

MULTILEVEL GOVERNANCE

The Implementation of EU Waste Legislation in Ireland

OEUE PHASE II
Occasional Paper 1.5 – 12.04

Brigid Laffan
Jane O'Mahony*

Dublin European Institute
University College Dublin
*University of Kent

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Series Editor
Mary Browne
Dublin European Institute
University College Dublin

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ORGANISING FOR EU ENLARGEMENT:

Challenge for the Member States and the Candidate Countries

The Dublin European Institute, University College Dublin,¹ was awarded, in 2001, a research contract under the EU's Fifth Framework Programme² to carry out a comparative study of the impact of the EU on the structures and processes of public policy in six small countries: **Ireland, Greece, Finland, Estonia, Hungary** and **Slovenia**. The Project's partnership, under the direction of Professor Brigid Laffan, Dublin European Institute, University College Dublin³, includes: Professor Dr. Wolfgang Drechsler, University of Tartu; Professor Teija Tiilkainen, University of Helsinki; Professor Calliope Spanou, University of Athens; Professor Attila Ágh, Budapest University of Economic Sciences and Public Administration; and Professor Danica Fink-Hafner, University of Ljubljana.

The aim of the research project was to deepen our understanding of the processes of Europeanisation in a number of the existing member states and some of the candidate states.

The research project encompassed the following three objectives:

- The conduct of research which offers immediate policy relevance to key stakeholders in the enlarging Union;
- The conduct comparative, theoretical and empirical research on the management of EU public policy making in three existing member states – Ireland, Greece and Finland – and three candidate states – Estonia, Hungary and Slovenia;
- The shedding light on the capacity of smaller states to adjust and to adapt to the increasing demands of Europeanisation on their systems of public policy-making and thus to identify the barriers to effective, efficient and accountable management of EU business.

Research Strategy

The research design consisted of two phases and within each phase, two levels of analysis.

Phase I analysed the management of EU business at the macro level of the core executive and was complemented by a micro case study of a recent policy negotiation using decision analysis.

Phase II of the research broadened the analytical focus to encompass other levels of government – the EU and sub-state – through multi-levelled governance. Here attention was centred upon the emergence of policy networks and the interaction between public actors and the wider civil society in specific, discrete policy sectors.

¹ National University of Ireland, Dublin (University College Dublin).

² European Commission, Community Research Fifth Framework Programme (Socio-Economic Research)

³ This project forms part of the Governance Research Programme, Institute for the Study of Social Change, University College Dublin, www.ucd.ie/issc/ and www.ucd.ie/govern/intex.htm.

Methodology

The study employed two specific methodologies: historical institutionalism and rational institutionalism in a new and innovative fashion. The use of combined perspectives provided a theoretically innovative and new approach to the study of the Europeanisation process. Both approaches could be used as they were applied to different elements of the empirical research.

Academic and Policy Implications

This study's findings provide insight into the manner in which diverse state traditions, institutions and political and administrative cultures influence national adaptation to EU governance and how the interface between national policy processes and the Brussels arena is managed. It is expected that these findings will assist those making and managing policy, thus facilitating adjustments to the changing European Union while also contributing to the growing academic debate on Europeanisation.

At various stages during the course of this project the research findings and analysis were presented to a range of stakeholders and academics to facilitate feedback and enhance the analytical process. Further details about the Organising for EU Enlargement (OEUE) project are available on the project web site www.oeue.net, along with i) the Project Report, ii) the OEUE Occasional Papers and iii) a selection of papers by the research partners which draw on various aspects their project research.

AUTHORS

Brigid Laffan

Professor Brigid Laffan is the Director and Academic Co-ordinator for the European Commission funded Fifth Framework project *Organising for EU Enlargement – A challenge for member states and candidate countries*.

Since 1991, Brigid Laffan has been Jean Monnet Professor of European Politics at University College Dublin, where she is the Director of the Dublin European Institute. Her experience of EU public policy and the public sector stems from both academic research and an involvement with programmes run by the College of Europe in Brugge, the Dutch Clingendael Institute and the Institute of Public Administration, Dublin. In 2002 Professor Laffan was awarded the Government of Ireland Senior Fellowship in Humanities and Social Sciences.

Among Professor Laffan's recent publications are 'Auditing and Accountability in the European Union', *European Journal of Public Policy*, 10:5, 2003; with Diane Payne, 'The EU in the Domestic: INTERREG III and the Good Friday Institutions', *Irish Political Studies*, 17:1, 2002; 'Ireland: Modernisation via Europeanisation', in Wessels, W., A. Mauer and J. Mittag, *Fifteen into one? The European Union and its member states* (Manchester: Manchester University Press). *Organising for a Changing Europe: Irish Central Government and the European Union* (Dublin: The Policy Institute, Trinity College 2001); and *Europe's Experimental Union: Rethinking Integration* with Rory O'Donnell and Mike Smith (London: Routledge, 1999).

Jane O'Mahony

Jane O'Mahony is a research fellow with the Dublin European Institute, University College Dublin and is the principal researcher on Ireland for the *Organising for EU Enlargement* project.

A graduate of University College Cork Jane O'Mahony completed the PhD Programme in Political Science at Trinity College Dublin in 2003. The title of her dissertation is entitled 'The EU Policy Process. Policy Making in the Community Pillar'. Dr. O'Mahony has written on Ireland's membership of the European Union⁴ and the European policy process while her research interests extend to include EU environmental and regional policy.

⁴ O'Mahony, Jane (2004), 'Ireland and the European Union' in Neil Collins and Terry Cradden (eds.) *Political Issues in Ireland Today* (Manchester: Manchester University Press).

ABSTRACT

This research paper analyses the implementation of European Union waste legislation in Ireland. Waste management is currently a very pressing issue for Irish governmental and local authorities, industry, environmental non-governmental groups and the Irish public. The economic growth that took place in Ireland in the late 1990s was accompanied by a significant increase in waste generated by the Irish population. According to the Environmental Protection Agency's (EPA) 2001 National Waste Database Report, there was an overall increase of 31.5 per cent in municipal waste (household, commercial and street-cleaning waste) generated between 1998 and 2001, an average of 10.5 per cent per annum (EPA, 2003, 14). Irish waste is primarily disposed of in landfills, and recycling and recovery rates on average have been less than 10 per cent (EPA 2003). In addition, the existing landfill infrastructure is under huge pressure, and alternative means of waste disposal, such as incineration, are highly controversial and unpalatable for the Irish public. As this paper shows, the domestic policy measures put in place to resolve this 'waste crisis' are heavily influenced by EU waste legislation and policy orthodoxy and there has been a significant deficit in effectively applying these instruments in Ireland. The causes of this 'implementation deficit' are multiple and include: incomplete transposition of EU waste legislation; the delayed establishment of the institutional structures necessary to apply such legislation; and the high degree of politicisation surrounding waste disposal in Ireland.

INTRODUCTION

This research paper analyses the implementation of European Union waste legislation in Ireland. Waste management is currently a very pressing issue for Irish governmental and local authorities, industry, environmental non-governmental groups and the Irish public. The economic growth that took place in Ireland in the late 1990s was accompanied by a significant increase in waste generated by the Irish population. According to the Environmental Protection Agency's (EPA) 2001 National Waste Database Report, there was an overall increase of 31.5 per cent in municipal waste (household, commercial and street-cleaning waste) generated between 1998 and 2001, an average of 10.5 per cent per annum (EPA, 2003, 14). Irish waste is primarily disposed of in landfills, and recycling and recovery rates on average have been less than 10 per cent (EPA 2003). In addition, the existing landfill infrastructure is under huge pressure, and alternative means of waste disposal, such as incineration, are highly controversial and unpalatable for the Irish public. As this paper shows, the domestic policy measures put in place to resolve this 'waste crisis' are heavily influenced by EU waste legislation and policy orthodoxy and there has been a significant deficit in effectively applying these instruments in Ireland. The causes of this 'implementation deficit' are multiple and include: incomplete transposition of EU waste legislation; the delayed establishment of the institutional structures necessary to apply such legislation; and the high degree of politicisation surrounding waste disposal in Ireland.

The main focus of this research paper will be the Irish implementation deficit with regard to EU waste legislation. The paper proceeds as follows. Section 1 briefly analyses the Irish environmental policy landscape. In order to evaluate how EU waste legislation has been implemented in Ireland, a brief description of EU waste policy is provided in Section 2. In Section 3, the Irish waste policy domain is explored, including an analysis of early Irish waste legislation, the relevant policy actors and Irish statistics on waste generation and disposal. This is complemented by a more in-depth analysis of recent Irish implementing legislation in Section 4. Section 5 examines Ireland's implementation record on EU waste legislation and Section 6 focuses on the politicisation of EU waste management policy in Ireland, a significant factor in inhibiting the comprehensive adoption of and adherence to EU waste legislation.

IRISH ENVIRONMENTAL POLICY

The policy context

At the outset of this analysis, it is important to stress that environmental policy in Ireland has been significantly influenced by the development of environmental policy at the EU level (McGowan 1999; Taylor 2001, Interview with Trevor Sargent, Leader of the Green Party). This influence was acknowledged by the Environmental Protection Agency in its Millennium Report on the state of the Irish environment:

[Membership of the EC in 1973] ...not only led to the acquisition of financial aids for economic development, particularly in the economic sector, but also required the State

to adhere to various directives dealing with environmental quality and allied matters. This in turn prompted further investigation and monitoring and, in addition, fostered a public interest and concern for environmental quality. It is possible that Ireland would have suffered greater damage to its environment, comparable to that which affected some other fast developing states in the same period, were it not for its membership of the EU (EPA 2001: 187).

