

EUROPEN position on Extended Producer Responsibility for post-consumer packaging in the EU

THE POLICY CONTEXT

Extended Producer Responsibility (EPR) is a policy approach¹ which obliges producers to take some or all responsibility for its products and/or packaging during its life-cycle, including the post-consumer phase. This legal responsibility entitles industry to take an active role in fulfilling this obligation and to control compliance costs. Its use by Member States as a tool for meeting EU waste policy objectives and targets has expanded significantly since 1994 when the EU Directive on Packaging and Packaging Waste (PPWD) was adopted. In addition to packaging, the revised Waste Framework Directive (2008/98/EC) (WFD) encourages use of EPR measures in other sectors, and some EU Directives explicitly require Member States to implement EPR for specific waste streams².

The PPWD, although not explicitly mandating EPR, allowed Member States to use the approach at national level³, and as a result it has become a central instrument of national packaging waste policies since the 1990s⁴. EPR is now implemented in 25 of the EU's 28 Member States (Denmark, Hungary and Croatia being the exception), and producers and their packaging supply chains have responded by setting up EPR schemes⁵ - in particular compliance schemes - for the separate collection, sorting, recycling and recovery of packaging across Europe. EPR has proven to be successful both in its own right and as a tool for implementing the recycling and recovery targets set by the PPWD. By 2010, EU-wide rates for used packaging recovery had reached 76% and for recycling 63%. In the process, the successes of the PPWD and of EPR have become interlinked if not inseparable.

At the same time significant changes, outlined below, have taken place in the regulatory and market environment since 1994, some leading to divergent practices undermining the recovery and recycling performance of packaging. Factors characterising the current setting include:

- Differences in EPR practices resulting from Member State implementation of the PPWD
- Lack of consistency and enforcement of compliance obligations in national packaging and packaging waste legislation
- Shifts in responsibilities for packaging waste between municipalities and industry
- Uneven progress between Member States in meeting EU recycling/recovery targets
- Changes emerging in national policies and the operational context for packaging waste

¹ 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

² End-of-Life Vehicles Directive 2000/53/EC, WEEE Directive 2002/96/EC, Batteries Directive 2006/66/EC.

³ Article 7 requires Member States to ensure that systems open to the participation of economic operators are set up to provide for the return and/or collection of used packaging and its reuse or recovering. A recital indicates that the legislator intended that EPR be applied in national implementing measures: "Whereas the development and implementation of the measures provided for in this Directive should involve and require the close cooperation of all the partners, where appropriate, within a spirit of shared responsibility."

⁴ Germany (1991), Austria (1992), France (1992), Sweden (1994), Belgium (1995), Spain (1997).

⁵ EPR Schemes include 1) compliance schemes – organisations whose main purpose is to offer compliance with requirements on recycling and recovery of packaging waste, and to manage take-back obligations, on behalf of the obliged industry (collective compliance). 2) Packaging Recovery Organisations (PROs) – organisations that offer commercial services and operations linked to packaging recovery management to the obliged industry.

Differences in EPR practices resulting from Member State implementation of the PPWD

Although the vast majority of Member States have provided for EPR in national legislation, there are differences in how it is implemented. These, combined with other changes highlighted below, are hampering the continued increase in the recovery and recycling of post-consumer packaging waste. Differences relate in particular to:

