

HOUSE OF LORDS

SESSION 2002–03
47th REPORT

SELECT COMMITTEE ON
THE EUROPEAN UNION

EUROPEAN UNION WASTE
MANAGEMENT POLICY

WITH EVIDENCE

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CONTENTS

	<i>Paragraph</i>	<i>Page</i>
PART 1: SUMMARY OF THE REPORT	1	5
PART 2: INTRODUCTION	1	7
What is this Report about?.....	1	7
Background	8	8
EU waste initiatives	8	8
Waste prevention	9	8
Reuse and Recycling	10	8
Improving final disposal and monitoring	11	8
PART 3: ANALYSIS AND OPINION	15	10
Reaction to the Commission’s draft Waste and Recycling Strategy	15	10
Legislative procedure for waste proposals	21	10
Co-decision (EC Treaty Article 251).....	22	11
Technical Adaptation Committees	22	11
The Waste Acceptance Criteria	26	13
Waste from Electrical and Electronic Equipment Directive.....	30	13
Definitions	42	16
Baseline data.....	53	17
Impact Assessment	60	18
Reporting Requirements	70	20
The role of the European Environment Agency	73	21
Conduct of negotiations in Brussels	77	21
Transposition and Implementation	85	22
Project planning.....	87	23
Role of the Environment Agency	89	23
Devolved and local government	96	25
Co-ordination of Government	104	27
Will the Commission’s strategy achieve its objectives?.....	108	27
PART 4: SUMMARY OF RECOMMENDATIONS	114	29
Recommendations to the Government	i	29
Co-ordination of Government and the need for a strategic approach.....	i	29
Regulatory Impact Assessment	vi	29
Technical Adaptation Committees	viii	29
The Role of the Environment Agency	xiii	30
Data collection.....	xvii	31
Recommendations to the Commission	xviii	31
Technical Adaptation Committees	xx	31
Definitions	xxiv	31
Data	xxvii	32
Harmonised reporting and the role of the European Environment Agency.....	xxix	32
Impact Assessment	xxxii	32
Recommendation to the House.....	115	32
Box 1: <i>Co-decision and Transposition</i>		11
Box 2: <i>Technical Adaptation Committees</i>		12
Box 3: <i>Comitology: Key Recommendations</i>		13
Box 4: <i>Legislative Consistency: Key Recommendations</i>		16
Box 5: <i>Data needed to Support Policy-Making:Key Recommendations</i>		17
Box 6: <i>Impact Assessment</i>		19
Box 7: <i>The UK’s Influence on EU Policy-Making:Key Recommendations</i>		21
Box 8: <i>Project planning: Recommendations of the Better Regulation Task Force</i>		23
Box 9: <i>Extract from Environment Agency and Defra concordat</i>		24
Box 10: <i>Disposal of Refrigerators: conclusions of the House of Commons Environment, Food and RuralAffairs Committee, 4th Report (2001-02)</i>		25

Box 11: <i>Example of good practice: the WEEE Directive</i>	26
Box 12: <i>Example of good practice: the Integra Project</i>	26
Box 13: <i>The Commission's Waste and Recycling Strategy Key Requirements for Reform</i>	27
Appendix 1 Membership of Sub-Committee D.....	33
Appendix 2 Call for Evidence	35
Appendix 3 List of Witnesses	37

ORAL EVIDENCE

Environment Agency

Written Evidence	1
Oral evidence 4 June 2003	4
Supplementary Written Evidence.....	14

Dr Caroline Jackson MEP

Oral Evidence 12 June 2003.....	18
---------------------------------	-----------

Biffa Waste Services Limited

Written Evidence	26
Oral Evidence 18 June 2003.....	35
Supplementary Written Evidence.....	46

Environmental Services Association

Written Evidence	30
Oral Evidence 18 June 2003.....	35
Supplementary Written Evidence.....	48

Her Majesty's Government

Written Evidence	51
------------------------	-----------

Department of Trade and Industry (DTI)

Oral Evidence 25 June 2003.....	56
---------------------------------	-----------

Department for Environment, Food and Rural Affairs (Defra)

Oral Evidence 2 July 2003	66
---------------------------------	-----------

Local Government Association

Written Evidence	78
Oral Evidence 9 July 2003	81

European Commission (Directorate A (Communications, Governance, Production, Consumption & Waste)

Oral Evidence 16 July 2003	93
----------------------------------	-----------

WRITTEN EVIDENCE

British Cement Association.....	105
The British Plastics Federation.....	109
Confederation of British Industry.....	112
The Industry Council for Packaging and the Environment.....	119
Dr Andrew Jordan and Mr Duncan Russel (CSERGE, University of East Anglia) and Dr Adriaan Schout and Mr Martin Unfried (EIPA, Maastricht, Netherlands).....	120
National Farmers' Union of England and Wales	126
Social Market Foundation	129
Waste Watch	131

NOTE: Pages of the Report and Appendices are numbered in bold type; pages of evidence are numbered in ordinary type. References in the text of the report are as follows:

(Q) refers to a question in oral evidence;

(p) refers to a page of the Report or Appendices or to a page of evidence.

FORTY-SEVENTH REPORT

18 NOVEMBER 2003

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

EUROPEAN UNION WASTE MANAGEMENT POLICY

- 10113/03 Communication from the Commission: Towards a thematic strategy on the prevention and recycling of waste (COM (03) 301)
- 10801/03 Communication from the Commission: Integrated product policy—building on environmental life cycle thinking (COM (03) 302)
- 13239/03 Communication from the Commission: Towards a thematic strategy on the sustainable use of natural resources (COM (03) 572)

PART 1: SUMMARY OF THE REPORT

- i. The European Commission has been seeking to develop a comprehensive and consistent policy on waste prevention and recycling within an overall objective of resource efficiency. Three initiatives form the basis of the Commission's future work in this area:
 - a consultation exercise on strategy for the prevention and recycling of waste;
 - a Communication which sets out the Commission's thinking on an integrated product policy approach;
 - a consultation exercise on strategy for the sustainable use of natural resources.
- ii. The aim of the Committee's inquiry has been to review current processes for developing Community legislation in the waste policy field and the impact they have had on the quality of legislation. The report considers whether implementation of the Commission's ambitious agenda requires changes to be made to these processes.
- iii. In the Committee's view, the European Union has in the past tended to base policy on inadequate evidence and data, leaving significant details to be agreed behind closed doors after framework legislation has been adopted.
- iv. Inconsistent definitions (e.g. of "waste" and "recycling"), confusing overlaps between Directives and inconsistent practices between different Member States in relation to the same Directive need to be reviewed.
- v. The Committee considers that placing waste in an overall context of sustainable use of natural resources is a rational approach, but that far better information is needed from which to develop workable, effective and proportionate legislative instruments in future.
- vi. Once EU legislation has been implemented, it should be monitored and evaluated in detail to find out whether it is having the desired effect. The Commission should make greater use of the European Environment Agency for collating data and ensure that Member States provide the Agency with sound and consistent data, which are essential to the proper discharge of its functions.
- vii. The UK has a poor record in influencing EU waste policy. It needs to operate at a more strategic level. It should initiate and innovate, not just react passively to legislative proposals from the Commission. This calls for a far greater level of collective working within Government, overseen and co-ordinated by a dedicated unit at the centre with the task of ensuring clear accountability for successes and failures.

- viii. The crucial interaction between central and local government in this field needs to be better recognised in policy-making.
- ix. The report concludes that:
- significant improvements can be made to the policy-making process at the Community and national level;
 - the Commission should review the operation of the EU legislative process as it applies to waste; and
 - the results of this review must be fed into current consultations on Community strategies for waste management and recycling and sustainable use of natural resources.

PART 2: INTRODUCTION

WHAT IS THIS REPORT ABOUT?

1. The Committee's decision to undertake an inquiry¹ into EU waste policy was prompted by recent initiatives of the European Commission which aim to take a more holistic approach to waste—by seeking to prevent it through design and technology, by improving arrangements for disposal, and by managing resources in a more sustainable manner so as to reduce the impact on the environment. This report has been prepared as a contribution to the Commission's consultations. It concentrates on the policy-making processes and how it might be improved to deliver better solutions to waste prevention and management.

2. The three initiatives are:

- A consultation exercise on strategy for the prevention and recycling of waste;²
- A Communication which sets out the Commission's thinking on an integrated product policy approach³ (see paragraph 13); and
- A consultation exercise on strategy for the sustainable use of natural resources⁴.

3. The inquiry has focused on the waste and recycling strategy. The strategy on natural resources (which has wider application) was not published until after the Committee had finished taking evidence. It is referred to only briefly in this report but is important in that it now completes the trio of Commission initiatives.

4. Lead responsibility for waste policy in England (and for UK-wide co-ordination) lies with the Department for Environment, Food and Rural Affairs (Defra), with the Department of Trade and Industry (DTI) leading on certain aspects which have direct impacts on industry. The Cabinet Office Strategy Unit has recently been reviewing the delivery of the Government's overall waste strategy⁵. This will provide a focus for implementing, and ideally shaping, the Commission's long-term vision.

5. In inviting evidence from witnesses the Committee posed the following questions in particular:

- How effective are current regulatory impact assessments by the Commission in assessing the capacity for implementing waste Directives, and how can cost benefit analysis be improved in the early stages of a proposal?
- Could the UK be more proactive in influencing the development of EU policy? Do Government departments have access to the skills required?
- What lessons can be learned from past difficulties to improve the quality, timeliness and effectiveness of implementation?

6. The House of Commons Environmental Audit⁶ and Environment, Food and Rural Affairs⁷ Committees have recently examined the UK review of the Waste Strategy 2000⁸. After we had finished taking evidence, the Advisory Committee on Consumer Products and the Environment (ACPE) and the Better Regulation Task Force (BRTF) also published reports, on sustainable products⁹ and implementing environmental Directives¹⁰ respectively. The Scottish Environment and Rural Development Committee have also been conducting a review of the Scottish waste strategy in the context of EU developments. This cluster of activity within the UK serves to underline the importance of this area of policy.

7. As part of its consultation on the waste and recycling strategy¹¹ the Commission asked for issues "which would be of interest for the development of an extended impact assessment"¹² to be brought to its attention. We have consequently made a number of recommendations to this end.