Flynn concurs with such an assessment when he comments: 'since Ireland's accession to the EEC (now EU) in 1973, achieving compliance with EU environmental laws has become an increasingly strong driver of domestic policy change, although not the only one' (Flynn 2003: 138). However, that is not to say that environmental protection initiatives were absent before Ireland joined the EU. A series of acts provided environmental protection of sorts. These included: the Foreshore Acts 1933 and 1992, the Forestry Act 1946, the Local Government (Planning and Development) Act 1963, the Wildlife Act 1976 and the Local Government (Water Pollution Act) 1977. In the 1970s and 1980s, implementation of environmental regulation was incremental and ad hoc (Taylor 2001: 9). The Irish environmental regulation regime was one of the weaker, less developed EU policy regimes (Flynn 2003: 138). According to Taylor, governments simply 'added on' new elements to the remit of local authorities, rather than constructing a coherent programme of environmental regulation. Lack of resources meant that local authorities were unable to enforce implementation of the small body of environmental measures effectively. In addition, local authorities had conflicting briefs. On the one hand they were given the task of monitoring and regulating the environment, but on the other they were in competition to attract investment from multi-national companies. Even so, by the late 1980s, the lack of enforcement of EU legislation and the incoherence of existing national environmental regulations was accompanied by a rise in protests by environmental groups over planned industrial developments such as pharmaceutical plants and from the mid-1990s onwards over landfill and waste incinerator sites. Such protests and disputes gave rise to an adversarial and litigious atmosphere. The environmentalists also had their first electoral success, with the election of the first Green Party member of the Dáil, Mr Roger Garland, in Dublin in 1989. All parties across the political spectrum from this point onwards recognised that there was a need to bring some kind of order to the environmental regulation regime in Ireland. The establishment of the Environmental Protection Agency was the most obvious result of this (Taylor, 2001).

When looking at the general development of environmental policy in Ireland we can see that the need to encourage economic development has pitted commercial interests against the environmental lobby in Ireland and has caused considerable tension in the policy arena. It has meant that environmental policy in Ireland is formulated and implemented within a particular political context: environmental concerns jostle for position on the political agenda with pressing economic interests. On occasion, what may be of benefit to the environment may not necessarily be of benefit to the consumer, to industry or to the agricultural community. Environmental protection is often viewed as being 'traded-off' against economic development

and employment creation. From the mid-1990s onwards, with regard to waste management, these two 'groups' were joined by a third –local residents groups set up to oppose the efforts of private firms to set up waste incineration options. In order to reduce reliance on landfill (and comply with EU policy and legislation), the Irish authorities, both governmental and local, considered the possibility of thermal treatment or incineration of waste as part of integrated regional waste strategies (energy recovery being just before disposal of waste in the waste management hierarchy espoused by both the EU and the Irish government – prevention, minimisation, reuse, recycling, recovery and disposal). As we shall see in Section 6, efforts on the part of local authorities and private waste management companies to set up thermal treatment centres became mired in conflict at the local level. This politicisation thus had consequences for the success of Irish waste management policy and the meeting of targets set at both the national and EU level.

The Institutional Context

The Department of the Environment, Heritage and Local Government (DoEHLG) holds primary responsibility for the protection of the environment in Ireland. The Department has responsibility for waste management as part of its environment brief, as well as responsibility for local government, natural heritage, water services, road transportation and safety, housing, planning and urban renewal, the construction industry, the electoral system, and protective and amenity services (such as fire services, emergency planning, libraries and the arts). The Department can be found in the inner core of departments involved in the management and coordination of EU business in Ireland because of its increasing involvement in the policy coordination of horizontal issues across the Irish system (see Laffan and O'Mahony 2002). Key interdepartmental relationships include interaction on Waste Management/Producer Responsibility Initiatives (Department of Enterprise, Trade and Employment, Department of Agriculture and Food, Revenue Commissioners); and climate change (Department of Finance, Department of Enterprise, Trade and Employment, Department of Communications, Marine and Natural Resources, Department of Transport, Department of Agriculture and Food). When the original Department was created in 1977, little attention was given to designing an effective and rational institutional and legislative structure. In response to the increased interest in environmental policy at EU level following the negotiation of the Single European Act, an environmental policy section was created within the Department at this time. See Figure I.

A number of bodies operate under the auspices of the Department. Most importantly for waste management issues, the Department is complemented by the Environmental Protection Agency, the independent statutory body established on 26 July 1993 (as stipulated under the EPA Act 1992). The EPA constitutes an independent body charged with the task of protecting Ireland's natural environment and was one of the first of such national agencies within the EU (McGowan 1999: 168). The EPA carries out integrated pollution control (IPC) licensing of scheduled industrial enterprises, as well as licensing all significant waste disposal and recovery operations and permitting large-scale petrol facilities. As of September 30 2002, the EPA had 242 staff, five regional inspectorates and four regional offices (<http://www.epa.ie/about/default.htm> 8

August 2003). According to McGowan, while the EPA has been well received, many environmental organisations contend that there remains scope for improvement:

They point to the continuing problems of insufficient resources to police all activity fully, and the lack of legislation and insufficient powers to prevent pollution and encourage waste recovery. In short, the EPA is often described as too reactive. Criticism has also been levelled at some of the EPA's reports which have not only proven expensive, but on occasions have been incomplete and even presented inaccurate information. It is also deemed too remote from the public and doubts persist in circulation over its actual independence from government direction and influence (McGowan, 1999, 168).

ENFO, an environmental information centre operated by DoELG, was established in 1990. Its responsibility is to collect, collate and maintain relevant information on all aspects of the environment including waste and has its own offices and budget. The National Sustainable Development Partnership (Comhar) was established in 1999 to encourage greater public participation in environmental policy. Comhar is a forum for national consultation and dialogue between the State, economic sectors, NGOs and academics and has established a working group on waste management and prevention. The Joint Oireachtas Committee on the Environment and Local Government has also held fact-finding hearings on waste management policy, e.g. its discussion of Packaging Waste with representatives of REPAK⁵ on 19 February 2003 and discussions with representatives from Cement Roadstone Holdings on illegal dumping in Co. Wicklow on 5 February 2003.

As mentioned above, local authorities are central to any successful implementation of Irish environmental policy. They are directly responsible for implementing and enforcing national and hence EU legislation. The 34 county authorities (29 Council Councils and five urban authorities: the Dublin, Cork, Galway, Limerick and Waterford County Boroughs) implement environmental regulations under the coordination and supervision of DoEHLG. 54 borough and urban councils (five Borough Corporations and 49 Urban District Councils) operate as authorities for physical planning, litter control and, in some cases, licensing of discharges to sewers. The city and county local authorities (including all urban authorities within the counties) are managed by city and county managers (senior local public servants). Following the decision to abolish local rates in 1977, local authorities depend upon funds received from or through the Department of the Environment to finance much of their environmental activity and they have very limited authority to raise taxes on their own behalf. In 1997, local taxes (in the form of commercial rates) made up just 2.1 per cent of the total share of government taxation. This compares with an average 12.7 per cent across the OECD industrialised countries' (Boyle et.al. 2003: 11). Local authority functions relating to the environment include:

⁵ REPAK was established in 1997 to meet the recycling targets in the Waste Management (Packaging) Regulations 1997 on behalf of its 1,400 members. These targets arise from obligations under the EU Packaging and Packaging Waste Directive.

- provision of drinking water, waste water collection and treatment, solid waste management, and litter prevention and control;
- implementation of legislation on air/water pollution and waste management for activities other than those controlled and regulated by the EPA; and
- promotion of environmental issues.

Local authorities are also required to prepare development plans, to be reviewed every five years including through comprehensive public consultation procedures. These plans provide the framework for more detailed land use planning, and for granting or refusing permission for proposed developments. Local authorities must also adopt management plans relating to pollution abatement and control in order to provide an overall framework for air quality, water quality and waste management (OECD 2000: 42).

According to Coyle, the array of environmental legislation and measures which emanated from national government, the EC/EU and international organisations in the early 1990s was not accompanied by a corresponding development of institutional arrangements to implement and manage these measures. As EC directives came on-stream, the trend was to add these on to the existing functions of local authorities without adequate consideration of additional staffing and financial requirements (Coyle 1994: 70). The embargo on public sector recruitment during the 1980s meant that the new technical expertise, especially chemists and biologists, required to conduct quite sophisticated environmental monitoring and control measures, were not available to the local authorities 'precisely at the time when new and pressing demands were being placed on their shoulders' (Coyle 1994: 70). In addition, the authority of local government in environmental control has been compromised by the fact that local authorities are themselves major polluters. There is a conflict of interest between the development role of local authorities and the control functions assigned to them under environmental legislation:

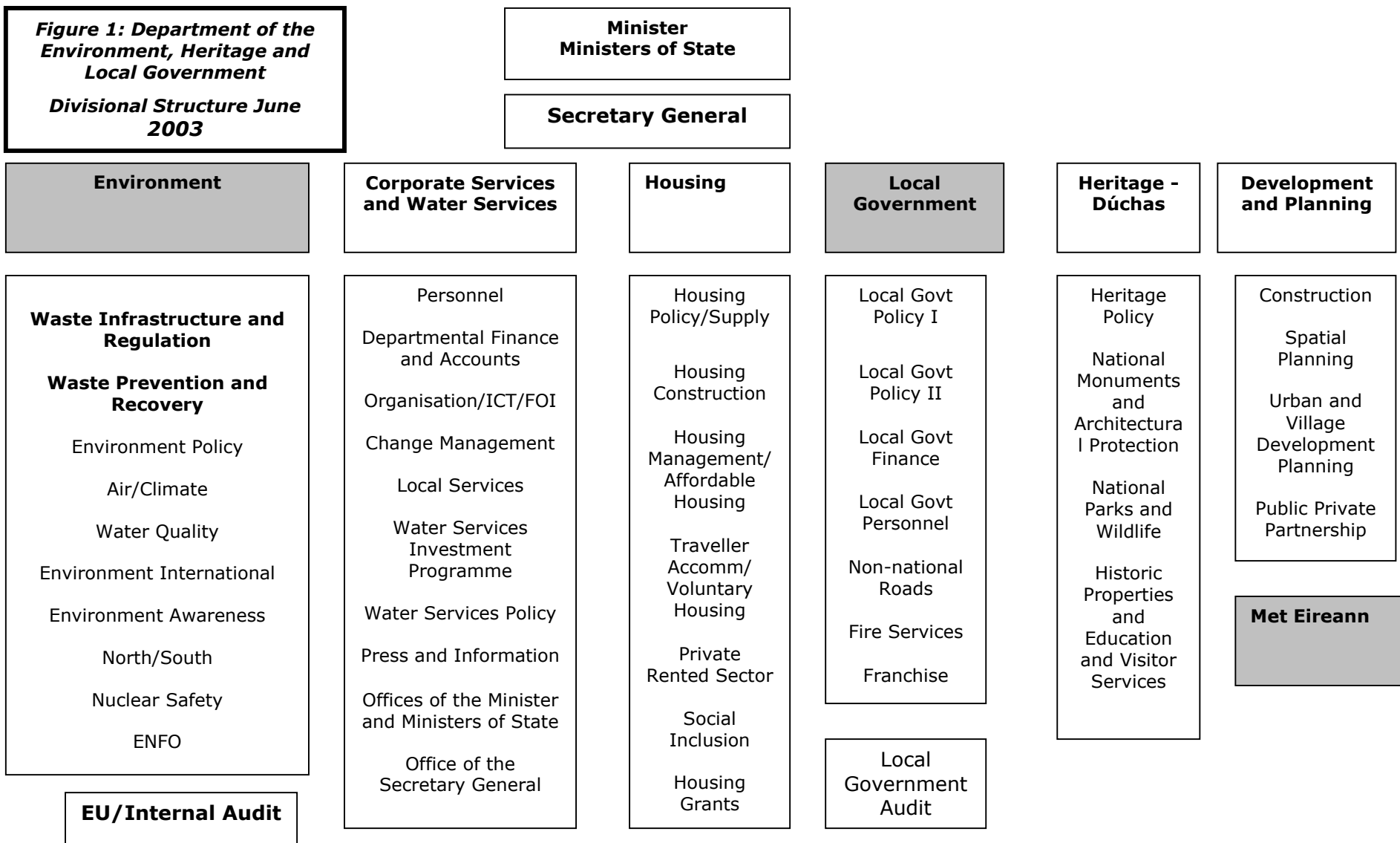
Local authorities act as both game keepers and poachers in respect of water quality and waste disposal since, under existing arrangements, they are responsible for the environmental impact and control of their own operations (Coyle 1994: 73).