- Degree of emphasis on post-consumer packaging: Although consumer packaging generally represents the largest and most visible share of packaging placed on the market, legislation in some Member States (e.g. Poland, Lithuania, Latvia) permits heavy reliance on the collection and recycling/recovery of industrial, commercial and institutional (IC&I) packaging waste to meet legal targets. Although it is easier and cheaper to collect, focus on IC&I packaging waste weakens industry's ability to achieve high recycling and recovery rates because the largest volumes are lost.
- Definition of EPR: There is no EU harmonised definition of EPR. Most Member States have interpreted EPR in a way which gives producers flexibility to decide how best to fulfil their legal obligation, for example by managing them individually or by setting up and funding an EPR scheme. However, increasingly, EPR is also interpreted in a way that takes the control or effective influence on costs away from the obliged industry. In some cases, the fees paid to fund separate collection⁶, sorting and recycling or recovery end up being diverted to general state revenue unrelated to recycling or recovery.
- Allocation of responsibilities: The PPWD provides for a loosely defined shared responsibility of the economic operators (article 7), which leads to differences in how the roles and responsibilities of the obliged industry⁷ and municipalities are defined in national legislation. In many cases, this local cooperation is working well. However, in a number of Member States, municipalities are seeking to take over and control separate collection and sorting of post-consumer packaging waste, with full cost-coverage by the obliged industry.
- Financing mechanisms: The loosely defined concept of 'shared responsibility' is also reflected in the financing mechanisms on local level (e.g. shared-cost or full-cost systems between EPR compliance schemes and municipalities). Whilst a close cooperation between municipalities and EPR schemes is critical for the long-term success and cost-effectiveness of recycling solutions, the scope and boundaries of financial responsibility for the collection, sorting and recycling of packaging and municipal waste can differ hugely between municipalities leading to a lack of transparency and level playing field.
- Cost-effectiveness of EPR: Shifts in the allocation of responsibilities may in turn lead into roles being assigned to parties who are not best placed to fulfil them. For example, compliance schemes are usually best placed to have a nationwide overview of post-consumer packaging volumes available for separate collection and, consequently, the capacities and suitable locations for sorting plants. Thus industry is well positioned, in cooperation with municipalities, to know how to organise separate collection and sorting at the lowest sustainable cost⁸ to society.

Lack of consistency and enforcement of compliance obligations in national packaging and packaging waste legislation

As the PPWD addresses Member States who then transpose and implement it in their national laws, industry has been primarily concerned with compliance at national level. Industry has responded to national EPR requirements by setting up EPR schemes in almost all EU Member States including those who joined the EU after the PPWD was adopted.

⁶ Separate collection is defined in the EU Waste Framework Directive as "collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment". Several packaging materials and formats intended for recovery and recycling may be collected together, but separately from residual household waste intended for disposal.

⁷ Definitions of 'obliged industry' differ between Member States. It can be defined to include packaged goods producers and importers of packaged goods; packaged goods producers, importers of packaged goods and packaging manufacturers or the entire packaged goods value chain including retailers.

⁸ 'Lowest sustainable cost' is a holistic and transparent cost approach that allows compliance schemes to effectively achieve recycling and recovery targets and objectives. Lowest sustainable costs internalise all applicable costs to achieve targets, are non-discriminatory across all packaging materials covered, and reflect actual recycling and recovery costs as far as possible.

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 targets. They do this typically by charging producers a fee on all the packaging they place on the market, which is used to pay private service providers or to compensate municipalities who collect and sort post-consumer packaging. Collected packaging is sold to recyclers or recovery plants.

EPR compliance schemes organise and manage the collection, sorting and recycling or recovery of post-consumer packaging through third parties, thus they are not vertically integrated. Packaging Recovery organisations (PRO)⁹, on the other hand, can be vertically integrated and are often run by Waste Management Companies.

EPR schemes generally operate in competition, mostly without a level playing field (e.g. with regards to universal service requirements or minimum coverage of inhabitants in function of their market share¹⁰), thus creating unfair competition.

On the other side, weak enforcement of legal obligations in combination with unclear roles and responsibilities of the different actors encourages 'free-riders'¹¹ and undermines competition and sustainability of the schemes.

Shifts in responsibilities for packaging waste between municipalities and industry

Municipalities are in charge of managing municipal waste, including packaging waste which is not collected separately for recycling or recovery. In some countries, EPR schemes have taken over completely from municipalities the organisation and cost of separate collection and sorting of post-consumer packaging (e.g. Austria, Belgium, Germany, Sweden). In others, the costs and responsibilities are shared and organisation of collection and sorting may be done by municipalities or through contracts between the EPR schemes and private waste management operators (e.g. France, Spain, Czech Republic).