¹ The inquiry was carried out by Sub-Committee D (Environment, Agriculture, Public Health and Consumer Protection), whose members are listed in Appendix 1. The specialist adviser was Dr Jane Powell, University of East Anglia, CSERGE

² Communication: towards a thematic strategy on the prevention and recycling of waste (COM(2003) 301 final)

³ Communication: Integrated Product Policy (COM(2003) 302 final)

⁴ Communication: Towards a thematic strategy on the sustainable use of natural resources (COM(2003) 572 final)

⁵ Waste Not Want Not: A Strategy for Tackling the Waste Problem in England, November 2002, Strategy Unit

⁶ Environmental Audit Committee, 5th Report (2002-03): *Waste – An Audit* (HC 99)

⁷ Environment, Food and Rural Affairs Committee, 8th Report (2002-03): *The Future of Waste Management* (HC 385)

⁸ DETR, *Waste Strategy 2000*, Cm 4693, May 2000

⁹ Towards Sustainable Products, the advisory committee on consumer products and the environment, 2003

¹⁰ Environmental Regulation: getting the message across, Better Regulation Task Force, July 2003

¹¹ <http://europa.eu.int.comm/environment/waste/strategy.htm>

¹² Extended impact assessment is discussed in paragraphs 63 and 64 below

BACKGROUND

EU waste initiatives

8. The first Community Waste Strategy¹³ was published in 1989, although interest in waste had been evident at Community level from the mid-1970s, when the Commission put forward the proposals which were to become the 1975 Waste Framework Directive¹⁴. This Directive was intended to provide a baseline for the measures and principles by which Member States were expected to abide. Since then the European Union's approach to waste management has been based on the so-called waste management hierarchy of prevention, reuse and recycling, energy recovery and final disposal.

Waste prevention

9. Top priority under the hierarchy is given to reducing the amount of waste generated in the first place and the degree of hazard which it creates. Waste prevention is closely linked to improving product design, management and manufacturing methods and to influencing consumers' demand for more environmentally benign products and those which make less use of packaging.

Reuse and Recycling

10. If waste cannot be prevented, items should be reused or as many of the materials as possible should be recovered through recycling. The Commission has identified several specific "waste streams" for priority attention, the aim being to reduce their overall environmental impact. These include packaging waste, end-of-life vehicles, batteries, and electrical and electronic waste. EC Directives now require Member States to introduce legislation on waste collection, reuse, recycling and disposal of these waste streams.

Improving final disposal and monitoring

11. Waste that cannot be reused or recycled should in the first instance be used for energy recovery. Failing that, it should be safely disposed of. Landfill—particularly when it does not include energy recovery—is seen very much as the disposal option of last resort. The EU has recently adopted a Directive setting strict guidelines for landfill management¹⁵ (see paragraphs 26–29). It bans certain types of waste altogether and sets targets for progressively reducing levels of biodegradable material which goes to landfill (to reduce production of methane). Another recent Directive lays down tough limits on emission levels from incinerators¹⁶. Both Directives were the subject of reports by our Committee when they were in draft¹⁷.

12. The Sixth EC Environment Action Programme, published in 2000, provides the environment component of the Community sustainable development strategy¹⁸. It highlights areas of policy for urgent action and proposes a series of thematic strategies. Currently the Commission is consulting on two waste-related strategies—on the prevention and recycling of waste and on the sustainable use of natural resources. The waste and recycling strategy was the first to emerge,¹⁹ and aims to consolidate existing EU waste policy and introduce new approaches. As its title suggests, it specifically deals with waste and recycling, the basis of which is to be comprehensive cost-benefit analysis to identify where recycling could be most socially beneficial, together with economic instruments to provide market stimulus. Waste prevention is also an important theme of the strategy, but specific proposals on how to achieve it have yet to emerge. Over time it is intended to focus on areas linked to the priority issues identified by the resources strategy. The strategy on natural resources will focus on understanding and mapping the links between the use of resources and their environmental impacts, in order to identify where action is needed. These strategies are not being developed in isolation, and a number of legislative instruments relating to products have recently been agreed and are now being transposed.

13. The Commission's recent Communication on Integrated Product Policy provides a toolkit of instruments that can be applied to reduce the environmental impact of a product throughout its lifecycle. The tools for promoting the environmental improvements include economic instruments (e.g. taxes and

¹³ A Community Strategy for Waste management (SEC (89) 934)

¹⁴ Council Directive 1975/442/EC, OJ L194 (25 July 1975) p 39

¹⁵ Council Directive 1999/31/EC on the Landfilling of Waste

¹⁶ Council Directive 2000/76/EC on the Incineration of Waste

¹⁷ European Communities Committee, 17th Report (1997-98): *Sustainable Landfill* (HL 83); European Communities Committee, 11th Report (1998-99): *Waste Incineration* (HL 71)

¹⁸ Environment 2010: Our future, our choice (COM(2001) 31)

¹⁹ Communication: Towards a thematic strategy on the prevention and recycling of waste (COM(2003) 301 final)

subsidies which reflect environmental impacts), voluntary agreements, and public procurement measures. The emphasis is on co-operation with industry using voluntary approaches, although if necessary legislative measures will be considered. The provision of information to consumers is another important factor, to enable them to make informed decisions through the use of environmental labelling.

14. This inquiry has focused on the processes of policy-making in the context of the themes set out in the waste and recycling strategy.

PART 3: ANALYSIS AND OPINION

REACTION TO THE COMMISSION'S DRAFT WASTE AND RECYCLING STRATEGY

15. Dr Caroline Jackson MEP, Chair of the European Parliament's Environment, Public Health and Consumer Policy Committee, expressed support for the publication of the Commission's draft strategy. This was echoed by the majority of witnesses, who saw it as an opportunity to address fundamental questions about the approach to waste policy in the EU.

16. Dr Jackson was pleasantly surprised by the following passage in the document, which she felt marked "a sudden change of direction, a realisation":

"Current Directives foresee that all Member States should achieve the same recycling rates. However, the question is legitimate whether this uniformity in targets is most effective from both an environmental and economic point of view"²⁰.

17. What witnesses found significant about the draft strategy was the fact that it raised questions about the practice of setting targets in waste legislation, thus providing the first opportunity to challenge conventional wisdom. The difficulty with which the UK and some other Member States have grappled with implementing waste legislation²¹ reinforces the need to examine the current approach to waste policy. Although waste prevention has been the preferred outcome identified by the Commission since the original 1975 Waste Framework Directive, progress towards it has been slow.

18. The Commission's waste and recycling strategy reasserts the importance of waste prevention, admits past failure, and promises a new agenda "inspired by a lifecycle approach to resources management"²². However, it quickly became apparent to the Committee during the inquiry that in order to put this new approach into practice much more effort would have to be made by the European Community and individual Member States to develop appropriate legislation.

19. Witnesses highlighted several points in the European legislative process which had in the past had an impact on the quality of waste legislation and which, in the light of the Commission's wider ambitions for waste policy, should now be addressed in the course of developing new strategies on waste and resource use.

20. **We believe that it is fundamental to the development of Community waste policy that the Commission identifies the weaknesses in the current approach to developing and implementing legislation and takes remedial action.** The following sections analyse in detail the Committee's findings.

LEGISLATIVE PROCEDURE FOR WASTE PROPOSALS

21. The Commission is responsible for initiating new policies, strategies and legal measures at Community level. Measures addressing waste issues are usually initiated under either Article 175 (environment) or Article 95 (internal market) of the EC Treaty and are subject to the co-decision procedure, in which the Council and European Parliament act together to decide the final text of a Commission proposal.

²⁰ Q 49

²¹ Implementation of Community Waste Legislation – Period 1998-2000 (COM(03) 250)

²² *ibid.* at p 4

Box 1*Co-decision and Transposition*

CO-DECISION (EC TREATY ARTICLE 251)

Proposal

The Commission submits a proposal to the European Parliament and Council.

First Reading

The relevant standing committee in the European Parliament produces a report which usually suggests amendments to the Commission proposal. The European Parliament adopts a position on the basis of the report.

The Council of Ministers either approves Parliament's amendments (if any are made), in which case the legislative proposal is adopted, or it adopts a Common Position, which is forwarded to the Parliament for a second reading.

Second Reading

The relevant standing committee makes a recommendation, and the European Parliament delivers an opinion at second reading, either approving, rejecting or amending the Council position by an absolute majority of its Members. If the European Parliament does not take a decision, or if it approves the Council's Common Position, the measure is deemed to be adopted. If it rejects the Common Position the proposal is deemed not to be adopted.

If the proposal is amended, the Commission forwards it, together with the Commission's opinion on the amendments, to the Council. The Council can subsequently adopt Parliamentary amendments by a qualified majority, or modify amendments on which the Commission has delivered a negative opinion by a unanimous vote. If it does not adopt all of the Parliament's amendments, the conciliation procedure begins.

Conciliation

A conciliation committee is formed from the members of the Council and a delegation from Parliament. There is a maximum of six weeks for an agreement to be reached, in the form of a joint text, which is confirmed at the third reading. If no agreement is reached, or if the joint text fails to secure approval by the required majority of votes in the Council and the Parliament, the proposal lapses and does not become law.

Transposition and Implementation

Directives are binding upon Member States as to the result to be achieved, but leave to the national authorities the choice of form and methods. In most cases, Member States implement Directives by adopting national legislation where necessary (a process known as "transposition"). Implementation, i.e. bringing into effect the necessary domestic legislation, has to be completed within a period of time specified by each Directive. Member States must submit reports to the Commission, showing that implementation has taken place. The Commission may initiate infraction proceedings before the European Court if it considers that a Member State has not implemented a Directive.

Technical Adaptation Committees

22. After co-decision, waste Directives can have detail added by implementing measures agreed through technical adaptation committees (see Box 2), under the system known as "comitology"²³. These committees are made up of representatives of Member States, chaired by the Commission, and seek agreement on issues which are deemed to be too technical for inclusion in the parent legislation.

23. Technical adaptation committees play an integral role in providing the detail of framework Directives. According to Defra, there are currently three committees discussing waste legislation, including preparations for implementation of the Waste from Electrical and Electronic Equipment Directive (see paragraph 30 *et seq.*).

²³ See European Union Committee, 3rd Report (1998-99): *Delegation of Powers to the Commission: Reforming Comitology*, (HL 23); and European Union Committee, 31st Report (2002-03): *Reforming Comitology* (HL 135)

24. The committees have long attracted criticism for their lack of transparency, with only basic information on their membership and remit being available to the public²⁴. The Commission publishes a list of the number of committees operating in a given year,²⁵ by policy sector and type of committee procedure. There is no sub-division for environmental policy, and no detail relating to which legislation is subject to this process. Box 2 contains a brief explanation of the committees' functions and how they relate to those of other "comitology committees".

Box 2

Technical Adaptation Committees

Technical adaptation committees are part of the comitology system of procedures where committees are set up to carry out detailed rule-making. This occurs when the Council delegates implementing powers to the Commission and the committees are set up to oversee the exercise of these powers. Current procedures are governed by Council Decision 1999/468/EC, which is undergoing a process of review.

Committees are made up of Member States' representatives (who may be government officials or nominated experts) and are chaired by Commission officials. However, who sits on them and when they meet is something of a mystery to the outsider. The Committees can in general be divided into three basic types:

- (i) *advisory committees* (used mainly on internal market matters) give advice on draft measures; the Commission is required to take their advice into account and to report back to the committee on how it proposes to do so;
- (ii) *management committees* are consulted by the Commission on draft implementing measures and give opinions on them by qualified majority voting (QMV); if a measure is approved by a committee, it may be implemented immediately; if not, it may still be implemented, but the Council must be notified and may, within a limited time, take a different decision;
- (iii) *regulatory committees* similarly give opinions on Commission proposals by qualified majority voting; but in their case if a committee rejects a proposed measure, the Commission cannot put it into immediate effect, but must propose it to the Council for a decision; the Council is required to take action by QMV within three months.

