

Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes

Updated study and stakeholder workshop, 15 October 2019

Page | 1

EXPRA reactions on fee modulation

Introduction

EXPRA welcomes the continuous dialogue with Eunomia on the ongoing Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes.

Following the workshop on 12 September, where Eunomia presented its preliminary recommendations on fee modulation, EXPRA elaborated a reaction paper highlighting its main comments and concerns. The paper was shared with Eunomia and the European Commission ahead of the workshop of 15 October, and forms the basis for this document. Overall, EXPRA regrets that, notwithstanding numerous exchanges with the authors of the study including during the 12th September Expert Talk, its views have not been taken into consideration in the final paper.

This paper compiles EXPRA’s additional reactions to the updated Study as shared by Eunomia (version: 7 October 2019) as well as comments from the discussions held on 15 October.

EXPRA’s comments on Eunomia’s Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes (version 7/10/2019) – Fee Modulation

1.0 Introduction

EXPRA welcomes Eunomia’s study but suggests a more cautious approach when stating that the solutions that are not yet applied, but have been examined by the authors, will be appealing/beneficial for the industry. In addition, EU-wide, non-binding guidelines should not be the channel through which new, untested methods are proposed.

As general comment, EXPRA would also like to draw attention to the definition of "producers", which appears inconsistent throughout the document., as the authors speak about “packaging manufacturers”, “packaging fillers” and “packaging waste producers”. Definitions, roles and responsibilities should be better clarified and used consistently throughout the study and in future Commission guidelines when the “polluter pay principle” is applied.

2.0 Fee Modulation: Packaging

2.1 Existing Practices and Future Plans

On existing practices and future plans, EXPRA notes a degree of inconsistency throughout the paper as the authors give examples of the national models, but only for some of the examples an analysis is

provided. Furthermore, for some of these examples, the information provided is incomplete or inaccurate (e.g. the **Netherlands, Belgium**).

In the **Netherlands**, the fee differentiation system is deliberately kept lean and simple in order to be effective and to limit administrative burdens for the obligated companies. It should be clarified that the reduced fee mentioned in the study is “available for some rigid plastic packaging items (not trays) made from PE, PP, or PET that adhere to specific requirements to ensure any ‘disruptors’ are avoided, **that actually get recycled, and that generate a positive market value upon sale to a recycler**”. The intention is to stimulate the circular economy by promoting more recyclable packaging with a positive market value. The analysis of the packaging that is actually recycled, and a guidance for companies to see if their packaging is recyclable, is based on the “[Recycle Check](#)” that has been designed by Kennisinstituut Duurzaam Verpakken (Knowledge Institute for Sustainable Packaging) .

Page | 2

With regards to **Belgium**, the values presented by the authors suggest that nothing is being done on eco-modulation, which is misleading. All relevant information was shared with Eunomia by Fost Plus, and must therefore be rectified. In 2021, the number of plastic streams sorted & recycled and their allocated tariffs will evolve from the current 3 (PET bottles/flasks transparent; HDPE bottles/flasks; other recycled plastics) to 10 (PET bottles/flasks transparent/colourless; PET bottles/flasks transparent/blue; PET bottles/flasks transparent/other colours; PET trays; HDPE; PP; PS; Other rigid plastics; PE-films; Other films) To recall, the Green Dot system is based on materials that are sorted and recycled. This approach ensures that fees accurately reflect the actual price of collecting, sorting and recycling the materials in question. Furthermore, fees are calculated according to the material’s chain deficit. In other words, the costs of collecting, sorting and recycling are added and the price the material is sold for is subtracted. Each material also has a number of criteria it needs to abide by. When a certain material does not abide by the aforementioned criteria, it is considered as “not recycled” and pays the highest recycled green dot fee with an additional increase. This increase is even more substantial for the streams that are not valorized.

On the example of **France**, EXPRA would like to caution against the approach taken by the authors, which appears to disregard the significant efforts behind reaching an agreement on such a prescriptive and detailed system. This is exemplified by Citeo’s detailed manual for declaring packaging and paying fees, which already creates excessive administrative burden for users.

With regard to the **Estonian** example, the paper notes that reusable packaging does not have to be declared as long as it is being reused. However, this approach is problematic once “packaging on the market” is taken as the denominator in the calculation of the recycling rate. It is not likely that the latest user of reusable packaging is going to declare this packaging, as it is difficult to trace the owners of its last trip in the system.

On rewards for recycled content, EXPRA notes that if both recyclable packaging and recycled content were to be rewarded, companies would gain a double bonus. In fact, the more recyclable packaging there is, the higher the uptake of recycled content will be. Hence, there would be no need to stimulate the uptake of recycled content in parallel to the already existing measures.

- **Summary of Existing Practices and Future Plans**

The application of penalties, mentioned in this chapter, is not acceptable in some of the EU Member States. Should this approach be chosen, it would require an ex-ante assessment of its appropriateness from a competition perspective.

Furthermore, when speaking about fee modulation with respect to the actual net costs of recycling, the authors refer to terms such as “bonus” and “malus”, which would not be accurate. It would be more appropriate to speak about “higher” and “lower” fees as the objective is not to reward or penalize, but to apply the “polluter pays principle” and therefore address the cross-subsidizing issue.

