

EXPRA's comments on Eunomia's recommendations regarding EPR costs

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The Extended Producer Responsibility Alliance (EXPRA) would like to express the sector's serious concerns over Eunomia's recommendations for the Commission's guidelines regarding Extended Producer Responsibility costs.

We particularly object to the broad interpretation of EPR costs that the recommendations are suggesting, making everything and anything fit into the Directives' cost coverage obligations. While triggering legal uncertainty as to what EPR schemes should be financially covering, proposed concepts such as 'the wider targets' absolutely defeat the purpose of having common cost provisions around which all Member States should try to align.

It is worth recalling that the Waste Framework Directive (WFD) explicitly states that *'the general minimum requirements should reduce costs and boost performance, as well as ensure a level-playing field, including for small and medium-sized enterprises and e-commerce enterprises, and avoid obstacles to the smooth functioning of the internal market'* (WFD Recital 22).

With the above in mind and while acknowledging a certain margin of maneuver for the various countries to reflect their national specificities, if costs provisions in EU law were not to pursue some degree of harmonisation among Member States, we would call for removing these provisions in future legislative reviews.

➤ **Sticking points of Eunomia's proposed approach include the following:**

- **Necessary costs:** To date, it has been widely understood that the 'necessity' principle refers to EPR schemes financially supporting waste management activities that, within their specific remit, are primarily required for meeting their recycling targets. The latter should set the boundaries for EPR costs.

In this respect, the Packaging and Packaging Waste Directive explains that the objectives set out in it, which aim to prevent any impact from packaging and packaging waste on the environment while ensuring the functioning of the internal market, require the principle of proportionality to be applied to EU-wide measures. This is why the Directive does not go beyond what is necessary in order to achieve those objectives (PPWD Recital 27). Eunomia's recommendations are not in line with these principles.

- **'Wider targets' concept:** Eunomia proposes such a concept to infer that, even in the event of EPR schemes attaining their objectives, they could be required to contribute further in order to help meet municipal waste recycling targets.

Please note that packaging is not a marginal component of municipal waste but it is certainly not the only one. By meeting their recycling objectives, packaging EPR schemes would already be playing their part vis-à-vis municipal waste obligations. Should all waste streams falling under municipalities' scope meet their legal requirements, municipal waste targets should be achieved, provided said targets had been appropriately calculated.

The ‘wider target’ concept is especially unacceptable in Member States where municipalities have the operational role of designing the separate collection of packaging waste. As explained later in this document, their choices may divert from the cost-efficiency principle, which would leave EPR systems facing disproportionately high costs.

In any event, any additional responsibility over EPR schemes should be reflected in an adequate allocation of roles and responsibilities among value-chain stakeholders that Member States should define by law at national level. This dimension has been completely omitted in Eunomia’s analysis. Should extra burden be put on packaging EPR schemes, it should be made clear how other waste streams would be contributing as well. Please note that many of these other streams have not been thus far regulated, and are not bound to EPR obligations. However, the producers of those products should be made accountable for their share.

Also, it is worth recalling that packaging recycling targets have been increased without considering the changes in the recycling calculation method, while Member States could, in fact, impose higher targets than those stated by the Directives. This landscape reflects the challenges that EPR schemes are and will be confronted with, which have to remain their main focus from both an operational and financial perspective.

Eunomia’s paper moreover refers to EPR needing to ensure service continuity in the event of meeting their targets. The WFD already establishes that, *‘in order to ensure proper waste management, where producers of products or organisations implementing extended producer responsibility obligations on their behalf are responsible for the management of waste from products that they place on the market, they should ensure continuity of waste management services throughout the year, even if the targets and objectives applicable to them are met’*. Industry-owned, non-profit schemes under EXPRA abide by this principle and ensure the continuity of their services even in unfavorable market conditions. This should therefore not become an excuse for justifying EPR schemes needing to fulfill municipal waste targets.

- **Relevant targets and objectives set by Member States:** EXPRA acknowledges that Member States would be entitled to add specific objectives, either quantitative or qualitative, for EPR schemes. However, besides these needing to be ‘relevant’ to the schemes’ scope, they would need to remain strictly connected to the schemes’ obligations towards their specific targets. In so doing, said schemes would be contributing to municipal waste and landfill targets but are not responsible for their ultimate compliance.

Should other collection channels be, for instance, required for EPR schemes to meet their recycling targets, the financial coverage of those efforts should indeed be negotiated at national level, always based on actual, neutral information. As an example, packaging retrieved from municipal waste stream could, if needed, be paid for the share of reaching the packaging recycling targets, to which the ‘necessity’ principle should, by all means, apply.

Within this context, it would not be fair for the EU to recommend EPR paying for littering clean-up of all packaging as this would neither contribute to meeting the targets nor would help prompt systemic change, which should be the ultimate goal of a circular economy. Here, it is important to recall that legally-binding litter clean-up costs affect SUP products and packaging alone. Please consider the cost implications for EPR schemes should this obligation, which was purposefully left out of the Directives during their negotiation process, would entail for the economic viability of the schemes. This would also ultimately impact the internal market as producers in certain Member States assuming this cost obligation would be put at a competitive disadvantage over others.

- **Efficiency:** When public authorities are responsible for organising the operational aspects of managing waste from products that are subject to extended producer responsibility schemes, those services should be provided in a cost- efficient manner and the financial responsibility of producers of products should not exceed the costs that are necessary to provide those services (WFD Recital 24).

In this light, it is logical that the operational model subscribed in agreements with the local authorities include payments formulas which are underpinned by 'efficient' costs. This model aims at optimising the operations while pursuing a quality control system in order to ensure that industry payments cover efficiently-run services.

As a result, given that EPR schemes are responsible for financing the activities, they should be co-responsible for the choice of the cost drivers (e.g. the collection system). Until now, municipalities in some countries have considered this their sovereign territory. Should they make unilateral decisions that are not supported by EPR schemes, the latter should not be made financially responsible for said choices.

- **Transparency and fair accounting:** When public authorities are responsible for organising the operational aspects of managing waste from products that are subject to extended producer responsibility schemes, they should provide maximum transparency in their cost drivers and actual costs. This should be done in order to prevent that municipalities are remunerated for certain cost drivers by both EPR systems and the citizens of the municipalities, via municipal waste taxes.

To conclude, the EPR model has been recognised by the new Directives as a valuable tool for boosting the circular economy. However, this model as such is not endlessly elastic, which is why its economic viability should not be considered a given. The financial burden on EPR schemes should be holistically assessed from a sustainability and competitiveness perspective, ensuring that it is governed by proportional and fair measures under a shared responsibility approach, and is safeguarding the smooth functioning of the internal market.

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