Uneven progress between Member States in meeting EU recycling/recovery targets

Overall, the EU packaging recycling and recovery targets are being met or exceeded¹². However, recycling and recovery rates in individual EU Member States vary widely. In 2010¹³ the best performing Member States reported packaging recycling rates in excess of 80%, while less performing Member States report around 40%.

The reasons for differences in performance include:

- Variations in national methods of calculating and reporting recycling and recovery rates: Commission Decision 2005/270/EC¹⁴ sets some rules on how to calculate and report quantities of packaging placed on the market and recovery and recycling rates. However, it does not distinguish between post-consumer and IC&I packaging, and some provisions may be interpreted differently.
- Uneven implementation and enforcement of the EU Waste Framework Directive and Waste Shipments Regulation: Incomplete or inadequate implementation and enforcement of waste legislation hampers collection and management of all household waste, including packaging. It also leads to export of recyclables to third countries, which discourages investment in new recycling and recovery technologies and capacities in the EU.

⁹ EPR Schemes include 1) compliance schemes – organisations whose main purpose is to offer compliance with requirements on recycling and recovery of packaging waste, and to manage take-back obligations, on behalf of the obliged industry (collective compliance). 2) Packaging Recovery Organisations (PROs) – organisations that offer commercial services and operations linked to packaging recovery management to the obliged industry.

¹⁰ Defined over the licensed volume.

¹¹ 'Free riders' are economic operators who neither fulfil their legal obligation individually nor contribute to the full extent to any EPR scheme.

¹² The overall recovery target is 60% and the overall recycling target is minimum 55% / maximum 80%; deadlines for Member States to achieve these targets ranges from 2008 to 2015.

¹³ Eurostat

¹⁴ Commission Decision 2005/270/EC establishing the formats relating to the database system pursuant to Directive 94/62/EC on packaging and packaging waste

- Collection, transportation and sorting infrastructure: A lack of infrastructure in some Member States may mean for example that household waste collection is not yet in place nationwide—this is a pre-requisite for separate collection of post-consumer packaging for recycling and recovery. Conversely, some Member States have an excess of sorting infrastructure which may lead to cost-inefficiencies. In addition, different levels of technology are used for the collection, transportation and sorting of post-consumer packaging, creating uneven performance amongst Member States.
- Volumes of packaging on the market: Separate collection, sorting and recycling/recovery is relatively more expensive in countries with lower than average per capita consumption and/or population density than in countries with high per capita consumption and/or population density.

Changes emerging in national policies and the operational context for packaging waste

The setting for EPR is further influenced by the following developments:

- Renewed divergences between national measures: The main justification for adopting the PPWD in 1994 was to tackle wide disparities¹⁵ in how post-consumer packaging was being addressed in the Member States and it has, in the main, been successful in this regard. However, adaptations in national legislation (e.g. in Austria, Belgium, Germany, Italy, Poland) are once again contributing to an incoherent regulatory framework across the EU. Examples of this include differences in the allocation of responsibilities between municipalities and the obliged industry, as well as in the design, management and ownership of compliance schemes and of systems for collecting packaging materials. Although national packaging waste measures must be adapted to local circumstances, certain issues are not unique to single countries and require a coordinated EU response.
- The value of waste and its use as a secondary raw material: In the early 1990s, post-consumer packaging had a low or negative value and all activities associated with its recycling and recovery came at a cost. Today there is significant revenue to be generated from selling collected and sorted packaging materials to recyclers and recovery plants, and high quality secondary materials are needed in industrial processes. Thus, stakeholders (producers, waste management operators, municipalities) all have an interest in controlling and owning collected and sorted packaging materials.
- New and competing EPR schemes: In the 1990s, the vast majority of EPR schemes was operated nationwide by the obliged industry as 'not-for-profit' or 'profit-not-for-distribution' organisations. The original purpose of these schemes was purely for the obliged industry to secure compliance by transferring its legal obligations to a third party. Today, annual fees paid by producers to EPR schemes¹⁶ in Europe¹⁷ are estimated up to €3,1 billion¹⁸. EPR has been identified as a business opportunity for private waste management operators, investors and entrepreneurs. Thus, in many countries we now find competing commercial EPR schemes owned by private waste management operators or investors offering their services to the obliged industry without a clear legal framework as the national legislation in most Member States does not foresee competing EPR schemes.
- Unclear legal provisions for competing EPR schemes: in many Member States (e.g. Germany, UK, Slovenia, Romania, Slovakia) national packaging waste legislation does not provide a clear regulatory framework for competing EPR schemes. Hence, it does not assign a clear responsibility to national authorities to control and enforce requirements and governance for the schemes. This leads to a lack of transparency and supports 'free-riding'.

