but related items of legislation and their amendments, which will be repealed but without changing the substance of their provisions; and
- *greater use of IT* to speed up reporting by firms, reduce paper flows and accelerate procedures.

However, two other proposed approaches to simplification are potentially more sensitive. *Recasting* will both codify separate items of legislation while at the same time amending their substance. So EU legislation in the waste sector is to be recast ‘to provide economic operators with a clearer and more streamlined regulatory framework’. While this could reduce administrative burdens for firms and/or regulators, it will be important to ensure that the level of environmental protection is not reduced at the same time.

The Commission also proposes in some circumstances to replace existing legislation with *alternative policy instruments*. These include alternatives to legislation, as well as different forms of legislation. An example of latter is ‘co-regulation, an approach currently reflected by the inclusion in some EU legislation of standards and certification procedures by independent bodies, limiting EU legislation to essential requirements only. The Commission observes that this has led to a considerable reduction in intervention by national and EU authorities, and a greater reliance on market forces to ensure the safety of products coming on to the market. It proposes to extend or further develop this approach, in areas such as noise emissions and health and safety at work. However, an obvious danger is that the process of setting standards for environmental or health protection is handed over to industry to the exclusion of elected representatives, NGOs and other stakeholders.

Reduced public accountability could also be the consequence of a further Commission proposal to replace existing EU measures with more flexible ‘framework’ legislation containing general provisions only. Detailed implementing measures decided at EU level would subsequently be enacted in Commission Decisions, following discussion with the Member States in advisory committees – through the so-called ‘comitology’ system. This is a sensitive political issue, for what the Commission might regard as merely details can still have important distributional, environmental or health consequences. Yet the process of agreeing this EU secondary legislation severely limits the input of the European Parliament, and bypasses the Commission’s impact assessment procedure, thus effectively excluding broad stakeholder involvement as well. In addition, the Commission has tabled proposals for overhauling the comitology system itself, which would shift the balance of power within the committees away from Member States in favour of the Commission<sup>xiii</sup>.

Perhaps the most radical and contentious of the Commission’s menu of alternative policy instruments is to replace selected EU *Directives* with *Regulations*. Directives set binding objectives, but give the Member States considerable discretion in deciding how they should be implemented, through their own national ‘transposing’ legislation. The majority of the EU’s environmental measures take the form of Directives, to take account of the often widely differing environmental and administrative circumstances

in the Member States. Regulations, on the other hand, are directly applicable in the Member States as soon as they are agreed. The Commission observes that ‘replacing Directives with Regulations can under certain circumstances be conducive to simplification as Regulations enable immediate application, guarantee that all actors are subject to the same rules at the same time, and focus attention on the concrete enforcement of EU rules’.

While it is true that the implementation of environmental Directives is often poor, and may vary greatly between Member States, there is nevertheless a need for a much wider debate on this issue. The Commission’s position can be challenged on a number of grounds:

- it is not necessarily the case that Regulations ensure that Member States respect the same rules, and more quickly, compared to Directives. Some Regulations can give rise to widely differing practices between Member States (eg EMAS and Structural Fund Regulations), and may in practice require additional national implementing legislation. On the other hand, some Directives can be quite specific, for example, in setting uniform emission limits;
- where Regulations *are* more specific than Directives, they may give rise to implementation problems due to their insensitivity to the widely differing national administrative or environmental circumstances in different Member States; and
- the use of a more prescriptive approach is inconsistent with other simplification approaches proposed by the Commission. For example, the scope offered in many Directives to Member States to use alternative policy instruments to reach required objectives is likely to be severely constrained in the case of Regulations. In this regard, it is worth noting that DG Environment has sought to encourage Member States to use the flexibility of some environmental Directives to the full. A more prescriptive approach would also be inconsistent with the ‘Integrated guidelines for growth and jobs’, which advocate flexibility for Member States to ‘choose local responses that best address their reform challenges’ and thereby also fostering greater national ownership.

#### **Key Messages:**

- Simplifying the EU’s environmental *acquis* through repealing obsolete acts and codifying sets of related acts in many respects is much needed.
- However, the wider use of some alternative instruments could reduce the effectiveness of environmental measures, or the transparency and accountability of the policy process.
- The proposal to replace some Directives with Regulations appears not to have been well thought through.

## 2.3 Withdrawal of proposed EU legislation

In what it describes as its ‘first ever comprehensive screening’, the European Commission has scrapped almost a third of the legislative proposals tabled before 2004 and still pending before the Council and/or European Parliament (see Box 3 for environment-related measures). It has also called for further ‘economic assessment’ of six others, including draft legislation on fluorinated greenhouse gases and cross-border waste shipments, even though both proposals are at their second reading stage in the European Parliament. According to the Commission’s Communication released on 27 September 2005, ‘better regulation needs to be integrated in the design of policy and ...new legislative proposals...must seek to promote better regulation and contribute to competitiveness’<sup>xiv</sup>.