25. From the evidence it was clear that the full implications of legislation were not always appreciated by the time a proposal had completed the co-decision process. Crucial definitions could be left to technical adaptation committees, which meant that Member States sometimes agreed to Directives without fully understanding their scope. Secondly, the legislative timetable did not always allow the technical adaptation committees time to conclude their deliberations before commitments previously timetabled in the framework legislation had to be met²⁶.

²⁴ EUC, 3rd Report (1998-99) *op cit*.

²⁵ For example: Report from the Commission on the working of the committees during 2001 (COM(2002) 733 final)

²⁶ Q 108

Box 3*Comitology: Key Recommendations*

The current use of technical adaptation committees is unsatisfactory; legislation is significantly amended behind closed doors and there is no effective scrutiny by national parliaments. The timing of the process has also resulted in situations where details of significance to the implementation of Directives have not been ready before the legislation has to be in force in Member States.

Our recommendations should result in:

- technical adaptation committees that focus on technical implementation measures and do not significantly alter the scope of a Directive;
- greater transparency, through publishing committee minutes, proceedings, etc.; and
- Project planning approach, where legislative timetables agreed during co-decision are compatible with work delegated to committees, and where committee deadlines are made publicly available.

The Waste Acceptance Criteria

26. A frequently cited²⁷ example of the problem just described is that of the waste acceptance criteria—a key element of the Landfill Directive and delegated to a technical adaptation committee to draft. The Landfill Directive was adopted in 1999 and sets targets for reducing Member States' dependence on landfilling. It aims to “prevent or reduce as far as possible negative effects on the environment from the landfilling of waste, by introducing stringent technical requirements for waste and land filling”²⁸.

27. The waste acceptance criteria are crucial to the planning of two major changes to UK landfill practice which are required by the Directive:

- categorizing landfills into three types—hazardous, non-hazardous and inert; and
- ending co-disposal²⁹ by July 2004.

28. The waste acceptance criteria define the type of waste allowed into each category of landfill. They were supposed to have been completed by the technical adaptation committee before the legislation came into force in Member States (July 2001) but were not finalised until January 2003. In the meantime the UK failed to meet the original implementation deadline of 16 July 2001, the legislation coming into force a year later (June 2002). Nevertheless operators of landfill sites were still expected to decide, by the deadline of July 2002, which type of landfill they would operate, without knowing what waste would be accepted.

29. As a result of the Council's decision to delegate a crucial part of the legislation to the Commission, and because the technical adaptation committee first met after Member States had begun the process of transposition, crucial details affecting the operation of the Landfill Directive were not agreed before the deadline for full implementation. The Government were thus in a position of having signed up to legislation without knowing the practical implications; while landfill operators were faced with significant uncertainty and confusion about what the law required.

Waste from Electrical and Electronic Equipment Directive

30. The Waste from Electrical and Electronic Equipment (WEEE) Directive emerged from work on priority waste streams, initiated in 1991, and was adopted in 2002³⁰. It is currently being transposed into Member State legislation along with a partner instrument, the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Directive (RoHS)³¹. At the same time a technical adaptation committee is discussing the scope of both Directives. For the first time it is possible

²⁷ p 28

²⁸ Council Directive 1999/31/EC on the landfilling of waste

²⁹ Co-disposal is a common practice in the UK, in which hazardous and non-hazardous wastes are mixed together

³⁰ Directive 2002/96/EC on waste electrical and electronic equipment (WEEE)

³¹ Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment

to track the progress of discussions, as the DTI have taken the unprecedented step of placing minutes of the meetings on their website. We welcome this initiative by the Department, although we are disappointed with the slow progress of discussions.

31. From the informal DTI minutes and the evidence to the inquiry it is apparent that both the scope of these Directives and practical questions of implementation are being discussed. The table below summarises the main issues which are being debated by Member States:

<i>Scope of the Directives</i>	<i>Implementation issues</i>
Discussion of criteria which might be applied to deciding whether or not to include some products in the scope of the WEEE/RoHS, where their status was unclear.	Definitions: producer, retailer take-back, inter-EU trade, recycling targets
Discussion of the implications of excluding particular products from the scope of the WEEE Directive.	Format of data
Examples of products with unclear status: Car radios Toys Refrigerators in caravans Military Equipment Large industrial machinery	Design of WEEE marking symbol
	Establishment of the maximum concentration values for the six substances in the RoHS Directive.

Source: www.dti.gov.uk

32. It could be argued that questions about the scope of these Directives fell within the area of significant policy and should therefore have been addressed during the co-decision process, when they would have been subject to the full scrutiny of the European Parliament, as well as open to scrutiny by national parliaments. We do not accept that there was a lack of time available to raise substantive issues. As we note above, initial discussions concerning waste streams began as long ago as 1991; the Fifth Environmental Action Programme, adopted in 1993,³² contained a commitment to regulate WEEE as a priority waste stream; and the Directive took two and a half years to emerge from co-decision.

33. The timetable set out in the WEEE Directive gives the UK until 13 August 2004 for transposition. The discussions in the technical adaptation committee appear to cover a significant range of issues, and until the precise scope of the Directive has been settled there is bound to remain significant uncertainty about the practical implications for industry, regulators and consumers over the coming months. **It is regrettable that, as we report, so much remains to be settled. It is impossible for those affected by the Directive to run their businesses without timely decisions on these matters.**

34. The Better Regulation Task Force report (see paragraph 86) has recommended better project planning by the Government during transposition. We consider that this advice is equally relevant to planning the work of technical adaptation committees. **The Commission should provide a project plan for each specific legislative proposal which demonstrates how the deadlines contained in framework legislation are to be co-ordinated with the work of technical adaptation committees. We recommend that where substantive definitions affecting the operation of the Directive remain to be decided, transposition into national law should not go ahead until the committee has completed its work.**

35. Both examples raise questions over what is appropriate for the Commission to delegate to committees: where is the line to be drawn between policy and technical matters?

36. **We consider that care should be taken during the co-decision process to ensure that any details which are left for decision by technical adaptation committees are genuinely technical and**

³² Fifth Environmental Action Programme, OJ C138 (17 May 1993)

appropriate for being decided in that way. A clearer line must be drawn between policy objectives and technical content. Besides purely technical aspects, committees may reasonably be used to resolve detailed questions of transposition but should not be relied upon to address policy gaps left behind by poor initial appraisal of the legislative proposal.

37. Where it is felt that more detailed aspects are not appropriate for settling by co-decision, the Commission might nevertheless adopt a more creative approach. For example the Integrated Pollution Prevention and Control (IPPC) Directive³³ lays down a framework requiring Member States to issue operating permits for certain installations carrying on industrial activities described in its Annex 1. Permits must include definitions of Best Available Technique (BAT) for the industrial process covered. These definitions were left to be agreed after the framework legislation was agreed by co-decision, but in a far more transparent manner than in the examples just cited. Working groups were organised by the Commission, made up of principal stakeholders, including representatives of Member States and industry. There is also a dedicated website from which relevant documentation can be downloaded for wider consultation.

38. Compared with the implementation of the IPPC Directive, the level of transparency in agreeing waste acceptance criteria and in current work on the WEEE Directive is unacceptable and should be addressed, primarily by the Commission but also by Member States. Where technical adaptation committees are addressing complex issues all stakeholders should be able to follow and comment on developments. The DTI has at last demonstrated that it is possible to do this and that concerns about confidentiality (frequently cited as an excuse for lack of transparency) can be overcome. The Commission stated in their evidence to us that they would look at possibilities for making access to committee information more open. We would urge them to do so, and would remind them of the existing commitment to greater transparency under the Community's Better Regulation initiative³⁴.

39. Although it is possible to discover that a committee exists and to find its legislative basis, access to information about agendas or decisions is almost non-existent. The Commission should ensure that:

- **Clear objectives are set for committees, before framework legislation is finally agreed, which allow enough time to operate before legislation is transposed in Member States. It should be explicit when these objectives have been achieved.**
- **A timetable of meetings, agendas, minutes and other documentation should be placed on the relevant policy web pages of the Commission.**
- **Appropriate expertise should be available to the committees, not only in the form of members of committees but also through wider consultation if this is necessary. Information on the members should also be placed in the public domain.**
- **Voting patterns of the Member States should be made publicly available, to enable scrutiny by national parliaments.**

40. The Government should not agree to framework legislation without a full understanding of the practical implications. Where significant detail is to be delegated to technical adaptation committees this should be made explicit in Explanatory Memoranda and regulatory impact assessments made available to Parliament.

41. We are glad that the DTI have made a start in opening up the committee system by placing informal minutes of the WEEE Directive committee on their website and by explicitly asking for comments by interested parties. We urge the Government to extend this practice to all technical advisory committees. Details of the UK representatives on the committees should in any event be made available.

³³ Directive 1996/61/EC

³⁴ See, for example, the Commission White Paper on European Governance (COM(2001) 428)

Box 4*Legislative Consistency: Key Recommendations*

The Committee was provided with examples of how lack of clarity in EU legislative instruments and national implementing measures have led to confusion over when an instrument applies and to difficulties with implementation.

- The Commission should accept a commitment to carry out a review of overlaps in existing legislation during preparation of the waste and recycling strategy.
- Future waste instruments must take account of existing reporting and data requirements in legislation and seek to ensure compatibility where possible.
- The Government should promote better linkages between the policy objectives of EU legislative instruments and the means of delivering them.

Definitions

42. As well as the problems which arise when crucial definitions are developed during the EU legislative process, witnesses (particularly the Environment Agency) drew attention to inconsistencies between the definitions contained in different Directives and between practices in different Member States in relation to the same Directive. To a certain extent the Commission has recognised this as a problem in the waste strategy. We feel however that it should conduct a wider review than it currently proposes. This should examine the overlaps in current legislation and the difficulties arising from inconsistent definitions.

43. The particular example cited by the Commission in the waste strategy and referred to also by the Environment Agency in its evidence to the Committee is the definition of recovery of waste in the Waste Framework Directive.

44. The annexes of the Waste Framework Directive contain definitions of disposal and recovery of waste which determine what waste treatment options can be counted towards recycling and recovery. The definitions are not very clear, and have been the focus of litigation in the European Court of Justice. The Court has sought to develop criteria for deciding whether processes constitute recovery or waste disposal³⁵. Unfortunately case law has created difficulties for recovering energy from waste in incinerators, as the Court decided that the primary objective of the incineration of waste in a processing plant designed to dispose of waste is waste disposal. The generation of energy as a secondary effect cannot affect the classification of that operation and cannot thus be considered to be waste recovery. The Commission, in a written answer to the European Parliament, subsequently confirmed that this means that energy recovered by this method cannot be counted towards waste recovery targets under the Packaging Waste Directive³⁶.

