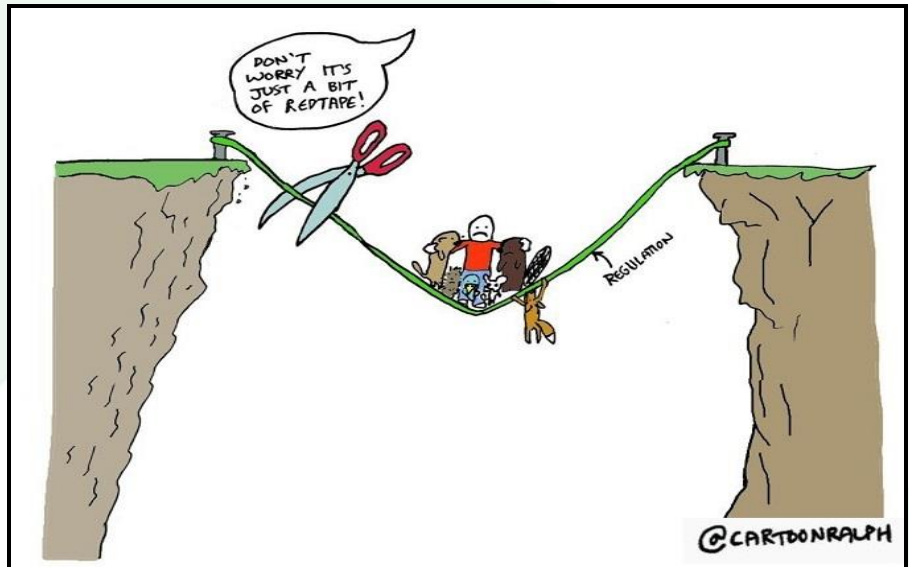




**Friends of  
the Earth  
Europe**



## **‘Better regulation’: failing the test**

### **How ‘better regulation’ sabotaged the Circular Economy Package**

**Prepared by Fabian Flues & Meadhbh Bolger | May 2016**

*The supporting institutions accept no responsibility for the correctness, accuracy or completeness of the information, or for the observance of the private rights of third parties. The views and opinions expressed herein do not necessarily reflect those of the supporting institutions.*

Printed on recycled paper.

## **‘Better regulation’: failing the test**

---

### ***How ‘better regulation’ sabotaged the Circular Economy Package***

#### **Introduction**

The Circular Economy Package (CEP) was initially introduced as a way to kick start Europe’s transition towards the more sustainable use of resources. It covers a wide range of areas such as landfilling, recycling, product design and food waste.

Almost completed, the proposal became a victim of the so-called better regulation agenda of the European Commission. In 2014, the First Vice President, Frans Timmermans, referring to the better regulation approach to law making, announced its withdrawal from the Commission work plan for 2015. In doing so the Commission ignored the opinions of the European Parliament and the Council of Environment Ministers as well as civil society organisations. Under the pressure of business lobby groups, the Circular Economy Package was transformed from a proposal having, primarily, a sustainability approach, recognising resource scarcity and planetary limits, into a proposal geared around economic and short term considerations.

The revised proposal, introduced at the end of 2015, is much less ambitious than what was originally put forward. It not only took out one of the key elements of the original package - a 30% resource efficiency target - and lowered proposed recycling targets, but it also cut back on binding obligations in favour of less stringent approaches, reflecting the dangers the better regulation agenda poses. Ironically, it did not follow recommendations of the Commission’s own impact assessment on key targets, despite impact assessments being one of the key pillars of the better regulation agenda.

This briefing outlines how ‘better regulation’ delayed and weakened the Circular Economy Package and why it should serve as a warning shot about the dire consequences of the better regulation agenda.