The current screening exercise tested proposals on three accounts:

- (i) Consistency with Lisbon objectives, in particular the promotion of competitiveness. This was assessed using the Commission’s ‘competitiveness test’, which forms part of the new impact assessment guidelines.
- (ii) The lack of substantial progress in the legislative process for a significant period of time, taking into account the reasons for slow advancement and chances of unblocking the path.
- (iii) Whether they meet better regulation requirements.

Many of the withdrawn proposals are indeed no longer relevant, for example, those relating to the 2004 enlargement. However, the Commission’s emphasis on the need for all proposals henceforward to contribute to competitiveness marks an important new direction, and one which could even be contrary to the EU Treaty. Article 6 requires environmental protection requirements to be integrated into the definition and implementation of all Community policies. In other words, the Commission should develop proposals to further all EU objectives (eg on environment or social cohesion), which could be neutral – or even negative - in terms of their consequences for competitiveness.

Moreover, it is interesting to note that the six measures which have been highlighted for more impact studies will be subject only to ‘economic analysis’ rather than a full assessment of their environmental, social and economic impacts, as required under the Commission’s impact assessment system (see below, section 2.4.1).



### **Box 3: Environment-related Proposals affected by the Screening Exercise**

#### ***Withdrawn:***

- SEC(90)431: Proposal for a Council Regulation amending Regulation (EEC) No 428/89 concerning the export of certain dangerous chemicals (superseded).
- 2001/0188/CNS: Proposal for a Council Decision relating to the conclusion, on behalf of the Community, of the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.
- COM(2003)263: Proposal for a Council Decision on the signature, on behalf of the European Community, of the Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents transboundary watercourses.
- 2001/0299/CNS: Proposal for a Council Regulation establishing measures for the recovery of cod and hake stocks.
- 2002/0275/CNS: Proposal for a Council Regulation for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms.
- 1998/0096/COD: Proposal for a Council Directive on a transparent system of weekend bans for heavy good vehicles involved in international transport

#### ***Called in for further ‘economic analysis’:***

- 2003/0189/COD: Proposal for a European Parliament and Council Regulation on certain fluorinated gases.
- 2003/0139/COD: Proposal for a European Parliament and Council Regulation on shipments of waste.

### **Key Messages:**

- The Commission’s proposal to withdraw draft legislation already in the pipeline which does not directly contribute to improved competitiveness threatens to sideline other important EU objectives, including many environmental ones.
- Proposals ‘called in’ for further assessment should undergo a full impact assessment rather than just an ‘economic analysis’

## **2.4 Developing future legislation**

### ***2.4.1 Impact Assessment***

A key element in both the EU’s (original) better regulation agenda, and in taking forward its Sustainable Development Strategy (EU SDS), was the introduction in the

Commission of a new system of integrated impact assessment (IA) for all significant Commission proposals. Launched in July 2002, the IA system was intended to identify and weigh up in a balanced way all the likely significant economic, social and environmental impacts – positive and negative, intended and unintended, short-term and long-term - of proposed EU measures, as an integral part of the process of policy development. Impact assessment would identify trade-offs and synergies between competing EU priorities in a transparent way, with the close involvement of stakeholders. It therefore pushed several of the buttons in the Commission's European Governance initiative by simultaneously promising better, evidence-based policies; increased transparency and participation; and better coherence between different EU policies.

The new IA system replaced a range of other assessment procedures operated separately (and not very effectively) by different Commission DGs. These included the *ex ante* environmental assessment of Commission proposals – the so-called 'Green Star' system. For environmentalists, one compensation for this was that the new system held out the prospect of helping to integrate environmental considerations into other EU sectoral policies in a more systematic and effective way.

However, after three years in operation, IA in the Commission has produced disappointing results. A range of studies has shown that:

- Commission Guidelines on IA are not fully respected by Commission DGs;
- the assessment and quantification of economic impacts has been emphasised at the expense of environmental, social and international impacts, limiting the contribution of IA to more coherent EU policies;
- costs of legislation are assessed far more than the benefits; and
- short-term considerations overshadow the long-term.

Most significantly, there has been an attempt to co-opt impact assessment as an instrument exclusively to promote competitiveness. Commission Guidelines on IA were revised earlier in the summer to give greater emphasis to competitiveness issues, following the review of the Lisbon strategy. They now include fourteen new questions relating to competitiveness, trade and investments flows; competition in the internal market; and operating and administrative costs on business. The 'proportionality' of IAs is also emphasised, giving individual Commission departments considerable discretion in selecting which costs and benefits to focus on. Moreover, the Competitiveness Council Commissioners Group (see section 2.4.3 below) has been given the role 'in particular to ensure that impact assessments accompanying such proposals adequately take account of competitiveness'.

#### **Box 4: Impact Assessment of the Air Quality Thematic Strategy (CAFE)**

An essential requirement of better regulation is that the benefits of new regulation outweigh the costs of implementing it. In producing the air quality Thematic Strategy (COM(2005)446) the Commission worked with many specialists and stakeholders to undertake one of the most extensive series of analyses of costs and benefits for any item of proposed EU legislation. The proposal, as it stands, will deliver benefits of at least €42 billion per year at a cost of around €7.1 billion per year. The benefits include the prevention of 62,000 premature deaths. An earlier more ambitious proposal would have prevented 74,000 premature deaths, but the benefits still outweighed the costs by a significant factor. It is legitimate, therefore, to ask how cost-benefits figures are used. There are concerns that future EU air quality policy has been strongly influenced by industry lobbying for its short-term interests, to the detriment of the long-term health of EU citizens. Indeed, Internal Market Commissioner McCreevy was reported<sup>xv</sup> as saying public health issues are ‘not a matter for environmentalists’ and that ‘air pollution is not a European concern’.