45. The waste and recycling strategy acknowledges the difficulties of the definitions in this instance, and work is currently under way to remedy the situation. However, our evidence points to other problems caused by poor definition which also need to be addressed.

46. The Environment Agency is concerned about overlaps between Directives. The Urban Wastewater Treatment Directive³⁷ and the Waste Framework Directive are given as examples. The first of these deals with the treatment of waste waters, the second with treatment and disposal of waste in a liquid form. Poor definitions in both Directives make it impossible to tell where one Directive stops and the other starts, or whether they overlap. The Agency's witness put it succinctly:

“The battery in the vehicle: is it caught by the End-of-life Vehicles Directive? Is it caught by the forthcoming Waste Electrical and Electronic Equipment Directive? Is it caught by the Batteries Directive? Or is it caught by the Hazardous Waste Directive?”³⁸

47. This example was used by the Agency to highlight the problems of providing effective delivery mechanisms to comply with the Directives, all of which have subtly different notification, data collection, and reporting requirements. It is often unclear which instrument should apply. If the Agency—as the Competent Authority for England and Wales—does not know which instrument applies, it is unlikely that anyone else does.

³⁵ See cases C-6/00, C-228/00 and C-458/00

³⁶ Written Question E-0790/03

³⁷ Directive 1991/271/EEC concerning urban waste water treatment, OJ L135 (21 May 1991)

³⁸ Q 20

48. The Environment Agency felt that these complications arose because the Directives had been agreed separately, without taking account of existing legislation or of what was happening in other policy areas. This lack of co-ordination by the Commission presented real problems in dealing with a number of Directives, each of which had to be addressed separately despite certain similarities. The Agency was currently attempting to improve its arrangements for issuing permits by developing an electronic permit administration system. The Agency stated that in order to benefit fully from such an approach, requirements under new Directives needed to be consistent with previous “templates”³⁹.

49. The waste and recycling strategy does not raise the issue of definitions in any depth and contains a commitment to carrying out work only on the definitions of recovery and disposal. The examples presented to the Committee showed how poor definitions can lead to significant problems with designing compliance mechanisms.

50. We agree with the Environment Agency that the existing overlaps and inconsistencies between Directives (especially on the definitions of “waste” and “recycling”), as well as inconsistencies of practice between Member States in relation to the same Directive, should be reviewed by the Commission. There should be an explicit commitment to carry out this work as part of the waste and recycling strategy, as it has a major impact on the ability to deliver the objectives of Community legislation in an efficient manner.

51. When new proposals are being developed the Commission should explain how they interact with existing and proposed Community legislation.

52. We support the Environment Agency in its attempts to modernise procedures for issuing permits, and believe that in future the Commission should pay more attention to ensuring that requirements in Directives are, as far as possible, consistent with existing Community legislation. This is a key factor in enabling the regulatory authorities to develop efficient permit systems which take advantage of new technology.

Box 5

Data needed to Support Policy-Making: Key Recommendations

The evidence pointed to a lack of baseline data on waste, inconsistent assessment of legislation and poor understanding of the implementation of legislation in Member States. This has resulted in poorly drafted Directives which “hope for the best” and are not specifically linked to a measurable outcome.

Our recommendations should lead to:

- the UK acting as a champion for improving data in the EU, on the basis of best practice;
- targets and other policy measures in EC legislation which can be justified through publicly available assessments;
- extended impact assessment carried out at key points in the legislative process;
- an enhanced role for the European Environment Agency in collating information on implementation in Member States; and
- non-implementation being dealt with robustly by the Commission.

Baseline data

53. A theme which recurred throughout the inquiry was the difficulty at all stages of assessing the merits of waste proposals, owing to lack of data. From the evidence there are three key problem areas: a lack of consistent baseline data on waste flows for Member States; difficulties in assessing the potential impact of proposed Community legislation; and evaluating the actual impact of legislation once it has been transposed.

54. The Commission has acknowledged in the draft waste strategy the “unsatisfactory status of current statistics about waste generation”,⁴⁰ and proposed to remedy it through the new Waste Statistics Regulation⁴¹. This is however a new initiative itself and, although agreed in principle, pilot projects have yet to be carried out to establish exactly how it will work. The idea is to increase the amount of data

³⁹ Q 23

⁴⁰ Communication: Towards a thematic strategy on the prevention and recycling of waste (COM(2003) 301 final), at p 23

⁴¹ Regulation (EC) No 2150/2002

collected by Member States on waste and to ensure that they are collated in a comparable way, in order to provide a reliable source of information. The Commission emphasises the importance of this Regulation in the waste strategy. However their initial timetable foresees the first set of data being made available to the Commission in 2006, allowing for assessment of trends at the earliest by 2008⁴².

55. The new Regulation aims to organise the collection of waste data in a way that ensures consistency of both data and collection methods across Europe. The Regulation is intended to provide baseline information on the production, recycling, re-use and disposal of waste.

56. The Commission also states in the waste strategy document that because of the lack of data “it is not possible at this stage to propose any operational, quantified waste prevention targets based on a comprehensive environmental and economic analysis.” This is echoed in the more recently published consultation on the resources strategy. However, both documents indicate that the strategies emerging from consultation and to be published in 2004 will be examining and perhaps suggesting targets for waste prevention.

57. We are concerned that the Commission’s attempt to address the lack of data through the Waste Statistics Regulation will not produce meaningful results until at least 2008; and yet significant waste policy strategies are being developed now. There are pressing problems relating to waste which cannot wait until 2008 to be addressed.

58. The Commission recognises that these strategies will require a systematic review of policy. We therefore very much regret that lack of proper data will result in a hiatus in the process. We believe that the Commission has no option but to be guided by its own statement that “it is not possible at this stage to propose any operational, quantified waste prevention targets based on a comprehensive environmental and economic analysis.” It should resist the temptation to rush into producing targets based on doubtful evidence.

59. The UK should not wait for EU initiatives on data collection but should seek to develop and improve its own baseline data as quickly as possible.

Impact Assessment

60. Associated with the quality of baseline data is how that information is used, and whether it leads to appropriate legislation. The DTI, commenting on their involvement in developing legislation and setting EU targets, said: “At times we have felt that the target-setting process in the Directives which we are now required to implement . . . has been rather simplistic and . . . resulted in waste diversion targets without a proper examination of what the overall environmental impact of those targets would be”⁴³. Dr Caroline Jackson MEP made specific reference to the Landfill Directive⁴⁴ (on which she been the rapporteur): in her opinion it was unclear on how recycling targets were to be devised and consequently whether they were likely to have the desired effect⁴⁵.

61. The more recent WEEE Directive was subject to amendment only three months after publication. During the co-decision process, problems over the wording of Article 9 were not discovered early enough to be addressed, which led to the institutions issuing a joint statement pledging to amend it as soon as possible⁴⁶. Despite the recognition that there was a problem, it was not until after the legislation had been agreed that action was taken. In our discussion of technical adaptation committees we have already mentioned how definitions relevant to the scope of the WEEE Directive were left to be settled after co-decision (paragraph 25). By then some firms (who had conscientiously tried to be ahead of the game) had lost money⁴⁷.

62. A Commission-wide initiative to improve the quality of regulation was promoted in 2000 in a White Paper on Governance,⁴⁸ which has resulted in Commission guidelines for impact assessment. We welcome these. These draw together previous work done in assessing costs and impacts on business, and aim to subject all major Community policies to social, economic and environmental impact assessment. The Commission is committed to producing preliminary impact assessments for all proposals presented from the beginning 2004.

⁴² *ibid.*, at p 23

⁴³ Q 119

⁴⁴ Directive 1999/31/EC on the Landfill of Waste

⁴⁵ Q 75

⁴⁶ ENDS Environment Daily, Issue 1435, 2 May 2003

⁴⁷ See the findings of the Better Regulation Task Force (paragraph 86)

⁴⁸ COM(2001) 428

Box 6*Impact Assessment***Extract from UK Cabinet Office Guidelines***When to prepare a Regulatory Impact Assessment (RIA)*

- Prepare an initial RIA as soon as you know that the European Commission is thinking about a new proposal.
- Develop this into a partial RIA when the Commission produces its proposal. You will have to include this with Ministerial correspondence seeking collective agreement on the negotiating line and the Explanatory Memorandum (EM) to the UK Parliament, as well as the formal consultation document.
- Update your partial RIA when Council or the European Parliament put forward amendments.
- Refocus your RIA when you are at the transposition stage to include options for implementation.

Whether you are working on EU or other international proposals, all stages of your RIA should be used to inform the negotiations as well as in the UK clearance/scrutiny process.

Extract from Commission “Internal guidelines on the new impact assessment procedure”

The impact assessment process has two stages:

- a filtering exercise based on a short preliminary assessment of all proposals presented in the context of the Annual Policy Strategy or the Work Programme of the Commission
- an extended assessment of selected proposals.

The impact assessment procedure covers:

- regulatory proposals such as Decisions, Directives and Regulations
- non-regulatory proposals that have an economic, social or environmental impact.

These include proposals such as white papers, expenditure programmes, communications on policy orientations and negotiating guidelines for international agreements.

63. The Commission’s “extended impact assessment” process is currently the subject of pilot studies, including one on the proposed revision of the Batteries Directive⁴⁹. Responding to questions about the Batteries Directive pilot process, Mr Grant Lawrence, from the Commission (DG Environment), stated that they “were not finding it easy” and one of the major problems was that the documents were simply too long⁵⁰.

64. Since the Committee took evidence, the results of another pilot study has been published. This was carried out on a proposal to revise the Groundwater Directive. It consists of an economic appraisal and a choice of policy responses, with the Commission’s preferred option indicated. Although we are not in a position to comment on the merits of the options presented in the impact assessment, we believe that the process of presenting different scenarios based on assessment is a positive step forward and provides encouraging evidence that the new impact assessment process is beginning to yield benefits.

65. As proposals move through the legislative process they undergo significant changes, particularly from amendments by MEPs and during conciliation⁵¹, in which texts are negotiated intensively behind closed doors. The relevance of an initial impact assessment may in consequence be compromised. To counter this, both the Commission and some MEPs believe that impact assessment should also be carried out on major amendments by the European Parliament. Dr Jackson felt that the ability to propose changes without justifying them was “power without responsibility”, citing the ratcheting-up of targets in the Packaging Waste Directive as an example. Mr Grant Lawrence stated that the Commission agreed that all

⁴⁹ COM(2003) 723 final

⁵⁰ Q 291

⁵¹ See Box 1

the institutions should carry out some form of assessment of proposals, but stressed that it was still in the early stages of development⁵².