The most recent institutional actor created in order to enforce Irish environmental and waste policy is the Office for Environmental Enforcement (OEE). In July 2003, the Minister for the Environment, Heritage and Local Government, Mr Martin Cullen, announced the establishment of the OEE (Liam Reid, 'New body will police illegal dumps and pollution', *The Irish Times*. 21 July 2003). The OEE will oversee the prosecution of significant dumping and pollution cases, operating closely with local authorities and the Garda National Bureau of Criminal Investigation. Local authorities will continue to have statutory responsibilities in relation to environmental protection in their areas, such as the licensing of small and medium waste management facilities and monitoring waste quality. However, under regulations being prepared, their performance in enforcing environmental legislation will be audited by the OEE. Authorities will also be penalised if their environmental enforcement records are not up to a required standard. The OEE will operate as a dedicated unit within the EPA and will be financed out of the

Environment Fund, established using revenue from the plastic bag tax and landfill levy. Revenue from new anti-litter taxes on chewing gum and ATM receipts will also be included in the fund.

Figure 1: Department of the Environment, Heritage and Local Government

Divisional Structure June 2003



Environmental Legislation in Ireland

Five Acts form the basis of the regulatory framework in Ireland: the Local Government (Water Pollution) Act 1977 (amended by the Local Government (Water Pollution) (Amendment) Act 1990); the Air Pollution Act 1987; the Environmental Protection Agency Act 1992 (EPA Act) setting up a licensing system known as Integrated Pollution Control (IPC); the Waste Management Act 1996 (as amended by the Waste Management (Amendment) Act 2001 (WMAA)); and the Protection of the Environment Act 2003. Since 1992 Irish law has distinguished between environmental law, which deals with the emission of pollutants, and planning law. As evident from Table 1, most environmental legislation dates from the late 1980s onwards. Each Environmental Act gives effect to the Directives in its area, except the EPA Act, which pre-dated its corresponding Directive. A characteristic of Irish implementing legislation is that it implements substantive requirements, but does not mention the objectives of the Directive, so that these are not given legal effect. Doyle asserts that this may amount to defective implementation because there is no provision of national law which sets out the purpose of the legislation, and which could be used to interpret the implementing legislation (Doyle 2003: 142).

Selected Legislation relating to the Environment

| | |
|------|---|
| 1933 | Forestry Act (amended in 1946 and 1988) |
| 1933 | Foreshore Act (amended in 1992 and 1998) |
| 1963 | Local Government (Planning and Development) Act (amended several times) |
| 1972 | European Communities Act |
| 1976 | Wildlife Act (Amendment Bill in 1999) |
| 1977 | Local Government (Water Pollution) Act (amended in 1997) |
| 1982 | Litter Act |
| 1983 | Local Government (Financial Provisions) Act (amended in 1997) |
| 1986 | Urban Renewal Act |
| 1987 | Air Pollution Act |
| 1988 | Oil Pollution of the Sea (Civil Liability and Compensation) Act (amended in 1998) |
| 1990 | Derelict Sites Act |
| 1991 | Sea Pollution Act (amended in 1999) |
| 1991 | Radiological Protection Agency Act |
| 1992 | Environmental Protection Agency Act |
| 1996 | Waste Management Act |
| 1996 | Dumping at Sea Act |
| 1997 | Litter Pollution Act |
| 1998 | Fisheries and Foreshore (Amendment) Act |
| 2000 | Planning and Development Bill |
| 2000 | Local Government Bill |

Source: OECD, 2000, 81.

In Ireland, EU waste directives are most commonly transposed into national law as regulations made under the 1972 EC Act, or more specific acts where appropriate. EU environmental directives are mostly technical in nature and new primary legislation is not normally considered necessary. In fact, directives are often translated word for word into Irish law in the form of national regulations/statutory instruments. However, the government sometimes consolidates existing national and EU legislation into new comprehensive single acts, for example, the Waste Management Act 1996 in order to ensure coherence. Law expert, Frank Clarke SC, has spoken of the labyrinthine way of implementing EU directives in Ireland, which makes understanding the regulatory regime very difficult, even for Supreme Court judges (Interview with Frank Clarke SC, 16 July 2003).

EU WASTE POLICY

According to Sbragia, the protection of the environment by the EU has become so extensive and intrusive that environmental policy is now one of the major policy areas in which Brussels plays a critical role:

'No matter whether a member state (such as the UK) has clearly struggled to adapt to EU laws or whether it has traditionally played a leadership role in setting the EU's environmental agenda (Germany, for example), the impact of the EU on that member state's policy is significant' (Haigh quoted in Sbragia 2002: 294-5).

The Single European Act endowed EU environmental policy with a treaty base and as a result legislative activity in the environmental sector increased from the mid-1980s onwards. This was particularly evident with regard to the development of the EU's waste management policy. Early phases of Community waste legislation focused on clearly identified problems, including waste shipments, polychlorinated biphenyl disposal and waste from the titanium dioxide industry. The first significant piece of waste legislation, the Waste Framework Directive, encouraged member states to achieve a number of waste management objectives including: the prevention of uncontrolled discarding, discharge and disposal of waste and the promotion of prevention, recycling and conversion of wastes. However, given its very nature, this framework directive was originally viewed in aspirational terms. Early waste legislation reflected the declared aim of the Treaty of approximation of national regulation directly affecting the common market. Later amendments to the Treaty of Rome, in particular the SEA and the Treaty on European Union introduced on the one hand the more general objective of protecting and improving the quality of the environment and on the other hand, more binding targets to be achieved. These changes allowed for the strengthening of the EU's waste legislation aiming at establishing an integrated waste management policy in the Union (<http://waste.eionet.eu.int/activities/0000104.html>, 17.11.2003). See Box 1 for a summary of EU waste legislation.

Box 1: EU Waste Legislation

| |
|---|
| Three pieces of legislation in particular form the backbone of Community waste management policy. These are: |
| <ol style="list-style-type: none">1. Directive on Waste (75/442/EEC), which requires member states to take all necessary steps to prevent waste generation, to encourage reuse and to ensure safe disposal.2. Directive on Hazardous Waste (91/689/EEC), which sets out more stringent requirements for the management of hazardous waste.3. Regulation on the supervision and control of transfrontier waste shipments (EEC/259/93), which sets out requirements for the control of waste shipments, taking into account the principles of self-sufficiency and proximity of waste for disposal. |
| This general legal framework for waste management is supplemented by a number of more specific Directives, which include: |
| <ul style="list-style-type: none">- Directives on specific waste streams covering both measures of prevention and common rules for separate collection and treatment, including: |
| Directive on Packaging Waste (94/62/EC) |
| Directive on batteries and accumulators (91/86/EEC) |
| Directive on the disposal of Waste Oils (75/439/EEC) Directive on Sewage Sludge (86/278/EEC) Directive on the disposal of polychlorinated biphenyls and polychlorinated terphenyls Directive on end-of-life vehicles (2000/53/EC) Directive on Waste Electrical and Electronic Equipment (2000/347/EC). |
| Directives aimed at reducing the impact of treatment and disposal by setting up common technical standards for the operation of treatment facilities, including: (a) Directive on the incineration of hazardous waste (94/67/EEC Directive on the landfill of waste (1999/31/EC), (b) Directive on the incineration of waste (As from 28 December 2002 (new plants) and (c) 28 December 2005 (old plants)) (2000/76/EC). |

The current EU waste management ethos was most recently set out in the Sixth Environmental Action Programme of July 2002, which aims to decouple environmental pressures from economic growth and to improve resource efficiency and resource and waste management so as to bring about sustainable production and consumption patterns (Decision 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme). In the field of natural resources and waste, a number of objectives are outlined:

- a significant overall reduction in the volumes of waste generated through waste prevention initiatives, better resource efficiency and a shift towards more sustainable production and consumption patterns;
- a significant reduction in the quantity of waste going to disposal and the volumes of hazardous waste produced while avoiding an increase in emissions to air, water and soil;
- encouraging reuse;
- reducing hazardousness of waste that is still generated;
- giving preference to recovery, and especially recycling;
- minimising the disposal of waste and carrying out disposal safely; and

- treating waste for disposal as close as possible to its place of generation, while maintaining efficiency in waste treatment operations.

These objectives are to be achieved through the development of thematic strategies on waste recycling and the sustainable use and management of resources, the development of implementing measures on waste prevention and management and the revision of legislation on waste at EU and national levels. In the Irish Environmental Protection Agency's assessment, the focus within waste management in the EU is shifting towards the measurement and monitoring of material flows. According to the EPA,

Material flows techniques allow for a holistic view of waste to be taken within the objective of moving the emphasis away from *end-of-pipe* technologies and towards the prevention of waste and the minimisation of material and resource use (EPA 2003, 5).