#### **2.4.2 Calculating administrative costs imposed by EU legislation**

A further move to harness IAs as an instrument for competitiveness has focused on developing a common EU approach to assessing the administrative costs likely to be imposed on business by proposed EU legislation, as outlined in the Community Lisbon Programme. Led by EU Finance Ministers in the ECOFIN Council, the initiative includes calls for setting quantitative targets for reducing the administrative costs of regulatory compliance in particular sectors, and for giving exemptions from ‘disproportionate’ costs for SMEs. Ministers have asked for proposals by spring 2006.

A particular danger of this initiative for the Commission’s impact assessment system is that it reinforces the preoccupation with short-term costs to business, at the expense of considering the longer-term costs of *inaction* – for example, the burden on both public expenditure and business costs imposed by the long-term damage inflicted by environmental pollution on the health of workers and consumers. Moreover, it downplays some of the benefits that EU regulations can offer to business, through providing a level-playing field, or cutting the costs associated with having to cope with 25 different sets of regulations.

### **Box 5: Netherlands - Measuring Administrative Burdens - The Standard Cost Model**

The Netherlands has developed a methodology to quantify the administrative burdens imposed on business by regulation, the so-called standard cost model (SCM). The SCM identifies the demands in legislation and puts a price tag on these demands in terms of time and money spent to fulfil the requirements. The model has been used by several other European countries, including Denmark, Norway and Sweden.

The SCM approach can be used to review existing regulations, or as part of impact assessment procedures in relation to new legislation. To quantify the 'red tape effect', the time normally spent on fulfilling an individual information requirement is valued at the going labour costs rates (tariff). This shows how much the individual information requirement costs ( $P = \text{time} \times \text{tariff}$ ). By multiplying the price with the frequency of the information obligation (eg monthly, annually) and the number of companies involved (Q) the total burden is calculated.

Source: Dutch Ministry of Finance: [www.compliancecosts.com](http://www.compliancecosts.com).

#### **2.4.3 Competitiveness screening - Competitiveness Group of Commissioners**

At the beginning of President Barroso's term of office, a number of informal groups of Commissioners were announced with the role of providing an overview of some of the main policy objectives of the new Commission. One such group is that chaired by Enterprise and Industry Commissioner, Gunter Verheugen, on competitiveness<sup>xvi</sup>. The Competitiveness Council Commissioners Group (CCCG) has a mandate to ensure coherence of the Commission's position on issues related to competitiveness, to prepare meetings of the Competitiveness Council, and to regularly review the economic situation and progress on structural reforms in the Community. Central to this, it provides a monitoring role on the impact on competitiveness of all legislative proposals. Mr Verheugen defines the group as 'a centre of economic integration in the Commission', acting as the 'ultimate forum for reconciling different policy interests'. In parallel, there is a similar, but more strategic, group co-chaired by Mr Verheugen and Mr Barroso on the Lisbon agenda.

The role of the CCCG in 'reconciling' different policy interests threatens to bias policy decisions towards competitiveness and away from policy objectives where the economic or other benefits are less immediately apparent. Given that the impact assessment completed prior to the adoption of a draft legislative proposal would have already placed more emphasis on competitiveness (see section 2.4.1 above), this represents a further hurdle in the development of 'acceptable' policy proposals. Mr Verheugen himself commented that 'the balance of benefits and costs must be carefully weighed up, and I am determined to set a high threshold in the competitiveness test that all important proposals must clear if they are to go forward<sup>xvii</sup>'. Furthermore, there are issues of transparency, given that details of the work of this group are not readily available.

#### 2.4.4 High-level groups

High-level groups are increasingly being established, normally over a restricted time period, to provide an advisory function on particular areas of policy, especially where there are crosscutting issues to address. Broadly speaking, they involve a group of representatives, brought together due to their collective expertise on the issue at hand, or sometimes their political importance, depending on the exact purpose of the group. They may include Commissioners, senior politicians, experts from national ministries, Commission desk officers, and representatives from industry, academia and NGOs, for example. One such High Level Group was that established to review the Lisbon Strategy and present proposals to the Commission for its revision. Chaired by former Dutch Prime Minister, Wim Kok, the group comprised thirteen independent experts and met over a period of six months. Its recommendations were submitted to the Commission in November 2004, and undoubtedly had a large impact on the way the Lisbon Strategy subsequently developed. There are several different models of High Level Groups emerging, the remit and seniority of membership varies (see Box 7, Box 6 and Box 8).

##### **Box 6: 'CARS 21'**

##### **Competitive Automotive Regulatory System for the 21st Century**

CARS 21 is an initiative of Enterprise and Industry Commissioner Günter Verheugen, set up to address the competitiveness of the European automotive industry, by screening existing legislation which affects it and setting out a 'road map' of future regulation.

