

Guidance on EPR: Stakeholder written consultation: questionnaire on possible golden principles and guidance

Objective of the consultation

This document follows the work carried out for the European Commission by BIO Intelligence Service, assisted by Arcadis (Belgium), UBA (Austria), Ecologic (Germany) and IEEP (United Kingdom), consisting in the analysis and comparison of 36 Extended Producer Responsibility (EPR) schemes in the EU (on Packaging, EEE, B&A, Oils, Graphic Paper and Vehicles). The main conclusions of the stakeholder workshop held on September 18th in Brussels were taken into account¹.

This document lists 10 propositions for the possible development of European guidance, recommendations or legislation on Extended Producer Responsibility, which were selected based on:

- their relevance as regards to the objectives of the project;
- their applicability to all product categories (this guidance does not cover topics that are only relevant for one or few product categories);
- the level of occurrence of the topic in the feedbacks received from stakeholders while performing the case studies, and in the position papers that were sent to the project team;
- the discussions which took place during the workshop organised on September 18th

In the final report of the study, these propositions will be developed in light of the analysis and comparison of the 36 EPR schemes studied, but also on the basis of the feedbacks provided by stakeholders (taking into account the present consultation, as well as the feedbacks received during the course of the study, and particularly at the workshop) and the expert judgment of the consultant team.

In addition to the numerous feedbacks that have been collected so far since the beginning of study, **this last written consultation aims to collect complementary feedback on these proposals.**

The deadline for stakeholders to submit their feedback is December 2nd, and the final report of the study will be finalised early 2014.

¹ The minutes of the workshop will soon be available on the project's website: <http://epr.eu-smr.eu/documents>

Preliminary question: general approach

The current European waste legislation gives a global framework for the implementation of EPR in Europe. National legislation at Member State level regulates operational aspects of EPR. In many cases, the national authorities establish a specific authorisation/accreditation procedure in order to formally register/recognise the Producer Responsibility Organisations (PROs). The accreditation includes more precise rules and detailed objectives.

Concerning the varied situations in terms of implementation and performances, the current project aims at identifying how a new possible EU initiative (whether legislation, recommendations or guidance) could determine which are the minimal essential elements to be included by the Member States in their implementation process.

Do you think that an initiative by the European Commission, aiming at clarifying the scope, definition and objectives of EPR, and at defining common principles and minimal requirements for their implementation, is necessary, for example through:

- (non-binding) general guidance: Yes No
- recommendations adopted by the Commission and the Council to Member States: Yes No
- legislation – notably through amendments to the existing Directives requiring Member States to adapt their ad hoc National legislation to common principles: Yes No
- or a combination of guidance/recommendations and legislation? : Yes No

Please briefly explain (max 15 lines)

EU legislation should include a definition and general principles on the setting-up and functioning of EPR schemes. In addition, guidelines and recommendations are useful complementary tools which can take into consideration specificities of different waste streams and allow Member States to respect specific characteristics of their national framework (e.g. distribution of competences among different Public administrations). Furthermore, any EU guidance or legislation on EPR (as well as other waste Issues), should be extended beyond the existing European Directives. This was confirmed in a recent study by the EEA (Managing Municipal Solid Waste - a review of achievements in 32 European Countries - Report No 2/2013) in which it is rightly said that "formal transposition of EU law into national legislation is seldom sufficient to achieve the minimum target levels required by the different EU directives. In practise, additional national and regional instruments are necessary to achieve targets". The Commission also has a role to play in encouraging and assist those Member States that have not yet fully suitable waste management policy instruments and waste management systems in place to develop their EPR and waste management practices. In any case, "Producer Responsibility" means that EPR systems have to be in hands of the obliged industry and act on a not-for-profit respective profit-not-for-distribution basis; otherwise, it is something different but not producer responsibility.

Proposed guidance and related questions

Preliminary statement: “No one-size-for-all solutions”

In addition to specificities related to every product category (and waste stream), several commercial, organisational, historical and cultural aspects influence the way EPR schemes are designed and implemented. On many aspects of the design and implementation of EPR schemes, some flexibility should prevail.

However, in order to achieve maximum results, to improve the cost effectiveness of existing and forthcoming EPR schemes, and to ensure a European level-playing field, a certain level of clarification and harmonisation seems to be desirable. The following 10 statements propose some possible clarifications and common principles.

