
Position paper on WFD

Harmonization and fair competition for Extended Producer Responsibility

Paris/Brussels, July 2017

European Recycling Platform (ERP) welcomes the start of the dialogues on the waste package and would like to contribute with its pan-European experience in the take-back market. In this context, the ERP would like to make some comments aiming at reaching a clear and harmonized legal framework for extended producer responsibility (EPR) in Europe.

As the only pan-European producer responsibility organisation (PRO) for WEEE, batteries and packaging, we advocate for the strict implementation of core principles such as clear, EU harmonized obligations and reasonable governance allowing entrepreneurial freedom and fair competition. We consider the consistent application of these policies as the best approach to meet recycling targets and to protect the environment. With view to the ongoing dialogue discussions, ERP therefore wants to highlight the following issues:

1. Entrepreneurial Freedom & Competition:

- Good practice through the years has proven that EPR achieves the best results in terms of environmental and economic benefits when producers are free to choose a PRO among **multiple competing producer schemes** (PROs). This helps reducing cost of waste management for the consumer, while at the same time increasing recycling rates.
- There should be a **clear set of rules defining operational and/or financial roles and responsibilities** for producers, **instead of undefined operational or organisational requirements** binding them to a specific PRO and limiting the entrepreneurial freedom of PROs. ERP proposes a description of those with its amendments.
- To respect the principles of entrepreneurial freedom, **the set up of EPR schemes should be possible for private companies**, respecting the set rules and as a compliance solution for producers to fulfil their legal obligation.
EPR schemes shall not be exclusively established by Member States.

2. Fair Level Playing Field:

- ERP welcomes the vote of the European Parliament for a clear definition of **roles and responsibilities of all actors, general requirements for extended producer responsibility setups** and **quality standards for the recycling operations** on the basis of a harmonized EU guidance. Studies show that for example ~60% of WEEE is treated outside of EPR schemes.
- Moreover, ERP supports the introduction of a **single independent national authority** that assures a reasonable governance. The independent authority should be introduced in every Member State – also in set-ups with a single PRO only – as voted by the European Parliament. Such an authority will generally assure conformity of all actors, help to avoid conflicts and unfair market practices between different actors and avoid the manifestation of **monopolistic structures** (as recommended by the OECD¹).

¹ OECD (2016), Extended Producer Responsibility, Updated Guidance for Efficient Waste Management, <http://www.oecd.org/environment/waste/extended-producer-responsibility-9789264256385-en.htm>.

3. EPR Scope:

- ERP supports the idea to make **EPR mandatory** for at least packaging, WEEE and batteries as experience shows that it effectively increases recycling rates.²
- The WFD or implementing directives should **clearly define the scope of the costs covered by producers, which should be contained in a closed list**. Producers and/or their PROs can only assure compliance if their obligation is fully clear, what is not the case with an open list. Moreover, the new concept introduced by Council of **producers having to bear at least half of the related costs is unclear and must be clarified**.

The European Parliament has therefore rightly voted for a **closed list of financial obligations**. This balanced and proven solution must not be jeopardized, while it shall be further specified that listed cost elements must be limited to items and waste streams that are controllable for producers or PROs acting on their behalf.

- The introduction of **modulated fees** for producers might create incentives for producers but must be **relevant** to treatment / recycling and **based on harmonized criteria**. Besides, they must be **enforceable by authorities and PROs** through the definition of generally accepted evidence documents. Otherwise they would miss the intention, create heavy administrative burden or might even be open for misuse.
- In order to ensure high-quality re-use operations, a harmonized concept of **“recognised preparing for re-use operator”** as voted by the European Parliament is crucial and should be maintained in the text. Also all volumes collected for re-use shall be carefully documented, reported and counted towards the targets.

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About ERP

The European Recycling Platform was founded in 2002 in response to the introduction of the European Union’s Waste Electrical and Electronic Equipment (WEEE) Directive. ERP’s mission is to ensure cost effective implementation of the directive, for the benefit of the participating companies and their customers. As of June 2014, the Landbell Group, an independent recycling and resource specialist, based in Germany, has become a shareholder of ERP SAS.

ERP is the first WEEE compliance scheme authorised to operate in Austria, Denmark, Finland, France, Germany, Ireland, Israel, Italy, Norway, Poland, Portugal, Slovakia, Spain, Sweden and the UK thus passing on the advantages of multinational recycling operations to the consumer. ERP has proved to be the most competitive solution for companies in the countries where operates now offering WEEE, Batteries, Packaging and PV panel compliance services and know-how.