EUROPEN'S POSITION AND RECOMMENDATIONS

¹⁵ In the early 1990s, Member States were either taking conflicting measures or doing nothing at all. National measures sometimes caused trade barriers or disrupted emerging recycling markets in neighbouring countries.

¹⁶ Aggregate of industry-owned compliance schemes (not-for-profit) and competing systems (for profit)

¹⁷ EU + Turkey, Iceland, Macedonia, Israel, Serbia and Norway.

¹⁸ This estimate excludes additional payments by producers to tax regimes (e.g. Denmark and Hungary) and to the different deposit systems (approx € 1 to 1,5 billion).

EUROPEN's member companies are part of the obliged industry and as such fulfil EPR requirements at national level. A number of our members are founding members and shareholders of EPR schemes and have been actively involved in these schemes for over 20 years.

EUROPEN is pleased to contribute to current discussions on EPR at the EU level and to share the assessment and conclusions of our members. In our view, the revised PPWD should enhance industry's capacity to carry out its EPR legal obligations Europe-wide. It should help to divert post-consumer packaging from landfill and ultimately drive higher recycling and recovery rates across the EU. Ensuring a minimum level of EU harmonisation in the area of EPR can help where this cannot be achieved through individual national measures alone.

1. Implementation and enforcement of EU waste legislation in all Member States

EUROPEN stresses the importance of effective implementation and enforcement of existing EU waste and packaging waste legislation. We welcome in this regard the European Commission's initiative to take bilateral contacts with 10 Member States and its intention to monitor the content of national waste management plans and to recommend changes if necessary.

Full implementation and enforcement of EU waste legislation is a pre-requisite to ensure conditions for effective separate collection of post-consumer packaging materials. Separate collection needs to be done in volume and value sufficiently high to:

- minimise exports of secondary materials to third countries,
- secure fair competition for European recyclers, and
- stimulate further sustainable investments in recycling technologies.

Recommendation: The European Commission should continue its 'compliance promotion initiative' and its plans to assess national waste management plans and monitor developments. Member States should follow the tailored recommendations outlined in the individual country roadmaps¹⁹.

2. The role of the Packaging and Packaging Waste Directive

EUROPEN strongly supports the PPWD, including the internal market principle as its sole legal base²⁰. In our view the directive's dual objectives—to protect the environment whilst securing the free movement of packaging and packaged goods throughout the EU, as well as avoiding divergences in national policies—remain valid today. The PPWD also ensures regulatory security and predictability for companies investing in the packaging recycling and recovery value chains. Moreover, in transposing the Directive, national legal frameworks have been set up enabling industry to carry out its EPR requirements and so help Member States meet EU recycling/recovery targets. However, new challenges related to its environmental objective require the PPWD to be updated so that it can continue to be relevant and effective and to help the EU meet the aspirational objectives set in the EU Resource Efficiency Roadmap²¹.