Statement n°1: The EPR definition, scope and objectives should be clarified

The concept of EPR is currently defined in general terms in European legislation (cf. art. 8 of the Waste Framework Directive 2008/98²). Differences and difficulties in terms of implementation arise from the varied interpretation in terms of scope, objectives and exact definition. The concept of EPR, along with other key definitions (see Statement n°9), needs to be clarified, and the fundamental goals of EPR need to be stated, as a basis for its definition, for example:

- EPR aims at internalising environmental externalities (in this case, the internalisation of end-of-life management costs according to high environmental standards), and should provide an incentive for producers to take into account environmental considerations along the products' life, from the design phase to their end-of-life.
- As such, EPR aims at supporting the implementation of the European Waste Hierarchy, and therefore at increasing, by order of priority, prevention, reuse, recycling and energy recovery.
- EPR is also a financial instrument, which can support the establishment and the operational implementation of sustainable products and waste management schemes in line with the waste hierarchy.
- Clear and measurable targets in terms of prevention, re-use or recycling aiming at least at meeting the existing EU quantitative targets should be defined as objectives for the EPR schemes.

In addition to this common and priority mandate, the inclusion of additional objectives is possible, such as economic objectives (sustaining a national or European recycling industry), environmental objectives (improving eco-design of products in general), or social objectives (supporting social economy).³

What is your opinion regarding this statement? (max. 15 lines)

EXPRA agrees with this statement. Along with the internalisation of environmental costs, EPR schemes should also have the goal of involving industry in the whole life-cycle of the products placed on the market (from design phase to end of life). There also needs to be close cooperation between the EPR scheme and the public administrations and citizens and a clear division of responsibilities between the actors involved. Both the economic and environmental objectives need to be considered.

However, it should be noted that there seem to be noteworthy divergences between Member States when it comes to waste generation and recycling from certain waste streams, as the measurements are made at different stages of the waste management chain and different measurement types are used.

²"In order to strengthen the re-use and the prevention, recycling and other recovery of waste, Member States may take legislative or non-legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has extended producer responsibility. Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities. These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable."

³ NB: for these two objectives to be clearly coherent, an effective EPR policy should be associated with other economic instruments, such as high landfill taxes.

As it is crucial to be able to assess and compare Member State performances, rules and enforcement regarding calculation and reporting waste statistics are vital. Furthermore, it should be set as a condition that PROs act in line with the strategy of obliged companies and do not have alternative intentions (e.g. being vertically integrated with a waste management company). Also, introducing clear rules for transparency and non-discrimination of PROs is important to increase the image of the industry and to be able to judge their performance in a standard and adequate manner.

On this topic, what would you expect from the European Commission (what would you expect from the legal definition of EPR, in terms of minimum elements this definition should include)? (max. 15 lines)

EPR needs to be defined at EU level (e.g. in the Waste Framework Directive). However, Waste Stream Directives can be suitable to set up more detailed requirements of what the EPR schemes need to fulfill.

Any EPR definition should ensure that producers are given financial responsibility hand in hand with operational influence on the design especially for the collection system. Some key elements that the European legal definition should encompass are: accreditation by the competent national authorities, mandatory fulfillment of minimum requirements of accreditation and functioning, objective membership criteria and monitoring procedures. EXPRA would also welcome guidance on a minimal infrastructure for separate collection, as this is a prerequisite for further recovery and recycling of packaging waste.

Additional national legislation may be required if other agents have partial operational responsibility for waste stream management at national level at the same time. Also, it could be added that Member States should ensure that obliged companies transfer their task to transparent and auditable organisations acting fully on their behalf. This leaves room to withdraw the license of those PROs who are not transparent, commit fraud and don't act on behalf of obliged industry.

Statement n°2: Responsibilities should be shared and clearly defined along the whole supply chain

Even if EPR focuses on the responsibility of the producers/importers⁴ for the products they place on the market, many actors have a share of responsibility in reaching the objectives of the scheme, starting with the consumer (individuals or companies, as the final user of a product, and as the actor who has to discard this product through the right channel – e.g. separate collection), local authorities (as responsible for municipal waste management, and more generally for the environmental quality of their territory), waste management industry (as private waste management operators investing in infrastructure and R&D in order to improve collection, sorting and recycling processes), etc.

Therefore, an EPR scheme should define the responsibilities (organisational and/or financial) of all stakeholders to the extent they play an important role in the system.

Again, there is no “one size fits all” solution when sharing the responsibility, but the individual responsibilities of all actors should be clearly defined in light of this general principle.

