

COMMENTS ON THE PLANNED REVISION OF THE PACKAGING AND PACKAGING WASTE DIRECTIVE

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European Recycling Platform (ERP) welcomes the upcoming revision of the Packaging and Packaging Waste Directive (PPWD) and the opportunity to comment on the latest plans as being disclosed by the European Commission in the stakeholder workshop on 30 May 2022.

ERP is pleased to contribute with its experience operating producer responsibility schemes in 13 countries. We would like to share some ideas, mainly focused on EPR related items such as the harmonisation and alignment of the packaging essential requirements and the EPR fee modulation criteria as well as the required processes for an effective and efficient implementation within the EU in a level playing field.

1. Support of a dual legal base

As the Commission pointed out, it is necessary to aim for a full harmonisation of rules on packaging to avoid obstacles to the free movement of goods and hinder the development of markets for secondary raw materials. The review of the PPWD should address existing barriers, incoherence in national implementation as well as insufficient enforcement of EU provisions at national level.

Any design criteria, mandatorily applicable essential requirements as well as for the producers' voluntarily applicable fee modulation criteria (see more below), shall be fully harmonised for a well-functioning single market. This will enable a high recycling standard creating a pull effect. Specifics of the EPR setup however can be defined as minimum requirements allowing Member States to consider national circumstances and well working existing setups. We therefore support a European dual legal base for the PPWD review, as envisioned also for the Batteries Regulation.

2. Need for harmonised design criteria for an EPR fee modulation

At present, EU legislation (2008/98/EC) lists only generic EPR aspects to be considered for national implementation of the EPR fee modulation. We believe that Member States and consequently PROs/producers urgently need a set of harmonised and clear design criteria for fee modulation to avoid different measures at Member State level.

The lack of harmonisation leads to uncertainties, making it difficult to achieve the goal of an equal and transparent market. If the implementation of fee modulation criteria is fully left to national authorities or to PROs, this would create a complexity for producers in designing packaging and reporting of attributes as well as

complexity for enforcement authorities. Moreover, it would hamper a well-functioning internal market since design aspects could vary among Member States if being regulated at national level.

We advocate for an EU-wide harmonisation of fee modulation criteria as the most effective means for assuring a true EU-wide impact and a free movement of goods in the single market and by this providing the necessary incentives to producers for designing packages with increased recyclability. Harmonisation of fee modulation criteria would also ensure a level playing field among PROs avoiding competition on those criteria which could water down the desired impact.

Moreover, such a harmonisation would allow for a seamless and necessary alignment with the baseline criteria (packaging essential requirements).

3. Mandatory recyclability assessment tools not suitable for efficient EPR fee modulation

While a standard or tool for the evaluation of recyclability provides great guidance to producers when designing packaging, it does not represent a suitable base for a holistic fee modulation system. Experiences show that different assessment tools regularly can lead to different recyclability for the same packaging, even if the same standard is applied as a basis. This is simply because every standard, also the often referred-to German minimum standard, leaves certain room for interpretation.

To ensure fair competition, it would therefore be necessary to carry out the evaluation by a standardised evaluation tool or by a central accredited institute (third party). Only a comparable evaluation without the influence of different interpretations can be used as the basis for fee modulation.

However, considering the millions of packaging designs put on to the market, a timely and independent assessment of all packaging in Europe is difficult to implement if not impossible. Just as a reference, in Germany meanwhile 420.000 producers are registered ([as of 21 June 2022](#)) which all would need to run such an assessment.

Moreover, and especially for SMEs such an assessment would be a big burden, as it involves considerable additional efforts, costs and time. As a result, these companies might be often left with the alternative of foregoing proof of higher recyclability and paying a higher fee, which amounts to unequal treatment. This is not aligned with current efforts by the European Commission to reduce the administrative burden on SMEs.

Moreover, further specifications are necessary (e.g. below/above which nominal recyclability percentage a packaging is to be assigned a higher fee/bonus).

We therefore strongly advocate for a harmonised, negative list of design features impacting the recycling of the packaging rather than mandatory recyclability assessment or certification.

4. Clear definition of required documentation

Harmonised mandatory essential requirements as well as the above-mentioned negative list of design features for a fee modulation would provide clear design guidance for producers, can be implemented quickly and would be easy to enforce by checking the design attributes of a packaging ideally directly at the packaging.

However, since the approach of fixed criteria can and should rely on self-declarations by producers (like for the CE marking) this requires a proper definition of required documentation for all design features (essential ones and fee-modulation criteria).

Probably this shall already be considered when setting the criteria. For example, it is not clear yet how the use of recyclates can be assessed and it can unlikely be measured by enforcement bodies at the final packaging.

Finally, also the roles shall be clearly defined. While for the essential requirements enforcement authorities are solely in charge of checking the compliance, it is to be decided whether PROs would have any role to check the correctness of producer claims being related to the EPR fee modulation.

5. Financial mechanism needed to implement EPR fee modulation in a competitive PRO environment

In competitive PRO setups, the implementation of modulated fees is more complex and requires specific regulations and a specific clearing mechanism. This is because the packaging registered with the respective PROs do not directly correspond to the packaging waste collected. Hence, there is a possibility that PROs catering to producers which sell packaging qualified for a lower EPR fee face financial deficits, as they would receive lower producer contributions due to the fee modulation while the costs for collection, sorting and recycling of mixed waste would likely remain unchanged. In contrast, PROs could generate a surplus if they serve mainly producers whose products do not meet the modulation criteria, as they would be required to charge higher contributions while continuing to pay the same costs for the collection and treatment as other PROs.

Probably the simplest clearing mechanism is a two-level system with a negative list of design criteria (sorting and recycling of disruptive design solutions) which is divided into a base fee (lower fee) and malus fee (higher fee). The PROs will charge the producers an EPR fee according to the producers' report. Depending on the evaluation this is either a base fee or malus fee. A base fee is covering the full net costs of EPR compliance operating a PRO and is subject to competition of different PROs. Lower EPR fees for designs meeting the modulation criteria is an incentive for producers. A two-level modulation would also simplify the reporting for producers.

Another important aspect is, that the fee modulation criteria and magnitude shall not be subject to competition among PROs as this would water down the desired impact of an EPR fee modulation. Criteria and magnitude for the packaging EPR fee-modulation (negative list) should be defined centrally by an independent body (at least on national level). Alternatively and as previously stated ideally, the criteria should be fully harmonised across the EU not requiring national criteria at all, while Member States would then set the magnitude according to national circumstances.

Finally, PROs shall transfer 100% of the malus income (difference between malus fee and base fee) to a central fund that is administered by an independent coordinating body. The financial resources of the fund can subsequently be used to finance shared obligations of all PROs, including, among others, awareness raising campaigns, the financing of a central registry or activities related to research and innovation. To ensure that the financial resources are only used for activities that are directly related to waste management, it is essential that the activities to be financed via such a fund are clearly defined as part of the respective national legislation.

Please also refer to our [independent research by Adelphi](#) reviewing this aspect (chapter 4.2.3).

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About ERP

European Recycling Platform (ERP) was founded in 2002 to ensure high-quality and cost-effective implementation of the WEEE, batteries and packaging directives 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 5 million tonnes of packaging, more than 3.5 million tonnes of e-waste, and over 80,000 tonnes of portable batteries.

ERP is the first and only pan-European PRO authorised to operate in Austria, Denmark, Finland, Germany, Ireland, Israel, Italy, Norway, Poland, Portugal, Slovakia, Spain, 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