

## Extended Producer Responsibility

### Introduction

The issue of producer responsibility takes a position of central importance in waste discussions today, as we strive to achieve resource-efficiency and a circular economy in Europe. Routes to achieving such a circular economy, which both performs the environmentally sound role of limiting the depletion of resources and sustaining the health of our local economies, are many. Extended Producer Responsibility (EPR) and Producer Responsibility Organisations (PRO) make up only one of those routes, and after twenty years of existence, they need reviewing.

Municipal Waste Europe strongly recommends that the Commission takes in to account the fundamental role municipalities play in improving waste management and transforming waste into raw materials for European industry. This includes the cooperation between municipalities and EPR schemes.

We also strongly recommend limiting EPR regulation at European level to principles and guidelines. Member States should not be legally obliged to implement EPR and should retain the necessary flexibility to adapt EPR schemes to their national situation.

An effective EPR scheme should include clear provisions on the responsibilities of the relevant actors, in particular producers and municipalities.

### OECD DEFINITION:

The OECD *defines* EPR as an environmental policy approach in which a producer's responsibility for a product is extended to the post-consumer stage of a product's life cycle. An EPR policy is characterised by: (1) the shifting of responsibility (physically and/or economically; fully or partially) upstream toward the producer and away from municipalities; and (2) the provision of incentives to producers to take into account environmental considerations when designing their products. While other policy instruments tend to target a single point in the chain, EPR seeks to integrate signals related

to the environmental characteristics of products and production processes throughout the product chain.

It is not only the above philosophy that needs reviewing, but also the many different ways in which it has been implemented. Today in Europe, we invest time, effort and funds to sort materials from waste. Yet, a large proportion of this sorted material is exported to countries outside Europe under the label of recycling; countries in which Europe cannot ensure that high-quality recycling is taking place. In such cases it is also unclear how any residual fraction would be treated and whether it would have a negative environmental impact. Such export is nevertheless counted towards the achievement of national recycling targets and we question the wisdom and effectiveness of this on the path to achieving a resource-efficient Europe.

Preference should be given to recycling of these sorted materials and products in controlled recycling facilities within Europe. Ensuring that these are recycled to high environmental standards which respect the health and safety of employees and that they re-enter the production cycle, is of central importance to municipalities and their credibility towards the citizens they serve.

A large part of municipal waste is not recyclable today. The future legislative framework should encourage producers to actively improve the recyclability of their products and materials, as well as encourage the inclusion of recycled materials in their new products and the development of new products made of recycled materials.

Municipal Waste Europe sees Extended Producer Responsibility and its related Producer Responsibility Organisations (PROs) as a mechanism, linking the producer with municipalities who are responsible for the management of municipal waste, in which consumers' used products will eventually become the waste materials and new raw materials.

PROs should act as mediators and be transparent in their transactions to both parties which they serve: the producers who are legally and financially responsible, and the municipalities who represent the citizen/waste producer through their public responsibility and system for waste management. The absolute neutrality required for this must be ensured by the legal form of the respective organisation, coupled with adequate national inspection and enforcement. The

framework for the national EPR system, within which PROs can operate, should be set in national law.

## **Recovering Resources from the Waste Stream:**

There must be clearly defined roles for each of the actors responsible for the achievement of resource recovery and recycling targets.

Municipalities are responsible for the management (collection, recycling/recovery and disposal) of municipal waste in their municipality, and to do this in accordance with relevant legislation. This responsibility also includes planning procedures, charging and financing arrangements, local regulations and communication to the citizens. The actual operation can either be executed through in-house operations or outsourced to an external operator. The Municipality retains the obligation to be fully aware of the requirements in all cases and to inspect and verify that contractors are fulfilling their obligations.

**Extended Producer Responsibility enacts a legal responsibility** on producers under an EPR scheme, to ensure that the products and materials they put on the market are managed in an environmentally sound manner in the waste phase. That responsibility includes cooperation with the executing party (municipality) on the design and financing of an appropriate collection system.

In order to fulfil this obligation collectively, producers have in many cases organised themselves into one or more 'Producer Responsibility Organisations (PROs)' per relevant product stream or group of product streams. This is not always necessary and there are several examples where producers of materials work directly with municipalities and/or commerce.