#### **Better Regulation and the Circular Economy**

##### **What is the Circular Economy Package (CEP)?**

Europe is one of the highest resource consuming continents on the globe. We extract more resources and produce more waste than the planet can sustain, and are the continent most dependent on imported resources for our economic activities<sup>1</sup>. Given that the world is facing ever higher demand for the same finite quantity of resources, leading to increasingly devastating effects on global ecosystems and communities, and that over 50% of Europe’s resources quickly become end-of-life waste, it is vital we change our current production and consumption system<sup>2</sup>.

---

<sup>1</sup> <http://creea.eu/8-project/2-creea-booklet>

<sup>2</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Municipal\\_waste\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Municipal_waste_statistics)

We need to turn away from false and polluting solutions like incineration and landfill, and towards reducing our consumption of resources, and increasing efficiency, recycling, repair and reuse.

The Circular Economy Package (CEP) was meant to be Europe's flagship initiative to improve the way we use resources and deal with waste in Europe. It was intended to change our current take-make-dispose model of production and consumption to one that keeps resources circulating in the economy for as long as possible, through better design, reuse and recycling.

It includes changes to four pieces of waste legislation – including targets to increase recycling and reduce landfilling – and an Action Plan of 54 broader initiatives covering product design, markets for secondary raw materials, a strategy on plastics and more.

A first proposal for the CEP was made by the European Commission in 2014 under the Europe 2020 Strategy<sup>3</sup>. But when the Juncker Commission came into power at the end of 2014 it scrapped the first proposal, and published a revised version in December 2015 – justifying the withdrawal and re-tabling with the better regulation agenda.

Yet, the revised proposal is significantly weaker, with key measures and binding regulations dropped. In particular, there is less of a focus on reducing absolute resource consumption and increasing efficiency, vital for a true circular economy. This briefing will outline the difference between both proposals and why it matters.

### ***The so-called better regulation agenda***

With the start of the Juncker Commission in 2014, “better regulation” became one of the Commission's ten priorities. It comprises a host of measures in the law-making process – including more weight for impact assessments and more consultations with stakeholders - as well as increased evaluation of laws and regulations and a programme to reduce “regulatory burden”.

While the Commission claims that “better regulation” will make EU policies more “effective and efficient”,<sup>4</sup> there has been strong criticism of the approach. Civil society groups criticise that better regulation is one-sidedly focused on reducing regulations that bother big business, tends to ignore the societal benefits of regulations and provides additional opportunities for corporations to influence the law-making process.<sup>5</sup>

The Circular Economy Package is one of the most important legislative files that has been explicitly re-shaped according to better regulation principles since the new Commission took the helm.

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0021:FIN:EN:PDF>

<sup>4</sup> [http://ec.europa.eu/priorities/democratic-change/better-regulation\\_en](http://ec.europa.eu/priorities/democratic-change/better-regulation_en)

<sup>5</sup> [http://www.betterregwatch.eu/BRWN\\_Founding\\_Statement\\_and\\_Members.pdf](http://www.betterregwatch.eu/BRWN_Founding_Statement_and_Members.pdf)

## Withdrawal of the CEP: fulfilling big business wish list

The Circular Economy Package had been proposed by former Environment Commissioner Janez Potočnik in July 2014 and was seen by many environmental organisations as a step in the right direction. It quickly became a target for business lobby groups, eager to water down the most ambitious provisions.

BusinessEurope, Europe's biggest corporate lobby group, warned against the ambitious proposal and argued it should abandon one of its main components, an overall resource efficiency target: "the target-based approach – 30% resource productivity target by 2030 – proposed today by the European Commission is far too simplistic to capture the complexity of resources use, production and consumption. The EU should abstain from any target rather than having an inappropriate one", reads a lobby document from July 2014.<sup>6</sup>

Corporate lobby groups saw their chance to derail the CEP when the Juncker Commission took over in late 2014 and emphasised from the start the importance of the so-called 'better regulation' agenda for its work. BusinessEurope was quick to draw up a hit list of unwanted legislative projects that the Commission should axe or completely re-vamp in the name of 'better regulation' – among them the CEP. According to the lobby group, "[t]he proposal should be withdrawn and re-tabled as an economic piece of legislation." It also reiterated that a target for resource efficiency "should not be proposed or considered."<sup>7</sup>