66. An inter-institutional agreement⁵³ on Better Regulation was agreed at the Thessaloniki Council in June 2003, which states that “Where the co-decision procedure applies the European Parliament and Council may, on the basis of jointly defined criteria and procedures, have impact assessments undertaken prior to the adoption of any substantial amendment, either at first reading, or conciliation”⁵⁴. Although this does not actually commit the institutions to preparing impact assessments, it does provide a clear indication that such a process would be valuable, both in the early stages of legislative development and during the conciliation stage. There is a commitment, however, for the institutions to “carry out an assessment of their respective experiences and consider the possibility of establishing a common methodology”⁵⁵.

67. We agree that the European Parliament and the Council should undertake impact assessment of significant amendments to legislative proposals. We welcome the inter-institutional agreement on impact assessment, which acknowledges the value of co-operation. We would encourage further work to be done on how this system can be made to work in practice. Although the Commission has some experience of conducting assessments it appears that this is an area which will require substantial further investment in expertise.

68. The UK has significant experience in preparing regulatory impact assessments and should act to champion the process in the EU institutions.

69. The origin of any future targets set by the Commission should be clearly explained and justified in the impact assessment process.

Reporting Requirements

70. Attention was also drawn to the lack of reporting requirements once EU legislation has been implemented by Member States, which again leads to a paucity of data with which to assess the success of legislation in reaching its objectives. The Commission itself has recognised that “the current data and reporting system is only giving us an approximate view of the state of the European environment and the associated socio-economic trends and an incomplete picture of the transposition and implementation of EU environmental legislation”⁵⁶.

71. The Commission stated in oral evidence that it used three main sources of information to judge whether or not a text had been implemented—the information supplied by Member States under the reporting requirements contained in each Directive; the European Environment Agency; and the European Statistical Office⁵⁷. The present reporting requirements have recently been criticised in a report of the Environment Committee in the European Parliament,⁵⁸ which found that “Member States are still failing to meet their basic obligations to report by a due date to the Commission”. The latest report by the Commission appears to confirm this, as none of the Member States met the deadline for submitting information⁵⁹. Dr Jackson felt that there had been little response within the Commission to the European Parliament’s criticism so far. Mr Grant Lawrence said that as part of the current work on waste the situation on reporting would be looked into and the Directive made more robust⁶⁰.

72. We agree with the European Parliament’s assessment that reporting is not functioning in a manner which allows the Commission to make accurate assessments of the state of implementation in Member States. We strongly encourage the Commission to accept the changes recommended in the Parliament’s report as part of its review of waste policy, with a view to securing:

- **harmonised information;**
- **greater transparency and access to activities and publications on the website; and**
- **a more robust approach to following up non-reporting.**

⁵² QQ 292-93

⁵³ An agreement between the European Parliament, Council and Commission

⁵⁴ 2003/2131 (ACI)

⁵⁵ Inter-institutional agreement on Better Law-making, para. 25

⁵⁶ Communication on the sixth environment action plan of the European Community (COM(2001) 31 final), at p 64

⁵⁷ Q 280

⁵⁸ Report on standardising and rationalising reports on implementation of directives on the environment, A5-0259/2002

⁵⁹ Report from the Commission to the Council and the European Parliament on the implementation of community waste legislation for the period 1998-2000 (COM(2003) 250 final)

⁶⁰ Q 280

The role of the European Environment Agency

73. The European Environment Agency (EEA) became operational in 1993; its objectives are set out in Regulation 1210/1990 (amended by Regulation 933/1999): “To provide the Community and the Member States with the objective information necessary for framing and implementing sound and effective environmental policies”.

74. The European Environment Agency was seen by several of our witnesses as a suitable candidate for taking on a greater role in enforcement. Industry in particular felt that it should have an inspection role to ensure consistency of application across the Member States. However, the Commission felt that although the EEA had a role in supplying information and data, the decision on whether a Member State is in breach of compliance should remain with the Commission⁶¹.

The Commission is currently evaluating the performance of the Agency, and a report into its operation was recently completed by consultants⁶². The report highlights the relatively recent establishment of the Agency and the rapidly changing policy approach of the Commission as reasons why the original mandate of the Agency might need to be refined. The report sets out different options for the Agency—whether it should be more proactive or more of an observer. Based on the evidence we have received, we favour a more proactive role for the Agency, to enable it to monitor more closely the implementation of legislation in Member States. This is consistent with its current role of providing the information necessary for sound policy-making.

75. We recommend that one of the outcomes of the Commission’s review of the European Environment Agency should be a clear acknowledgment of the Commission’s duty to ensure that the Agency is able to work with data which are complete and consistent across the Union and to ensure full cooperation from all Member States. This is essential to the Agency’s task of promoting awareness, backed by reliable comparisons, of the state of the environment across the European Union.

76. We would not, however, go as far as recommending that the Agency be given inspection, let alone enforcement, responsibilities.

Box 7*The UK’s Influence on EU Policy-Making:
Key Recommendations*

The Committee saw little evidence to support the claims by the Department for Environment, Food and Rural Affairs and the Department of Trade and Industry that the Government was having a major influence in driving strategic thinking on EU waste policy. The confusion apparent in dealing with waste policy in the UK does not provide a strong position from which to represent the UK interest in EU negotiations.

Following the recommendations in the Better Regulation Task Force report, which we fully endorse, the UK needs to take a more co-ordinated approach to implementing waste Directives.

- The UK must act at the strategic level in EU policy development, not just react to legislative proposals as they emerge from the Commission.
- A project planning approach should be adopted for implementation.
- The Environment Agency (England and Wales) should be much more closely involved in the early stages of developing and negotiating EU legislation.
- Local authorities should act proactively and share best practice.
- A single waste policy unit should be established within Government to improve collective working and to establish clear lines of accountability.

Conduct of negotiations in Brussels

77. Central government has responsibility for implementation of international protocols, negotiating EU waste legislation and overall UK waste strategy. Waste policy within the UK is devolved and the Scottish Executive and Welsh Assembly have responsibility for ensuring that environmental policies are in place to deliver waste commitments stemming from the UK strategy and international commitments.

⁶¹ Q 281

⁶² Evaluation of the European Environment Agency, an IEEP/EIPA study, August 2002
http://europa.eu.int/comm/environment/pubs/eea_a_en.pdf

At the EU level negotiation in Council is usually carried out by the Minister from the lead Department in central government, which for waste policy is Defra or the DTI, depending on the particular dossier.

78. Defra officials were keen to impress on the Committee that they did play a significant role during the development of waste legislation at the EU stage. In their written submission they stated that “The UK has been participating in developing policy on IPP at European level and is keen to see an overall vision developed to show how it can help deliver major EC environmental strategies and enable decisions to be made about priorities”⁶³. The written evidence was sent as a joint submission with the DTI who, in reply to further questions on the Government’s role on developing EU strategy, stated that the evidence was “intended to mean that the UK has very significantly influenced existing legislation”⁶⁴.

79. In their evidence the DTI and Defra cited examples of how they had responded constructively to EU initiatives through practical implementation of Community legislation; they found it less easy to provide instances of the UK providing strategic direction in Brussels. The DTI explained how they were responding to EU initiatives and legislation “as a result of the Landfill Directive and other Regulations”⁶⁵. Neither Department provided significant evidence of creative thinking by the Government in developing waste strategy further or in driving policy at an EU level.

80. The waste industry claimed that the UK was not engaged in proactively developing environmental strategies in the same way as other Member States⁶⁶. The Commission, although it had words of praise for the UK’s approach to giving effect to EC Directives, felt that it was not an active participant in the initial strategic thinking in the way some other Member States were⁶⁷.

81. In responding to specific questions on the waste and recycling strategy the DTI felt that it was not their responsibility to take a position, referring to Defra as taking the lead generally on waste⁶⁸. This may be technically true but we believe it highlights the difficulty of coordinating the activities of separate departments in order to bring about a coherent overview and strategic direction to policy.

82. Waste is subject to Qualified Majority Voting in the Council, so it is not always possible for the Government to guarantee the best outcome for the UK. In a Union of 25 Member States, after enlargement, it will be even more important for the UK to negotiate effectively. This means engaging early on in the development in policy.

83. It was also unclear how well the Government had analysed UK performance compared with that of other Member States. Defra felt that learning from other Member States’ experience was valuable and “we certainly do what we can to keep the radar directed towards north European practice”⁶⁹. This does not imply a systematic study, and again the Department’s statement related to consistent implementation rather than to seeking to develop a strategic waste policy with the aim of influencing Community thinking.

84. The Government do not provide convincing evidence of a strategic approach to EU waste policy, although they appear to have had some success in developing implementation. Currently it appears that the Government’s position is essentially reactive. Without a clear idea of how EU policy should develop we believe that the Government are at a severe disadvantage in representing the interests of the UK during negotiations.

Transposition and Implementation

85. There was general agreement among witnesses that delayed implementation of Directives could result in uncertainty for industry and regulators. Both industry and the Environment Agency felt that this led to a lack of investment confidence and missed opportunities in developing new technology. We have already discussed the blurring of the final stages of the EU process and transposition at the national level in relation to technical adaptation committees (paragraphs 22–24). We also received criticism from various witnesses of the Government’s approach to implementing Directives. The Commission recently published its latest report on the implementation of waste legislation across the EU⁷⁰. The record for the UK is not impressive, in so far as the Commission has five cases against the UK pending in the European

⁶³ at p 53

⁶⁴ Q 121

⁶⁵ Q 107

⁶⁶ Q 80

⁶⁷ Q 251

⁶⁸ Q 110

⁶⁹ Q 165

⁷⁰ Report on the implementation of community waste legislation (COM(2003) 250 final)

Court for failure to implement Directives on time—the second highest number of such cases in the Community.

86. During the inquiry the Better Regulation Task Force published their own report on implementing European environmental legislation⁷¹. They focused in particular on the WEEE and End-of-Life Vehicles (ELV) Directives, which are currently being transposed. Their report found similar shortcomings in the transposition process as highlighted by our witnesses and made some highly pertinent recommendations, which our findings reinforce.

Project planning

87. The DTI are leading on implementation of the ELV and WEEE Directives, and are carrying out consultations. Unfortunately one of the first questions asked in the consultation on the WEEE Directive is whether its objectives are realistic. It is too late to be asking questions about the Directive's objectives at the implementation stage; an impact assessment undertaken at the preliminary proposal stages should have addressed these questions. We believe that this highlights the need for the Government to define clearly the steps that should be taken during the EU process and subsequent implementation.

88. The Better Regulation Task Force (BRTF) report was carried out in response to concerns that the ELV and WEEE Directives might result in yet another late or poorly thought out implementation. A number of recommendations were made on adopting a project planning approach to implementation. We fully endorse those recommendations. The Environment Agency's evidence included the results of an analysis of the implementation of several Directives. Both the Agency's analysis and the BRTF report provide guidelines on factors which need to be taken into account in order to achieve a successful implementation process. We reproduce the Task Force's recommendations below.