The respective roles (and related financial and/or operational obligations) of the following actors are concerned:

- producers (obliged industry, responsible for the products they put on the market, as well as the Producer Responsibility Organisations acting on their behalf);
- national authorities (notably responsible of implementing the EU legislation, reaching the EU legal targets, enforcing and controlling the implementation of EPR principle);
- consumers/citizens participating in the collection schemes (e.g. obligation to participate to the separate collection schemes, establishment of PAYT systems, etc.);
- local authorities (public waste operators) in charge of some of the collection operations, achieving environmental objectives in direct with citizens-sorters/tax-payers;
- private waste operators and recycling industry, can be in charge of different waste management steps.

In addition, **multi-stakeholders platforms should be encouraged to ensure dialogue among stakeholders** with the involvement of representatives of PROs, obliged companies (producers, importers, retailers), public authorities (national and regional/local), waste management industries, consumers, and environmental NGOs.

This dialogue structure should aim at:

- Increasing transparency of the systems, by sharing information along the supply chain;

⁴ In the present document, the word "producers" has to be understood in the sense of article 8 of the WFD 2008/98

- Improving the sharing of responsibilities and control, for example by consulting stakeholders on the operational objectives of the systems, the approval of collective schemes, etc. ;
- Coordinating efforts (in terms of communication and R&D in particular) in order to optimise the performance and cost-efficiency of the system

What is your opinion regarding this statement? (max. 15 lines)

EXPRA agrees with the statement made - recognition of the role each actor has to play and ensuring clear allocation of responsibilities among them are key to making EPR schemes successful. Ensuring coordination and cooperation between the actors along the whole chain is also essential. National governments also have an important role to play when it comes to defining the roles and responsibilities of the actors involved.

Mixing the roles of the different stakeholders will lead to conflict of interests which will then lead to a less effective EPR system.

As regards market-based implementation of rules, multi-stakeholder dialogues can help, as long as they do not disturb the functioning of the market. It is however very important to ensure balanced representativeness of the sectors involved.

It should however be noted that it is not enough just to have multi-stakeholder platforms. Without clearly set rules, there is a risk that the platform does not operate in an optimal manner and that some of the actors involved try to take advantage of their positions. Therefore, if certain actors have a legal responsibility in relation to a given product category (from putting it on the market until recycling of the waste), national governments should make sure that binding multi-stakeholder agreements are in place.

On this topic, what would you expect from the European Commission (definition of the roles of the different stakeholders, minimum requirements in terms of dialogue and stakeholders consultation)? (max. 15 lines)

EXPRA would welcome an obligation for Member States to make additional binding agreements with concerned actors if it is the case that multiple actors share the same (operational) task (e.g. waste collection). It is also important to ensure that the roles and responsibilities of the different stakeholders are clearly defined, while taking national differences into consideration.

While recognising that Member States are best placed to allocate responsibilities between the actors concerned (as waste management differs from Member State to Member State), the Commission should promote the principle of shared responsibility, encouraging member States to adopt legislation in that direction and carefully assess the contribution made by different stakeholders towards fulfilling waste management targets.

Statement n°3: Notwithstanding the way competition takes place, a clear and stable framework is necessary in order to ensure fair competition, with sufficient control and equal rules for all, supported by enforcement measures (including sanctions) and transparency.

Generally speaking, there are today two broad models of management within a collective Producer Responsibility Scheme:

- Single Producer Responsibility Organisation, owned by the obliged companies: competition is organised by the PRO (through public call for tenders) at the operational level (waste collection, sorting or/and treatment operations and sales of the recycled materials as well as communication campaigns related to the objectives of the PRO);
- Several competing PROs, privately owned (by the obliged companies or other entities), among which the obliged companies are free to choose: competition exists at the level of the PROs.

Based on available data and feedbacks, although advantages and drawbacks of each system have been identified, there is no strong evidence that one model is more effective (in reaching the targets) or more efficient (in reaching the targets at the lowest costs) than the other.

In case competition exists or arises among several PROs, actors should be enabled to compete fairly, within a clear and stable framework, thorough control and equal rules for all, realistic enforcement measures in case of irregularities and transparency. In case of single producer responsibility organisation, it is essential to ensure a strong public control so that the PRO does not take advantage of his dominant position.

