

## **EPR for packaging waste EUROPEN response to stakeholder consultation 3 December 2013**

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### **Preliminary question**

The questionnaire asks whether the results of this exercise should take the form of non-binding general guidance, Commission and Council recommendations to member states, legislation (notably amendments to the existing directives) or a combination of these.

EUROPEN would recommend a combination of legislative changes and guidelines, and therefore opts for:  
A combination of guidance/recommendations and legislation

- Legislation – notably through amendments to the existing Packaging and Packaging Waste Directive (PPWD) requiring Member States to adapt their ad hoc National legislation to common principles:
  - The revised PPWD should contain a harmonised definition of EPR for packaging waste and harmonisation of key definitions and reporting modalities (see Q9).
  - Ensuring a minimum level of EU harmonisation in the area of EPR, via minimum requirements (see EUROPEN's input to Q3) in the PPWD and a requirement for Member States to enforce them via authorisation procedures
  - Roles of key stakeholders should be clarified and defined in the PPWD (see Q2 and 'additional comments')
- Guidelines/recommendations:
  - In addition to the above legislative changes, a set of initial guiding principles for the Member States reflecting the work undertaken so far by the Commission would be very helpful to facilitate the process of creating awareness among the Member States.

**The questionnaire invites responses to the following 10 propositions:**

### **1) The EPR definition, scope and objectives should be clarified – what is your opinion regarding this statement?**

EUROPEN agrees with the overall statement. EPR is a policy approach<sup>1</sup> which obliges producers to take some or all responsibility for its products and/or packaging during its life-cycle. This legal responsibility entitles industry to take an active role in fulfilling this obligation and to control compliance costs for the end-of life management of its separately collected used packaging for recycling/energy recovery.

As suggested in the consultant's explanatory note, EUROPEN does not support prevention targets or reuse targets. The waste hierarchy was originally devised as advice to waste handlers on how best to deal with the waste that has been generated. It was never intended as a concrete design guide for producers. Packaging prevention is driven both by the need to reduce costs and by the need to reduce environmental impact, and a great deal of technological development is devoted to packaging optimisation. Reuse takes place where it makes economic and environmental sense (i.e. principally in the B2B sector or with low transportation distances).

### **What would you expect from the EC (what would you expect from the legal definition of EPR, in terms of minimum elements this definition should include?)**

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<sup>1</sup> OECD definition of EPR: "an environmental policy approach in which a producer's responsibility (physical and financial) for a product is extended to the post-consumer state of a product's life cycle. There are two features of EPR policy: (1) the shifting of responsibility (physically and/or economically, fully or partially) upstream toward the producer and away from municipalities, and (2) to provide incentives to producers to take environmental considerations into the design of the product." See [http://www.oecd.org/document/19/0,3343,en\\_2649\\_34281\\_35158227\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/19/0,3343,en_2649_34281_35158227_1_1_1_1,00.html)

The updated PPWD should contain a harmonised definition of EPR for packaging waste. We support the [OECD definition](#)<sup>2</sup> as a generic definition, which can be used as a basis to further specify EPR for packaging waste in the PPWD. A separate codification of EPR for packaging waste in the PPWD is needed to reflect its particularities in terms of packaging materials and types, volume, consumer interaction, and the existing and specific packaging waste management infrastructure in place.

The role of EPR schemes is to take over obliged industry's' legal obligation, including the take-back obligation, and to meet recycling and recovery packaging waste targets in the PPWD. The role and objectives of EPR should be clearly defined in the PPWD. Additional economic initiatives (e.g. supporting recycling industry), eco-design or social objectives (i.e. local jobs) are not a part of EPR.

## **2) Responsibilities should be shared and clearly defined along the whole supply chain.**

EUROPEN agrees with the overall statement but questions the practical and financial implications on the guiding explanation of the statement.

All participants in the value chain have to work together to achieve effective collection and recycling of used packaging. EUROPEN acknowledges that obliged industry has a responsibility for its products throughout their lifetime, including the post-consumer phase. However, a condition of accepting legal responsibility for its separate collection, sorting and recycling or recovery must be that companies are allowed to choose how to do this. The options available should include self-compliance or collective compliance, typically through an EPR scheme.

## **What would you expect from the European Commission (definition of the roles of the different stakeholders, minimum requirements in terms of dialogue and stakeholder consultation)?**

The roles should be clarified and defined in the PPWD. See EUROPEN's suggestions under 'additional comments'.

EUROPEN supports stakeholder platforms to align communication efforts on sorting and recycling to citizens. Sharing control through a multi-stakeholder platform, including the waste operators, does not allow obliged industry to control what it pays for in line with its legal responsibility. Financial and operational responsibility cannot be separated. Each stakeholder with financial responsibility must be able to influence performance and costs. The one who pays must also have the possibility to secure financial control and transparency. This is a precondition in order to appropriately manage the shared responsibilities

R&D needs, efficiency gains and sharing information should remain core of the management of the PRO/EPR scheme and not be part of the stakeholder platform, as this is also an asset of the individual EPR scheme and may differ from competing PROs.