Page | 3

2.2 Criteria for Fee Modulation

- **Recyclability**

Eunomia’s paper describes the views of EUROOPEN and of the Alliance for Beverage Cartons and the Environment as not fully capturing the “potential of fee modulation as an economic instrument”. Such statement is unclear, as no explanation is given as to the reasoning of the authors. Further explanation should be provided as regards the definition of “potential of fee modulation as an economic instrument”.

- **Recycling rate**

While the authors acknowledge that recyclability, which is mentioned as a possible modulation criterion in the Waste Framework Directive, is stakeholders’ preferred choice, they opt to structure the proposed approach around the so-called recycling rate per packaging format. This comes as a surprise since: 1) the recycling rate is not a modulation criterion set out in the Directive, and 2) format-specific recycling rates do not apply today to recycling practice, which means data may not be available in most cases.

This approach leads to multiple shortcomings:

- 1) Such a high level of granularity would be very difficult to reach, as this would imply calculating a large number of separate recycling rates, each with their margin of error. Furthermore, each of the material/packaging types would have to be recorded separately when being placed on the market through to their waste stage, resulting in EPR schemes almost having to treat all these categories separately to keep track of their recycling.
- 2) The proposed recycled-based fees per packaging format would therefore result in additional and unnecessary burden for operators. This would be unjustified from a cost-efficiency standpoint.
- 3) Importantly, the data system required to implement the above is not available today which would lead EPR schemes to modulate on an uncertain basis. While the authors suggest that the schemes could start with those packaging formats the data of which is available, this would not be recommendable, as the modulation should be based on a comprehensive and certain approach from the outset with the aim of giving producers clear signals.

Also, the authors assume that, in Member States where data is not available, operators using formats known to be widely recycled will be incentivised to ensure such data becomes available as soon as possible, in order to differentiate themselves from less widely recycled formats. This assumption is cause for concern, as the authors underestimate the efforts needed to produce such data, and could also foreseeably lead to claims from producers.

- 4) EXPRA strongly rejects the following statement: *“The recycling rate of a particular packaging format is closely linked to its ‘recyclability’ – not just its technical recyclability but the cost of recycling the format. All else being equal, formats where the cost of recycling is lower will be expected to be recycled at a higher rate than formats where the cost of recycling is higher”*. Such statement does not take into account that EPR systems have to recycle packaging waste at any cost in order to reach their recycling targets.
- 5) Overall, this approach does not take in account the state of waste management in each country. As a result, it decouples the modulation from what is sortable and recyclable, and what actually works or could work, within each Member State.

- **Reusability**

Some of the assumptions made by the authors on reusability appear to be over-simplistic. The authors choose to focus mostly on the packaging material when defining the criteria for reusable packaging. However, it is important to consider all other efforts that have to be made and other resources that have to be used in order to recirculate this type of packaging. These include transport, cleaning, refurbishing, etc.

In addition, Eunomia’s statement that *“a shift towards the use of reusable packaging, such as in food service, and with the growth of zero waste shops, is currently underway”* should be justified with data.

- **Recycled Content**

EXPRA supports the authors’ view stating that recycled content should not be used as a basis for fee modulation. In addition to the reasoning provided in the study, it is important that any guidelines on EU law should not include new provisions to the law itself.

2.3 Recommended Approach to Structuring Fees and Modulating

Chapters on Step 1: More Accurately Reflecting Net Costs; Step 2: Accounting for Contribution towards the Recycling Target; and Step 3: Modulation within Specific Categories have already been addressed in EXPRA’s reaction paper on Eunomia’s study on fee modulation: preliminary recommendations, as shared with Eunomia ahead of the 15/10 workshop.

Additional comments on the remaining sections are provided below.

- **Determining the Magnitude of the Modulation**

As fees need to reflect real-life costs, they should be purely accounting (evidence) driven and should not therefore contain additional elements.

- **Ensuring Cost Recovery**

As already highlighted above, the authors' detailed and prescriptive approach is not realistic.

When it comes to cost recovery, it is important to note that revenues cannot overly exceed the costs, as many of the EPR schemes, being not-for-profit, would face difficulties with building substantial reserves. On the other hand, forecasting such a large level of separate categories is very difficult, or nearly impossible, without having to calculate defensively. This leads to a risk of building reserves, with in turn may result in discussions with tax authorities.

In addition, this approach fails in taking into account cost and sales price calculation, and negotiations with the retailers. All producers need certainty about the fees in advance of a coming year.

- **Evidential Basis for Modulation**

Eunomia's suggests that evidence regarding the recycling rate by individual format is an area where more data is required. EXPRA stresses that this might be challenging as the information would have to be provided in great detail, in order to be precise and accurate and not to punish one format over another.

- **Transparency and Consultation**

The authors suggest that transparency and consultation are required to give a clear steer to producers. To this extent, they suggest giving notice or at least an approximate indication of the financial costs that producers will incur in the future (3 to 5 years) if they do not alter their packaging design. This approach is unfeasible as costs are dependent on market conditions. Developments and adequate forecasts cannot be provided, especially for a large number of formats.

EXPRA furthermore rejects the statement "PROs should likewise avoid, to the extent possible, sudden changes in fee levels that do not give producers sufficient opportunity to respond. However, material prices do fluctuate – and base fees might thus also need to change", as this is not something that should be addressed by EU guidelines.

- **Allowing Innovation**

The proposed approach (that sees new types of packaging being placed in the fee highest fee category until recycling infrastructure is developed) is not acceptable and introduces a market barrier. All new packaging should be analyzed on the basis of its recyclability and then be included in the appropriate fee level.

*** **