More generally, competition issues can arise at the level of:

- Producers, i.e. PROs can be used by established producers to erect barriers for new market entrants;
- Collection, i.e. economies of density make it optimal to have a single collection system which needs to be open to competing PROs ;
- Treatment, i.e. there may be issues when PROs become operators of recycling facilities;
- Facilitation, i.e. abuse of dominant position in the role that PROs play as service providers to producers (facilitation of compliance of producers with their obligations);

A number of possible recommendations emerge from this:

- Ensure equal treatment of all concerned producers, i.e. by requiring that producers have access to PRO membership if they so wish;
- When there is a single collection infrastructure, ensure access to this by competitors, similar as network access in the railway sector;

- When PROs expand beyond their role as facilitators and become operators of collection or treatment, ensure strict separation of these activities (especially through separate accounting).

In any case, it is important that adequate regulation and administrative capacity is in place to ensure that no anti-competitive behaviours emerges.

What is your opinion regarding this statement? (max. 15 lines)

EXPRA considers that competition should be kept at the level of collection, sorting and treatment of waste by having (public) tender procedures. In any case, PROs should always be owned by obliged companies; otherwise there is always of conflict of interest. In case of competition between PRO's, there needs to be strong guidance and minimum and common provisions in place to ensure fair competition, prevent opacity and ensure that PROs do not have different price conditions to some of their customers. This, in turn, will prevent them from cherry picking (e.g. reaching recycling quotas of their registered packaging by collecting/recycling the easy to collect and to recycle packaging only). This guidance could be made by the Commission to enable a level playing field in the entire EU, which is vital for the efficient operation of the systems and to meet the targets that have been set. Part of the guidance is that any of the PROs that might be accredited by Member States should play an active role in prevention by teaching and assisting their customers when it comes to prevention activities. It is also necessary to increase transparency, especially in these cases of competition, and to assure that EPR schemes report in a suitable way to the competent authorities. Fees to obliged companies should be published and be valid for all obliged companies. Furthermore, the role of vertically integrated PROs should be scrutinised to eliminate conflicting interests and price dumping.

On this topic, what would you expect from the European Commission (in terms of regulation, guidance, technical requirements, governance, targets, etc.)? (max. 15 lines)

EXPRA would like to see that Member States are required to have criteria in place for the acceptance of PROs, or even to set these criteria themselves in order to enable a level playing field for PROs. These criteria should include rules about PRO activities in the field of prevention.

EXPRA would also welcome that the Commission requires Member States to provide more comprehensive information and data about the EPR schemes operating in the country for the different waste streams (for example data on market share, functioning, targets achieved and monitoring systems in place).

Clear requirements as regards minimum technical infrastructure for separate collection would also be welcome.

In addition, the EC should oblige Member States to enforce legislation and ensure that sanctions are in place for EPR schemes and obliged companies not complying with legal requirements.

Statement n°4: An independant clearinghouse is necessary, especially in case of competing PROs.

In the case of competing PROs, an independent organisation, acting as a clearinghouse⁵, is necessary. This structure should have the following objectives (some of these objectives are also applicable in the case of a single PRO):

- Centralisation and aggregation of data reported (see Statement n°8) and control on data quality and completeness ("Register" role)
- Control over compliance (free-riders identification), in link with public authorities in charge of enforcement
- Ensuring that all competing PROs work in a level-playing field, by verifying that all requirements are met
- Calculating market shares and ensuring a fair determination of the PRO's individual objectives
- When necessary, organising the sharing of costs related to certain operations (e.g. reimbursement of local authorities, national communication campaigns), through common agreements with public local authorities, or through common call for tenders.
- This structure may also manage common communication and R&D activities.

What is your opinion regarding this statement? (max. 15 lines)

EXPRA agrees to this statement and underlines that also a single PRO is fulfilling these tasks.

A clearing house is in any way necessary in case of competition, and it could contribute to better transparency and fair competition amongst the systems. However, it is important to clearly define its roles and responsibilities. In this regard, the functions and the scenarios in which this clearing role could be useful should be further analysed and it is also important to ensure that there are no unnecessary administrative burdens or non-justified costs to society.

Also, it should be borne in mind that having a single clearing house could in fact be regarded as a "monopoly". Instead of having a regulated monopoly somewhere in the middle of the market, the EC could also think of having single PRO systems in the Member States, as long as they comply with national rules and act entirely on behalf of obliged industry.