## **3) Notwithstanding the way competition takes place, a clear and stable framework is necessary in order to ensure fair competition, with sufficient control and equal rules for all, supported by enforcement measures (including sanctions) and transparency.**

EUROPEN agrees. The current situations and performances in the Member States vary too drastically between the best in class and lowest performers.

The revised PPWD should contain minimum requirements for all EPR schemes and a requirement for Member States to enforce them via authorisation procedures. This would facilitate compliance monitoring for Member States, ensure fair competition between multiple schemes at national level, and discourage free riders. Minimum rules for all EPR schemes (regardless of their ownership) should cover areas such as scope (geographical scope, types of packaging material to be covered), transparency (material flows, cost, tendering procedures), consumer information, monitoring, reporting and audits, and financial solidity.

## **4) An independent clearinghouse is necessary, especially in the case of competing PROs.**

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<sup>2</sup> "An environmental policy approach in which a producer's responsibility (physical and financial) for a product is extended to the post-consumer state of a product's life cycle. There are two features of EPR policy: (1) the shifting of responsibility (physically and/or economically, fully or partially) upstream toward the producer and away from municipalities, and (2) to provide incentives to producers to take environmental considerations into the design of the product."

In countries with competing EPR schemes/PROs, a clearing house needs to be established to ensure transparency, robust data reporting and a level playing field on the collection, sorting and recycling level.

There would seem to be no need for a clearing house in countries where there is only one PRO for packaging waste provided there is strong public oversight.

**What is expected from the EC in terms of regulation, guidance, definition of the role of clearing houses?**

We strongly believe that a common definition of a clearing house and its scope/ objectives, minimum reporting requirements, competition rules/minimum requirements and financing/ownership and operation should be defined in the PPWD. In specific, a clearing house could provide public information (e.g. sorting instructions), analyse the tonnages of used packaging collected, cartel prevention, data management and control and data transparency.

**5) In line with the polluter pays principle, the design and implementation of an EPR scheme should make sure that the full costs related to the end of life of products are covered.**

It is not clear whether this proposition is intended to mean that full costs should be covered through the shared responsibility of all players (see our response to proposition 2) or only by obliged industry.

EUROPEN considers the full cost a shared responsibility by various actors throughout the packaging value chain. As for obliged industry, the full net cost principle should apply covering collection costs and taking the resale value of the material into the equation. This is not only fair in terms of cost vs benefit, but also incentivises producers to improve the end-of-life performance of their packaging in order to increase its resale value.

See also our input to Q2(b) and Q7

**On this topic, what would you expect from the European Commission (minimum requirements on the costs that should be included in the full cost)?**

The full net cost principle should be implemented in the PPWD as it is defined also in the Battery Directive and we recommend taking the same definition. Obligated Industry is prepared to cover the lowest sustainable cost to meet the legal recycling and recovery targets which covers the collection costs and sorting costs minus the secondary material value.

The questionnaire suggests to include collection, transport and treatment costs for [packaging] waste which goes into the residual waste bin. EUROPEN cannot accept this. Residual waste (including packaging waste not collected separately for recycling and/or recovery) from households and public areas should remain the responsibility of municipalities. However, EPR compliance schemes need to collaborate with municipalities to reduce residual waste in the collected packaging fraction. This can be done via financial incentives granted to municipalities making continuous efforts to lower residual waste and enhancing secondary material quality.

**6) When obliged companies (through Producer Responsibility Organisations) are required to contribute financially, the contributions should be based on a 'reference cost'.**

EUROPEN disagrees with this statement. We question how the benchmark will be set, by whom and by which criteria. On the principle of subsidiarity, cost depends on many factors playing at national/local level, e.g. geography, transport distances, density of populations, islands, way of trade, percentage of out of home consumption. A reference cost also contains a high risk to inhibit innovation (e.g. for sorting and collection techniques) and if the EPR scheme does not benefit from any value in the sale of materials, it can work against incremental improvements in quality.

**7) The fees paid by a producer to a collective scheme should reflect the true end-of-life management costs of his products.**

The fees paid by the obliged industry should cover the true full net cost to meet their legal obligation for the packaging they place on the market and to give effect to the principle of EPR.

Obligated industry must have decisive control over the collection and sorting services (quality) and costs (i.e. means, frequency, availability...) concerning the separately collected packaging waste for which it is financially liable to ensure the most cost/quality effective results.

End of life design innovations are appropriately driven inside companies and should not be the responsibility of EPR schemes. Eco-design innovation reflects the life-cycle approach for packaging which has served a specific purpose for specific product requirements in a specific packaging waste management system and packaged product supply chain.