As municipal waste is a public responsibility from the outset, its management is regarded as a service of general interest. Likewise, the collection of waste fractions from waste under EPR schemes must be regarded in the same way. The ultimate consequence is that the collection of municipal waste under producer responsibility should be arranged through the municipality.

It is however the responsibility of these PROs, as contractors to the EPR system, to design appropriate collection schemes. These must be adapted to the various local situations in the country, and carried out in cooperation with the national and local administrations. Once

designed, Municipalities should have the freedom to opt for the collection system or mix of collection systems that suits them and their waste producer best. This collection system must be open to adaptation, which will account for any irregular situations and any changes. All of this must be done in agreement between the municipality and the PRO, in order that both parties are able to determine and agree the functioning, cost and expected recovered material quality from the collection system. The collection schemes will be operated, in order to achieve best results, through in-house capabilities or public contracts achieved through public procurement methods.

Municipalities recognise that in order for an effective, transparent system to be achieved, which benefits the citizen as well as the producer, the type of costs included in collection costs to be covered by the PROs must be pre-determined and agreed. This is further elaborated below.

**Sorting and reporting are responsibilities** which belong to the producer, hence to the PROs. In cases in which the Municipality has a contract with a PRO but already owns and operates sorting facilities, coordination with the EPR scheme is necessary.

It is necessary to clarify here that the **achievement of targets is a national responsibility**, which lies with the responsibility for implementation of legislation. The national level is therefore responsible for enforcing national waste management plans, EPR schemes and PRO functioning to ensure that they deliver on their target achievement.

## **Eco-design and the market for recyclables**

The European Union has repeatedly underlined the important role of EPR schemes as key instruments to improve municipal waste management. This instrument can minimise waste and regain all potential resources/materials from waste products. In order to make sure that resources are recovered and used efficiently, producers should design products in an environment-friendly manner that facilitates their recyclability, including clear labelling of a product's material content.

The market for recycled products should be promoted; by increasing demand, the value of recyclable materials can be increased. Municipal Waste Europe supports specific collection targets for individual product categories combined with full recyclability of products put on the Internal Market. Higher resource-efficiency is connected to the recyclability of the products and to their sustainable design. EPR can act as a barrier or a facilitator to the achievement of high recycling targets, hence greater resource-efficiency. Under the current revision of the Waste

Framework Directive (WFD), these principles need to be embedded in a revised Article 8, which will apply to the full WFD, including to construction and demolition waste.

## **Harmonisation of Waste Directives**

In addition to the revision of Article 8 of the WFD, the same wording must be included in all relevant waste legislation in order to ensure correct implementation. By this we mean, its inclusion in the Packaging and Packaging Waste Directive, the Batteries Directive, the Waste Electrical and Electronic Equipment Directive, the End-of-Life Vehicles Directive and any others existing or future which are relevant to producer responsibility and polluter pays principles.

## **Elements Required for the correct functioning of an EPR Scheme are:**

1. Clear roles and responsibilities for the producer, producer responsibility organization and municipality;
2. Ambitious Targets;
3. Transparency of the producer responsibility organisation on its income and expenditure, and on the flows of materials onto the market and recovered from the waste coupled with analogous reporting obligations;
4. Transparency in the cost to municipalities of separate collection as well as the management of waste belonging to EPR schemes which remain in the residual waste fraction;
5. Cooperation between the producer or their PRO and the Municipality on the design of the collection system;
6. Cooperation between the producer or their PRO and the Municipality on the execution of a communications campaign;
7. If there are competing PROs for the same waste stream, there must be one point of contact (e.g. clearing house) for municipalities to ensure collection and targets are not compromised;
8. There cannot be any 'cherry-picking' by PROs of the part of their waste which is easily recyclable or on service provision;

## **Detailed justification of the Elements:**

### **1. Clear roles and responsibilities for the producer, PRO and municipality:**

As Municipal waste management is a service of general interest for reasons of environment and public health and given the differences in large cities and rural areas, the responsibility for the organisation of municipal waste collection and management lies with the local governments who must be free to select the collection method. This should be in cooperation with the PRO (as explained previously and below).

Residual waste, garden/bio-waste, hazardous waste and several other waste streams will always remain under the competence of the local authority managing the public space. However, due to Producer Responsibility for several waste streams, a large part of the municipal waste comes under the regime of Producer Responsibility as well and often suffers under an unclear double regime.