Box 8

Project planning: Recommendations of the Better Regulation Task Force

- When launching new legislative initiatives, the Government should publish a very short summary of its underlying objectives, set in the context of overall policy in the area. This should include its criteria for judging the contribution this new legislation will make to achieving its objectives, and how this contribution will be measured.
- From the earliest stage of developing waste policy and implementing new waste legislation, the Government should draw on the advice of a range of experts from outside Government. This includes seconding experts into Departments to develop policy alongside officials.
- The Government should adopt a project planning approach to introducing new legislation. Project plans should be published so that stakeholders know what will happen and when in implementing new legislation.
- The Government should publish an analysis of progress with implementing the ELV and WEEE Directives across the EU, showing what decisions Member States have reached on key issues of concern to the UK. This should be updated on a regular basis.
- The Government should commit itself to giving the Environment Agency the means to raise the necessary resources to take on the new role of enforcing the ELV and WEEE Regulations, or provide them directly.
- DTI, Defra and the Environment Agency should establish a single website that brings together all relevant information on the ELV and WEEE Directives, including that which is currently held separately on each Department's home sites.

Role of the Environment Agency

89. The Environment Agency was set up as a non-departmental public body by the Environment Act 1995. The Agency is the waste regulation authority for England and Wales, and is sponsored by Defra and the National Assembly for Wales.

90. The Environment Agency made it clear in their evidence that they felt that they could play a useful role in the early stages of legislative development. Many of the issues raised during our inquiry have centred around the need for a better understanding of the capacity to implement legislative objectives during EU policy making, and the need for the Government to take a more strategic approach in the EU. The Agency could provide the necessary information and support the Government in EU negotiations. To that end the Agency and Defra have recently agreed a concordat which sets out how the Agency should

⁷¹ Environmental Regulation: Getting the Message Across, July 2003

be involved in EU policy development. The concordat replaces a “Memorandum of Understanding between the Department and the Agency on the handling of international activities”, dating from 1997.

Box 9

Extract from Environment Agency and Defra concordat

Legislative developments are those which are specifically aimed at establishing new or revised EU legislation. Agenda-setting measures are those at a more formative stage – e.g. the production of Green or White papers – which will often in turn lead to legislative developments.

In both areas Defra and the Agency have an important role to play in the early influencing of the EU institutions’ thinking. Defra should alert the Agency as early as possible to developments in areas relevant to its functions and expertise, and where possible senior Agency personnel should be involved, from a strategic perspective, in initial discussions. Likewise the Agency should inform Defra where it becomes aware of policy proposals, including apparently technical issues which may have wider policy ramifications.

- Defra will normally lead in policy negotiations, or in groups (even if supposedly “technical”) where the main interest is policy matters. The Agency may be well placed to support Defra if there is likely to be substantive discussion of matters such as the practicalities of implementation, or the likelihood of a measure achieving its desired outcomes.
- The Agency would attend technical groups which relate entirely, or nearly so, to its areas of expertise and responsibility.
- Defra and the Agency should consider whether joint attendance would enhance the quality of a UK delegation, and provide opportunities for effective joined-up influencing based on complementary skills and experience.

91. The Environment Agency wishes, not unreasonably, to be involved continuously in negotiations in Brussels. For this it needs the ability to be proactive rather than just responding to requests from Government departments for information. We believe that this is crucial to enhancing the UK’s ability to influence proposals at an early stage. We wish to see the provisions in the recently agreed concordat working towards this end.

92. The Government should therefore acknowledge that it has a duty to listen to and take into account the advice of the Agency, as the statutory regulator, and should be prepared to justify its own decisions. The Agency, for its part, must recognise that ultimately it is the Government who have to take responsibility for policy decisions.

93. We note that the Agency is involved in technical adaptation committee negotiations in some cases and fully endorse this arrangement. However, to improve transparency it should be made clear which committees the UK has an active role in and from which department UK representatives on the committees are drawn.

94. At the same time the DTI leads on certain proposals and the Agency stated that “progress has not been as fast as we would have liked” in reaching a similar agreement⁷². We consider it essential that on waste matters where DTI is the lead department the Environment Agency should be listened to and involved in negotiations on exactly the same basis as it should be where Defra is in the lead. We recommend that the DTI should draw up a concordat with the Agency similar to the one negotiated with Defra. Both concordats should recognise the distinct functions of Government departments, the Agency and industry.

95. The underlying reason for a concordat was to create a structured and strategic approach to negotiations. A concordat can only go so far in achieving this, and we reinforce our view that, at the outset, emphasis must be placed on the objective to be achieved and the practicalities of how the legislation is to be implemented. Secondly, there is a question of resources. The Government should recognise that the Environment Agency will need additional staff, with appropriate specialist skills, to carry out its responsibilities effectively. We recommend that the Government should as a matter of priority consider how the Agency can be provided with the resources and expertise not only to carry out its increasing regulatory functions in regard to waste, but also to enable it to be proactive in the early stages of policy development.

⁷² Q 8

Devolved and local government

96. We have not considered the role of the devolved administrations in this report. The Scottish Parliament is currently undertaking an investigation into waste policy. We received evidence from the Local Government Association (LGA) on the activities of local authorities, who have responsibility for waste management functions.

97. Evidence from the LGA focused on the need for early engagement by central government with the EU, based on an awareness of the capacity of local government to carry out its part in the agreed tasks. The LGA argued that once legislation had been agreed, the Government should inform local authorities in good time so that they could put the necessary infrastructure in place. The “fridge mountain” was cited as the classic example of a failure in this regard. It did not result from poor legislation from Brussels *per se*, but reflected a mistaken understanding of the scope of the relevant Regulation⁷³.

Box 10

*Disposal of Refrigerators: conclusions of the House of Commons Environment,
Food and Rural Affairs Committee, 4th Report (2001-02)*

“Whilst the European Commission must accept some blame for lack of clarity, the overwhelming responsibility for mishandling the implementation of Regulation 2037/2000 lies with Government. Government officials initially made a judgement that insulating foam within fridges fell under Article 16(3) not Article 16(2); they argued about the semantics of the phrase ‘if practicable’ when in fact the practicality of dealing with the foam was abundantly demonstrated by practice in other European countries; they were unaware of the implications of Article 11 for exports of fridges from the UK, and therefore for ‘take back’ schemes; despite requesting clarification on so many occasions they failed to resolve the issues; they apparently ignored or reacted very slowly to a host of warnings from interested parties; and despite those warnings and legal advice suggesting the Regulation would be taken to apply to foam insulations they failed to put in place contingency plans to cope with the problem.”⁷⁴

98. The LGA made it clear that the disparate nature of local authority views made it difficult for the Association to speak with a single voice in the way the Environment Agency was able to do. However, a single point of information and contact within central government and a “longer term vision”⁷⁵ would facilitate early communication. At the same time the LGA was engaged in its own dialogue with the Commission and MEPs, as well as with other local authorities across the EU.

99. We agree that better collective working in Government is certainly necessary; but we also feel that local authorities themselves need to be more proactive in anticipating EU policies and their consequences. For instance, when the Committee was taking evidence from the LGA, the Association drew attention to press reports of what they claimed was a new and previously unrecognised problem for local authorities—the implications of having to collect and dispose of banned garden chemicals⁷⁶. Whilst we note the Association’s concerns, we find it difficult to believe that this new requirement came completely out of the blue. But even if it did, it suggests to us some failure on the part of the LGA to identify the implications for its members of a proposal which we believe was adequately publicised at the time of its adoption. Certainly we feel that the Association did at least have the opportunity to discover what was happening and that it is not reasonable to place all the blame on the Government.

100. There are examples of proactive work being undertaken at the local level, and we encourage local authorities to share the task of developing best practice. Two examples are set out in the boxes.

⁷³ Q 206

⁷⁴ Environment, Food and Rural Affairs Committee, 4th Report (2001-02): *Disposal of Refrigerators* (HC 673)

⁷⁵ Q 205

⁷⁶ Q 197

Box 11*Example of good practice: the WEEE Directive*

The European Directive on Waste Electrical and Electronic Equipment (WEEE) puts the responsibility for the collection, recycling and disposal of these items firmly onto the producer and retailer. Currently, however, this responsibility partly falls on local authorities and waste collection companies, which provide recycling and disposal facilities via their civic amenity sites and who often provide doorstep collection systems for large household appliances. Recycling these items can contribute significantly to a local authority's recycling targets and the new Directive provides a good opportunity to increase this. With the infrastructure already in place it makes sense for local authorities to work with producers and retailers to provide future facilities for collection and recycling.

A good example of this is already taking place in Peterborough. The City Council has teamed up with the Dixon Group, the Kingfisher Group, the UK Centre for Economic and Environmental Development (UK CEED), the Environment Agency and a number of other private and public sector organisations to identify best practice options for collecting, processing, remanufacturing and recycling WEEE items. As part of the new scheme Peterborough City Council has been awarded £266,000 by Defra from the Waste Minimisation and Recycling Fund for local authorities to establish WEEE reprocessing facility. The scheme will provide a separate collection service for old electrical items from domestic properties and retail stores. The appliances will either be repaired and sold into the re-use market, or disassembled for reprocessing and remanufacture into new products.

The scheme will also provide funding for training and to act as a catalyst for the community to help the unemployed, disadvantaged people, those on low incomes, people with learning difficulties and ethnic minorities. The reprocessing plant will have a public viewing area, a community shop and classrooms so that it will also provide an education facility for local schools and the community.

Box 12*Example of good practice: the Integra Project*

In 1993 Hampshire County Council and 13 district councils undertook a county wide public consultation process to take account of the views of Hampshire residents on how to deal with the waste problem. Links were also established within a wider network including Parish Councillors, community groups and the education sector. The consultation resulted in the adoption of an integrated waste management strategy, known as Project Integra, by the 11 district councils of Hampshire, Portsmouth and Southampton unitary authorities, Hampshire County Council, and the private waste contractor Hampshire Waste Services.

Currently Project Integra has achieved a collective recycling rate of over 22 per cent with over 95 per cent of Hampshire's households having access to a kerbside collection of recyclables.

Developments have been made in terms of infrastructure with the provision of two Materials Recovery Facilities in Portsmouth and Alton, three centralised composting sites, twenty-six household waste recycling centres and three planned energy recovery incinerators, the first of which was opened in September 2003. Project Integra's long term aim is to achieve 40% recycling in the partnership by 2005/06. To help achieve this, funding of over £5 million from Defra will go towards providing additional kerbside collection schemes and increased green waste processing capacity.

The effective delivery of the waste strategy has required high levels of cooperation between the authorities. This has been achieved by the development of joint agreements that set out the principles of the respective local authorities' responsibilities and obligations supported by all Project Integra partners. This includes a formal agreement to share income and risks from the sale of recyclables and a joint promotional campaign focusing on waste minimisation and recycling. In 1999 Project Integra was awarded Beacon Council status by the then Department of the Environment, Transport and the Regions.