## The CEP: The Commission's test case for 'better regulation'

Promptly after taking office, the new European Commission decided to withdraw the CEP, despite severe criticism from the European Parliament<sup>8</sup> and the Council of Environment Ministers, several of which wrote to the European Commission to express their "strong support" for the package.<sup>9</sup> Even the new Commissioner for the Environment Karmenu Vella, strongly opposed the withdrawal.<sup>10</sup>

Despite this opposition, the Commission's First-Vice President Frans Timmermans, responsible for 'better regulation', insisted that the package would be withdrawn and "a more ambitious" proposal would be re-tabled.<sup>11</sup>

He even made the package a test case for 'better regulation', asking sceptical MEPs to let him prove them wrong.<sup>12</sup>

---

<sup>6</sup> <https://www.besnesseurope.eu/sites/buseur/files/media/imported/2014-00639-E.pdf>

<sup>7</sup> <https://www.besnesseurope.eu/sites/buseur/files/media/imported/2014-01070-E.pdf>

<sup>8</sup> <http://www.euractiv.com/section/sustainable-dev/news/circular-economy-package-to-be-ditched-and-re-tabled/>

<sup>9</sup> <http://www.euractiv.com/section/sustainable-dev/news/council-of-ministers-signals-support-for-threatened-circular-economy-package/>; <http://www.gerbrandy.eu/europese-commissie-wil-circular-economy-pakket-en-het-clean-air-policy-pakket-schrappen/>

<sup>10</sup> <http://www.euractiv.com/section/science-policy-making/news/vella-told-timmermans-not-to-axe-circular-economy-package/>

<sup>11</sup> <http://www.euractiv.com/section/sustainable-dev/news/circular-economy-package-to-be-ditched-and-re-tabled/>

<sup>12</sup> <http://www.euractiv.com/section/sustainable-dev/news/let-me-prove-you-wrong-on-circular-economy-timmermans-tells-greens/>

But worrying signals emerged right after the withdrawal. Whilst work on the first proposal was led by the Directorate-General for Environment, the revised proposal became a joint effort led by Commission Vice-President Frans Timmermans (Better Regulation) and Commissioner Jyrki Katainen (Jobs & Growth), with secondary involvement from Commissioners Karmenu Vella (Environment) and Elżbieta Bieńkowska (Industry).<sup>13</sup> This new allocation of responsibilities for the CEP mirrored the BusinessEurope demand for a more economically instead of environmentally focused proposal.

### **European Parliament recommendations to strengthen the CEP**

After its recommendation not to withdraw the CEP had been ignored, the European Parliament published an Own-Initiative report on resource efficiency in July 2015 to influence the upcoming revised proposal. The report outlined Parliament recommendations to ensure a strong proposal, including:

- An increase in resource efficiency by 30% by 2030 compared with 2014 levels and binding indicators by 2018, based on the footprint methodology and measuring at least land, water and material use and carbon
- Binding waste reduction targets for 2025
- Recycling/preparation for reuse targets of at least 70% of municipal solid waste and 80% recycling of packaging waste by 2030
- Binding food waste reduction target of at least 30% by 2025
- Mandatory separate collection for biowaste by 2020
- Strictly limiting incineration, with or without energy recovery, to non-recyclable and non-biodegradable waste by 2020

However, as will be shown below, all of the above measures were not taken on board by the Commission, as well as many other progressive measures not mentioned here.

### **The CEP impact assessment: ignored by the Commission**

Improved impact assessments have been hailed by the European Commission as the cornerstone of the 'better regulation' agenda and are supposed to inform the Commission services and decision makers better about the advantages and disadvantages of different policy options. However, in the case of the CEP the Commission disregarded important findings of its own impact assessment in order to push less-demanding, more business-friendly approaches.