In the past, Irish waste management policy has tended to focus on end-of-pipe technologies and disposal of waste once generated.

IRISH WASTE POLICY

This section reviews Irish waste policy until the 1996 Waste Management Act. The adoption by parliament of the 1996 Waste Management Act was primarily to address inadequacies exposed in the existing waste management infrastructure in Ireland and the failure to fully implement the 1975 EU Waste Framework Directive and other more specific directives that were due to come on stream around this time.

In the OECD's 2000 assessment, in spite of the agreement of an EU Waste Framework Directive since 1975 and the plethora of more specific waste stream directives giving shape to waste management, waste management is the environmental area which, until recently, received the least attention in Ireland (OECD, 2000, 25). Until 1979, the main sources of Irish law on waste disposal were the Public Health (Ireland) Act 1878, and the Public Health Acts Amendment Act 1907. Provisions in other Acts, such as the Local Government (Planning and Development) Acts 1963-93, the Local Government (Water Pollution) Acts 1977-90, the Litter Act 1981 and the Environmental Protection Agency Act 1992, also acted to control improper waste disposal.

As mentioned above, the Department of the Environment is the Irish authority with primary responsibility for ensuring that waste management directives are implemented. The Waste Infrastructure and Regulation and the Waste Prevention and Recovery Sections within the Environment Division of the Department are specifically responsible for the transposition and application of waste directives. Municipal waste is collected by or on behalf of local authorities and is mainly disposed to landfill. According to the Department of the Environment, the pre-eminence of landfill as a waste management option until the early 1990s was due to its relatively low relative cost, favourable geological conditions and Irish settlement patterns. Landfills were generally small in size and scale of operation and

were often badly operated and maintained. There was limited private sector involvement in municipal waste collection and local authorities themselves were not monitored, nor were they involved in the collection and management of industrial waste (<http://www.environ.ie> 1.12.2003).

In the early years of EU membership, the Department of the Environment considered that European waste directives could be implemented by sending circular letters to the various authorities (primarily local authorities) concerned with waste management. According to Scannell, this approach was criticised by lawyers such as Mary Robinson SC on the basis of its lack of transparency and democratic accountability (Scannell, 1990, 84). In a 1982 ruling, however, the European Court of Justice insisted that directives could no longer be implemented by 'quasi-law' such as circulars but must be given formal legal expression in domestic law by regulations or primary legislation (Commission v. Belgium [1982] 2 CMLR 622). From 1985 onwards, therefore, the Department of the Environment began implementing directives wholly by regulations under the European Communities Act 1972 or by Acts of the Oireachtas (Parliament). Therefore directives on specific waste streams were implemented in the form of regulations, such as the European Communities (Toxic and Dangerous Waste) Regulations 1982. Until the EPA Act of 1992, the most comprehensive controls over waste in general, as distinct from specific wastes, were contained in the European Communities (Waste) Regulations 1979, which were enacted specifically to give effect to the 1975 Waste Framework Directive. The 1979 Regulations came into operation on 1 April 1980.

According to the 1979 Regulations, local authorities were charged with responsibility for the planning, organisation, authorisation and supervision of waste operations in their area and were required under article 4(2) to prepare waste disposal plans. Under article 5(3), it was an offence for any person, other than a public waste collector, to carry out the treating, storing or tipping of waste on behalf of another person without a permit from his local authority or in a manner contravening the terms of such a permit. The operation of a private dump on a commercial basis was thus to be subject to authorisation under the regulations as well as under planning legislation (Scannell, 1995, 460). While the Waste Framework Directive was thus transposed into domestic legislation, difficulties arose both in the transposition and the application of the directive in regulation form. First, while the regulations implemented some of the requirements in the Directive (e.g. liability of prosecution), they were silent as to many of the duties of public authorities under the directive. For example, they did not implement obligations in the directive with respect to promoting beneficial uses of waste, with respect to the duties of local authorities to carry out regular inspections of waste disposal facilities, to ensure respect for the 'polluter pays' principle at the heart of EU waste management policy and to forward periodic reports to the EC on waste management data (Scannell 1995: 464). Second, public authorities were accorded special privileges by the 1979 regulations: 'public waste collectors' (i.e. sanitary authorities) were not required to obtain a permit for treating, storing or tipping wastes.

Unlike private waste disposal companies, they were merely subject to the 'supervision' of the appropriate local authority (Scannell 1990: 102). In addition, the European Communities Act 1972 created only summary offences for infringements of the regulations, so that the maximum penalty for offences created by regulations made thereunder was only £1,000 and/or six months imprisonment, which, with the passage of time, seemed a negligible level of punishment. Finally, on a more practical level, enforcement of the 1979 regulations was also problematic for the Irish authorities. Illegal disposal or dumping of waste occurred regularly in Ireland in the 1980s and six major incidents of hazardous waste dumping occurred between 1980 and 1994 (see Scannell 1995, 485 for further details). For their part, local authorities proved recalcitrant in their preparation and drafting of waste disposal plans (Scannell 1995: 102) and disposed of rising amounts of wastes in environmentally unsuitable sites or in sites that caused nuisance to local residents (O'Sullivan 2001; 20). A number of local environmental groups of concerned residents took legal action against local authorities, with the aim of obtaining closure or better management of landfill sites (for a list of legal proceedings against landfill operators see O'Sullivan 2001).

In the early 1990s, therefore, given the growth in waste arising, the impending exhaustion of landfill sites, pressure from the European Union in the form of letters of information, reasoned opinions and referrals to European Court of Justice and increased concern regarding waste arising and disposal on the part of civil society and the media (Frank McDonald in Scannell, 1990, Taylor 2000) (see also section 4), it became evident that there was an urgent need to develop a modern infrastructure and a more comprehensive and coherent legislative framework for waste management in Ireland. This necessitated a significant effort to 're-steer', strengthen and ultimately consolidate the implementation process of EU waste legislation in Ireland. The establishment of the Environmental Protection Agency was the first concrete governmental step in this regard. The EPA Act of 1992 provided for a system of integrated pollution control whereby the EPA is the designated body charged with authorising applications for licensing for large or complex activities with significant pollution potential (listed in the First Schedule of the Act). The IPC licensing function of the Agency applies to both new and established activities. New activities must apply for and obtain an IPC licence before they can commence operations and established (existing) activities had also to apply for an IPC licence by dates specified by ministerial order. In granting an IPC licence to an activity the EPA was charged with ensuring that the best available technology not entailing excessive costs (BATNEEC) would be used to prevent pollution. Under the Environmental Protection Agency (Licensing) Regulations, the licensing function of the Agency commenced on 16 May 1994 and was made operational on a phased basis. The EPA was also given the responsibility of establishing a national waste database and was required to specify and publish criteria and procedures for the selection, management, operation and termination of use of landfill sites.

From the outset of its existence, the role of the EPA as environmental regulator and monitor was hamstrung by its weak powers in the planning system. According to the EPA Act, planning would continue to operate in the domain of the local authorities and on appeal to An Bord Pleanála. Writing in 1995, Scannell spoke of the 'presumption of law in favour of development' in the EPA Act. She pointed out that planning authorities were advised by the Department of the Environment that the 'approach to development control should not be unduly restrictive' and that permission should be refused 'only where there are serious objections on important planning grounds' (cited in Taylor 2001: 59). The Local Government (Planning and Development) Regulations of 1994 helped implement the EU's Environmental Impact Assessment Directive. Following these regulations and the establishment of the EPA, the EPA was designated the competent authority when assessing an Environmental Impact Statement, but only insofar as this deals with issues of environmental pollution. The relevant planning authority and An Bord Pleanála have authority for all other considerations (landscape, visual effects, traffic implications etc.). This division of responsibilities between the EPA and the planning on projects that require an IPC licence caused considerable confusion (Taylor 2001: 59; Interview with Frank Clarke SC, 16 July 2003).

In 1994, a national recycling strategy 'Recycling for Ireland' was also published. This was the first serious governmental response to addressing Irish reliance on landfill for the disposal of waste. The strategy's aim was to urge people and companies to recover and recycle as much as possible, especially with regard to glass bottles, tin cans and aluminium containers. For the first time ever, the strategy established specific targets to be reached with regard to recycling, for example an overall target of diverting 20 per cent of municipal waste from landfill through recycling by 1999 was set. The overall recycling rate in Ireland in 1993 was 7.4 per cent. The strategy also focused on the recovery packaging waste, newsprint and organic (compostable) waste. It set an overall minimum target recovery rate of 30 per cent for waste packaging, and announced the decision to extend the network of collection points for recyclable materials throughout the country. Finally, the principle for producer responsibility was adopted, whereby producers were to take responsibility for the waste produced by their products (<http://www.environ.ie> 1.12.2003).

Attitudes to Waste Management in Ireland

An important contributing factor to the success (or failure) of waste management policy in Ireland is societal interest. Despite the proliferation of a number of environmental NGOs in the 1990s, societal interest and sympathy for environmental protection in Ireland is significantly less than in other EU states (Flynn, 2003, 139). Eurobarometer and national studies of Irish public opinion appear to bear out this conclusion. Attitude surveys during the 1980s revealed Ireland to be consistently at or near the bottom of the league in terms of concern for the environment, especially when the issue was a trade-off between economic growth and environmental protection (Coyle 1994; 64).

This conclusion was mirrored in a broad-based survey carried out on behalf of the Environmental Protection Agency in 1993. In examining the public's perception of the environment in the survey, particular attention was paid to the extent to which inherent tensions are seen between economic growth on the one hand and environmental protection on the other. Irish respondents frequently perceived a tension, if not a trade off, between the two. In the survey, a significant proportion of Irish respondents expressed attitudes that failed to accord priority to environmental protection over economic imperatives. However, there were differences among Irish respondents in this regard. Support for environmental protection, when juxtaposed with economic growth, was higher among Irish respondents who were younger, had relatively large personal incomes and high levels of educational attainment (Faughnan and McCabe 1998).