The Group works at two levels: a '*high level*' group comprising three Commissioners, two MEPs, five government Ministers (including Margaret Beckett) the Chief Executives of five car manufacturers, a trades union representative, a safety representative from the motoring federation FIA, the Petroleum Industry Association (EuroPIA) and David Baldock from IEEP as the environmental representative. A second, '*Sherpa*', group supports the work of the high level group and in effect carries out the substantive work of drafting and commenting on papers, etc, with each high level person having its own Sherpa.

A number of working groups have each taken a specific issue, including many dossiers traditionally held by DG Environment, such as the quality of fuel, in order to assess its impacts on the industry and assess where legislation can be simplified. The group is expected to report in December 2005.

A similar group on pharmaceuticals is expected to be established shortly.

### **Box 7: Maritime Task Force**

The Maritime Task Force group is chaired by the Fisheries Commissioner Borg, and includes six other Commissioners with responsibilities in relevant fields: Günter Verheugen (Enterprise and Industry); Jacques Barrot (Transport); Stavros Dimas (Environment); Danuta Hubner (Regional Policy); Janez Potocnik (Research); and Andris Piebalgs (Energy).

The work of the Task Force is aimed at 'identifying the potential for beneficial synergies between sea-related sectoral policies as well as to examine how these could help improve competitiveness, encourage growth and boost employment in an economic, socially and environmentally sustainable manner'. Most of the work appears to be carried out internally within a *Commission Interservice Group* of about 20-30 people from these DGs. In addition, there is a *High Level Expert Group*, comprised of representatives from Member States' Prime Minister's offices or Foreign Offices.

### **Box 8: The Group of High-Level National Regulatory Experts**

In order to facilitate the development of better regulation measures at both the EU and national levels, the Commission is to establish a group of high-level national regulatory experts, comprising representatives from each Member State. The group is expected to have an advisory role to the Commission on better regulation issues in general, in particular methodological approaches such as impact assessment.

The group should encourage the sharing of best practice between Member States and the EU. As such, it is expected to discuss the development of a coherent set of common indicators to monitor progress as regards the quality of the regulatory environment, as a basis for benchmarking. The mandate of the group is expected to be adopted in December 2005, and it would be officially operational thereafter.

The Commission recently announced the establishment of a new High Level Group on Competitiveness, Energy and Environment<sup>xviii</sup>. The Group should be operational by the end of 2005, and will serve as an 'advisory platform', bringing together Commissioners from Enterprise and Industry, Competition, Energy, and Environment and a number of 'relevant stakeholders'. Its purpose will be to examine the links between industrial, energy and environmental legislation and to advise on measures to ensure the coherence of individual initiatives, while improving sustainability and competitiveness. The Group is likely to address the following issues:

- Concrete implementation of better regulation principles;
- Climate change, in particular the EU emissions trading scheme, energy efficiency and renewables;
- The functioning of energy markets, particularly the electricity market;
- Implementation of the Thematic Strategy on the prevention and recycling of waste, and related legislation; and

- The improvement of resource efficiency and the uptake of environmental and other innovative technologies.

The establishment of High Level Groups raises a number of challenges for the EU's environment policy:

- Large policy areas where DG Environment currently leads (eg climate, vehicle emissions, waste, chemicals) will now be subject to greater influence by other DGs, in particular DG Enterprise, whose priorities are not necessarily environmental. It is too early to generalise on how this will play out in practice, and the outcome may differ from area to area. For example, while CARS21 established a Working Group on the 'Integrated Approach' to reducing CO<sub>2</sub> emissions from cars, its outcome was rather inconclusive and oversight of this issue has now reverted to a Working Group of the European Climate Change Programme, which is chaired and run by DG Environment. The flip-side of other DGs being involved in traditionally DG Environment policy, is that DG Environment may also have a role in influencing the policy of other DGs itself, such as DG Enterprise, Trade, Transport and Energy. Whether this will actually assist environmental integration, however, remains to be seen given the current climate.
- There are concerns about the representativeness of such groups. The 'CARS 21' High Level Group, for example, has been clearly weighted with industry representatives, and it was reportedly only after some battle that an environmental representative was invited to participate. Japanese and Korean carmakers were also excluded, and only a few Member States with a significant car industry are involved. Aside from the specific choices made for this group, it is more generally questionable how far a group of, say, 20 people can ever be seen to be truly representative. There is also a question of democratic legitimacy, given that there is often no role for the European Parliament in these groups, and it is clear that a few handpicked MEPs or Member States cannot be expected to represent the Parliament or Council. Even though it holds the Presidency at present, the UK Government representative does not pretend to speak for the Member States more generally in CARS21, and has no mandate to do so.
- There is an important issue of transparency. Although the groups have no formal powers as such and are only advisory in nature, their outputs could potentially be highly significant, given that they can influence the development of legislation at a very early stage (Maritime, CARS 21), and in some cases can influence the whole strategic direction of EU policy (Wim Kok). Yet agendas and minutes from the meetings are not accessible and there are no official press releases from these meetings. Indeed the outputs of the CARS21 Sherpa meetings are supposedly confidential, although in practice a range of more and less formal methods have developed to communicate work in progress to a wider group of stakeholders.
- There is nothing in the Treaty regarding the establishment of High Level Groups, and no formally agreed operating structures, powers or responsibilities. This causes some confusion over their role, and may in

practice limit their effectiveness. For example, CARS21 has proposed a list of legislation that should be simplified or repealed, but in practice this is no more than an informal recommendation to the Commission, which will still have to decide whether to take up this recommendation, and if so will have to undertake an impact assessment and propose legislation to the Council and Parliament in the usual way.