101. Defra acknowledged in its evidence that since waste Directives were of particular significance to local authorities, LGA representatives should be brought in at an earlier stage, and were seeking to develop links for this purpose. We believe that this should be put into effect sooner rather than later. The Commission's strategies on waste point to the possibility of greater national flexibility in implementing overall EU objectives, for example by setting recycling targets at the Community level but with tradable national obligations. For the UK fully to take advantage of this change in approach a clear understanding of the capacity of local authorities to deliver is crucial. It does, however, place a greater onus on the local

authorities themselves to be more proactive in assessing their own capacities and perhaps also in developing their own targets and policy responses.

102. We believe that better communication between the Government and local authorities can be assisted through the creation of a single point of information and consultation on waste policy.

103. Financing new commitments was a major concern of the LGA, and we agree that it should be made much clearer what the responsibilities were likely to be for local authorities as early as possible. To facilitate this, **initial regulatory impact assessments by the Government should show how responsibilities will be divided between local authorities, central government and other agencies; the percentages of the overall cost represented by this breakdown; from which budget lines local authorities are expected to meet their shares; and whether extra money is likely to be provided.**

Co-ordination of Government

104. From the evidence received by the Committee it is clear that the Government need to develop more strategic thinking, leading to clear and achievable objectives at the EU level, and at the national level to establish a clear process of implementation.

105. We believe that the current split of responsibility between departments without a clear strategic lead results in a lack of accountability and direction. Also, industry expects the Government to speak with one voice. A single waste policy unit could provide strategic leadership on policy development and a single source of information for stakeholders. As Defra is currently responsible for overall waste policy, it would seem sensible for such a unit to be based within this Department and report to the Secretary of State for Environment, Food and Rural Affairs. We therefore recommend that an inter-departmental group on waste policy, reporting to the Environment Secretary, should be set up as soon as possible.

106. **The current placing of consultations and general information on disparate websites is confusing to stakeholders and the public. We therefore recommend that the inter-departmental group is backed by a single government website containing all matters relating to waste management, together with links to European Commission and other relevant sites. Whilst we look to Defra to take the lead in setting up and maintaining this website, we would expect it to have due regard to the responsibilities of DTI, other relevant departments and the devolved administrations.**

107. **In the interests of transparency, all Explanatory Memoranda on relevant EU documents sent to Parliament should also be placed on this website.**

Box 13

*The Commission's Waste and Recycling Strategy
Key Requirements for Reform*

The Commission's waste and recycling strategy identifies areas of policy in need of reform. We believe that in addition this strategy should focus more clearly on issues of process, which affect the quality of legislation. The key requirements are:

- waste policy placed in the context of reconciling sustainable development and economic development;
- clear long term objectives;
- a systematic approach to identifying weaknesses in developing and implementing legislation, co-ordinated by the Commission; and
- unambiguous framework legislation, which provides achievable steps towards the long term objectives set in the Strategies.

Will the Commission's strategy achieve its objectives?

108. The Commission is seeking to create a comprehensive and consistent policy on waste prevention and recycling. It sees this as being embedded within the overall objective of resource efficiency. It is developing new tools and methodologies for carrying out this work, for example through the Communication on Integrated Product Policy.

109. Our inquiry has attempted to find out whether the process of developing legislation, as currently applied to waste policy, has had an impact on the quality of legislation and whether the process needs to be changed in order to respond effectively to the Commission's ambitious agenda.

110. The strategy on waste and recycling places considerable emphasis on creating incentives to the public and business to pursue waste prevention. In order to do this, Community legislation must be framed in a way which provides these incentives. From the evidence received from our witnesses we are not convinced that waste legislation has been developed in a manner which provides the steps necessary to achieve longer term objectives. This criticism does not apply simply to earlier legislation. The Better Regulation Task Force report argues that the recently agreed producer responsibility Directives do not provide correct incentives for the cultural change necessary to achieve their objectives. In this the Task Force is not referring just to the domestic implementation process but to the Directives themselves.

111. The Commission states that the waste and recycling strategy is “to open a discussion about strategic options for the further development of Community policy on waste prevention and recycling [rather] than giving a full analysis of waste management policy at all levels. This would go beyond the role and available resources of the Commission”⁷⁷.

112. We believe that sound legislation is essential to the realisation of the Commission’s strategy on waste. In our view this requires a review to be made of how waste legislation has been developed in the past. The Landfill Directive is mentioned specifically in the waste strategy as a driver “for the development of waste management policies at national level during the current decade, including efforts to promote the diversion of waste towards material recycling and biological treatments”⁷⁸. During the inquiry we have identified weaknesses in the development of that Directive, for example a lack of initial analysis when devising targets and a poor approach to implementation. The inquiry has also highlighted inadequacies with the current system of reviewing implementation, which will make it extremely difficult for the Commission to assess the effect of the Directive. We do not believe that this is an appropriate way to drive forward Community waste policy. A proper review of the policy-making and legislative process is fundamental to developing appropriate waste legislation in future.

113. We conclude that significant improvement can be made to the policy-making process at the EU and national level. The Commission should commit itself to reviewing the operation of the EU legislative process as it applies to waste.

⁷⁷ Commission Communication: Towards a thematic strategy on the prevention and recycling of waste (COM(2003) 301), at p 12

⁷⁸ *ibid.*, at p 14

PART 4: SUMMARY OF RECOMMENDATIONS

114. We now bring together the conclusions and recommendations from the earlier parts of this report. Figures in brackets refer to paragraph numbers in the report.

RECOMMENDATIONS TO THE GOVERNMENT

Co-ordination of Government and the need for a strategic approach

- i. The Government do not provide convincing evidence of a strategic approach to EU waste policy, although they appear to have had some success in developing implementation. Currently it appears that the Government's position is essentially reactive. Without a clear idea of how EU policy should develop we believe that the Government are at a severe disadvantage in representing the interests of the UK during negotiations. (84)
- ii. We believe that the current split of responsibility between departments without a clear strategic lead results in a lack of accountability and direction. Also, industry expects the Government to speak with one voice. A single waste policy unit could provide strategic leadership on policy development and a single source of information for stakeholders. As Defra is currently responsible for overall waste policy, it would seem sensible for such a unit to be based within this Department and report to the Secretary of State for Environment, Food and Rural Affairs. We therefore recommend that an inter-departmental group on waste policy, reporting to the Environment Secretary, should be set up as soon as possible. (105)
- iii. The current placing of consultations and general information on disparate websites is confusing to stakeholders and the public. We therefore recommend that the inter-departmental group is backed by a single government website containing all matters relating to waste management, together with links to European Commission and other relevant sites. Whilst we look to Defra to take the lead in setting up and maintaining this website, we would expect it to have due regard to the responsibilities of DTI, other relevant departments and the devolved administrations. (106)
- iv. In the interests of transparency, all Explanatory Memoranda on relevant EU documents sent to Parliament should also be placed on this website. (107)
- v. We believe that better communication between the Government and local authorities can similarly be assisted by the creation of a single point of information and consultation on waste policy. (102)

Regulatory Impact Assessment

- vi. The UK has significant experience in preparing regulatory impact assessments and should act to champion the process in the EU institutions. (68)
- vii. Regulatory impact assessments by the Government should show how responsibilities will be divided between local authorities, central government and other agencies; the percentages of the overall cost represented by this breakdown; from which budget lines local authorities are expected to meet their shares; and whether extra money is likely to be provided. (103)

Technical Adaptation Committees

- viii. The Government should not agree to framework legislation without a full understanding of the practical implications. Where significant detail is to be delegated to technical adaptation committees this should be made explicit in Explanatory Memoranda and regulatory impact assessments made available to Parliament. (40)
- ix. We note that the Environment Agency is involved in technical adaptation committee negotiations in some cases and fully endorse this arrangement. However, to improve transparency it should be made clear which committees the UK has an active role in and from which department UK representatives on the committees are drawn. (93)
- x. As a result of the Council's decision to delegate a crucial part of the legislation to the Commission, and because the technical adaptation committee first met after Member States had begun the process of transposition, crucial details affecting the operation of the Landfill Directive were not agreed before the deadline for full implementation. The Government were thus in a position of having signed up to legislation without knowing the practical

implications; while landfill operators were faced with significant uncertainty and confusion about what the law required. (29)

- x. In relation to the WEEE Directive, it is regrettable that, as we report, so much remains to be settled. It is impossible for those affected by the Directive to run their businesses without timely decisions on these matters. (33)
- xi. We are glad that the DTI have made a start in opening up the committee system by placing informal minutes of the WEEE Directive committee on their website and by explicitly asking for comments by interested parties. We urge the Government to extend this practice to all technical advisory committees. Details of the UK representatives on the committees should in any event be made available. (41)

The Role of the Environment Agency

- xiii. The Environment Agency wishes, not unreasonably, to be involved continuously in negotiations in Brussels. For this it needs the ability to be proactive rather than just responding to requests from Government departments for information. We believe that this is crucial to enhancing the UK's ability to influence proposals at an early stage. We wish to see the provisions in the recently agreed concordat working towards this end. (91)
- xiv. The Government should therefore acknowledge that it has a duty to listen to and take into account the advice of the Agency, as the statutory regulator, and should be prepared to justify its own decisions. The Agency, for its part, must recognise that ultimately it is the Government who have to take responsibility for policy decisions. (92)
- xv. We consider it essential that on waste matters where DTI is the lead department the Environment Agency should be listened to and involved in negotiations on exactly the same basis as it should be where Defra is in the lead. We recommend that the DTI should draw up a concordat with the Agency similar to the one negotiated with Defra. Both concordats should recognise the distinct functions of Government departments, the Agency and industry. (94)

- xvi. The Government should recognise that the Environment Agency will need additional staff, with appropriate specialist skills, to carry out its responsibilities effectively. We recommend that the Government should as a matter of priority consider how the Agency can be provided with the resources and expertise not only to carry out its increasing regulatory functions in regard to waste, but also to enable it to be proactive in the early stages of policy development. (95)

Data collection

- xvii. The UK should not wait for EU initiatives on data collection but should seek to develop and improve its own baseline data as quickly as possible. (59)

RECOMMENDATIONS TO THE COMMISSION

- xviii. We believe that it is fundamental to the development of Community waste policy that the Commission identifies the weaknesses in the current approach to developing and implementing legislation and takes remedial action. (20)
- xix. Significant improvement can be made to the policy-making process at the EU and national level. The Commission should commit itself to reviewing the operation of the EU legislative process as it applies to waste. (113)