For more information on ERP, please visit www.erp-recycling.org

² OECD (2016).

Summary of main topics

Reference	Commission's text	Parliament Plenary vote text	Council text (22.05.2017)	ERP recommendation
1. Entrepreneurial Freedom & Competition				
Recital 6c (new) Am 18			<p>The definition of extended producer responsibility scheme should be introduced to clarify that it means a set of measures taken by the Member States requiring producers of products to bear financial responsibility for the management of the waste stage of a product's life cycle including separate collection, sorting and treatment operations. That obligation may also include organisational responsibility and a responsibility to contribute to waste prevention and to the reusability and recyclability of products.</p>	<p>Clarify the definition of EPR as follows:</p> <p>The definition of extended producer responsibility scheme should be introduced to clarify that it means a set of measures taken by Member States requiring producers of products to bear financial responsibility for the management of the waste stage of a product's life cycle including separate collection, sorting and treatment operations: "<i>That obligation may also include [...] responsibility to ensure their individual solution or the collective scheme they have selected, comply with the provisions of this Directive and any national measure related thereto</i>" and a responsibility to contribute to waste prevention and to the reusability and recyclability of products.</p>
Recital 8e (new) Am 26		... Extended producer responsibility is an individual obligation on producers who should be accountable for the end-of-life management of products that they place on the		<p>Clarify the definition of EPR as follows:</p> <p>"... <i>Extended producer responsibility is an individual obligation on producers who</i></p>

market. Producers should be able, however, to assume their responsibility individually or collectively. ...

*should be accountable for the end-of-life management of products that they place on the market. Producers should be able, however, to assume their **waste management** responsibility individually or collectively **by entering into an agreement with any of the collective producer responsibility organisations, as long as they meet the minimum requirements set under this Directive and the operational requirements set by the national independent authority related thereto. ...***

Recital 8f

Am 27

EPR schemes should be understood as a set of rules established by the MSs to ensure that producers of products bear the **financial and/or operational responsibility for the management** Those rules should not prevent producers from fulfilling those obligations either individually or collectively.

Not acceptable

Clarify the definition of EPR as follows / adjust to Recital 8e(new):

*"EPR schemes should be understood as a set of rules established by the MSs to ensure that producers of products bear the **financial and/or operational responsibility and/or the responsibility to ensure their individual solution or the collective scheme they have selected, comply with the provisions of this Directive and any national measure related thereto.** Those rules should not prevent producers from fulfilling those obligations either individually or collectively."*

Article 3(20a) NEW Am 94			EPR scheme means a set of measures taken by MSs to ensure that producers of products bear financial or financial and organisational responsibility for the management of the waste stage of a product's life cycle.	Rephrase “organisational” responsibility according to compromise amendments on rectial 6c (new) defining it.
Article 8,1(3) Am 121	...extended producer responsibility schemes defining operational and financial obligations...	...producers bear the financial and/or operational responsibility...	Where extended producer responsibility schemes are established by Member States ... EPR schemes that do not establish mandatory financial or financial and organisational responsibilities on producers may be exempted from the general requirements in article 8a. ...Member States that establish EPR schemes	Clarify the base for the exemptions and rephrase “organisational/operational” responsibility according to compromise amendments on rectial 6c (new) defining it.
Article 8 (5a) Am 126	...exchange of information on the organisational features and the monitoring of PROs...	Information exchange platform shall discuss organisational features of EPR	...exchange of information on the organisational features and the monitoring of PROs... The Commission shall publish guidelines , in consultation with Member States, on cross-border cooperation of extended producer responsibility schemes .	Modify the wording “organisational / operational” responsibility according to compromise amendments on rectial 6c (new) defining it.
Artcile 8a (3b) Am134	Has the necessary operational and financial means to meet its extended producer responsibility obligations	Has the necessary operational and/or financial means to meet its extended producer responsibility obligations	Has the necessary operational and financial means to meet its extended producer responsibility obligations	Support COM, Parliament and Council wording on operational means – need to align it throughout the text
2. Fair Level Playing Field				
Article 8,1(1) Am 120	...MS may take legislative or non-legislative measures ... that any natural or legal person who	...MS shall take legislative or non-legislative measures ... that any natural or legal person who	Not acceptable	Removing Parliaments’s wording might promote free-riding. Also EPR obligations

	professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has EPR.	professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has EPR.		should be harmonized and hence everywhere mandatory
Article 8a (3d, 1) Am 134	makes publically available the information about: - its ownership and membership		makes publically available the information about: - its ownership and membership	Delete – this wording raises confidentiality concerns
Article 8a (3d, 2) Am 135	The financial contribution paid by the producers	In the framework of collective schemes, the financial contribution paid by the producer per unit sold or per tonne of product placed on the market	in case of collective fulfilment of EPR obligations , the financial contributions paid by the producers	The Council wording raises confidentiality concerns
Article 8a (1) Am 128	define in a clear way the roles and responsibilities of producers of products placing goods on the market of the Union, organisations implementing extended producer responsibility on their behalf, private or public waste operators, local authorities and, where appropriate, recognised preparation for re-use operators;	define in a clear way the roles and responsibilities of all actors involved , including producers of products placing goods on the market of the Union, organisations implementing extended producer responsibility on their behalf in the framework of collective schemes, private or public waste operators, distributors, regional and local authorities and, where appropriate, re-use and repair networks, social economy enterprises and recognised preparation for re-use operators;	define in a clear way the roles and responsibilities of producers of products placing [...] products on the market of the [...] Member State, organisations implementing extended producer responsibility on their behalf, private or public waste operators, local authorities and, where appropriate, reuse and [...] preparation for re-use operators and social enterprises;	Maintain „all actors“ from Parliaments wording
Article 8a (5,2) Am 143	Where, in the territory of a Member State, multiple organisations implement EPR obligations, Member States shall establish an independent authority...	Introduction of an independent authority to oversee EPR implementation and verify compliance.	Where, in the territory of a Member State, multiple organisations implement EPR obligations...	Maintain Parliament’s wording of an independent authority in all cases, and not only for multiple PROs but addressing all actors

3. EPR Scope				
Recital 8e (new) Am 26		...Producers should be able, however, to assume their responsibility individually or collectively. Member states should ensure the establishment of extended producer responsibility schemes for at least packaging, EEE, batteries and accumulators, and ELV.	Not acceptable	Maintain Parliament's text as it would strengthen EPR requirements
Recital 9b (new) Am 30		The Commission should without delay adopt guidelines on the modulation of contributions of producers in EPR schemes in order to assist MSs ... in furtherance of the internal market.	Not acceptable	Guidelines are essential to harmonize the contribution's requirements in particular as they might have an impact on the product design (single market)
Article 8a (3) Am 133	PROs: have a clearly defined geographical, product and material coverage	PROs: have a clearly defined geographical, product and material coverage that is based on the sales area and without limiting these areas to the territories in which the collection and management of waste are profitable;	PROs: have a clearly defined geographical, product and material coverage without limiting these areas to the territories in which the collection and management of waste are most profitable;	Maintain Commission's and Council wording
Article 8a (4b) Am 140	(Fees) ...are modulated on the basis of the real end-of-life cost of individual products or groups of similar products, notably taking into account their re-usability and their recyclability	(Fees) ...in the framework of collective schemes, are modulated on the basis of the real end-of-life cost of individual products or groups of similar products, notably by taking into account their durability, reparability, re-usability and recyclability and when available, based on harmonized criteria in order to ensure a smooth functioning of the internal market.	(Fees) ...in case of collective fulfillment of EPR obligations, are modulated, where possible , for individual products or groups of similar products by taking into account their reusability and reparability as a contribution to waste prevention and preparation for reuse, and their recyclability;	Maintain the Parliament's wording regarding harmonized criteria for modulated fees as they have an impact on the product design (single market)

Article 8a (4d) Am 141			Where justified by the need to ensure the proper functioning of waste management, Member States may depart from the division of financial responsibility for separate collection as laid down in 4(a) while ensuring that the producers bear at least half of the necessary costs.	Delete/clarify the reference to at least half of the necessary costs
Article 8a (4,1,a) Am 139	Cover the entire cost of waste management... including all the following:	Cover the entire cost of waste management... as follows:	Cover ... at least the following costs of waste management...	Maintain EP wording – if the financial scope is not closed, it will be impossible to claim compliance
Article 14, 2 (new) Am 188			Without prejudice to Article 8a(4)(d) MSs may decide that the cost of waste management are to be borne partly or wholly by the producer of the product from which the waste came and that the distributor of such a product may share these cost.	This needs clarification
Article 3 (16) Am 87	"preparing for re-use" means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste and have been collected by a recognised preparation for re-use operator are prepared (...)	"preparing for re-use" means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste and have been collected by a recognised preparation for re-use operator are prepared (...)		Maintain the reference to "recognised" operators in the definition of "preparing for re-use", as proposed by Commission and Parliament