**On this topic, what would you expect from the European Commission (in terms of technical guidance on fees modulation, targets and objectives on prevention, etc)?**

The true full net cost is the standardised cost for separate collection, sorting and recycling/recovery of packaging waste originating at households and similar, minus the profit made by selling the materials recovered. These costs also incorporate good governance principles, control on cost (for collection, auditing, material traceability through the recycling/recovery chain and reporting), performance and waste shipments, as well as communication and awareness campaigns for the general public.

The true full net cost excludes eco-design (this is the cost of the obliged company and its business and life-cycle intelligence), additional waste prevention measures, recyclability, control on free riders, litter management, management of the waste covered by EPR present in residual fraction.

On prevention targets, see our response to Q1.

**8) Transparency is required on performance and costs.**

EUROPEN agrees. See our request for minimum requirements in our response to Q3.

**9) Harmonisation of key definitions and reporting modalities is needed at the European level.**

EUROPEN agrees that the revised PPWD should contain harmonised definitions of 'recycling' and 'recovery' (according to the WFD and the CEN standards), along with a clear distinction between post-consumer and industrial, commercial and institutional packaging waste. However, we do not believe that a harmonised definition of 'reuse' is appropriate. The reuse of bottles or drums in a system and with infrastructure designed for that purpose (principally a washing operation) is very different for the "preparation for reuse" of old computers or furniture. The two should not be compared.

Harmonized definitions are also needed for separate collection, responsibilities of different actors, and of 'obliged packaging'. Harmonization is also needed for what is counted among packaging and the de-minimis threshold definitions which is currently excluded from the PPWD. For instance, in Slovenia this represents 1/3 of total packaging put on the market which increases the pressure on the paying industry and municipalities; also in Ireland the very high de-minimis rule supports free riding.

**On this topic, what would you expect from the European Commission (in terms of definitions to be harmonised, clarification of reporting modalities, etc)?**

On definitions, see our response above to Q9.

Harmonised calculation and reporting methods should also be introduced at EU level, to ensure that data can be effectively tracked and compared between member states. Member states should be required to provide information concerning amounts of packaging put on the market and amounts of post-consumer packaging recycled and recovered.

**10) Member states and obliged industry are co-responsible for enforcement, and should ensure that adequate means for monitoring and control are in place.**

The questionnaire indicates that this should consist of a formal authorisation procedure, public control and auto-control by obliged industry/PROs. EUROPEN agrees that there should be a common minimum requirement across the EU concerning formal authorisation of PRO's and public control. We also agree that the obliged

industry has a role to play in performing regular audits of PRO and ensure high quality of reporting and transparency.

Third-party verification should not be mandated at EU level: it should be up to the national authorities to determine whether this is necessary. Also, other than the existing appropriate law (eg. Waste Shipment Regulation) enforced by Member States, we do not believe that there should be an EU-wide requirement for obliged industry/PROs, or have a role, in controlling the export of materials. However, applying the full net cost principle, which would allow the PRO to benefit from the material value, would give greater visibility to the material flow and a greater incentive to ensure high quality recycling.

**Additional Comments (max 30 lines)**

*(Further to Q2)*

EUROPEN suggests to define the roles and responsibilities in the PPWD as follows:

Citizens: Consumers (packaging waste holders) have the prime responsibility to separate packaging waste at source following guidelines and awareness campaigns from the respective local authorities and EPR schemes/PROs.

EPR schemes/PROs shall manage material and money flows for the collection, sorting, recycling and recovery of post-consumer packaging. They are responsible for meeting the legal obligations for recycling and recovery at lowest sustainable cost for their customers (obliged industry) and ensure that fees reflect accurately the different end-of-life management costs for each material.

Municipalities/local authorities: have the financial and operational responsibility for collection, treatment and disposal of municipal waste generated by consumers (in households) and for waste of similar origins and charge consumers for their services (e.g. via pay-as-you-throw schemes). This includes the responsibility for packaging left in residual municipal waste which is not collected separately for recycling and recovery.

Producers and importers of packaged goods take over full or partial financial and operational responsibility for the separate collection, sorting and recycling/recovery of packaging waste. Producers must be allowed to transpose their obligations to EPR schemes/PROs.

Packaging manufacturers are responsible for identifying recycling or recovery capacities. When in some cases they are part of the obliged industry, manufacturers must be allowed to transpose their obligations to EPR schemes/PROs.

Waste management companies (including sorting plant operators) develop their service portfolio for separate collection and sorting, work within a contractual frame and follow performance criteria stipulated in a contract. They are also responsible to develop new sorting technologies to sort out new types of collected material and to enhance quality of collected material.

Member States shall be in charge of reporting results to the EU and for enforcing rules that secure fair competition among economic operators and EPR schemes/PROs.