**Key Messages:**

- In the EU, environmental policy has been put on the defensive through:
  - new high-level Commissioner Groups screening environment-related measures for their competitiveness impacts;
  - the ‘simplification’ of existing environmental laws that could reduce their scope and effectiveness; and
  - attempts to co-opt the Commission’s impact assessment system to focus mainly on short term-economic costs while downplaying longer term environmental and social impacts.
- There are several examples of where the control of traditionally ‘environmental’ measures is moving away from DG Environment. This includes the screening of activities by High Level Groups, the balance of impact assessments, and the involvement of a cross section of Directorates-General in the development of the seven Thematic Strategies.



### 3 BETTER REGULATION AT THE MEMBER STATE LEVEL

The impact of EU legislation on the ground is largely determined by how it is transposed and applied in the Member States. This is especially true in the field of environment policy, where more framework legislation exists. Several Member States are already active in creating their own strategies for improving the regulatory environment, including the UK, Denmark and the Netherlands. However, over the last year the Commission has reiterated the importance of embracing better regulation at the national level. In its March Communication<sup>xix</sup> on the revision of the Lisbon Strategy it stressed that Member States must increase their efforts in promoting better regulation, outlining a number of specific initiatives that should be taken.

#### **Box 9: Denmark – Simplification of Permit Schemes for Business**

As a part of the Danish Growth Strategy, in 2002 the Danish government launched an initiative to reduce administrative burdens by 25 % by the year 2010. For the Ministry of the Environment and the Ministry for Agriculture, the administrative burdens have been calculated to 3% and 6% respectively. Between February and July 2005, the Ministry of the Environment carried out an evaluation of environmental legislation, which will result in concrete proposals for further improvements.

One of the environmental initiatives aims to simplify permit schemes for business. This strategy was the outcome of the work of a committee comprised of stakeholders and representatives from ministries formed in 2002. Previously, 13000 companies had a notification obligation when establishing a business; with the initiative, there is no general notification obligation. Less information is also needed when applying for a permit and less information has to be given in advance. Instead, many companies are given standard conditions for their businesses.

As a result, the administrative burden on companies has been reduced, on average, by €6,700 per company for external consultants, and by 6.6 hours per company for own employees. However, the administrative burden on the Ministry of the Environment has increased.

Source: Ministry of Environment, Denmark.

Member States were required to report on better regulation activities and future plans in their National Reform Programmes (NRPs) by 15 October 2005. The purpose of NRPs is to identify challenges, priorities, objectives and actions for the period 2005-08, in relation to the Lisbon objectives. To guide this process, in April 2005, the Commission issued draft 'Integrated guidelines for growth and jobs', bringing together the hitherto-separate Broad Economic Policy Guidelines (BEPG) on macro and micro-economic policy, and the Employment Guidelines. These guidelines were adopted by the ECOFIN Council in June<sup>xx</sup>. Guideline 14 – under the objective of making Europe a more attractive place to invest and work - states that Member States should:

1. Reduce the administrative burden that bears upon enterprises, particularly upon SMEs and start-ups;

2. Improve the quality of existing and new regulations, while preserving their objectives, through a systematic and rigorous assessment of their economic, social (including health) and environmental impacts, while considering and making progress on measurement of the administrative burden associated with regulation, as well as the impact on competitiveness, including in relation to enforcement; and
3. Encourage enterprises in developing their corporate social responsibility.

The March Communication also recommended that all Member States establish national better regulation strategies and ensure that systems and structures for impact assessment are in place. It suggested the use of ‘national sectoral enquiries’ as useful tools for improving the quality of existing national legislation, with ‘a view to giving it a more pro-competitive orientation’, while retaining the intended policy objective. Furthermore, it invited Member States, when drafting new national legislation, to take account of the consequences on the EU internal market and other Member States. In effect, Member States already have to consider the impact of implementing legislation on the internal market. Therefore, although there is often a high degree of flexibility in how a Member State implements EU Directives so long as the over-riding objectives are met, in practice internal market and free trade considerations have always been an issue<sup>xxi</sup>. There is a danger that if Member States are to be encouraged by the Commission to add more weight to internal market issues and effects on other Member States, more ambitious approaches could remain untried.

