

DECONSTRUCTING THE BOTTLENECKS CAUSED BY WASTE LEGISLATION: END-OF-WASTE REGULATION

EELF 2017 Conference, 30.8– 1.9.2017, Copenhagen, Denmark

Topi Turunen, UEF Law School/ Finnish Environment Institute

UEF // University of Eastern Finland

Fundamentals of waste legislation

- Waste status (Art. 3 WFD) has a huge impact on the use of substances and objects
 - **WFD is applied** (not applied to non-waste) → Permits and other additional control and monitoring measures
- EU waste legislation aims to 1) protect the environment and human health, and 2) increase the use of waste as a resource.
 - Because of the protection aspect and the precautionary principle the concept of waste is interpreted widely
 - ‘better-safe-than-sorry’ approach

End-of-waste regulation

- **Article 6 WFD:** ‘Certain specified waste shall cease to be waste - - - when it has undergone a recovery, - - - and complies with - - - the following conditions:
 - (a) - - - is commonly used for specific purposes;
 - (b) a market or demand exists - - -;
 - (c) - - - fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable - - - ; and
 - (d) the use - - - will not lead to overall adverse environmental or human health impacts.’

Legal impacts of ceasing to be waste

- The waste stream is out of the control of the WFD → no more preventative and precautionary measures from waste legislation!
- Regulation to similar virgin products is applied → usually smaller regulatory burden
- More efficient waste recovery can be supported with EoW regulation

The contradictory elements

- The regulatory burden on waste is based on controlling the environmental and human health impacts
 - Waste streams are often heterogenic and their properties are unknown and potentially hazardous
 - The lack of scientific data on properties of waste arms the precautionary principle
- EoW would remove the additional measures to waste in order to reduce the administrative burden of waste recovery
- Research questions:
 - *To what extent can the additional control measures on waste be deconstructed through the EoW?*
 - *What is the optimal balance between enabling legislation and the precautionary?*

Bottleneck or justified control mechanism?

- The relatively heavy regulatory burden for the use of waste is necessary to protect environment and health from the impacts of waste
 - it can be argued that additional control measures not serving that purpose are unnecessary = *bottlenecks*
- If the same factual level of protection can be achieved without the provisions, they should be removed!
 - E.g. non-hazardous, clean, homogenic waste streams such as scrap metal

Protection aspect in EoW

- Even though the main point of EoW regulation is to remove bottlenecks, it takes the protection aspect rather seriously
- One of the criteria for EoW status is: **'the use of the substance or object will not lead to overall adverse environmental or human health impacts.'**
 - Comparison between the situation after the EoW and the no-action scenario

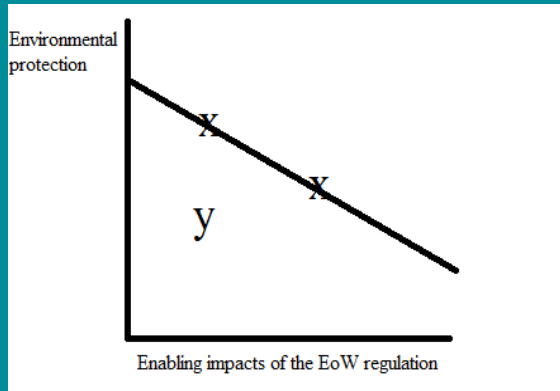
Limits of the deconstruction

- May not have negative impacts on environment and human health
- The burden of proof is on proving that there is no negative impacts → providing scientific data on the waste stream
- If the scientific data proves that there is no risks, the basis for applying the precautionary and prevention principles disappear
 - additional measures on waste are to be considered bottlenecks

Finding the balance

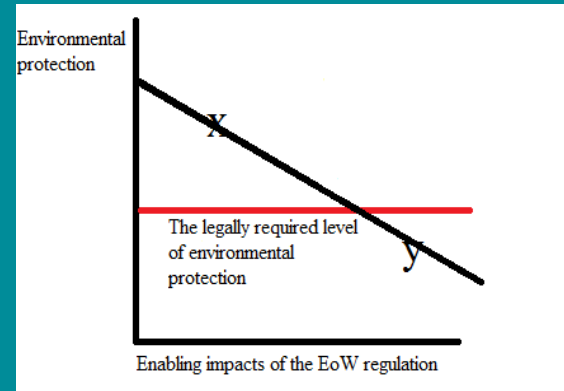
- After the material ceases to be waste, it is not in a "legal vacuum"
 - The regulation on EoW sets the new level of protection together with the existing product regulation for similar virgin materials
 - The formulation of the EoW regulation can decide to what extent the additional measures are deconstructed → is the emphasis put on deconstruction or strong protection aspect?
- Balancing of EoW regulation can be theoretized through pareto optimal scenarios
 - How much should and could be removed in order to promote material efficiency?

Valuing environmental protection and enabling impact of the regulation



Possible scenarios

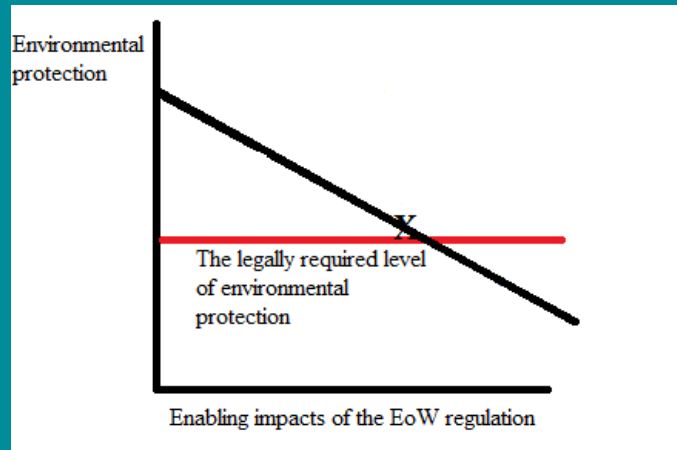
ILLEGAL! DOES NOT PROVIDE
MINIMUM PROTECTION



Legally plausible scenarios

DOES NOT PROVIDE THE MOST
MATERIAL EFFICIENT SOLUTION

Optimal solution for promoting circular economy



Best legal alternative to promote material efficiency

Conclusions

- 1) The regulation promoting the use of waste-based materials cannot overrule the high level of protection of the environment and the human health.
- 2) However, when the precautionary provisions are not based on environmental or human health protection → should be removed to promote material efficiency (level playing field should be provided for the operator using waste as substitute of virgin raw materials)
- 3) Finding a balance between closing the loop and environmental protection will determine the future of waste management in circular economy.

Questions?

Thank you!



UNIVERSITY OF
EASTERN FINLAND

uef.fi