In EUROPEN's view, a specific regulatory approach for packaging remains essential because targeted legislative measures are necessary to ensure that packaging—and post-consumer packaging in particular—gets collected separately for recycling or recovery. Distinguishing features of post-consumer packaging are:

- it arises in households and, increasingly, on-the-go; thus collection points are widespread and success depends on the participation of citizens, making post-consumer packaging more sophisticated and expensive to collect than IC&I waste streams;
- it arises daily in significant volumes; thus it is more visible and politically sensitive than other waste streams;
- it is not homogenous; thus it is more challenging to collect and sort than other waste streams.

¹⁹ See http://ec.europa.eu/environment/waste/framework/support_implementation.htm

²⁰ Art.114 in TFEU on the establishment and functioning of the Internal Market

²¹ *Roadmap to a Resource Efficient Europe*, COM (2011) 571. Aspirational objectives for 2020 include limiting energy recovery to non-recyclable materials and virtually eliminating landfilling.

EUROPEN believes that EU and national legislation must continue to recognise packaging's vital role in protecting and distributing goods and food. Packaging prevents product spoilage and wastage, protects human health and ensures safety. Finally, the PPWD should continue to cover within its scope all packaging formats and materials in a non-discriminatory manner.

In addition to maintaining the PPWD's original rationale and fundamental principles, EUROPEN believes that certain additions are needed particularly in the area of EPR. Finally, EUROPEN welcomes the European Commission's 'fitness check' of the PPWD which will include an evaluation of its effectiveness, efficiency, relevance and coherence with other waste legislation.

Recommendation: Maintain the legal base, objectives and core provisions of the PPWD, while amending environmental provisions to drive collection and recycling/recovery of post-consumer packaging.

3. Harmonised definitions and implementation of concepts, such as EPR, recycling and recovery

Significant differences in interpretation and practice of EPR across the EU have led to varying results and to sub-optimal use of EPR. EUROPEN supports the OECD's definition of EPR²² as the basis for defining the packaging value chain's role in the separate collection and sorting of post-consumer packaging for recycling and recovery, and for internalising compliance cost into product prices. In our view, a harmonised definition of EPR, which would apply across all relevant EU and national legislation, would be the first step to a common understanding and application of this concept, and thus to improved implementation of EPR in practice.

Similarly, there are different EU definitions of recycling and recovery, for example in the WFD and PPWD. This, combined with different national interpretations and methods to calculate recycling and recovery rates, leads to divergences in Member States' compliance costs and in national performances as reported to the European Commission. EUROPEN supports the definitions of recycling and recovery in the WFD²³. Guidance, such as that published by the EU Commission on key provisions of the WFD²⁴, also helps to align interpretations of concepts defined in EU legislation.

Recommendation: Introduce in the PPWD an EU harmonised definition of EPR and align the definitions of recycling and recovery with those in the WFD.

4. Flexibility for the obliged industry to choose how to comply with its legal obligations

All participants in the value chain have a degree of responsibility particularly as Europe moves towards a more resource efficient circular economy. EUROPEN acknowledges that industry has a responsibility for its products throughout their lifetime. This includes the post-consumer phase of the packaging. 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, for example through an EPR scheme.

As industry has the legal responsibility, industry must be entitled to take an active role in fulfilling these obligations and to control compliance costs. This means being enabled to control how separate collection, sorting and recycling / recovery are organised and to drive cost-efficiency to ensure the lowest sustainable

²² 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

²³ Waste Framework Directive 2008/98/EC: 'recycling' means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations; 'recovery' means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy.

²⁴ European Commission, Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste, June 2012

cost to consumers and society. Mandated transparency on material flows, cost and performance of schemes is key.

Recommendation: Introduce in the PPWD a requirement for Member States to allow obliged industry to choose how they wish to fulfil their legal obligations and to control performance and costs.