#### **Box 10: Better Regulation in the UK National Reform Programme**

The UK published its National Reform Programme (NRP)<sup>xxii</sup> on 13 October 2005. The plan sets out the main challenges facing the UK economy, and the strategy for delivering long-term sustainable growth, high employment, and a fair and inclusive society. The focus, driven by the Commission guidelines, includes increasing productivity, reducing inefficiency, delivering on health and education, pensions, increasing working opportunities, and increasing business R&D. It draws together in once place information on existing strategies covering these issues, rather than setting out any new objectives and targets.

In terms of better regulation, the programme includes details of UK action on regulatory reform; assessing the impact of proposed regulations; consultation; simplifying the stock of legislation; measuring and reducing administrative burdens; and better inspection and enforcement. As one of the main proponents of improving the regulatory environment, the UK approach focuses on supporting regulatory reform at the EU level, and a commitment not to ‘gold plate’ the transposition of EU legislation. The UK is pursuing the development of rolling programmes by all departments. These plans are to be published in autumn 2006.

The Commission also encourages the simplification of national legislation transposing EU directives, with the intention of avoiding ‘gold-plating’, and has indicated that it will take this into account when scrutinising national implementing legislation. This again may deter Member States from making full use of the flexibility allowed in Directives. Even now, it is often the case that Member States do not take sufficient advantage of this flexibility, particularly in choosing alternative policy options and instruments<sup>xxiii</sup>. There is a strong tendency for government departments to reach for

tried (but not necessarily tested) regulatory methods, when more cost-effective approaches might exist that would equally well reach the required objectives. This may also prevent Member States taking action beyond that specified at the EU level, even in cases where it considers this is justified to meet wider policy objectives, or to enact clearer, more coherent legislation. The potential move away from Directives to more specific Regulations, as mooted in the Commission's own simplification strategy, could also have this impact (see section 0 above).

**Box 11: Germany - Act on the Acceleration and Simplification of Approval Procedures under the Federal Emission Control Act of 9 October 1996**

Over the past few years, Germany has implemented several new regulations aimed at streamlining, simplifying and accelerating administrative procedures. This includes amendments to the Federal Emission Control Act, which introduces streamlining and simplification of application procedures. The amendments, which entered into force in October 1996, were developed in the context of an action programme for economic growth and employment, and in particular, to contribute to Germany's competitiveness.

The provisions of the Federal Emission Control Act already included several elements for a simplification of approval procedures in its first version. Among these were a simplified approval procedure for certain types of installations, and an obligation for the administration to provide guidance to the applicant. In addition, the local authorities (the Länder) have been able significantly to simplify and accelerate the approval procedures by means of administrative provisions and informal guidelines.

The 1996 amendments were aimed at further streamlining and simplification, and included:

- Under certain conditions, permission can be given for the construction work to start even before the permit is formally issued;
- for non-significant changes, a notification in writing will sometimes be sufficient instead of a full permit procedure; and
- upon application, the authority need not engage in public consultation if no significant negative environmental impact is expected.

In 2001, the system was evaluated by the Federal Environment Agency (UBA) (UBA report 1/01), which concluded that further improvement should focus on the application of the existing legal instruments and the cooperation between the operators and the authorities on the basis of an adequate permit strategy. A largely positive evaluation and assessment was also given by the German Council of Environmental Advisers (SRU), in its annual report 2002 (BT-DRs. 17/8792).

Source: German Chamber of Commerce and Industry at the European Union, Belgium; Ministry of Agriculture, Environment and Rural Affairs of the Land of Schleswig-Holstein, Germany.

**Key Messages:**

- Environmental policy makers in the EU and the Member States have responded by taking active steps to improve environmental regulation. Some countries have adopted strategic approaches to BR, eg UK, NL, Denmark, Canada, which provides a good framework for assessing business impacts and directing regulatory change as opposed to an *ad hoc* approach.
- Better regulation, and in particular simplification, should not prevent Member States from setting more ambitious environmental commitments/targets where permitted, or from using the flexibility allowed in EU Directives.

## **4 CONCLUSION: RESPONDING TO THE BETTER REGULATION CHALLENGE**

### **4.1 Environment policy on the defensive**

Safeguarding growth and jobs in the face of globalisation is an over-riding objective of the Commission and all the Member States, and will clearly be the principal focus of EU policies for some years to come. The drive for better regulation in the pursuit of stronger competitiveness is therefore clearly something that the environmental policy community cannot ignore. Nor is it desirable to do so, for there are many examples - some of them highlighted in this paper - where the design and delivery of environmental policies can be lighter and less costly, without sacrificing essential environmental objectives.

Within the European Commission, Environment Commissioner Stavros Dimas has sought to show how the seven Thematic Strategies produced in the framework of the Sixth Environmental Action Programme exemplify many of the features of better regulation<sup>xxiv</sup>. The strategies are the key delivery mechanism, and the first concrete outcome, of the EU's Sixth Environmental Action Programme (6EAP) launched over three years ago, and they will set the direction for the EU's environmental policy at least for the next ten or twenty.

#### **Box 12: 6<sup>th</sup> Environmental Action Programme Thematic Strategies**

The Thematic Strategies cover, separately, air pollution; the marine environment; the sustainable use of natural resources; waste prevention and recycling; the sustainable use of pesticides; soil protection; and the urban environment. They have all been developed with the active participation of several Commission DGs, and the extensive engagement of a range of stakeholders, including Member State experts, academics, business representatives and NGOs. Two of them – on air pollution (CAFE) and the marine environment - have already been published, while the remainder are expected to appear in the next few months.

