

The Circular Economy Package: A Work In Progress



Paul Sheridan and **Olivia Jamison** of CMS Cameron McKenna LLP look at the Circular Economy Package, the limited progress that appears to have been made to date, and summarise where we are now and what comes next...

Eight months on from the publication of the European Commission's Circular Economy Package, comprising a Communication "Closing the Loop – an EU Action Plan for a Circular Economy" and proposals to amend existing law, despite keen interest there have been limited announcements on progress achieved in implementing it. With many now wondering about the implications of the UK leaving the EU and other issues vying for political time, we consider a snapshot of the present position and next steps.

A major aspect of the Package was the European Commission's desire to amend key existing waste legislation to establish more stringent targets and to further shift emphasis on waste as a resource. Formal proposals were submitted to the European Parliament to amend the Waste Framework Directive; the Packaging and Packaging Waste Directive; the Landfill Directive; the End-of-Life Vehicles Directive; the Batteries Directive; and the WEEE Directive. Together with the European Parliament, the Council of the EU, formerly known as the Council of Ministers, is the main decision-making body of the EU and will

consider the proposals once decided upon by the Parliament.

The proposals include:

- a common EU target for recycling 65 percent of municipal waste by 2030

– turning one industry's by-product into another industry's raw material

- economic incentives for producers to put greener products on the market and support recovery

"A paradigm shift is... needed which will take us beyond mere waste management and entail the adoption of policies which regard waste as a genuine resource in its own right. In order to attain that objective, full implementation of the European rules on waste is needed..."

- a common EU target for recycling 75 percent of packaging waste by 2030
- a target to reduce by 2030 the landfilling of municipal waste to maximum of 10 percent of all municipal waste generated
- a ban on the landfilling of separately collected waste with promotion of economic instruments to discourage landfilling generally
- simplified and improved definitions and harmonised calculation methods for recycling rates throughout the EU
- more and smarter extended producer responsibility obligations
- concrete measures to promote reuse and stimulate industrial symbiosis

and recycling schemes (eg, for packaging, batteries, electric and electronic equipment, vehicles).

In May and June 2016 the European Parliament received comments and proposed amendments from members on the European Commission's draft proposals. As part of that process it was noted that "A paradigm shift is... needed which will take us beyond mere waste management and entail the adoption of policies which regard waste as a genuine resource in its own right. In order to attain that objective, full implementation of the European rules on waste is needed, which should be achieved by means of

strict application of the waste hierarchy and should be complemented by further measures to reduce waste production."

In many areas members of the European Parliament have suggested changes to the legal text suggested by the European Commission. Quantitative targets for preparing for reuse, changes to proposals for targets for the recycling of municipal waste and commercial and industrial waste and incineration caps with or without energy recovery are proposed for consideration. Emphasis is placed on the phasing out of landfill stating that only treated waste that cannot be recycled anymore shall be landfilled.

Other proposed amendments include mandatory separate collection of biowaste at source; targets for the organic recycling of biowaste; marine litter measures and further waste reduction measures; the introduction or increase of incineration levies and specific bans for incineration.

The European Parliament and the Council will either approve or amend the proposals. If agreement cannot be reached on any proposed amendments both can amend the proposal a second time. If they still cannot reach an agreement they enter negotiations after which both institutions can either vote in favour or against the proposed laws.

The Action Plan

THE ACTION Plan included focus on the following areas:

- products – design and processing, in particular in respect of electronic equipment via the Ecodesign Directive and BREFs
- consumption – including better enforcement of guarantees on tangible products, acting on false green claims, proposing requirements on repair information
- green and public procurement – actions to use procurement as a vehicle for change
- waste management – in particular revising legislative proposals on waste, combatting illegal shipments of waste
- energy from waste initiative – EfW via thermal incineration does not sit comfortably with the principles of the circular economy. The European Commission implicitly accepts this and is promising an initiative in 2016

- waste as a resource – strengthening the secondary raw materials market through, for example, better interface between chemicals, products and waste legislation, and improved electronic data exchanges.

The Action Plan also identified specific actions in respect of plastics, food waste, critical raw materials, construction and demolition, and biomass and bio-based materials. The Annex to the Action Plan set out approximate timelines for completion of certain measures, some of which – such as the Ecodesign Work Plan – are presently behind schedule.

On 20 June 2016, the European Council which sets the EU's overall political direction and priorities, adopted conclusions on the Action Plan and in so doing effectively endorsed its contents and its implementation.

Next Steps

IT WILL take some time for the scrutiny process to be finalised by the European Parliament and the end result subsequently reviewed and decided upon by the Council. If the proposals are agreed in whatever form, there is usually a period of time following the coming into force of a Directive for the requirements to be transposed into local law.

The explanatory memorandum to one of the legislative proposals notes that in transposing the amended directives, member states may have to amend a wide variety of legislative acts at national, regional and local levels. In tandem, once the UK formally triggers the exit mechanism available to leave the EU it remains a member until the withdrawal agreement or after two years, whichever is the earlier, unless an extension is unanimously agreed by other member states.

For that period, EU law continues to apply and the UK is obliged to implement appropriate legislation. Thereafter, whether legislation remains binding depends on the terms of any withdrawal agreement and also on the approach adopted by the incumbent Government and Parliament. Predicting the trajectory of implementation is for others but, whatever the outcome, the proposals should remain of interest to all in the waste management industry. ■

Nicolas Scarsbrook, director of Stow Skips Limited, has been disqualified from acting as a company director for five years and ordered to pay £35,000 compensation after pleading guilty to a charge of failing to store waste in accordance with the environmental permit held for Westington Quarry in Chipping Campden, and two charges of operating a waste operation without the necessary permit. The company was fined £20,000. Stow Skip Ltd was granted an environmental permit to operate a household, commercial and industrial waste management facility at its site in Chipping Campden, but the landowner received concerning reports regarding its condition. Upon inspection the land agent found large piles of wood and inert waste stored on the ground outside the main building, along with piles of asbestos, baled waste, loose tyres and 13 intermediate bulk containers containing hazardous liquid waste.

Noble Waste Treatment Ltd has had its environmental permit revoked, meaning it can no longer operate its waste transfer facility in Wakefield, and no more waste can be accepted at the site. The company has a history of failing to comply with the conditions of its environmental permit, the Environment Agency said, and it has until 22 September to remove waste from the permitted area of the site. If it does not comply, the firm may face the prospect of further legal action.

Poor site management at an anaerobic digestion (AD) plant operated by Trinity Hall Biogas Ltd in Hockliffe, Bedfordshire, led to 3km of watercourses being polluted and the company fined £10,000 and ordered to pay £10,423.79 in Environment Agency costs. The court heard that as a result of overflows from the plant in December 2013, and again the following April, water quality was chronically affected in the stream from the farm near Hockliffe to the Ouzel Brook approximately 3km downstream. The storage container held liquid which had leached from a maize heap stored as bio-fuel for an AD plant. The tank had not been checked and had overflowed. It was reported that bags of wrapped bio-fuel, owned by the company, were stored on a field in rows, the ends of which were within 10m of the ditch where the effluent had been found. This is a breach of silage regulations.