
Position paper on WFD

Harmonization and fair competition for Extended Producer Responsibility

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European Recycling Platform (ERP) welcomes the development of the dialogues on the waste package and would like to contribute with its pan-European experience in the take-back market. In particular, we are **supportive of the progress achieved on the following aspects:**

- Deletion of the reference to **'Member States that establish extended producer responsibility** schemes for the purposes of this paragraph, may decide whether producers should be able to choose to fulfil their obligations individually or collectively". This is to avoid misunderstanding and to strengthen 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 (**Amendment 121 to article 8**).
- Mention in recital 6c new of the wording previously included in article 8 related to **"the obligations of the extended producer responsibility scheme can be fulfilled individually or collectively"**. This helps clarifying the role of the schemes, however a definition of what responsibility producers delegate to the schemes should also be included in this recital.
- Harmonized approach on cross-border cooperation between Member States and on modulated fees (**Amendment 126 to article 8 para 5 / Amendment 140 to article 8a para 4b**) supporting a **"smooth functioning of the internal market"** for product design and an efficient waste management market).
- Clear definition of **roles and responsibilities of all relevant actors (Amendment 128 to article 8a)** aiming for a level playing field.
- Implementing extended producer responsibility also in the case of **distance sellers (Amendment 142 to article 8a, para 5,1)** aiming for a level playing field among producers.

In this context, the ERP would like to draw the attention to some further topics aiming at reaching a clear and harmonized legal framework for extended producer responsibility (EPR) in Europe, based on entrepreneurial freedom and fair competition:

1. Entrepreneurial Freedom & Competition:

Good practice through the years has proven that EPR achieves 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 to reduce the cost of waste management for the consumer, while at the same time increasing recycling rates.

Thus, there should be a clarification, possibly in a recital, of the **set of rules, defining organisational and/or financial roles and responsibilities** for producers.

Currently the term “organisational” is not defined (would also apply to the term “operational ” originally proposed by the Parliament in Plenary). Depending on the national transposition/interpretation of such wording, there is a risk that manufacturers would be bound to a specific PRO (through buying shares, board seats etc), impacting competition. Also this would limit the entrepreneurial freedom of PROs.

- **ERP proposes a generic definition of “organisational responsibilities” in recital 6c new, or 8e or 8f, all being linked to the EPR definition of article 3(20).**

2. Fair Level Playing Field:

ERP supports the introduction of an **independent national authority (Amendment 143 to article 8a - paragraph 5 subparagraph 2)** that assures a reasonable governance. However, 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 avoids the manifestation of **monopolistic structures** (as recommended by the OECD¹).

- **ERP supports the wording of the European Parliament on the establishment of an independent authority – also if there is only one PRO.**

3. EPR Scope:

ERP supports the idea to make **EPR mandatory** for at least packaging, WEEE and batteries (**Amendment 26 to recital 8e new**) as experience shows that it effectively increases recycling rates.²

- **ERP supports mandatory EPR for packaging, WEEE and batteries**

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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 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

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

² OECD (2016).

Summary of main topics

Reference	Commission's text	Parliament Plenary vote text	Council text (28.11.2017)	ERP recommendation
1. Entrepreneurial Freedom & Competition				
Recital 6c (new) Am 18			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.) The obligations of the extended producer responsibility scheme can be fulfilled individually or collectively.	Strengthen the definition of EPR avoiding the unspecific term "organisational". This can be combined with the latest amendment by the Council adding a sentence on individual or collective responsibility: <i>"That obligation may also include organisational 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 and a responsibility to contribute to waste prevention and to the reusability and recyclability of products. "</i>
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 market. Producers should be able, however, to assume their responsibility individually or collectively. ...	Not acceptable	Clarify the definition of EPR as follows: <i>"... 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 market. Producers should be able, however, to assume their waste management</i>

				<p><i>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. ...</i></p>
<p>Recital 8f Am 27</p>		<p>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.</p>	<p>Not acceptable</p>	<p>Clarify the definition of EPR as follows / adjust to Recital 8e(new):</p> <p><i>"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."</i></p>
<p>Article 3(20a) NEW Am 94</p>			<p>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.</p>	<p>Define organisational responsibilities as proposed for recital 6c (new) or 8e/f</p>

Article 8,1(3) Am 121	...extended producer responsibility schemes defining operational and financial obligations...	...producers bear the financial and/or operational responsibility...	[...] Member States may decide that producers that undertake financial or financial and organisational responsibilities [...] for the management of the waste stage of a product's life cycle on their own accord should apply some or all of the general minimum requirements in article 8a.	Define organisational responsibilities as proposed for recital 6c (new) or 8e/f
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 .	Define organisational responsibilities as proposed for recital 6c (new) or 8e/f
Article 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 [...] financial [...] or financial and organisational means to meet its extended producer responsibility obligations;	Define organisational responsibilities as proposed for recital 6c (new) or 8e/f
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 professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has EPR.	...MS shall take legislative or non-legislative measures ... that any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has EPR.	Not acceptable	Removing Parliaments's wording might promote free-riding. Also EPR obligations should be harmonized and hence everywhere mandatory

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 and not manifesting monopolistic situations.
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 and achieve harmonization across Europe (actually among WEEE, battery and packaging EPR only packaging is not harmonized yet)
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 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