A study commissioned by the Department of the Environment and published in 2000 also came to an interesting conclusion regarding Irish attitudes towards the environment and recycling of waste. The survey 'Attitudes and Actions: A National Survey on the Environment' conducted by Drury Communications on behalf of the Department highlighted the fact that Irish people have a public and private morality, thinking one way and behaving another when it comes to the environment (DoELG 200: 4). An example of the gap between mentality and behaviour is recycling. According to the research undertaken, highest levels of recycling are to be found where there are household collections, i.e. no real effort is required on the part of the individual. Most respondents admitted to being willing to recycle in theory, if recycling facilities such as 'bring' centres or household collections were available in their area. However, when it comes to actual action, even where recycling is convenient through local facilities and 'bring' centres, the report commented that a large proportion of individuals do not make this effort. While over half of all Europeans recycle regularly, the Irish levels of recycling for glass, aluminium cans and paper are significantly lower, i.e. less than one in four (DoELG 2000: 7) (See also figures 1 and 2). The report concluded:

There is a public and private morality when it comes to the environment, with people saying one thing and doing another ... When Irish people are asked for their reaction to possible Government policies and initiatives to protect the environment, the majority are in favour of spending public money on environmental campaigns ... When asked specifically, however, there is less individual willingness to make sacrifices, with less than one-fifth of people either willing to pay higher taxes, pay higher prices or make cuts in their standard of living (DoELG, 2000).

Generation and Disposal of Waste in Ireland

Considerably more is known about the generation of waste in Ireland now than was known in the mid-1990s as a result of the compilation of reliable statistics on waste by the Environmental Protection Agency. In its 2001 Millennium Report on Ireland's environment,

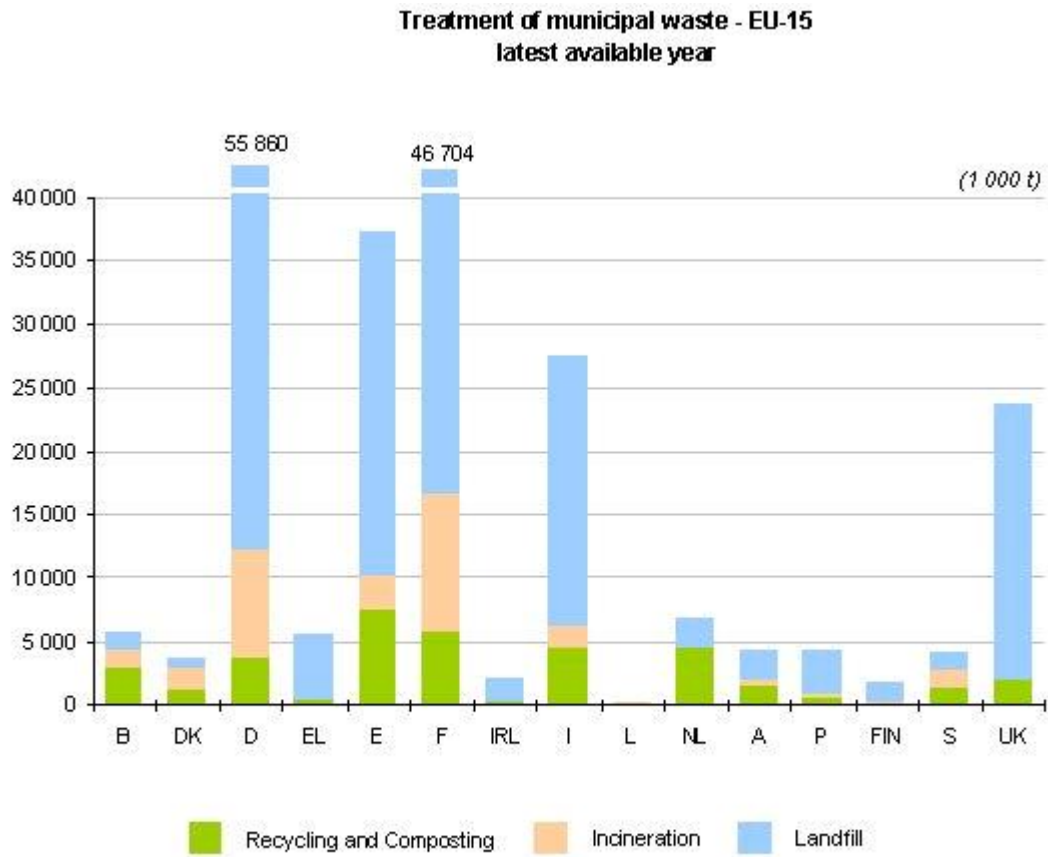
the EPA reported that almost 80 million tonnes of waste was generated in 1998, of which over 64.5 million tonnes originated from agricultural sources, mainly animal manures. Over two million tonnes of municipal waste were generated in the same year. A comparison of waste collected by or on behalf of local authorities between 1984 and 1998 indicated an increase of over 100 per cent in 14 years. Between 1995 and 1998 there was a 47 per cent increase in the amount of industrial waste generated, from 6.2 million tonnes to 9.1 million tonnes. Hazardous waste also increased by 13 per cent between 1996 and 1998 and the amount of construction and demolition waste in 1998 was estimated at 2.7 million tonnes (EPA 2001: 55). In 1998, landfill was the principal waste disposal route with 91 per cent of municipal waste generated in Ireland landfilled in 1998 and 9 per cent recovered for recycling. Unlike the majority of its EU partners, Ireland does not have an incineration capacity for household and commercial waste. A number of incinerators (seven) are in operation in the state jurisdiction but they are operated by individual industries for the disposal of their own waste. Landfill continues to be the primary disposal route for waste, despite the fact that EU policy considers landfill to be the least desirable waste management practice. The EPA was forced to conclude that:

[Landfill] will not be sustainable in the longer term given the quantities of waste being generated and the difficulty in providing new facilities due to public objections. In addition, targets set by EU directives and declared national policy preclude the continuance of the current scale of reliance on this mode of disposal. In general, efforts to date to deal with the situation in Ireland by means of minimising waste production, recycling or otherwise reducing the volume of waste have met with little or only minor success, although for some of the schemes now in operation such a conclusion may be premature (EPA 2001: 192).

In its 2001 National Database Report published in 2003, the EPA confirmed that the increase in waste generation and dependence on landfill continues. In the Report the EPA stressed that the evolution from almost complete dependency on landfill to use of a range of integrated management solutions is essential and is driven by the impact of national and EU legislation and the introduction of the 1996 Waste Management Act. The EPA did report that the recovery rate for household and commercial waste increased from 9 per cent in 1998 to 13.3 per cent in 2001. The actual quantity recovered also increased from 166,684 tonnes in 1998 to 305,554 tonnes in 2001, a gross increase of 83.3 per cent. The rate of landfilling decreased from 91 per cent in 1998 to 86.7 per cent in 2001. However, the actual quantity of waste landfilled increased from 1,685,766 tonnes in 1998 to 1,992,050 tonnes in 2001 (EPA 2003: 18). In 2001, there were 92 authorised landfills in operation compared with 126 in 1998. Of the total, 50 landfills were operated by or on behalf of local authorities with the remaining 42 operated by private/industrial operators (a large proportion of which are associated with IPC-licensed facilities and authorised under IPC-licences) (EPA 2003: 65). There are no hazardous waste landfills or commercial incinerators in Ireland and hazardous waste continues to be shipped to other countries for

safe disposal and recovered waste items are also sent abroad for recycling. Agriculture is the single largest source of waste in Ireland and construction and demolition waste is another large waste stream. Indeed, despite the predominance of construction and demolition waste, few records, particularly on waste generation, are maintained by operators within this sector (EPA 2003: 37). Finally, figures 2 and 3 show how Ireland compares with other EU member states in levels of waste landfilled and recovered. As is clearly evident, Ireland is one of the member states most reliant on landfilling of waste, the least favourable option of waste management advocated by the European Union's waste hierarchy (most to least favoured option: prevention, minimisation, reuse, recycling, energy recover and disposal).

Figure 2

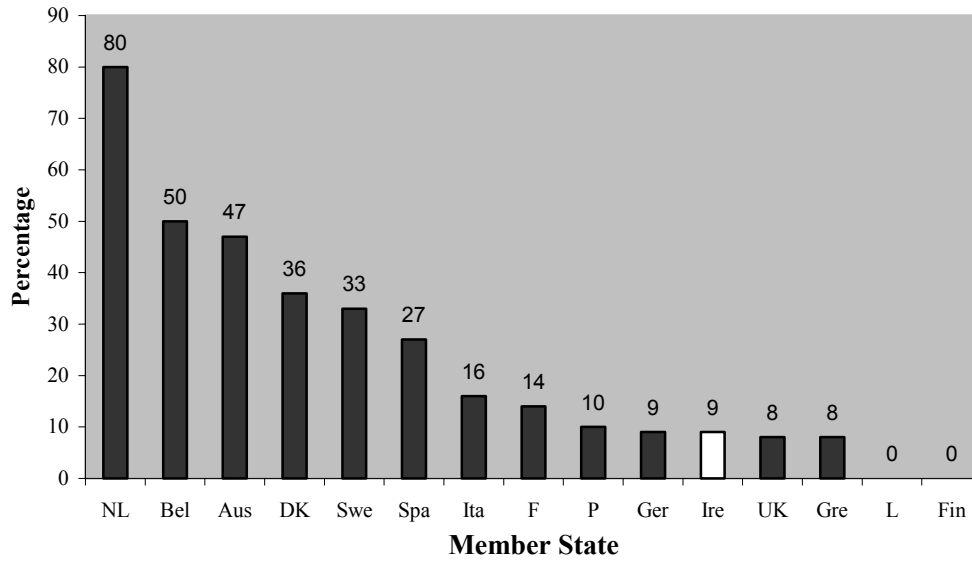


Source: Eurostat / New Cronos

Taken from Eurostat – DG Environment Website, 19 November 2003.

Figure 3

**Treatment of Municipal Waste EU15 - Recovery and Composting
Latest Available Year**



Taken from Eurostat – DG Environment Website, 19 November 2003.

WASTE POLICY FROM 1996 ONWARDS: A CASE OF SIGNIFICANT RESTEERING?

The adoption of the Waste Management Act in 1996 represented a considerable shift in gear on the part of Irish central government towards waste management. The Waste Management Act and the policy statements *Changing Our Ways* (1998) and *Delivering Change. Preventing and Recycling Waste* (2002) marked the Irish central authorities' most serious effort to tackle the so-called waste crisis in Ireland and at the same time address the implementation deficit with regard to EU waste legislation. These initiatives not only had to adhere to the goals of the 1975 Waste Framework Directive, but also to a number of daughter directives that added further pressure to change the Irish waste management approach (Swords 2001: 52). Two key directives, 2000/76/EC on incineration and 1999/31/EC on landfill had important implications for Ireland. For example, the Landfill Directive requires a 25 per cent reduction in biodegradable waste going to landfill by 2006, rising to 65 per cent in 2016. With the *Changing Our Ways* policy document in particular, waste management targets were set at the Irish central authority level for the very first time.