The air, waste and pesticides strategies seek to simplify existing legislation, clarify definitions, remove ambiguities and suggest ways to improve implementation. The consolidation and streamlining of existing monitoring and reporting requirements - moving towards a shared information system catering for multiple needs - is also a positive contribution towards better regulation.

However, in acknowledging that environmental policies at Member State and EU levels often could be better designed and implemented, it is important not to be too defensive, or to go too far in seeking lighter regulation. The words 'baby' and 'bathwater' somehow spring to mind. For example, in relation to the Thematic Strategies it appears that the EU's future environment policy is being driven in the general direction of 'less and looser'. The marine, soils and resources strategies will leave the detailed definition of specific objectives and measures, and the quantification of their impacts, to the Member States, while the urban strategy is

expected to include no binding implementing measures at all. Where strategies require action to be taken on specific products, these are likely to be taken primarily on a voluntary basis within the framework of the EU's integrated product policy (IPP) and the Environmental Technologies Action Plan (ETAP). Other alternatives to regulation are being considered, including market-based instruments such as taxation and charges.

The ability to legislate is one of the EU's greatest assets, and sets it apart from other less effective international organisations. A major difficulty with the current better regulation agenda is that many of the alternative policy approaches are untested. ETAP, for example, is being taken forward on the basis of the Open Method of Co-ordination (OMC) – where Member States co-operate voluntarily to meet EU objectives and benchmark good practice. But the Commission's own review of the Lisbon Strategy has noted that the most developed example of OMC – in relation to the co-ordination of economic and employment policies – has in many respects failed to deliver. Moreover, while the use of taxation and charges can be an effective policy instrument, the requirement for unanimous voting in the Council on these issues means that it will be the Member States separately, rather than the EU, that will take action in this area, probably in an uncoordinated fashion and possibly with a lack of ambition.

## 4.2 Broadening the debate

In engaging in the better regulation debate, the environmental policy community needs to go on the offensive. This should begin with countering one of the underlying premises of the competitiveness agenda – that high environmental standards inevitably limit growth and destroy jobs. In several recent speeches<sup>xxv</sup>, Commissioner Dimas has sought to slay a number of dragons by citing various studies from the OECD, a Harvard Business Professor, and the CEO of General Electric, to the effect that:

- The net impact of environmental policies on employment is either neutral, or slightly positive. Finland, Sweden and Denmark are ranked by the World Economic Forum as three of the four most competitive countries in the world, and they top the EU's own innovation scoreboard. Yet they have some of the highest standards of environmental protection in the world;
- Regulation can stimulate Europe's eco-industries, which currently now employ over 2 million people, with the sector growing by an estimated 5% a year;
- Environmental regulation can systematically lead to investment in cleaner, more efficient technologies, promoting more efficient resource use and improving brand and corporate image;
- Short-term costs can be far outweighed by long-term benefits. The European Environment Agency's publication *Late Lessons from Early Warnings* includes 14 very different case studies - ranging from asbestos to the over-exploitation of cod stocks – to highlight the crippling costs of inaction.

The recent Prague Statement by the Network of Heads of European Environment Protection Agencies makes many of the same points.

### 4.3 Re-possessing the principle of better regulation

As discussed in section 2, ‘better regulation’ in an EU context originally meant much more than just cheaper, or less regulation, but these wider objectives have become obscured since the revision of the Lisbon strategy earlier this year. In particular, better regulation means more *coherent* regulation, so that EU measures in one policy domain do not run counter to the objectives of those in another. It is hardly better regulation to continue to have to apply a drinking water directive to counter some of the consequences of the EU’s own agriculture policy.

Article 6 of the Treaty requires environmental considerations to be integrated into the definition and implementation of all EU policies, yet the principal initiative to put this into effect – the Cardiff process launched by the last UK Presidency in 1998 – has run into the ground, despite current UK attempts to revive it. In a public debate on 17 October 2005, EU Environment Ministers emphasised the key role of impact assessment in identifying the effects on the environment of legislation in other sectors. However – and as originally proposed by the Commission in 2002 – impact assessments need to be integrated and balanced, and not focused only on short-term economic costs. In particular, they should take full account of the costs of inaction, in the form of long-term effects on the environment and health. The principle of cross-compliance could also be used more extensively to secure environmental gains from the provision of EU funding to the Member States.