### **2. Ambitious Targets**

Ambitious recycling targets focus attention on recovering quantity and quality as well as feeding back to the design phase, which will eventually make the waste phase easier to manage.

To achieve such ambitious targets, comparability of the data collected on recycled quantities must be ensured. There must be only one calculation method which is used by every Member State which also stipulates that the point of measurement is after sorting. Recycling should be measured as the output of sorting plants.

### **3. Transparency of the PRO on its income and expenditure, and on the flows of materials onto the market and recovered from the waste coupled with analogous reporting obligations;**

PROs are mediators, responsible for ensuring the full implementation of producer responsibility on behalf of their members/clients. As such, transparency on finances and material flows enables the relevant authorities to verify that costs are being met and paid for and that targets are being met.

Producer responsibility organisations today very rarely cover the total cost for collection and treatment. In most cases municipalities are left with an outstanding bill as well as the management of the part of the PROs waste which is not collected separately and so remains in the residual waste fraction.

Most importantly, as producers will be unaware of the cost of management of all of their waste products, they will not be in a position to initiate suitable actions to fulfil their producer responsibility in the cases where the EPR system fails. This occurs when PROs do not cover the cost of treatment of their waste products which remain in the residual waste, as they are not fulfilling the responsibility of their members/clients, who pay a fee to the PRO (also called compliance scheme) for all of their products which enter the market. However the PRO only pays for a part of the management of the waste products when they pay only for the separate collection costs of materials they wish to recover for recycling.

As long as this situation persists, PROs have no incentive to go further than to meet current recycling targets.

The aims of Producer Responsibility Schemes should be to promote eco-design, shift taxation from communities to polluters, promote recycling, as well as to prevent an increase in waste quantities or toxicity.

An interesting economic instrument which is being explored by the French Eco-Emballage is a 'Bonus Malus' system whereby the PRO would be rewarded for recycling the materials recovered and charged for the materials they leave in the residual waste.

**4. Transparency in the cost to municipalities of separate collection as well as the management of waste belonging to EPR schemes which remain in the residual waste fraction;**

Municipalities have the responsibility to define and declare the true costs of collecting the relevant waste fraction and the PROs have the responsibility to ensure that Municipalities are reimbursed for those costs. This reimbursement cannot be in kind (truck, bins etc).

**The definition of costs should include:**

- i. Communication costs to enhance material recovery through continued information to the waste producer on how, where, when, what to recycle and why.
- ii. Collection costs including: Personnel and protective wear and equipment, vehicles and their fuel, yearly vehicle maintenance, waste containers, collection points, recycling centres, or these costs as outsourced to a contractor. This list is not exhaustive and should be further refined.
- iii. The fraction of recyclable waste (in accordance with the relevant waste stream and PRO) remaining in the residual waste, which includes litter (the cost of treating the waste which is not separately collected and which remains in the residual waste, e.g. preparation for re-use, sorting, energy recovery and disposal);

Producers should finance the recycling of what they put on the market, and given the responsibility of municipalities to manage the public space efficiently and sustainably, producers and municipalities should decide together on how to collect the resources from the households.

The fact that producers cover these costs, may not in any way endanger municipal discretion for waste collection at a Member State level. The compensation of costs should be on the basis of standard cost compensation, which does not include payment for inefficient service-provision by municipalities.

**5. Cooperation between the producer or their PRO and the Municipality on the design of the collection system;**

There are several effective collection systems in Europe today and their effectiveness on implementation will depend on their fitness for purpose. A different system is required for densely populated urban areas than that for sparsely populated rural areas, with a range of options in-between.

The producer is responsible for recovering their waste, and today is also interested in accessing it as a raw material, and therefore must play a role in designing the collection system. To achieve this, they need to ensure that there is close cooperation with the municipalities in order to ensure that the most appropriate system is selected. One which will limit costs, deliver high recycling

rates, high quality of recovered materials and be convenient and simple for waste producers to implement.

Nevertheless, taking account of their public responsibility and also their knowledge of their public and geographical area, municipalities must take the final decision on the type of collection system to be implemented.

**6. Cooperation between the producer or their PRO and the Municipality on the execution of a communications campaign**

A key tool in achieving high recycling rates is communication with the citizens. Communication should be an integral part of extended producer responsibility.