This is most strikingly exemplified by the impact assessment's cost-benefit analysis of recycling targets. The analysis in the impact assessment clearly shows that a target of 70% recycling by 2030 would be from a financial, social and environmental vantage point the most beneficial long-term option, with the conclusions stating that: "...the higher the final recycling rates, the greater the overall benefits for society."<sup>14</sup>

---

<sup>13</sup> [http://europa.eu/rapid/press-release\\_IP-15-6203\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6203_en.htm)

<sup>14</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014SC0208>

Yet, the Commission decided to ignore the unanimously positive effects of a higher recycling target in favour of a less ambitious approach, in the end going with a 65% recycling target, and allowing some member states an extra 5 years to reach this.

### **The CEP after 'better regulation'**

The CEP changed significantly after being revised by the Commission in the name of better regulation. Almost all the changes reduced the ambition of the package – by lowering or dropping targets and extending timelines for reaching targets. Among the most important changes were:

- The removal of an overall 30% resource efficiency target – which was the most important policy element of the first proposal.
- The reduction of the recycling target by 5 percentage points, despite the positive effects of a higher target being demonstrated by the Commission's impact assessment.
- The deletion of a binding EU-wide food waste target in favour of a non-binding UN target, which doesn't carry any legal obligation on the member states.
- The elimination of a mandatory biowaste collection system by 2025 in favour of a less stringent approach without deadlines for achieving the target.
- The prolongation of deadlines for achieving recycling targets for certain member states.

Taken together the changes, explained more in detail in the table in the annex, slow down and set back Europe's march towards a more sustainable, resource-efficient region.

### **Conclusion: 'Better regulation' worsening the CEP**



The European Commission itself declared the Circular Economy Package a test case for its 'better regulation' approach, promising that more ambitious legislation would come out of the process. Instead, it has served as an entry point for some business lobby groups to delay and weaken one of Europe's major environmental policies. The analysis has shown that the CEP was weakened in two ways in particular, increasing the concerns how 'better regulation' will influence the European law making process:

- Binding measures have been replaced by voluntary tools: In some cases a measure that would have been binding for the EU member states to implement has been replaced with an instrument that has no legal backing, thus making it de-facto voluntary and not enforceable through EU law.
- Targets were reduced or completely removed: Previously strong targets and strict deadlines have been replaced by much less ambitious ones and in some cases completely dropped. Lower or no targets will reduce the potential positive effects of the CEP.

There can be no other conclusion than that the 'test case' failed. In weakening the Circular Economy Package, the 'better regulation' approach has revealed its true intent: Less regulation for big business at the expense of the public interest.

## Annex: Full evaluation of the changes to the CEP

The table below shows some of the main changes made by the Commission from the first proposal to the revised proposal and evaluates their impact from an environmental perspective.

First proposal	Revised proposal	Verdict	What we propose	Why this matters
Resource efficiency target: resource productivity to increase by 30% in 2030 compared to 2010 levels and based on raw material consumption	Absent. According to Commission, action on resource efficiency is being achieved through ecodesign measures and compliance with UN 2030 Agenda for Sustainable Development and G7 Alliance on Resource Efficiency		Binding resource productivity target of at least 30% by 2030 compared with 2014 levels, based on raw material consumption (eventually moving to total material consumption); development of indicators and reduction targets for land, water, material and carbon footprints	Europe is one of the highest consuming continents on the globe, contributing to significant environmental and social impacts; research shows that even if we were to recycle 100% of waste, our consumption patterns mean that demand for virgin resources would remain high. We need action to reduce absolute resource consumption
Recycling and preparation for reuse target of 70% by 2030 for municipal waste and 80% for packaging waste with interim target for 2020	Recycling and preparation for reuse target of 65% by 2030 for municipal waste and 75% for packaging waste with no interim target for 2020; 7 countries getting an extra 5 years to reach these		Reinstate first package proposal but with a separate target for preparation for reuse by weight per year per capita	Higher targets drive greater investment and action on recycling and are proven to be the most beneficial for society. Recycling and reuse activities need to be separated so that member states do not reach recycling targets by counting materials which are reused

