

EU Policy Development



Europe and Climate Care

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Environmental issues are enjoying remarkable prominence in media and political debates throughout Europe – but how does this interest translate into one of the main motors of change – EU environmental policy? We explain which EU policies are likely to have the greatest impact on the conditions for doing business in the near future. The range is wide, from broad climate strategies to more detailed measures on waste.

Climate and Energy

Alongside a drive to increase Europe's competitiveness (the Lisbon Agenda), the EU has the ambition to see the world make large enough cuts in greenhouse-gas (GHG) emissions to avoid global warming exceeding 2°C above pre-industrial levels. It will need to take the leadership in achieving reductions itself, starting with meeting its 2012 reduction commitments under the Kyoto Protocol (8 per cent below 1990 levels for the EU-15 and for all of the ten new Member States except Poland and Hungary, for which the obligation is minus 6 per cent). The projections show that targets could be met – at least by the EU-15 – if extra measures, which are already contemplated, are put in place.

Crucial amongst the EU measures to tackle climate change is the Emissions Trading System (ETS). This has been in place since 2005 and has weathered some early storms. It is now in the second phase of operation, with less generous caps on national emissions than in the first round. This is driving significant investment in energy conservation and improved plant efficiency. The longer term future of the ETS is still to be determined, however there is an active debate about including aircraft emissions for example.

Faster uptake of new technology clearly has to play a major role in helping to reach the 2°C goal. European governments will have to steer a course

between laissez faire and picking winners, promoting sufficient investment to get real results. There is a growing web of EU policies and programmes to promote clean technology and support the competitiveness of European business. These range from binding targets for renewable energy to the sprawling 7th Research Framework Programme, to facilitating projects and programmes which promote take-up (eg: the Competitiveness and Innovation Framework Programme (CIP), including Intelligent Energy Europe 2007-2013). An eco-innovation strategy is anticipated in 2008 to contribute to Europe's goals on strengthening competitiveness and limiting climate change. The strategy aims to build upon Europe's competitive strength in areas such as sustainable and safe low carbon technologies, renewable energies and energy and resource efficiency. Up to now, national initiatives have been more effective in driving investment – Germany and Spain's massive growth in wind energy, for example, is the result of guaranteed high tariffs paid by spreading the subsidy over the whole rate base. With new momentum behind EU measures, however, opportunities for business should be increasing.

Companies which produce energy-efficient appliances, materials, and alternative fuels – or seek to reduce their energy consumption or switch to biofuels – can expect to see support measures emerging within the next few years. A new set of policy documents – the 'energy package' – was approved by the Summit of EU leaders in March. The headline outcome of the Summit was a commitment to a 30 per cent reduction in GHG emissions by 2020 if also agreed among other developed countries, with developing countries contributing according to their abilities. If this is not achieved through a multilateral agreement, then the EU will retain a 20 per cent reduction target. In addition, a binding renewable

energy target of 20 per cent by 2020 and 10 per cent biofuels in the transport sector by that year were also agreed. The strategic directions are set out in a Renewable Energy Road Map, however, binding targets need to be translated into legislation, which the Commission will be drafting in the year ahead.

Energy efficiency is another major focus of the energy package. The introduction of environmental building standards and the expansion of the range of products under energy-efficiency standards are likely to increase demand for more energy and resource efficient products and materials. An expansion of the scope of the Energy Performance of Buildings Directive will be proposed by 2009, and a proposal for a Directive on eco-design requirements for energy-using products is currently being debated in Parliament and expected to be agreed by the end of the year. Other proposals include a new regulatory framework for microgeneration in new electricity, heating and cooling plants with capacity lower than 20MW, and new legislation on CO₂ emissions from cars to be proposed in 2007. This will be a controversial and potentially highly influential measure at a global, as well as European, scale. Moreover, the EU institutions have shown great enthusiasm for Carbon Capture and Storage – an emerging technology which may significantly reduce the emissions of large point sources of CO₂, although it is still debated how effective it in fact is. The idea was floated that any new power plants should include carbon capture by 2020 but was watered down to an R&D goal by the European Council in March.

