

Delivering the Circular Economy Package

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Environment analysis: Following changes made to the Circular Economy Package, including revised legislative proposals on waste, Christopher Badger, barrister at 6 Pump Court gives his insight into the European Commission proposals and evaluates how transformative they are likely to be.

What is the background to the Circular Economy Package?

The European Commission has adopted what it describes as an 'ambitious' Circular Economy Package, aimed at stimulating the transition of Europe towards a circular economy that is intended to boost the ability of Europe to compete globally, foster sustainable economic growth and generate new jobs.

A previous legislative proposal on waste was withdrawn in December 2014. The reason given was that the package was withdrawn in order to present a 'more ambitious' strategy. There is some disagreement as to whether this new package has actually achieved that, particularly as previous recycling targets have been reduced in this new package.

The broad reaction appears to be generally positive, with most sectors regarding the EU Action Plan as a welcome and constructive step forward. Draft legislation will now be debated and amended and so there is still some way to go before a final package can be implemented.

What are the details of the proposals?

Key elements of the revised waste proposal include:

- o a common EU target for recycling 60% of municipal waste by weight by 2025 and 65% of municipal waste by weight by 2030
- o a common EU target for recycling 75% of packaging waste by 2030
- o a binding landfill target to reduce landfill to a maximum of 10% of all waste by 2030
- o a ban on landfilling of separately collected waste
- o promotion of economic instruments to discourage landfilling
- o measures to promote re-use, in particular the re-use of industrial by-products
- o economic incentives for producers to put greener products on the market and support recovery and recycling schemes
- o ensuring the separate collection of bio-waste where it is technically, environmentally and economically appropriate

How does the December 2015 Circular Economy Package compare with the proposals that were shelved in December 2014?

The reduction of headline municipal recycling and packaging recycling targets will be seen by many as less ambitious than the proposals that were withdrawn in December 2014. The previous target for municipal waste was 70% by 2030. The new package sets no target for the reduction of food waste, or a target for the overall reduction in the total amount of resources used. Friends of the Earth described the package as 'notably weaker than its predecessor'.

The European Environmental Bureau commented:

'The Commission has failed to deliver on its promise to come with a more ambitious proposal. The addition of some nice initiatives does not offset the fact that the legally binding core of the package, notably the waste targets, is weaker than in last year's proposal. We've ended up with a wasted year and a proposal that is less ambitious.'

Others point to the fact that the targets will be legally binding and in themselves present a stiff but achievable challenge for Member States. The UK government has welcomed the broad direction of the EU Action Plan and has indicated that it would like to see more, including the scale up of voluntary approaches.

The fact that targets have been weakened may be the result of the Commission taking account of the large number of consultation responses—about 1,500 replies were received during the course of the public consultation.

The targets are in my view realistic, particularly given the financial benefit that can result to the economy from the adoption of a circular economy. There are several issues, not least the current perceived underdevelopment of markets in secondary raw materials and there is a need to encourage particular innovation in the remanufacturing sector. However, it is to be anticipated that those affected by the EU Action Plan will take positive steps to ensure that their obligations are met.

What is the purpose of the new package of measures?

The purpose of the EU Action Plan is described as contributing to ‘closing the loop’ of product lifecycles through greater recycling and re-use, to bring benefits to both the environment and the economy.

The Commission has stated that waste prevention, ecodesign, re-use and similar measures could bring net savings of €600bn, or 8% of annual turnover, for businesses in the EU, while reducing total annual greenhouse gas emissions by 2–4%. They cite the example that if 95% of mobile phones were collected, this could generate savings on manufacturing material costs of more than €1bn.

What are the benefits of this package and are there any drawbacks?

Research by Imperial College London last year estimated that a circular economy could add £29bn to UK GDP. Further, a report produced by the Waste & Resources Action Programme (WRAP for the London Sustainable Development Commission argued that a reusing, remanufacturing, repair and rental revolution could create more than 40,000 new jobs in London by 2030. It suggested that growth in London’s circular economy would deliver ‘substantial economic and environmental benefits’ and see resources and products ‘used more efficiently by keeping them in use for as long as possible, extracting the maximum economic value from them while in use and then recovering and reusing products and materials’.

Those that have voiced negative comments have tended to concentrate on the focus of any measures that are to be implemented. Inefficient use of materials, it is said, is not just a problem that the recycling and waste management industry can solve single-handedly. All sectors need to see the benefits, in particular cost benefits, from reuse of materials.

Furthermore, concern has been voiced that too great a focus on recycling targets may have the unfortunate negative effect of resulting in a net environmental deficit because others have taken their eye off key issues such as sustainability and climate change as a result of focusing too heavily on targets.

Ultimately, any legislative change needs to be realistic, pragmatic and cost-effective in order for it to stand a genuine chance of achieving the benefits that the package hopes to implement.

How successful do you think the measures are likely to be?

Not everyone is entirely happy with the revised package. There has been a concern voiced that the package masks a pro-business agenda that drives down environmental standards. Friends of the Earth have described the new package as ‘short-termist Bad Regulation’ when compared to the previous package.

Both the European Council and Parliament could increase the ambition of the package when they negotiate over targets and policy measures. It remains to be seen whether there will be any adjustment to any of the targets as the package becomes law. In my experience, the generally held view is that the Commission should be given credit for introducing the new Circular Economy Package, making it a priority and driving investment into the circular economy. The overall direction of travel looks to be welcomed by most, even if there are those who would like to see much tougher targets.

The fact that the proposals appear on their face to be constructive should bode well for their successful implementation.

What does all this mean for lawyers and their clients? What should they do next?

Lawyers and their clients should become familiar with the terms of the EU Action Plan and the areas likely to be impacted by the Commission's proposals. For example, manufacturers will want to look to ways in which they can create products that are truly recyclable and made from recycled materials and the cost benefits of such an approach. Other sectors will be interested in improving their resource efficiency, as measures may well end up being implemented that favour those with a clear strategy in this area.

Consumers will want to have confidence in the re-use of materials, which is likely to impact on quality standards. Sustainable markets for secondary raw materials will need to be developed, potentially with the support of government.

Lawyers will no doubt be interested in the legal implications of the package and the finer detail that will result. The manner in which the circular economy is promoted, particularly the extent to which economic incentives are made available will be of interest. Legally binding targets will require significant action on the part of the executive to ensure that they are met.

Do you have any predictions for future trends or developments in this area?

Key actions adopted or to be carried out under the current Commission's mandate include (among others):

- o funding of over €650m under Horizon 2020 and €5.5bn under the structural funds
- o actions to reduce food waste
- o development of quality standards for secondary raw materials
- o producing a revised Regulation on fertilisers
- o producing a strategy on plastics in the circular economy
- o producing a series of actions on water reuse

All of these developments are important to the creation of a circular economy. There are huge potential economic benefits and the prospect of job creation, as well as possible stimulus to developing aspects of re-use and remanufacturing sectors. In light of the potential benefits, I anticipate that business and government will run with the direction of travel and that this package represents an important step forward.

Christopher Badger, barrister at 6 Pump Court, has an established practice in environmental law, with particular emphasis on regulatory investigations and prosecutions. Recent advice has included issues on environmental liabilities for private investors, the risks run by landowners for breaches of environmental legislation by contractors and the implementation and practical use of the Definitive Guideline for Environmental Offences.

Interviewed by Emily Jones.

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