The Waste Management Act 1996 is an example of framework primary legislation, with the detail of the statutory scheme being provided by secondary legislation. According to Fitzsimons, this approach has the advantage of establishing a number of basic principles, such as the delineation of public authority principles, while vesting a discretion in the Minister in relation to detailed regulation and policy making (Fitzsimons 1999: 65). Section 1(2) of the Act stipulated that all provisions of the Act were to be commenced within two years of it being passed (i.e. by 20 May 1998). According to the overview to the Act, its main purpose was to provide 'a comprehensive and modern regulatory framework for the application of higher environmental standards, particularly in relation to waste disposal, in response to EU and national waste management requirements' (Overview of Waste Management Act, Department of the Environment and Local Government, February 1998). The Act prohibited the unauthorised holding, transportation, recovery or removal of waste in a manner that causes or is likely to cause environmental pollution. Unlike the weaker penalties applicable on the basis of the 1979 Regulations, penalties of up to £10 million and/or ten years imprisonment were specified for offences, plus potential liability for clean-up costs. The EPA was assigned responsibility for licensing of all significant waste recovery and disposal activities and for planning, management and control in relation to hazardous wastes. The EPA was to continue to operate the IPC licensing system of the EPA Act. According to the Act, county councils and county borough corporations are now responsible for:

- waste management planning in relation to non-hazardous wastes;
- authorisation of commercial waste collection activities;
- control of waste movements;

- ensuring that adequate arrangements exist for the collection, recovery and disposal for household waste;
- making bye-laws in relation to the manner in which waste is presented for collection;

and for day to day supervision of waste activities generally within their functional areas. For local authorities, the most significant aspect of the Act was its waste management planning provisions. The statutory basis for waste management planning was expanded under the Act. While the EPA was required to prepare a national hazardous waste plan, County Councils and County Borough Corporations were required to prepare detailed non-hazardous waste management plans, either individually or jointly (Section 22). The plans were to reflect the EU waste hierarchy, addressing the scope for waste prevention and waste recovery (including recycling). Thus it is clear that the EU waste hierarchy and waste policy norms strongly underpinned the new Irish waste regulatory framework. According to the Act, the Minister was given the power to specify the form and content of local authority plans, to require local authorities to coordinate their plans (or make joint plans) and to require that a local authority plan be varied or replaced. The management plans would be subject to review at least every five years and would be subject to public consultation and input. Extensive regulatory powers were given to the Minister regarding the imposition of requirements for recycling of packaging wastes in order to meet EU and national recycling targets. In addition, Section 39 of the Act specified that a licence is required to operate a waste recovery or disposal facility, including local authority facilities. This meant that local authorities, as with private undertakings, would be obliged to obtain a licence from the EPA. Before granting a waste licence, the EPA would have to be satisfied that the BATNEEC principle would be applied (Best Available Technology Not Entailing Excessive Costs) when operating waste recovery or disposal facilities. Finally, the Act also provided scope for the effective recoupment of costs associated with the regulatory functions of the EPA and local authorities and for the application of the polluter pays principle.

The 1996 Waste Management Act was complemented by two policy statements made by Ministers of the Environment on waste management. In the October 1998 policy statement on waste management – *Changing Our Ways* – Minister Noel Dempsey chiefly addressed local authorities regarding waste policy and in particular reducing Irish reliance on landfill, recognised as the ‘most fundamental issue to be addressed in the waste management area, and which should be the core objective of the current local planning process’ (*Changing Our Ways* 1998: 3). In line with the *Action Programme for the Millennium*, the EU’s waste hierarchy must be adhered to. A number of targets were set (see table 2). It was clear from the policy document itself, that the anticipation of future EU obligations with regard to landfill infused the rationale behind the document. According to the Minister:

EU Environmental Ministers have reached political agreement on a draft Directive on the landfill of waste, which has major long-term implications for the way municipal waste is managed. Apart from imposing high environmental controls and standards in relation to the operation and aftercare of landfills (which have already been anticipated by the EPA waste licensing system), it will require each member state to draw up a national strategy for the reduction of the proportion of biodegradable municipal waste going to landfill, and will impose a series of mandatory reduction targets, culminating in a 65 per cent reduction within fifteen years (*Changing Our Ways* 1998: 4).

The Minister also drew attention to local authorities' previous ineffectiveness with regard to the drafting of waste plans and as such the incorrect application of the 1979 Waste Regulations:

Local authorities have been required since 1979 to make waste plans in respect of their functional areas. However, obligations in the past relating to the content of such plans were minimal, and this planning exercise had limited added value either for the local authorities concerned or the general public (*Changing Our Ways* 1998: 7).

In *Changing Our Ways*, a new planning approach was adopted (echoed already in the 1996 Waste Management Act): local authorities were encouraged to adopt a regional approach when drafting waste management plans, and the private sector was to be used more in contributing to the delivery of waste services on behalf of local authorities. The thorny issue of waste charges (again alluded to in the 1996 Act) was explicitly advocated: 'It is recognised that Ireland's waste management infrastructure has been consistently under-resourced and that significant capital investment will be necessary to achieve the radical improvements which are required. ...Local authorities must move rapidly towards full cost recoupment for the waste services they provide. As a matter of equity, and in order to directly incentivise waste reduction, the level of waste charges should vary according to usage' (*Changing Our Ways* 1998: 11). Finally, the possibility of introducing waste to energy treatment (WTE) was discussed as an alternative to landfill and in the absence of adequate levels of composting or materials recovery and recycling in the short-term.

Changing Our Ways Targets (over a fifteen year timescale):

- a diversion of 50 per cent of overall household waste away from landfill;
- a minimum 65 per cent reduction in biodegradable wastes consigned to landfill;
- the development of waste recovery facilities employing environmentally beneficial techniques, as an alternative to landfill;
- recycling of 35 per cent of municipal waste;

- recycling at least 50 per cent of Construction and Demolition waste within a five year period, with a progressive increase to at least 85 per cent over fifteen years;
- rationalisation of municipal waste landfills, with progressive and sustained reductions in numbers, leading to an integrated network of some 20 state-of-the-art facilities incorporating energy recovery and high standards of environmental protection, and
- an 80 per cent reduction in methane emissions from landfill, which will make a useful contribution to meeting Ireland's international obligations (*Changing Our Ways* 1998: 6-7).

Table 2: Progress towards national targets for the management of municipal waste as set out in *Changing Our Ways*.

| Target (set in 1998, to be achieved by 2013) | Position in 2001 |
|--|--|
| A diversion of 50% of overall household waste away from landfill. | In 1998, 3.2% of household waste was recovered. In 2001, 5.6% was recovered. |
| A minimum 65% reduction in biodegradable wastes consigned to landfill [on a phased basis to meet the requirements of the Landfill Directive 1999/31/EC]. | In 1998, 1,039,195 tonnes of organic waste (excluding wood) were landfilled. In 2001, 1,250,048 tonnes (excluding wood) were landfilled; a quantitative increase of 20.3% between 1998 and 2001. Poor progress. |
| Recycling of 35% of municipal waste. | In 1998, 9% of municipal waste was recovered. In 2001, 13.3% was recovered. |

EPA 2003, 20.

| Waste Infrastructure | | | |
|--------------------------------|-------|----------------------------|-----|
| Bring Banks | | | |
| 1998 | 837 | 1998 | 30 |
| 2001 | 1,436 | 2001 | 53 |
| EPA Licensed Facilities | | Operating Landfills | |
| 1999 | 30 | 1998 | 126 |
| 2002 | 123 | 2001 | 92 |

EPA 2003.

The third policy statement, *Delivering Change*, presented by new Minister for the Environment, Martin Cullen, reiterated many of the objectives laid out in *Changing Our Ways* as well as a number of new targets and initiatives regarding packaging waste, end-of-life vehicles and electrical and electronic equipment (all subject to individual EU directives). The introduction of two new levies was alluded to: a levy on plastic shopping bags and a levy on the landfilling of waste. A 15 cent levy on plastic shopping bags took effect on 4 March 2002, with a landfill levy later in 2002. These levies finance the Environment fund, used to assist waste recycling activities and other environmental initiatives. The waste policy commitments are summarised in Figure 4. Commentators on *Changing Our Ways* praised the document for its aspirations to solve the waste crisis but criticised the Government for the absence of domestic financial assistance needed in order to reach these ambitious targets (eg Irish Times, 2 October 1998).

Figure 4: Government Waste Policy Commitments 2002

- Establish a **National Waste Management Board** to coordinate, monitor, review and advise the Government on all aspects of waste management policy at all levels of the waste hierarchy;
- Establish a **National Waste Prevention Programme** to achieve waste prevention and minimisation;
- Establish a **Core Prevention Team** within the EPA to drive the National Waste Prevention Programme;
- Promote voluntary action and other initiatives to implement re-use systems and to implement the plastic bag levy;
- Establish a **Recycling Consultative Forum** to act as a consultative and advisory body on all aspects of recycling;
- Provide funds for waste recovery infrastructure including recycling infrastructure;
- Introduce a landfill levy and implement landfill bans;
- Establish a **Market Development Programme** to identify and promote markets for recyclable material;
- Further promote or establish producer responsibility initiatives for packaging waste, end-of-life vehicles, waste electrical and electronic equipment, construction and demolition waste, newsprint, tyres and batteries;
- Establish a **Producer Responsibility Unit** within the EPA;
- Draw up a national strategy on biodegradable waste in the municipal waste stream; and
- Develop a public service waste management programme.

The most recent piece of environmental legislation, the Protection of the Environment Act, was adopted in 2003. It strengthens the body of current Irish environmental legislation and in particular aligns the existing IPC and waste licensing systems with EU legislation, more specifically Directive 96/61/EC concerning IPPC (Integrated Pollution Prevention and Control) which should have been transposed by September 2004. It also amends the 1992 EPA Act, the 1996 Waste Management Act and the 1997 Litter Pollution Act to ensure

that the Polluter Pays Principle is implemented and improves the enforcement of correct waste management in Ireland. Licensing for waste management facilities must now be made on the basis of BAT (Best Available Techniques) and not BATNEEC as hitherto. The power of elected officials to review or replace regional waste management plans was rescinded (see below). Local authorities were given statutory responsibility to levy charges for their own waste services.