Technical Adaptation Committees

- xx. Although it is possible to discover that a committee exists and to find its legislative basis, access to information about agendas or decisions is almost non-existent. The Commission should ensure that:
- a. Clear objectives are set for committees, before framework legislation is finally agreed, which allow enough time to operate before legislation is transposed in Member States. It should be explicit when these objectives have been achieved.
 - b. A timetable of meetings, agendas, minutes and other documentation should be placed on the relevant policy web pages of the Commission.
 - c. Appropriate expertise should be available to the committees, not only in the form of members of committees but also through wider consultation if this is necessary. Information on the members should also be placed in the public domain.
 - d. Voting patterns of the Member States should be made publicly available, to enable scrutiny by national parliaments. (39)
- xxi. The Commission should provide a project plan for each specific legislative proposal which demonstrates how the deadlines contained in framework legislation are to be co-ordinated with the work of technical adaptation committees. We recommend that where substantive definitions affecting the operation of the Directive remain to be decided, transposition into national law should not go ahead until the committee has completed its work. (34)
- xxii. We consider that care should be taken during the co-decision process to ensure that any details which are left for decision by technical adaptation committees are genuinely technical and appropriate for being decided in that way. A clearer line must be drawn between policy objectives and technical content. Besides purely technical aspects, committees may reasonably be used to resolve detailed questions of transposition but should not be relied upon to address policy gaps left behind by poor initial appraisal of the legislative proposal. (36)
- xxiii. Compared with the implementation of the IPPC Directive, the level of transparency in agreeing waste acceptance criteria and in current work on the WEEE Directive is unacceptable and should be addressed, primarily by the Commission but also by Member States. (38)

Definitions

- xxiv. We agree with the Environment Agency that the existing overlaps and inconsistencies between Directives (especially on the definitions of “waste” and “recycling”), as well as inconsistencies of practice between Member States in relation to the same Directive, should be reviewed by the Commission. There should be an explicit commitment to carry out this work as part of the waste and recycling strategy, as it has a major impact on the ability to deliver the objectives of Community legislation in an efficient manner. (50)

- xxv. When new proposals are being developed the Commission should explain how they interact with existing and proposed Community legislation. (51)
- xxvi. We support the Environment Agency in its attempts to modernise procedures for issuing permits, and believe that in future the Commission should pay more attention to ensuring that requirements in Directives are, as far as possible, consistent with existing Community legislation. This is a key factor in enabling the regulatory authorities to develop efficient permit systems which take advantage of new technology. (52)

Data

- xxvii. We are concerned that the Commission's attempt to address the lack of data through the Waste Statistics Regulation will not produce meaningful results until at least 2008; and yet significant waste policy strategies are being developed now. There are pressing problems relating to waste which cannot wait until 2008 to be addressed. (57)
- xxviii. The Commission recognises that these strategies will require a systematic review of policy. We therefore very much regret that lack of proper data will result in a hiatus in the process. We believe that the Commission has no option but to be guided by its own statement that "it is not possible at this stage to propose any operational, quantified waste prevention targets based on a comprehensive environmental and economic analysis." It should resist the temptation to rush into producing targets based on doubtful evidence. (58)

Harmonised reporting and the role of the European Environment Agency

- xxix. We agree with the European Parliament's assessment that reporting is not functioning in a manner which allows the Commission to make accurate assessments of the state of implementation in Member States. We strongly encourage the Commission to accept the changes recommended in the Parliament's report as part of its review of waste policy, with a view to securing:
- a. harmonised information;
 - b. greater transparency and access to activities and publications on the website; and
 - c. a more robust approach to following up non-reporting. (72)
- xxx. We recommend that one of the outcomes of the Commission's review of the European Environment Agency should be a clear acknowledgment of the Commission's duty to ensure that the Agency is able to work with data which are complete and consistent across the Union and to ensure full cooperation from all Member States. This is essential to the Agency's task of promoting awareness, backed by reliable comparisons, of the state of the environment across the European Union. (75)
- xxxi. We would not, however, go as far as recommending that the Agency be given inspection, let alone enforcement, responsibilities. (76)

Impact Assessment

- xxxii. We agree that the European Parliament and the Council should undertake impact assessment of significant amendments to legislative proposals. We welcome the inter-institutional agreement on impact assessment, which acknowledges the value of co-operation. We would encourage further work to be done on how this system can be made to work in practice. Although the Commission has some experience of conducting assessments it appears that this is an area which will require substantial further investment in expertise. (67)
- xxxiii. The origin of any future targets set by the Commission should be clearly explained and justified in the impact assessment process. (69)

RECOMMENDATION TO THE HOUSE

115. This Report is submitted to the House for debate.

APPENDIX 1

Sub-Committee D
(Environment, Agriculture, Public Health and Consumer Protection)

Members of the Sub-Committee

Baroness Billingham
Lord Carter
Lord Crickhowell
Lord Fyfe of Fairfield
Lord Haskins
Lord Lewis of Newnham
Lord Livsey of Talgarth
Baroness Maddock
The Countess of Mar
Lord Palmer
Lord Renton of Mount Harry
Earl of Selborne (Chairman)

The Specialist Adviser was Dr Jane Powell

Members of the Sub-Committee declared the following interests in relation to this inquiry:

Lord Carter

President, The Institute of Agricultural Management
Chairman, British Chicken Marketing Group
Vice-Chairman, English Farming and Food Partnership
Vice-Chairman, British Association of Biofuels and Oils
Member, The Commercial Farmers Group
Retired farmer
Retired agricultural consultant

Lord Crickhowell

Chairman, ITNET plc
(providing IT services to Government departments)

Lord Fyfe of Fairfield

Former Chairman, Co-operative Wholesale Society 1989-2000

Professor Lord Lewis of Newnham

Chairman, Royal Commission on Environmental Pollution 1986-1992
Chairman (and Director), Onyx Environmental Trust 2002-
Chairman, Onyx Environmental Advisory Board 1999-
Chairman, ESART (Environmental Services Association Research Trust) 1998-
Director, Brett Environmental Trust Limited 2001-
Chairman, WAMITAB (Waste Management Industry Training and Advisory Board) 2002-
Hon. President, Environmental Industries Commission 1996-2000

Baroness Maddock

Trustee, National Energy Foundation
Non-Executive Director, Utilicom Ltd (Heating Company)

The Countess of Mar

Farmer
Cheese Maker

Lord Palmer

Arable Farmer
Member, National Farmers' Union of Scotland
President, British Association of Biofuels and Oils
Member of the Advisory Board of "Farm Business" magazine
Landlord of former Hunt Kennels

Lord Renton of Mount Harry

Chair, Sussex Downs Conservation Board

The Earl of Selborne

Director, Blackmoor Estate Ltd (a farming company)
Director, The UK Centre for Economic and Environmental Development
Member, The Commercial Farmers Group
Member, Country Land and Business Association
Member, The Institute of Agricultural Management
Member, National Farmers' Union (England and Wales)

APPENDIX 2

Sub-Committee D's Call for Evidence

Sub-Committee D, under the Chairmanship of the Earl of Selborne, invites evidence to its new inquiry, which has the following terms of reference:

“To review developments in EU waste policy, from producer responsibility to integrated product policy, and to consider their contribution to improved and more sustainable waste management.”

In the wake of recent developments in Community waste policy, the Commission has stated that it intends to “upgrade policy approaches on waste prevention” in its management strategy⁷⁹. In parallel to work on implementation of agreed legislation, several strategies are in preparation which aim to take a more holistic approach to the problem of waste—looking at how to prevent it through design and technology as well as improving arrangements for final disposal.

The Development of Waste legislation

The Committee is interested in the development and implementation of current legislation such as the Landfill Directive (1999/31/EC) and producer responsibility Directives (for example end of life vehicles (2000/53/EC) and waste from electrical and electronic equipment (WEEE) (COM(2000) 347)), and will consider whether they provide a sound basis for moving towards a more integrated life-cycle approach.

In particular the Committee will consider:

1. How effective are current regulatory impact assessments by the Commission in assessing the capacity for implementing waste Directives, and how can cost benefit analysis be improved in the early stages of a proposal?
2. How will the “extended impact assessment” process, part of the better regulation package⁸⁰, which is to be piloted this year on amendments to the batteries Directive (91/157/EEC), improve the situation?
3. What is the appropriate stage for preparation and consideration of national impact assessments, to influence the debate and to ensure that assessments reflect the ability of individual Member States to meet commitments before they sign up to them in the Council?
4. How far can costs be realistically assessed at the EU level, when proposals change significantly through co-decision, particularly when conciliation is involved?
5. To what extent should amendments to legislation during its passage through the Community institutions be subject to some kind of cost benefit analysis?
6. How should impacts be assessed for non-legislative initiatives such as work plans and where a larger amount of implementation detail is left to Member States under framework legislation?
7. Could the UK be more proactive in influencing the development of EU policy? Do Government departments have access to the skills required?

Implementation

Implementation of waste Directives has given rise to problems in several Member States, including the UK. Enlargement will make the situation even more complicated, since there will be derogations for the implementation of a number of Directives, including landfill. For legislation which has been agreed but not yet implemented at national level, such as the WEEE Directive, it is unclear whether derogations will be sought in these areas as well.

8. How effective are UK Government departments and regulatory authorities in assessing the practical implications of forthcoming Community legislation and in working with industry and local authorities to address them?
9. What lessons can be learned from past difficulties to improve the quality, timeliness and effectiveness of implementation?
10. Does uneven implementation lead to problems of competition between Member States?

⁷⁹Environment DG management plan 2003 http://europa.eu.int/comm/dgs/environment/index_en.htm

⁸⁰Commission Communication on Impact Assessment:
http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0276en01.pdf

An evolving waste policy

11. How is the whole lifecycle approach being designed to address current limitations of waste policy?
12. With recent rapid development of EU waste policy, how is the move towards a full lifecycle approach likely to affect candidate countries? Is their capacity for implementation being adequately taken into account in the development of new approaches?

Relationship to current House of Commons inquiries

This inquiry is designed to complement inquiries by the House of Commons Environmental Audit Committee “Winning the War on Waste”, and the Environment, Food and Rural Affairs Committee “The Future of Waste Management: Moving up the Waste Hierarchy”.

10 April 2003

APPENDIX 3

List of Witnesses

The following witnesses gave evidence. Those marked * gave oral evidence.

- * Biffa Waste Services Limited
- British Cement Association
- The British Plastics Federation
- Confederation of British Industry
- * Department for Environment, Food and Rural Affairs (Defra)
- * Department of Trade and Industry (DTI)
- * Environment Agency
- * Environmental Services Association
- * European Commission
- The Industry Council for Packaging and the Environment
- * Dr Caroline Jackson MEP
- Dr Andrew Jordan and Mr Duncan Russell (CSERGE, University of East Anglia)
and Dr Adriaan Schout and Mr Martin Unfried (EIPA, Maastricht, Netherlands)
- * Local Government Association
- National Farmers' Union of England and Wales
- Social Market Foundation
- Waste Watch

Information (not printed as evidence) was also received from:

Brunner Mond (UK) Limited
Mr Nick Clegg MEP and Mr Michiel van Hulten MEP

The Sub-Committee is grateful for the valuable assistance given by Mr Jeff Cooper of the Environment Agency and Dr Paul Hollinshead of the Cabinet Office Strategy Unit at an informal meeting during the preparatory stages of the inquiry.