

TOWARDS A STRONG AND COMPETITIVE CIRCULAR ECONOMY

RECOMMENDATIONS FOR THE EUROPEAN COMMISSION'S GUIDELINES AND FAQS ACCOMPANYING THE CIRCULAR ECONOMY PACKAGE

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European Recycling Platform (ERP) welcomes the adoption of the Circular Economy Package and its Directives and their publication in the Official Journal of the European Union. By setting higher recycling targets and imposing measures to stimulate competition, the new framework can bring substantial benefits for both the environment and consumers in Europe. The setting of general minimum requirements for producer responsibility organisations (PROs) will create a level playing field. And the inclusion of distance sellers in the scope will combat free-riding. Moreover, applying the principle of extended producer responsibility to packaging waste in all Member States will create a more harmonized approach for producers.

However, some of the new Directives' provisions are rather unspecific and leave room for interpretation. Therefore, ERP welcomes the European Commission's intention to compile guidelines and update the FAQs with the aim to specify these provisions and to avoid misinterpretation when it comes to national transposition. For this purpose, we would like to draw the Commission's attention to some topics which we feel not being sufficiently specified in the legislative texts and which we would strongly recommend being addressed in the guidelines. This will enable Member States to transpose the new framework correctly, harmonized and hence in a way that contributes to the Directives' goals and to Europe's transition towards a circular economy in the internal market.

1. Clear definition of producers' organisational responsibility in an extended producer responsibility scheme

Good practice through the years has proven that extended producer responsibility achieves best results in terms of environmental and economic benefits when producers are free to choose among multiple competing PROs. This helps to reduce the cost of waste management for the consumer, while at the same time increasing recycling rates.

According to the new legislative text, a producer responsibility scheme is defined in article 3 as a "set of measures taken by Member States to ensure that **producers of products bear financial responsibility or financial and organisational responsibility** for the management of the waste stage of a product's life cycle". However, the **term "organisational" is not sufficiently defined**. This may lead to problems when it comes to national transposition. Depending on their respective interpretation, Member States may impose rules according to which producers are bound to a specific PRO instead of being able to choose among multiple competing ones. In order to avoid such anticompetitive frameworks, the Commission's guidelines should provide a clear definition of producers' organisational responsibility.

ERP recommends to define producers' organisational responsibility as "the responsibility to ensure their individual solution or the collective scheme they have selected comply with the provisions of the Waste Framework Directive and any national measure related thereto".

2. Implementation of extended producer responsibility in a competitive environment

ERP appreciates the strong commitment to the principle of extended producer responsibility. The strengthening of this principle will promote innovation and cost-efficiency in the waste market. However, ERP receives signals from the market that some Member States interpret the new legal framework in a rather anti-competitive way, resulting in the **implementation of monopolistic and state-owned schemes**.

In order to maintain a landscape for innovative solutions assuring compliance and best quality for the benefit of the environment at best price for the benefit of producers and ultimately consumers, the Commission should make sure that **the transposition by Member States allows for extended producer responsibility schemes operated by private industry in a competitive environment**.

3. Harmonised criteria for modulated fees

The new legislative framework provides that the financial contributions (fees) paid by producers to comply with their extended producer responsibility **obligations are modulated, taking into account the product's durability, reparability, re-usability and recyclability and the presence of hazardous substances**. In order to assist Member States in the implementation of such modulated fees, the Commission is required to adopt guidelines.

Modulated fees are intended to function as an incentive for producers to design products that contribute to waste prevention and facilitate recycling. In terms of extended producer responsibility this approach sounds reasonable and logical as it would reward producers who design their products accordingly. At the same time, modulated fees have some potential practical implications, which should be considered when developing the required criteria:

- Because most producers design products for **multinational markets**, it is very important that criteria for **modulated fees are harmonized across Member States**. Any specific national criteria would interfere the functioning of the internal market and would increase the administrative burden for a proper European enforcement.
- There is a risk that criteria overlap or even contradict with other EU legislation such as the Ecodesign Directive, the RoHS Directive or the REACH Regulation. In principle, **criteria shall be fully relevant and limited to the targets of the Waste Framework Directive (WFD)**.
- Criteria should have a sufficiently **universal** character in order to be applicable for many products and producers as well as **objective, achievable and enforceable** - easing the enforcement.

For a more detailed review on aspects to be considered when drafting criteria on modulated fees, please also refer to ERP's separate paper *"Modulated Fees, Discussion of practical implications from the point of view of a Producer Responsibility Organization (PRO / EPR)"*.

4. Clearing house

Member States, in which there are multiple organisations implementing extended producer responsibility obligations on behalf of producers, will be required to appoint **at least one body independent of private interests or entrust a public authority to oversee the implementation of extended producer responsibility obligations**. ERP welcomes this provision as an important means to assure a reasonable governance.

The independent authority needs to be equipped with the necessary means to fulfil its tasks. This does not only include the right to monitor the market, but also the obligation to **ensure a proper clearing between multiple competing PROs**. This is essential for assuring reasonable governance and for creating a level playing field. Therefore, the Commission's guidelines should clarify that overseeing the implementation of extended producer responsibility obligations does include carrying out a proper clearing.

5. Confidentiality of customer data

According to the new legislation, **PROs are required to make certain information publicly available**, among other things the **financial contributions paid by producers of products per unit sold or per tonne of product placed on the market**. This information **contains highly confidential data of producers** which, in turn, are the customers of PROs. A publication of these data might distort competition between PROs and might also result in competitive disadvantages for producers in certain markets. ERP therefore appeals to the **Commission to diligently balance the trade-off between transparency and the functioning of the market** when specifying the kind of information to be published by PROs.

6. Minimum requirements for extended producer responsibility

The new legislation requires Member States to take the necessary measures to ensure that producers or PROs, among other things,

- have the **necessary financial means or financial and organisational means** to meet their extended producer responsibility obligations and
- put in place an **adequate self-control mechanism**, supported, where relevant, by regular independent audits, to appraise its financial management and the quality of data collected and reported.

While we support these requirements, we believe that Member States could benefit from guidance from the Commission on **how to best implement such requirements in the full respect of the principles of free market and competition**.

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About ERP

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 high quality and cost effective implementation of the Directive, for the benefit of its customers and the environment. In June 2014, ERP became part of the Landbell Group, an international supplier of service and consulting solutions for environmental and chemical compliance. ERP and Landbell Group have collected more than 7 million tonnes of packaging, more than 3 million tonnes of e-waste, and over 50,000 tonnes of portable batteries.

ERP is the first and only pan-European producer responsibility organisation authorised to operate in Austria, Denmark, Finland, Germany, Ireland, Israel, Italy, Norway, Poland, Portugal, Slovakia, Spain, Sweden, and the UK. By passing on the advantages of multinational recycling operations to customers, ERP has proved to be the most competitive solution for companies in the countries where it operates for WEEE, batteries and packaging compliance, as well as take-back services.

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



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