Table 2 highlights the limited progress made by Irish authorities in meeting the targets set out in *Changing Our Ways* and in the Landfill Directive. The other important element of Ireland's waste management strategy – the adoption of regional waste management plans – also proved difficult to implement. On the one hand, local authorities were very slow to draft the management plans and once drafted many of these management plans became subject to considerable opposition from the public due to their advocacy of the incineration and waste to energy recovery treatment. Regional plans were drafted in Connacht, Clare/Limerick/Kerry region, the South East region, the Midlands region, the Dublin region and the North East region. Donegal, Kildare, Wicklow and Cork County drafted stand-alone plans. The plans examine a number of costed waste management scenarios including recycling, thermal treatment and landfill. The plans caused a large controversy on two levels. The drafting of the plans themselves provoked considerable public and political opposition, mainly due to the inclusion of thermal treatment options and agreement on the plans proved impossible in a number of cases. For example, in January 2000, Wexford County Council rejected (apart from one Councillor) the South East Regional Authority's waste plan (Irish Times 12 January 2000) and in September 2000, Roscommon County Council rejected the draft Connacht waste management plan, which provided for an incinerator and superdump (Irish Times, 26 September 2000). The Galway, Longford and Louth County Councils also refused to adopt waste management plans for their counties. In order to avoid such levels of controversy and stalemate, other waste plans did not include thermal treatment or waste to energy facilities. As a result of these difficulties, Minister Noel Dempsey undertook a review of the powers open to him to speed up the adoption of regional waste management plans (already two years overdue) and in March 2001 took away the power from local councillors to adopt waste management plans (Irish Times, 24 March 2001). This rescinding of power was codified in the Protection of the Environment Act, 2003.

Once adopted, a number of plans encountered difficulties at the implementation stage. For example, the Dublin region waste management plan made it clear that alternatives to landfill must be found. The target for waste (comprising household, commercial and construction) for 1994 to 2004 was set at 59 per cent for recycling, 25 per cent for thermal treatment and 16 per cent for landfill. The provision was made for thermal treatment with energy recovery for 500,000 to 700,000 tonnes per annum. According to Swords, while public consultation was completed in developing the plan, in reality the public did not get very involved at the consultation stage: 'It was only when the plan was adopted and

Poolbeg earmarked for the thermal treatment plant that temperatures started to rise' (Swords 2001: 52). In Sword's view, there was no doubt that incineration was the crux issue with these plans:

Protests generally are on the following grounds:

- Incineration produces large quantities of toxic emissions, particularly dioxins;
- Incinerators have to be fed with large quantities of waste, while recycling is the correct alternative;
- Incinerators produce large quantities of waste, much of which is hazardous;
- Incineration is a failed hazardous technology, which like the nuclear industry is being phased out in other countries (Swords 2001: 53).

It must be borne in mind that discussion as to the appropriateness of waste to energy as a waste management option is subject to much scientific debate. It is clear from this evidence alone, that efforts on the part of the authorities to reduce reliance on landfill appear to the public to be focused on the 'incineration option' and less so on recycling and recovery targets. This has meant that implementation of the new waste management regulatory framework has been slow, fraught and highly politicised. We will return to this issue again in Section 6.

EU IMPLEMENTATION RECORD ON WASTE

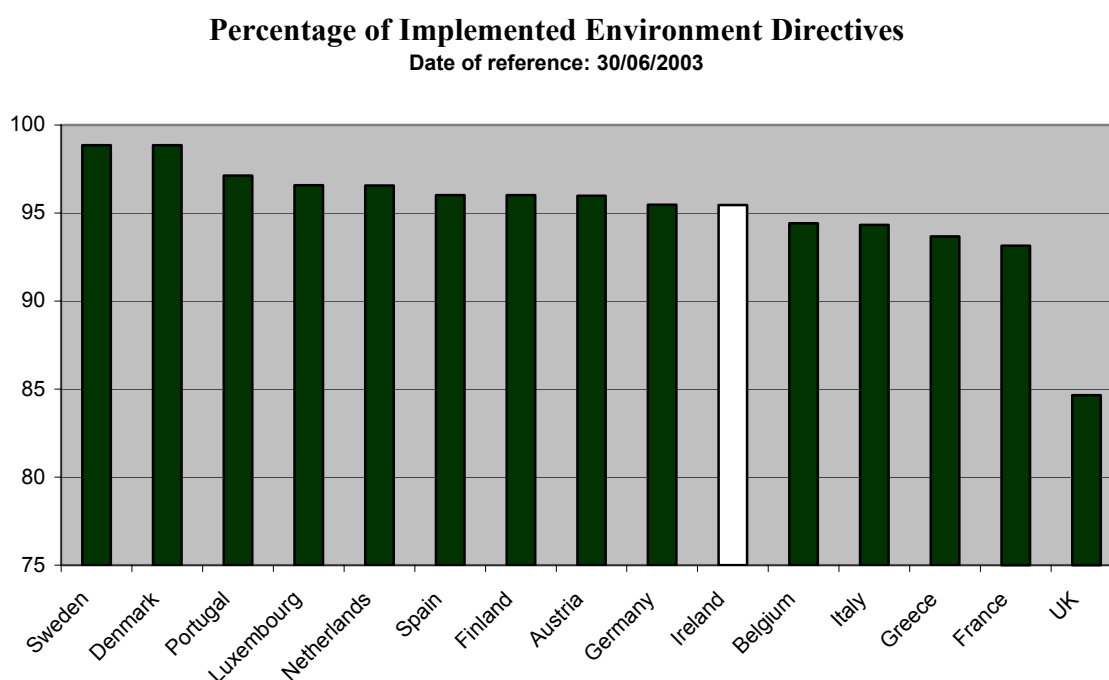
In McGowan's 1999 assessment of Irish environmental policy, Ireland had been one of the least active members of the EU in terms of bringing forth, implementing and enforcing environmental legislation and belonged to the laggard camp alongside Greece, Spain and the UK (McGowan 1999: 164). In 2003, Flynn went further, stating:

a serious deficit has been revealed with regard to the implementation of EU norms, and the regulatory enforcement capacity of the Irish state appears essentially weak. Indeed Ireland, which accounts for just 1 per cent of the total EU population, appears to account for 10 per cent of the complaints submitted to the Commission for non-implementation of EU environmental directives (Coffey, M. 2002. 'Ireland One of the Worst Polluters in Europe'. The Irish Times, 23 January. Cited in Flynn, 2003, 139).

Problems with implementation have been evident with regard to a number of the waste directives and water directives in particular. However, the OECD's 2000 review of environment policy in Ireland stated that Ireland has transposed most EU environmental directives (98 per cent) and compares very favourably with other Member States in this regard (OECD 2000:137). Ireland does not currently merit the title of 'laggard' with regard to the implementation of EU environmental legislation on an aggregate level. At this level of analysis, its position in the 'class' is more towards the middle. Figure 5 shows

the percentage of implemented directives by EU member states up to June 2003. Here we can clearly see Ireland's more middle-ranking position in terms of percentage.

Figure 5



Source: European Commission, Secretariat General Asmodée II Database, http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#transposition

However, the picture is less positive with regard to the implementation of EU waste legislation, as table 3 shows. The table produced below provides a more in-depth account of Irish infringements with regard to EU waste legislation from 1997 onwards. Although the Irish authorities have not often been prosecuted in the European Court of Justice, table 2 shows the continuous flow of letters of formal notice and reasoned opinions to the Department of the Environment, Heritage and Local Government with regard to waste infringements. In early 2002, EU Commissioner for the Environment, Margot Wallström, stated that as far as the European Commission was concerned, the waste problem was *the* dominating environmental issue from the Irish public. Speaking at a public meeting where she answered questions from representatives of residents' groups and NGOs, the

Commissioner said the big challenge for the Irish Government was to put in place an entire structure for waste disposal:

We prefer material recovery before energy recovery but we also put incineration before landfill. You have too many landfills and you also have illegal dumping. You'll have to decide on that. ...The Commission does not have one model that goes for all member states. You'll have to find an Irish model (Commissioner Wallström, Irish Times, 25 January 2002).

Table 3: Irish EU Waste Infringements from 1997 onwards

| Date | Infringement | Details |
|------------------|---|---|
| 19 December 1997 | Reasoned Opinion | Failure to adopt and send necessary implementing legislation for Hazardous waste directive. |
| 30 June 1998 | Application to ECJ | Failure to adopt and send all necessary national legislation to implement Packaging Waste Directive. |
| 15 December 1998 | Application to ECJ Case C-461/99 '7 December 2001' – Following the recent welcome finalisation and notification of waste management plans by Ireland, a resolution to this case appears imminent'. | Failure to adopt and communicate waste management plans complying with Framework Waste, hazardous waste and packaging waste directives. |
| 28 January 2000 | Reasoned Opinion | Failure to send a report required under Waste Shipment Regulation. |
| 7 April 2000 | Letter of Formal Notice | Possible incorrect application of: Environmental Impact Assessment Directive and Dangerous Substances Directive, Dangerous Substances Directive, EIA Directive, Framework Waste Directive and Groundwater Directive (operation of waste facility without a waste permit). |
| 26 October 2000 | Letter of Formal Notice | Failure to provide information on compliance with regard to four cases under Waste Framework Directive (non-respect of Article 10 of EC Treaty). |
| 14 November 2000 | Letter of Formal Notice | Non-respect of Sewage Sludge Directive (failure to submit adequate information for 1995-97). |

Table 3: Irish EU Waste Infringements from 1997 onwards (cont.)