5. The roles and responsibilities of municipalities and industry

EUROPEN supports existing requirements in the PPWD which oblige industry to ensure that all packaging put on the market is recyclable and/or recoverable. In EUROPEN's view, industry, the municipalities and citizens each have specific roles and responsibilities to perform in order to ensure the separate collection, sorting and recycling or recovery of post-consumer packaging.

Industry can only effectively comply with legal EPR obligations if Member States (municipalities) ensure that citizens have access to waste management²⁵ services for residual waste and separate collection of recyclables. Thus it is, in our view, the full responsibility of municipalities to manage residual waste (including packaging waste not collected separately for recycling and/or recovery) from households and public areas. Industry should help to organise and pay for separate collection and sorting of post-consumer packaging to meet recycling and recovery targets.

Recommendation: Introduce in the PPWD a provision which requires Member States to assign roles and responsibilities to public authorities and economic operators.

6. A requirement for separate collection of post-consumer packaging

Collection of post-consumer packaging separately from organic or non-recyclable waste is essential to ensure a level of quality and quantity that makes recycling and recovery economically viable and environmentally beneficial. In EUROPEN's view, the PPWD should explicitly require the separate collection of post-consumer packaging for recycling and recovery with the objective to optimise recycling opportunities whilst not creating unnecessary burdens and complexities for the consumer. In particular, appropriate recycling and recovery targets should be combined with a requirement to collect separately post-consumer packaging for which recycling capacities are in place. EUROPEN also supports the recommendations in the European Commission's roadmaps (see footnote 24) for certain Member States to apply incentives for citizens to separate household waste (e.g. pay-as-you-throw, landfill taxes).

Recommendation: Specify the requirements for post-consumer packaging collection in the PPWD, for example by separate post-consumer packaging recovery/recycling targets.

7. Minimum requirements for EPR schemes

EUROPEN believes that it is appropriate for Member States to implement the PPWD according to their specific national and local conditions. We welcome competition between EPR schemes as a means to incentivise efficiency and lower costs. However, competition must be fair. Activities such as 'cherry picking' of post-consumer packaging which generates the highest revenues and a lack of transparency create a high risk that producers will not be able to fulfil their legal obligation, which jeopardises Member States' requirement to meet current and future national packaging recovery and recycling targets.

In EUROPEN's view, basic principles and rules for all EPR schemes (regardless of their ownership) must be enshrined in EU legislation along with national authorisation procedures which Member States would be required to implement and enforce. This would facilitate compliance monitoring for Member States, ensure fair competition between multiple schemes, and discourage free riding. Minimum rules should cover areas such as scope (geographic scope, types of packaging material to be covered), transparency (material flows, cost, tendering procedures), consumer information, monitoring, reporting and audits, and financial solidity.

Recommendation: Introduce in the PPWD minimum requirements (e.g. geographic scope, types of packaging material covered, transparency on material flows, cost and tendering procedures) for all EPR

²⁵ 'Waste management', as defined in the Waste Framework Directive, means "the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker".

schemes and a requirement for Member States to implement and enforce authorisation procedures for the schemes.

8. Rules for calculating and reporting packaging recycling and recovery rates

Inconsistencies in the methods used by Member States to calculate packaging recycling and recovery rates lead to unreliable and non-comparable statistics. This means that it is not possible to accurately assess progress in meeting EU targets and objectives, or to have a reliable factbase on which to set new or revised targets. It also allows some Member States to report recycling and recovery rates which are in line with the targets, without developing separate collection of post-consumer packaging. This, in turn, creates opportunities for economic operators to 'free-ride' and for compliance schemes to 'cherry pick'. Thus, EUROOPEN supports the view that harmonised calculation and reporting methods are needed at EU level.

Recommendation: Develop or refine harmonised rules for calculating and reporting so that amounts of packaging placed on the market and post-consumer packaging separately collected and recycled or recovered can be tracked. This must be combined with harmonised implementation of definitions of 'recycling' and 'recovery', as outlined above.

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