Liability

A new Directive on environmental liability intends to give effect to the 'polluter pays principle' by imposing ►

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► liability on businesses for the prevention and remediation of environmental damage. Environmental damage includes damage to species and natural habitats protected at EU level under the 1979 Wild Birds Directive and the 1992 Habitats Directive, damage to waters covered by the 2000 Water Framework Directive and land contamination which causes significant risk of harming human health.

The Directive is likely to have direct implications for how businesses calculate and manage environmental risks as it introduces two types of liability regimes. On the one hand, strict liability is introduced for the operators of risky or potentially risky activities listed in the Directive. These Annex III activities include "activities releasing heavy metals into water or into the air, installations producing dangerous chemicals, landfill sites and incineration plants." Under this regime, an operator can be held liable even if he has not committed any fault, though there are a few cases in which he can be exempted from liability (force majeure, permit defence and 'state-of-the-art' defence). On the other hand, a fault-based regime is introduced for other economic operators: they may be liable for preventing or remedying environmental damage, but only if they are found to be at fault or negligent.

There might still be a while before UK companies will see this Directive applied in practice. The transposition of the Directive into national law is progressing very slowly, although the deadline for transposition expired on 30 April 2007. Only three of the EU's 27 Member States – Italy, Latvia and Lithuania – has reported full or partial transposition to the Commission.

The UK has tabled draft rules which will probably be undergoing a second public consultation shortly. The UK Government proposes to apply a permit defence (together with the state-of-the-art defence) which exempts polluters from liability if these can show that damage was caused by activities or emissions expressly authorised by the competent authorities. It is also

proposed not to cover the UK national network of protected sites. If implemented properly, the liability Directive could generate more demand for prevention, remediation and clean-up services by businesses which carry out activities which risk damaging the environment.

Better Regulation

Within a few years, businesses concerned with waste management, pollution control, and environmental hazards will be relieved of some of the most tedious reporting requirements. Directives on IPPC, end-of-life vehicles, electrical and electronic waste, and the Seveso Directive on major accident hazards are singled out as 'business irritants' and put on the priority list in a Commission Action Programme published in early 2007 and endorsed by the European Council in March 2007.

The objective is to cut 25 per cent by 2012 the cost to EU businesses of complying with obligations in EU and national legislation to collect and report information. The focus is on instances where monitoring and reporting is unnecessarily frequent, requested several times, or is no longer required for technical or legal purposes. The 25 per cent reduction is a joint target applying to both the Commission and the Member States: it targets the information obligations set in EU Regulations and Directives; the measures put in place by Member States to transpose and implement these EU measures; and purely national and regional information obligations.

Waste

Waste policy is an important area of European environmental policy, but one that has faced considerable difficulties in terms of defining the scope of legislation and fundamentally what constitutes waste. The Thematic Strategy on waste prevention and recycling was intended to address some of these problems, redefining and clarifying waste policy into the future. It was accompanied by a proposal for the

revision of the Waste Framework Directive that is currently at the early stages of decision-making in the Parliament and the Council and is scheduled for adoption in 2008.

The revision could lead to tougher requirements on waste management and increase demand for waste-reduction strategies and recycling services. Waste prevention and recycling are at the top of the five-step waste hierarchy – which ranks waste-management options in a pre-defined order. What the revision will entail in more detail is still very unclear as there is considerable disagreement between the institutions.

Tough negotiations are expected, as many MEPs were very disappointed with the proposal and are keen to increase its ambitions, for instance by introducing targets on waste production and requirements on incinerators to be more energy efficient. For the first time, MEPs also propose to enshrine the five-step waste hierarchy in European law, and derogations from this would only be allowed on the basis of specific criteria. However, the Commission remain defendant of its original proposal and certain Member States in the Council are expected to take exception, especially to the proposed targets and ambitious timescales set for implementation.

In a further development, which will also influence the definition of waste in Europe, the Commission has adopted a Communication designed to help distinguish between waste and by-products; this is important for environment protection and for industry as by-products are subject to more limited controls. The Communication builds on several rulings by the European Court of Justice on what constitutes waste. The most useful element of the Communication is a decision tree, which clearly highlights in what situations material is classified as waste or as a by-product. Under the Thematic Strategy, the Commission has also promised to come forward with guidelines on specific waste streams to determine when waste ceases to be waste. ●