| | | |
|------------------|-------------------------|--|
| 10 April 2001 | Letter of Formal Notice | Failure to correctly transpose and apply Waste Oils Directive |
| 26 July 2001 | Reasoned Opinion | Failure to comply with Framework Waste Directive – failure to properly control unauthorised private and local authority waste storage and disposal operations and to properly regulate waste collection (Greenore, Co. Louth, Poolbeg, Dublin, wetlands in Co. Waterford and Fermoy, Co. Cork. Local landfills operating without licences. |
| 30 July 2001 | Letter of Formal Notice | Waste Oils Directive |
| 7 December 2001 | Application to ECJ | Failure to respect Waste Framework Directive with regard to the controlled disposal and recovery of waste. [Uncontrolled private waste operations, Greenore, Poolbeg, Waterford, Fermoy]. |
| 1 October 2002 | Reasoned Opinion | Failure to completely transpose and correctly apply Landfill Directive. |
| 21 October 2002 | Reasoned Opinion | Failure to transpose End-of-Life Vehicles Directive. |
| 19 December 2002 | Reasoned Opinion | Failure to apply certain provisions of Packaging waste directive and shortcomings in Irish legislation on implementing packaging waste directive. |
| 15 April 2003 | Letter of Formal Notice | Failure to provide information about possible breaches of Groundwater directive, Framework Waste directive, Hazardous waste directive, transfrontier waste shipment regulation, dangerous substances directive and the Habitats Directive. |

| | | |
|-----------|------------------|---|
| July 2003 | Reasoned Opinion | Failing to bring national legislation into line with requirements of Framework Waste Directive in relation to urban waste water treatment plants (no system of permits in operation). |
|-----------|------------------|---|

HOW WASTE HITS HOME:

THE POLITICISATION OF EU WASTE MANAGEMENT POLICY IN IRELAND

Government and local authority efforts to implement domestic waste management policy as described in previous sections have become a continuous source of controversy in Ireland. Highly localised controversies, flashpoints, have contributed to the politicisation of Irish waste policy. From the time of the adoption of the 1996 Waste Management Act, flashpoints have erupted regularly between private waste facility developers, local authorities (with regard to its role as planning authority), the Environmental Protection Agency and local environmental action groups (mainly anti-landfill and incineration groups) over proposed incineration and landfill projects. Such disputes have been widely reported in the local and national media because of the degree of controversy generated over the granting or withholding of planning permission and IPC licences for incineration facilities. Instances of illegal dumping, such as that of Blessington, Co. Wicklow in 2002, also attracted considerable media and public attention. In many cases, local action groups organised protests, public meetings, petitions, representations to local politicians, invoked judicial review and went to the High Court in order to overturn decisions to go ahead with incineration facilities. As Box 1 shows, in many cases such local opposition to incineration projects was highly effective and progress on these projects ground to a complete halt.

The evidence shown in Box 2 highlights a feature of environmental activism and the types of environmental groups existing in Ireland. Tovey in particular has drawn attention to the dichotomy of environmental action groups that exist. She argues that one can recognise two distinct environmentalisms in Ireland, which have different histories and social locations, and which express different and even opposed interpretations of Irish development (Tovey and Share 2000: 461; Tovey 1992: 275). On the one hand, there is 'official' environmentalism, as it is led primarily by environmental experts from a range of academic disciplines (planners, economists, agriculturalists, chemists, botanists, zoologists) who usually work through the established environmental organisations. On the other hand, there is 'populist' environmentalism, representing 'a relatively independent movement of dissent, by ordinary people working at the local level. Populist environmentalists may not necessarily see themselves as environmentalists'. Tovey links populist environmentalism to local communities experiences of economic underdevelopment (Tovey 1992: Tovey and Share 2000: 461). Populist environmentalists,

by their very definition, organise around specific controversial issues directly affecting their locality, in this case proposals to build incinerations or new landfills. The rise in populist environmentalism in Ireland since 1996 can be termed the NIMBY (Not In My Backyard) syndrome as the number of local action groups established to protest against the construction of waste facilities in their own localities has been quite significant. Frank McDonald, Irish Times Environmental Correspondent, alluded to the eruption of such groups in the Irish Times in 1997 when he wrote:

Any mention of plans for a new landfill dump leads to the formation of an instant action group to fight it all the way. But this is nothing compared to the whiff of an incinerator, which is guaranteed to generate much higher levels of public hysteria (Frank McDonald, 28 February 1997).

The consequence of the proliferation of such groups and their success in preventing the introduction of energy recovery operations in Ireland has meant that local authorities, the EPA and Department of the Environment ignore them at their peril when planning waste management initiatives.

Box 1 – Opposition to Incineration 1996 to 2003

Clarecastle, Co. Clare 1996-1999

Proposal to incinerate made by Syntex Ireland/Roche Ireland. Incinerator to operate in own plant only.

Opposed by Care For Clare, Clare Alliance Against Incineration.

Methods of protest used: Protests with vehicle cavalcade, petitions, 80 families threatened to move from the area, judicial proceedings taken against EPA decision to grant licence. High Court upheld EPA decision.

Ringsend, Co. Dublin 1996

Proposal to incinerate made by: Waste to Energy Ltd.

Opposed by: local resident groups.

Methods of protest: petitions, public meetings.

Proposal withdrawn.

Goddamendy, West Dublin 1997

Proposal to incinerate by: Foster Wheeler Power Systems and ESB.

Opposed by: Local resident groups and VOICE environmental group (Dublin based).

Methods of protest used: petitions, representations to local politicians.

Proposal withdrawn.

Benbulbin, Co. Sligo 1998

Opposed by North Sligo Environmental and Health Awareness Group.

Proposal withdrawn.

Kilcock, Co. Kildare 1999-2000

Proposal to incinerate made by Thermal Waste Management Limited who appealed An Bord Pleanála decision not to grant planning permission (also refused by Kildare County Council).

Appeal action opposed by: North Kildare-South Meath Anti-Incineration Alliance.

Members established a steering committee, scientific and legal committee and fundraising committee. The Alliance set up a full time office in Kilcock, employed a PR company and set up its own website. 6,000 objections were made to the Appeal, a series of public meetings held. Local representatives lobbied and 65 stud farms made a

Box 1 cont. Opposition to Incineration 1996 to 2003

Roscommon, 2000 e 1996-1999

Action taken against inclusion of incineration option in Connacht waste management plan and siting of incinerator and superdump in Roscommon.

Opposed by Roscommon Environmental Alliance. Incineration.

Waste management plan abandoned incineration option. petitions, 80 families threatened to move from the area, judicial proceedings taken against EPA decision to grant licence.

Duleek, Carranstown, Co. Meath 2001-2003

Proposal to incinerate made by Indaver Ireland.

Opposed by Louth-Meath Anti-Incineration Alliance and Boyne Valley and Newgrange Environmental Protection League. ste to Energy Ltd.

Methods of protest used: 4,000 individual objections made, 27,000 signatures collected.

Incinerator proposal approved by An Bord Pleanala 5 March 2003.

proposal withdrawn.

Ringaskiddy, Co. Cork 2001-

Proposal to build commercial toxic waste incinerator made by Indaver Ireland.

Opposed by Ringaskiddy and District Residents Association, CHASE (Cork Harbour Alliance for a Safe Environment), Irish Doctors' Environment Association, Actor Jeremy Irons. See CHASE website: www.chaseireland.org. esentations to local politicians.

6,000 objections made to planning application. An Bord Pleanala hearing took place in Neptune Stadium, Cork due to large turnout of objectors.

Case ongoing. **o. Sligo 1998**

pposed by North Sligo Environmental and Health Awareness Group.

Wexford 2000-2001

Opposition to incineration option in South East Region Management Plan (in area known as SKEWW box – South Kilkenney, East Waterford, Wexford).

Opposed by local councillors (waste plan rejected by Wexford County Council) and An Bord Research and Information Group (who proposed to put forward a candidate in the 2002 general election).

Incineration option dropped from Waste Management Plan. Incineration Alliance. Members established a steering committee, scientific and legal committee and fundraising

Galway 2001 e Alliance set up a full time office in Kilcock, employed a PR company and Draft Alternative Waste Management Plan presented by Galway Waste Alliance in April 2001. Waste Alliance comprises of six local groups: Ballinasloe Against the Superdump, t Clontuskert Anti Incineration Group, Cross/New Inn Anti-Dump Committee, Galway for a Safe Environment, Ballinahistle/Kilrickle Anti-Dump Committee, Newbridge Action Committee.

Box 1 ctd.

‘Coolmore Stud’, Rosegreen, Cashel, Co. Tipperary 2002-2003

Proposal to construct incinerator by rendering plant National By-Products Ltd (CEO Jack Ronan) for the thermal treatment of meat and bone meal. Received planning permission from An Bord Pleanála and EPA.

A group led by racehorse trainer Aidan O’Brien and magnate John Magnier sought judicial review of the decision. They were supported by public figures such as Andrew Lloyd Webber, Alex Ferguson, local GPs (37 in all), An Taisce, Irish Farmers Association, Irish Creamery and Milk Suppliers Association, Sinn Féin, Dr Martin Mansergh, Special Advisor to Taoiseach Bertie Ahern and Fianna Fail candidate in 2002 general election. Public meetings were organised with attendance of up to 1,500 people. A 20,000 strong petition was gathered. In the High Court Aidan O’Brien threatened to leave Ireland. An MRBI poll was conducted on the issue (telephone poll of 500, 70 per cent opposed to incinerator). An Appeals Advice Centre was established in Fethard, Co. Tipperary and both sides employed Dublin-based PR firms.

In the end, Jack Ronan of National By-Products Ltd withdrew the application in April 2003. Earlier newspapers reported that Jack Ronan was subject to a vicious campaign of intimidation by those opposed to incinerator (Irish Times, 4 October 2002).

Poolbeg, Ringsend, Co. Dublin 2003

Proposal to build incinerator made by Treasury Holdings.

Opposed by Combined Residents Against Incineration Group.

Source: Taken from various issues of the Irish Times. <http://www.ireland.com>.

On the basis of evidence gathered in this paper, governmental efforts to solve Ireland’s waste crisis and adhere to the EU’s waste hierarchy have been limited. Efforts to promote and implement waste-to-energy options have become the primary focus of public attention with regard to waste management. The disputes over incineration options are highly politicised, mired in controversy and more often than not subject to successful public opposition. Ambitious recovery and recycling targets have been set by the central authorities, primarily as a result of EU legislative pressure, but have proved hard to meet in the short term at least. The provision of recovery and recycling facilities by local authorities is varied and in many cases limited to the establishment of bring centres, which are inadequately dispersed throughout the country. Waste collected for recycling and recovery cannot be processed in Ireland but is exported for treatment. The Government must find a way to address public concerns over landfill and thermal treatment options. Given these difficulties and the ongoing pressure to meet EU waste targets, it is safe to predict that Ireland will continue to run into difficulties in implementing EU waste legislation and will be subject to further EU infringement proceedings in the future

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