#### **Box 13: Common Agricultural Policy - Cross Compliance**

Cross-compliance is a policy tool that was developed to help integrate environmental concerns into agriculture, and in particular to combat the detrimental impacts of agricultural intensification. It requires farmers in receipt of agricultural subsidies to comply with certain environmental standards or face the reduction or complete withdrawal of such subsidies. The 2003 Mid Term Review of the CAP made cross-compliance a compulsory measure, applying to all direct payments. Member States must now set farming standards in relation to 19 European Union Regulations and Directives (Statutory Management Requirements or SMRs), define Good Agricultural and Environmental Conditions (GAECs) and ensure compliance with those standards on farms in receipt of CAP subsidies. For instance, the implementation of cross compliance rules for the birds and habitats Directives offers substantial scope to address biodiversity concerns in Member States. Cross compliance may also lead to increasing awareness of nature protection issues at the level of the individual farm, and the re-enforcement of existing legislation. In certain cases, cross-compliance has also sped up the designation of protected areas

Source: [www.ieep.org.uk](http://www.ieep.org.uk); Farmer, M. – Swales, V., The Development and Implementation of Cross Compliance in the EU 15: an Analysis, 2004.

Better regulation also should mean better *implementation* of existing legislation. This is a major problem in relation to the EU’s environmental policy, but the search for softer policy instruments has diverted attention – and probably reduced the commitment of many Member States – to addressing the implementation gap. And this is not just an issue for environmentalists alone, for major differences in the way

that Member States choose to implement Directives (or sometimes not) can lead to significant distortions in the EU's internal market, reducing trade and cutting growth.

Better regulation also means *greater involvement of stakeholders* and citizens in the development of EU measures. Despite the laudable principles set out in the Commission's guidelines on minimum standards for consultation, it is important that such participation is balanced, for without this the messages getting to the Commission will be distorted. Industrial groups are clearly better organised and resourced than environmental NGOs, as witnessed by the debate over the REACH proposal, when the additional economic impact studies were overwhelmingly contributed by industrial representatives. The playing field needs to be levelled with more financial assistance for NGOs (from both the EU and Member States), and more support for capacity building, particularly in the new Member States.

#### 4.4 Sustainable development and better regulation

The drive for improved competitiveness, growth and jobs through better regulation (narrowly defined) is clearly not the only objective of the Union, as Article 2 of the Treaty on European Union makes clear. Not all environmental measures can contribute to growth and jobs – although many can and do – and indeed some may lead to some short-term increase in costs to industry. However, the benefits will often be in the form of other values which EU citizens hold important, such as health, biodiversity, equity or access to information. These may be less easy to quantify but are key to closing the credibility gap between the EU and its citizens. In this regard it is worth quoting a sentence from the Commission's review of the Lisbon Strategy:

‘The Lisbon Strategy is an essential component of the *overarching* objective of sustainable development set out in the Treaty: improving welfare and living conditions in a sustainable way for present and future generations’ (*our italics*).

In responding to the better regulation agenda, the environmental policy community should never be afraid to ask: ‘Better for what?’

##### **Key Messages:**

- The environmental policy community should not be too defensive in responding to the better regulation agenda. There is a danger that this will weaken the forthcoming 6EAP Thematic Strategies.
- It is important to emphasise that environmental protection and the creation of wealth and jobs are not per se incompatible.
- There is a need to revert to the original definition of better regulation, to include, for example, more coherent regulation, better implementation; and more balanced stakeholder and citizen participation.
- The objectives of the EU are broader than competitiveness alone. The overarching principle of sustainable development serves to emphasise the equal importance of other environmental and social values.



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- <sup>xiii</sup> COM(2004)324, amending COM(2002) 719
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- <sup>xv</sup> <http://www.euractiv.com/Article?tcmmuri=tcm:29-145376-16&type=LinksDossier>
- <sup>xvi</sup> In addition to Mr Verheugen, the CCCG comprises Commissioners for trade; health and consumer protection; internal market and services; competition; and science and research.
- <sup>xvii</sup> Enterprise Europe, Issue 19: [http://europa.eu.int/comm/enterprise/library/enterprise-europe/issue19/articles/en/topic1\\_en.htm](http://europa.eu.int/comm/enterprise/library/enterprise-europe/issue19/articles/en/topic1_en.htm)
- <sup>xviii</sup> Implementing the Community Lisbon Programme: A policy framework to strengthen EU manufacturing – towards a more integrated approach for industrial policy, COM(2005)474, 5.10.2005.
- <sup>xix</sup> Better Regulation for Growth and Jobs in the European Union, COM(2005)97, 16.3.2005
- <sup>xx</sup> 9912/05, 8 June 2005
- <sup>xxi</sup> See for example the recent ECJ case Case C-320/03 on the Austrian ban on heavy lorries using a key Alpine crossing route, which ruled that infringes EU rules guaranteeing the free movement of goods.
- <sup>xxii</sup> [http://www.dti.gov.uk/ewt/National\\_Reform\\_Programme.pdf](http://www.dti.gov.uk/ewt/National_Reform_Programme.pdf)
- <sup>xxiii</sup> See for example Farmer, A et al (Nov 2005) *Workshop on Best Practice in Analysing and Developing Environmental Policies: Background Paper*, IEEP.
- <sup>xxiv</sup> European Commission Working Document *Better Regulation and the Thematic Strategies for the Environment*, COM(2005) 466
- <sup>xxv</sup> Speeches by Environment Commissioner Stavros Dimas on *Sustainable Development and Competitiveness*, European Policy Centre, 6.10.2005; and *Growth, Jobs and the Environment*, European Environment Agency, Copenhagen, 7.10.05