First proposal	Revised proposal	Verdict	What we propose	Why this matters
EU-specific food waste reduction target of 30% by 2025	Non-binding UN Sustainable Development Goal target of 50% global food waste reduction by 2030, covering only food losses at consumer and retail level.	☹️	Introduce a binding food waste reduction target by 2018 of at least 30% and mandate the Commission to establish a common measurement methodology by 2017, ensuring food waste over the full supply chain is accounted for.	40% of all food is wasted in Europe, with the majority lost between production and retail stages. Among the impacts, at a global level, it is estimated 1.4 billion hectares of land is 'lost' (about 30% of the world's agricultural land area) from food produced and not eaten.
Mandatory separate collection of biowaste by 2025	Separate collection of biowaste where technically, economically and environmentally practicable (TEEP) and no date for achieving this	☹️	Mandatory separate collection of biowaste at source by 2025	Sending biowaste to landfill or incineration is inefficient and polluting; it presents a missed opportunity to create valuable secondary resources of compost, biogas and natural fertiliser. Collection at source ensure activities like home composting are included
All member states must achieve recycling targets at the same time	7 member states get a time derogation of 5 years to reach the targets	☹️	Member states can only get a time derogation if they meet staged caps on residual waste per capita per year in 2023 and 2028	Granting derogations based on our approach would incentivise waste prevention and separate collection while allowing for the different starting points of member states, in terms of both recycling and waste generation



Friends of the Earth Europe gratefully acknowledges financial assistance from the European Commission - DG Environment. The contents of this briefing are the sole responsibility of Friends of the Earth Europe and cannot be regarded as reflecting the position of the funder. The funder cannot be held responsible for any use which may be made of the information this briefing contains.





**Friends of  
the Earth  
Europe**

for the people | for the planet | for the future

## Friends of the Earth Europe

### Member Groups

Austria	Global 2000
Belgium (Wallonia & Brussels)	Les Amis de la Terre
Belgium (Flanders & Brussels)	Friends of the Earth
Bosnia & Herzegovina	Centar za životnu sredinu
Bulgaria	Za Zemiata
Croatia	Zelena Akcija
Cyprus	Friends of the Earth
Czech Republic	Hnutí Duha
Denmark	NOAH
England, Wales & Northern Ireland	Friends of the Earth
Estonia	Eesti Roheline Liikumine
Finland	Maan Ystävät Ry
France	Les Amis de la Terre
Georgia	Sakharvelos Mtsvaneta Modzraoba
Germany	Bund für Umwelt und Naturschutz Deutschland (BUND)
Hungary	Magyar Természetvédők Szövetsége
Ireland	Friends of the Earth
Latvia	Latvijas Zemes Draugi
Lithuania	Lietuvos Zaliuju Judėjimas
Luxembourg	Mouvement Ecologique
Macedonia	Dvizhenje na Ekologistite na Makedonija
Malta	Friends of the Earth Malta
The Netherlands	Milieudefensie
Norway	Norges Naturvernforbund
Poland	Polski Klub Ekologiczny
Russia	Russian Social Ecological Union
Scotland	Friends of the Earth Scotland
Slovakia	Priatel'ia Zeme
Spain	Amigos de la Tierra
Sweden	Jordens Vänner
Switzerland	Pro Natura
Ukraine	Zelenyi Svit

**Friends of the Earth Europe** campaigns for sustainable and just societies and for the protection of the environment, unites more than 30 national organisations with thousands of local groups and is part of the world's largest grassroots environmental network, Friends of the Earth International.