

Best practices for successful EPR for packaging

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Preamble

EPR can be implemented in several ways, by a single service approach not/for/profit compliance schemes owned by industry but also in a competitive way. The different European member states have implemented EPR in various ways. From our experience of the past 23 years this is what we believe should be set up in an ideal world.

Executive Summary

This paper contains best practices for successful Extended Producer Responsibility (EPR) for packaging. These rules aim to support the goals of obliged companies in their sustainability policy and Corporate Social Responsibility (CSR), and should be incorporated in the forthcoming revision of the EU Waste Legislation on Packaging and Packaging Waste.

To achieve economic and environmental excellence, the EPR compliance scheme should be industry-owned, operate on a not-for-profit or profit-not-for-distribution basis and have a public service mission. It should have sustainable financing based on joint financial responsibility and operate in a transparent and auditable manner. The EPR compliance scheme should also involve a strong collaboration with all stakeholders going from public authorities to inhabitants and waste operators – each of which has a designated role to play.

Based on these 10 rules, the EPR compliance scheme should bring significant added value across the product life cycle in terms of packaging optimisation and packaging waste recycling, while actively contributing to an optimum cost-efficient and transparent packaging waste management.

I. The essence of EPR

According to the Organisation for Economic Co-operation and Development (OECD), EPR is “an environmental policy approach in which a producer’s responsibility for a product is extended to the post-consumer stage of a product’s life cycle”.

It means that companies who put products on the market are obliged to collect, sort and recycle these products and their packaging once they reached their end-of-life stage.

II. The EPR compliance scheme should be run and controlled by the obliged companies

In order to ensure that products and their packaging are appropriately dealt with once they become waste, the obliged companies should set up an EPR compliance scheme to finance, organise and coordinate the collection, sorting and recycling of packaging waste.

In order to shift their individual responsibility into a collective one, they should give a mandate to an industry-owned EPR organisation responsible for the take-back obligations of the obliged companies. This mandate should be issued by the competent authorities in the form of an accreditation/license. This is the best guarantee to ensure the lowest cost to society and the obliged companies, as well as the highest sustainable, environmental and legal compliance.

Indeed, by financing the EPR compliance scheme and actively being involved in the EPR organisation itself, the obliged companies can coordinate and control the operational expenses for the recovery of packaging, thus ensuring that expenses are kept to the necessary minimum.

Moreover, the obliged companies can agree to dedicate funding to necessary long term projects, like educational campaigns and to increase the long term performance of the EPR compliance scheme.

III. EPR compliance scheme run on a not-for-profit / profit-not-for-distribution basis

The industry-owned EPR compliance scheme should operate as not-for-profit / profit-not-for-distribution organisation. There are several reasons why this is the preferred structure:

- It ensures compliance with antitrust laws. If profits are disbursed between founding members/shareholders of the industry-owned EPR organisation, a charge of monopoly could be levelled at the EPR organisation.
- It ensures non-discrimination among all of the obliged companies, as distribution of profit to the founding members/shareholders would constitute discrimination against non-shareholders.
- It ensures that small and medium size participants receive a full and equal service.
- It ensures that every obliged company has a right to join the system.
- It ensures that the interests of the consumers/inhabitants are served and that general interest objectives such as education and communication are pursued. This is especially important in the case of household packaging.

IV. Role of the waste operators and investors

In an open market, the natural inclination of waste operators and investors is to maximise profit and grow market share, i.e. to strive for the highest price per tonne of collected, sorted and recycled material. Doing so, waste operators and investors have an interest in increasing the amount of packaging put on the market. This is, of course, contrary to the legal objectives of the waste hierarchy and hereby in conflict with the public interest.

On the one hand, waste operators should not interfere in the coordination of the EPR organisation, whereas the EPR organisation should not act as a collector, sorter or recycler itself. Each has a distinct role to play in order to fully respect competition and antitrust laws.

On the other hand, the purpose of the EPR organisation is to fulfil the obliged companies' take-back obligations in the most efficient and effective way. In other words, at the lowest possible costs for the obliged companies and society in general. The EPR organisation should therefore work in close collaboration with local authorities to ensure negotiations and tenders in an open market for collection, sorting and recycling services. The legal framework should be set up in such a way that the role of waste operators is focused on the supply of the highest quality services. The EPR compliance scheme should hereby only use the services of licensed waste operators.

V. Involvement of public authorities/legislator

The legislator and the public authorities have a key role to play in the enforcement of EPR. There should be an explicit legal framework and strong enforcement by the competent public authorities on the implementation of EPR.

The legislator should not only create an effective and efficient legal framework for the implementation of EPR, he should also dedicate the necessary resources to fulfil these objectives. The legal framework should therefore define the public service mission of the EPR organisation and should foresee regular third-party auditing as well as reviews of the EPR organisation by the competent authorities, as well as data transparency with respect to reporting of volumes by the EPR organisation. The national legislator should however set out clear and high criteria for the accreditation/license of the EPR organisation.