Extended Producer Responsibility schemes should pay for the cost of communicating the recycling options for recovery of resources from their waste products. Communication plans should be designed and agreed by all parties involved, at national level. Communication is hence one of the aspects of sharing of responsibility between producers and the public sector, as the latter will carry the communication cost for wastes which do not come under an EPR system.

**7. If there are competing PROs for the same waste stream, there must be one point of contact (e.g. clearing house) for municipalities to ensure collection and targets are not compromised;**

Experience in those Member States with competing Producer Responsibility Organisations in effect today, has proven to cause several problems to municipalities and to the achievement of targets. In these cases, municipal costs for the management of their agreement with the PROs increase, their collection costs are not covered and local recycling targets are not achieved, in particular in cases where the municipality is not of interest to the PRO due to accessibility or quantity of recyclable materials (cherry-picking). For these reasons, Municipal Waste Europe does not believe that multiple PROs are appropriate for the same waste stream.

However, we cannot disregard an existing situation, so, if a Member State decides to allow multiple PROs to compete for the same waste stream, several legal provisions should be made to ensure that they operate effectively together and neither jeopardise the achievement of targets nor the payment of municipal collection costs.

**To achieve this, at least these provision must be in place:**

- i. one point of contact for municipalities (e.g. clearing house at national level);
- ii. the existence of multiple PRO's for one waste stream should never have an impact on the compensations that municipalities receive from producers
- iii. the existence of multiple PRO's for one waste stream should never have an impact on the achievement of targets
- iv. the use of procedures, comparable with those of public tendering, can be helpful
- v. the number of PROs per waste stream, per Member State should not be excessive

Importantly, the fact should not be disregarded that a transparent and fair competitive environment can be organised within one PRO per waste stream in the case that markets for the collection and treatment of the waste are awarded to private companies through a tendering procedure.

**8. There cannot be any 'cherry-picking' by PROs of the part of their waste which is easily recyclable or on service provision;**

'Cherry-picking' of easily recyclable materials and products, either at the collection or dismantling phase results in the incomplete taking of responsibility by the producer of that product or material. In practical terms, it means that the non- or less valuable fraction of that waste stream remains in the residual waste fraction for treatment and neither encourages eco-design nor a move to a cyclical economy.

In terms of service-provision, 'cherry-picking' refers to the easily accessible areas with large quantities of materials as opposed to the more difficult to reach neighbourhoods or rural areas. Municipalities have the responsibility to serve all of their public, making municipal waste management a service of general interest and PROs have an obligation to respect that and integrate it into their strategy.

## **To Sum Up**

EPR should be simple, clear, transparent, well-structured and run by producers. The government should set the framework/minimum requirements for the EPR systems, support and enforce the correct implementation of the schemes. PROs must be officially recognized and permitted by the national government, which must verify that PROs achieve their yearly targets.

EPR is optimised when there are few EPR schemes operating per country which balance large multinationals and small producers. In some Member States the proliferation of EPR schemes has led to an economically and bureaucratically inefficient system.

## **The Future of Extended Producer Responsibility**

In view of the significant review of EPR and PROs that is necessary at EU and national level in order to make them effective to all actors in the management of waste and resources, Municipal Waste Europe advises caution when examining their future. That said, Municipal Waste Europe acknowledges that, in the right form, these tools can help in the achievement of resource efficiency.

European legislation should give Member States the right to introduce EPR-related measures beyond the waste streams currently covered by European Producer Responsibility legislation (e.g. WEEE, packaging) but must not oblige them to do so.

**Municipal Waste Europe** aisbl is a non-profit association which represents European municipalities and their waste management companies, in their responsibility to manage municipal waste. The members of Municipal Waste Europe represent 13 Member States of the European Union and the European Economic Area, through national public waste associations, which serve over 60% and up to 100% of their national population.

One of the key issues for European municipalities is to ensure understanding of the responsibility of local and regional authorities for waste management and why this constitutes a Service of General Interest. Throughout Europe, municipalities are responsible for the recovery of material resources from European households. The members of Municipal Waste Europe therefore play a pivotal role in driving Europe to becoming more resource-efficient. In effect, the members of Municipal Waste Europe are the bridge between the actors in resource efficiency, the citizens (waste producer) and thus the public.

Thanking you for your careful consideration of our paper and inviting you to discuss its content with us further,

On behalf of Municipal Waste Europe,

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