

## **Joint Declaration on Eunomia's study to support the European Commission's guidance on the implementation of EPR provisions**

Our organisations welcome improvements in the final Eunomia report on Extended Producer Responsibility (EPR) guidelines, notably in terms of better demarcating the Directives' scope and national competences as well as improving the governance and transparency of EPR schemes.

We nevertheless wish to share some recommendations on certain aspects of the current report. We hope that the comments provided in this declaration, which are based on our long-term practical experience, will help strike the right balance in the Commission's final guidelines to Member States and ensure the effective implementation and enforcement of these new EPR guidelines across the EU.

### **Key recommendations**

The Eunomia's study suggests that Member States can go beyond the scope of the Waste Framework Directive by having EPR schemes cover the costs of waste management, including the costs of managing mixed waste streams. However, **EPR systems should only be made responsible for cost of waste management linked to their remit and their obligations towards achieving their specific recycling targets.** Therefore, we would like the Commission to provide a clear demarcation of responsibilities in the future EPR guidelines in order to avoid a fragmented implementation across the EU.

**Eco-modulation of EPR fees should reflect the net management cost of the various materials and formats that may make a difference within the recycling process. The net cost principle is, however, totally absent in the Eunomia report.** Regarding eco-modulation criteria, granularity should be introduced gradually, always meeting three important conditions: be based on solid technical proof (technically indisputable), not impose excessive administrative burden and be economically affordable for companies. We believe that packaging format-specific recycling rates are, at present, not a viable solution to the modulation of fees, particularly as they are not a modulation criterion within the Directive.

### **Main recommendations on EPR fees' modulation**

- **Waste management costs to be covered by EPR Schemes**
  - a) **Scope of EPR responsibility in relation to costs**

The report suggests that Member States can go beyond the scope of the Waste Framework Directive (WFD) by having EPR schemes cover the costs of waste management, including the costs of managing mixed waste streams. This represents in our view a misinterpretation of the Directive. We believe that EPR systems should not be made responsible for management of non-packaging waste, in supporting the achievement of municipal waste recycling targets. A clear demarcation of responsibilities in the future EPR guidelines is needed, in order to avoid a fragmented implementation in different Member States, which is ultimately the overall objective of such guidelines. As a matter of fact, the polluter pays principle is recalled in Article 14 of the WFD as a general principle for waste management. However, Article 8 of the Directive develops this principle specifically for sectors under EPR schemes. Therefore, packaging producers have to bear the costs set out in Article 8a (4), which rules out their financial responsibility for municipal waste.

## **b) EPR and municipal waste targets**

We disagree with the report's finding that "mandatory targets for municipal waste are of relevance to the EPR schemes on packaging". Certainly, by achieving their recycling targets, packaging producers contribute to meeting the general waste management objectives<sup>1</sup>. However, the Directive does not require producers to assume all-encompassing responsibility for EU waste management objectives, given that these general objectives are addressed to Member States and not to producers alone. Therefore, producers cannot be required to assume financial responsibility for all municipal waste, but only for the waste management costs that are necessary to meet their recycling objectives.

## **c) Relationship between EPR costs and separate collection**

The report states that the cost of separate collection that must be covered by EPR schemes is distinct from the obligation to cover the costs of meeting recycling targets. This signals a possible misunderstanding on how the financial obligations connect with the separate collection requirement. We would like to reiterate that separate collection obligations cannot be decoupled from the recycling targets. Packaging producers' liability for costs of separate waste collection is tied to the quantitative targets for packaging waste. The Directive clearly positions separate collection as a mean to achieve these targets and its costs should be limited to their achievement.

- **Eco modulation of EPR fees**

Overall, we continue to question the viability of the packaging format-specific recycling rates as pivotal to the modulation of fees, particularly as the recycling targets are not a modulation criterion within the Directive. Eco-modulation should reflect the net management cost of the various materials and formats that may make a difference within the recycling process. The net cost principle is, however, totally absent in the *Eunomia* report. Regarding eco-modulation criteria, granularity should be introduced gradually, always meeting three important conditions: be based on solid technical proof (technically indisputable), not impose excessive administrative burden and be economically affordable for companies.

As appealing as the bonus/malus system may seem, it does not reflect how fees work in reality and we would suggest that they reflect the idea of "greater" and "lesser" costs. In fact, if modulation is to take place, the fees will be less of the net costs associated with their management or greater than the actual net cost.

The introduction of supplementary and unclear criteria reflecting a 'high quality recycling rate' would only render the modulation basis even more uncertain.

### **Additional recommendations**

- **How to integrate Commercial and Industrial Packaging**

The *Eunomia*'s report rightly brings certain wastes from commercial and industrial sources within the scope of EPR. However, problems arise when it suggests imposing the same compliance modality than for household packaging. Commercial and Industrial (C&I) packaging flows work differently from household packaging and there are different sizes and activity models even amongst C&I packaging. In addition, most EU countries have rolled out some form of well-functioning arrangement for C&I packaging, generally based on a variety of agreements between waste holders and other operators. By neglecting these realities, the proposed approach risks to result in serious inefficiencies and even hamper implementation. Instead, the main focus of C&I's specific regulatory set-up should be placed on demonstrating EPR compliance through guaranteeing the efficiency of the arrangements in place, fulfilling the targets,

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<sup>1</sup> Source: Eurostat 2020: [Recycling and recovery rates EU-28, 2017](#)

ensuring data accuracy and delivering legal reporting, as well as providing information to waste holders, in line with Article 8a of the WFD.

- **Equal treatment, reporting requirements and de minimis**

We support the intention, highlighted in the report, to solve the issue of free riding by introducing the concept of equal treatment of companies, which is important to ensure trust in the system from both actors and regulators.

We believe that a common set of rules is needed and that SMEs should have to follow certain requirements, e.g. some form of documentation showing how much packaging they put on the market. However, below a certain threshold, SMEs should not need to report in detail to EPR systems. For such companies, the corresponding packaging on the market should be estimated based on, for instance, representative research. For all the others, it is nevertheless crucial to ensure a sufficient level of reporting to avoid a risk of free riding, which would create a vicious circle leading to more costs for the system. Overall, there is a need to strike the right balance between in-depth reporting and the related administrative burden. This decision should be left to the Member States as long as they ensure that the data is reliable.

The report also suggests establishing a data gathering and reporting system based on how many units of products are placed on the market and how much of this is collected and recycled. This approach is contradictory with the way EPR schemes work: the focus should be in tons placed on the market, collected and recycled. The reason stands in the fact that fees are structured on the basis of the tons put on the market rather than the number of units.

- **The importance of stakeholders' roles and responsibilities**

The report fails to recognise the importance of the roles and responsibilities of the various players involved in the packaging value chain, which should be clearly spelled out in national legislation. We believe that the Commission should provide guidance to introduce the necessary accountability for those who play a part in using the fees that they receive from EPR schemes. For instance, where local authorities are liable for waste management operations, they should abide by the efficiency and transparency principles and impose penalties punishing littering behavior. The legal framework should also drive the supply of high-quality services to citizens by waste operators.

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