In their auditing role, public authorities should ensure a qualitative implementation of EPR, i.e. by using meaningful enforcement procedures to close loopholes and trace free riders. The legislator should also create mechanisms to enforce EPR and enhance fair competition among the obliged companies.

Moreover, compulsory Pay-As-You-Throw (PAYT) systems on residual household waste can work as an incentive for the inhabitants to sort their household packaging waste. They should also refrain from establishing any counter-productive regulations or measures such as packaging taxes and deposit schemes which could impede the execution of the EPR.

VI. Involvement of municipalities/local authorities

A close partnership between municipalities/local authorities and the industry-owned EPR organisation, based on mutual trust, is a condition sine qua non for the success as well as the economic and environmental sustainability of the EPR compliance scheme.

Municipalities/local authorities have several key roles to play. Many of these roles depend upon the product/waste flow itself. For example, when the flow concerns household packaging for high-volume or fast

moving consumer goods, municipalities play an important role in the set-up and management of door-to-door collections and/or bring or collection point centres. In this respect, municipalities/local authorities and the EPR organisation have to agree on the most appropriate collection system, taking into account both local particularities as well as the conformity with national and European requirements.

The municipalities/local authorities and the EPR organisation should also actively co-operate in local public communication and awareness programmes, data gathering and monitoring, the control of the waste management operators, and the tendering for collection services.

VII. Creating a level playing field

Recently there has been a shift in several EU Member States from industry-owned not-for-profit/profit-not-for-distribution EPR compliance schemes towards the creation of competing compliance schemes owned and managed by private companies and investors whose primary purpose is to operate as a profitable business.

When multiple EPR organisations are in simultaneous operation, it should be noted that the principle of competition regarding the collection of household packaging seldom functions ideally. This is due to the fact that those who receive the service (inhabitants) do not choose the EPR organisation (which is selected by the obliged companies).

In countries with multiple EPR organisations – in some cases up to 40 in the same country – it has been observed that the organisations tend to cherry-pick, i.e. they concentrate on the easiest material to collect and recycle. Moreover, public authorities have greater difficulty monitoring multiple EPR organisations as well as avoiding and penalizing free riding.

Also, for each authorized EPR organisation it becomes more or less impossible to monitor the reports of the obliged companies participating in their system as they might participate with other packaging in another EPR organisation. Therefore, usually the number of free riders in countries with multiple EPR organisations is higher than in a country with a single EPR organisation.

In principle, having a single EPR organisation responsible for a national territory – organising the collection, sorting and recycling of a product category for all obliged companies within national boundaries – has many advantages.

Such a single EPR organisation ensures that:

- There is strengthened public oversight.
- There are no differences in scope, governance and transparency of the EPR organisation.
- Obligated companies are treated in a non-discriminatory manner.
- An efficient functioning of the market is created, enabling the lowest societal cost for collection, sorting and recycling.
- Effective national and local awareness and communication campaigns are deployed.
- Reliable data on the collection, sorting, and recycling of packaging waste is obtained.

Competition must however be assured at the level of the waste management activities, meaning on the level of collection, sorting and recycling services, which represent over 80% of a successful industry-owned EPR organisation's total cost.

Finally, having a single EPR organisation per national territory, should not bring prejudice to the industry-owned and not-for-profit / profit-not-for-distribution nature of the EPR organisation.

VIII. Sustainable financing based on joint financial responsibility

The industry-owned EPR organisation must be set up in such a way that all necessary finances are provided for an effective implementation in compliance with the legal framework. The financial contribution of the obliged companies should also be significant enough compared to the total cost. This enables a strong position for the EPR organisation in discussions with local authorities regarding the deployment of the most appropriate collection system.

The financial contribution of each obliged company must be calculated based on the amount and type of packaging put on the market and the real cost of operations, including awareness campaigns and potential revenues from the secondary raw material market. This ensures that all obliged companies receive equal treatment and share a fair allocation of the costs.

IX. Public service mission and procurement rules

The industry-owned EPR organisation should pursue – as part of its statutory purpose – a public service mission regarding the collection, recovery, and recycling of household packaging waste. This means the EPR organisation should support an environmentally and economically sustainable recycling society, which benefits the inhabitants of the country.

In this respect, the EPR organisation should engage itself in raising awareness about sorting and recycling among the inhabitants and provide support for educational programmes. It should also develop adequate programmes and actions for 'away from home' consumption of household packaging waste.

The EPR organisation should implement transparent and non-discriminatory procurement rules for the selection of waste treatment service providers, such as collectors, sorters, and recyclers. It should observe the principles of equality and neutrality at all times.

X. Packaging optimisation and prevention

The industry-owned EPR organisation should help the obliged companies to improve the environmental performance of their products and packaging by providing advice and information on packaging optimisation. Packaging optimisation efforts include improved design of the combined product/packaging, guaranteeing the greatest functionality and longest life, while using safe materials and a minimum of raw materials and resources.

Through its coordination efforts, the industry-owned EPR organisation should function as a 'bridge' between the obliged companies and the recyclers. This ensures that the obliged companies gain insight into the recyclability of their packaging and enables them to take the end-of-life treatment into account during the design of the packaging.