The debate about competition on the system level is a false one, as the important topic is that a PRO

On this topic, what would you expect from the European Commission (in terms of regulation, guidance, definition of the role, objectives and status of the clearinghouse, conditions under which such a clearinghouse should be recommended or mandatory)? (max. 15 lines)

EXPRA would like to see that EU legislation clearly defines what a "clearing house" is, its goals, functions and basic principles. Enabling regulated monopolies on PRO level instead of using clearing

⁵ Third-party central agency or corporation, acting as a regulator on a competitive market

houses could also be considered, as such houses may make things more complicated. Where competition between PROs is in place, the clearing house should be made mandatory.

Statement n°5: In line with the polluter pays principle, the design and implementation of an EPR should make sure that the full costs related to the end of life of products are covered.

In line with the existing European legislation promoting the polluter pays principle, and taking into account Statement n°2 (Shared responsibilities), the full costs should be taken into account when designing and implementing an EPR scheme.

The establishment of this full cost should cover all types of costs, for example:

- Collection, transport and treatment costs for separately collected waste;
- Revenue from the sales of the materials
- Collection, transport and treatment costs for non-separately collected waste covered by EPR (e.g. waste covered by EPR collected with mixed municipal waste);
- Cost for public communication and awareness raising (on waste prevention, separate collection, etc.);
- Costs for litter prevention and management;
- Costs for the appropriate control of the system (including auditing, measures against free riders, etc. see statement 9)
- Administrative costs, i.e. costs linked to the running of PROs

What is your opinion regarding this statement? (max. 15 lines)

EXPRA does not agree that EPR is connected to the polluter pays principle but something different.

Nevertheless, it has to be in mind that financial responsibility goes hand-in-hand with operational influence especially on the design of the collection system. However, we do not consider that the costs of littering should be covered. Littering is not the consequence of mis-management or unsuccessful operation of obliged companies or PRO. Littering is a (mis-)behaviour of the citizens that goes far beyond the limits of the operations of PROs. As such, littering can not be managed alone by obliged companies or PROs but has to be dealt with by a range of stakeholders, including the municipalities and citizens.

However, we do not consider that the financial responsibility should be set at EU level, as national legislation is more appropriate to set up the the scope of the financial responsibility that each system should bear (as this may depend on the waste stream, the agents involved, etc.).

Also, we do not consider that the EPR schemes should pay any cost for non-separately collected waste (e.g. waste covered by EPR that is collected together with mixed municipal waste). This encourages consumers and local authorities to take responsibility for separate collection and not to assume that their costs will be covered by the EPR scheme in any case. On the other side, the PRO is not asking for financial contribution of municipalities for residual waste in the separate collection bins.

On this topic, what would you expect from the European Commission (minimum requirements on the costs that should be included in the full cost)? (max. 15 lines)

EXPRA would welcome the Commission setting up guidelines of the cost sharing for the stakeholders concerned and ensuring that the stakeholders have aligned interests to promote responsible recycling and sorting at source and not the opposite. However, the requirements / concepts / associated costs should be set at national level bearing both environmental and economic efficiency in mind.

It should also be borne in mind that there is a lack of homogeneity amongst the different EPR systems in Europe (as regards issues such as scope, operational features etc.) which makes it difficult to be able to fully compare the costs they cover and consequently their performances.

Statement n°6: When obliged company (through Producer Responsibility Organisations) are required to contribute financially, the contribution should be based on a “reference cost”.

When obliged companies (through Producer Responsibility Organisations) are required to contribute financially to waste management operations while leaving the actual choices of organisation to a third party (e.g. local authorities, for instance in charge of collection and/or sorting operations), a “reference cost” should be established. This reference cost, which corresponds to the optimal level of service necessary to reach the targets and obligations of the EPR scheme, should be based on the market price and controlled by an independent entity in full transparency.

To this end, performance indicators should be developed to address the concept of optimisation (environmental, financial, minimum level of service to citizens, minimum requirements in terms of geographical coverage, quality of treatment operations, control over exports, etc.).

What is your opinion regarding this statement? (max. 15 lines)

EXPRA considers that the setting up of a reference cost can be a good idea under certain circumstances. These include if there is competition in place, that factors and criteria on which this cost could be based would be objective and measurable, and that it has been discussed and agreed by all actors involved. Under these conditions, a reference cost could contribute to transparency and equity and avoid disputes between the actors concerned. It should however be borne in mind that the setting up of such a cost is a very complex task, as it requires agreement between the actors involved. Also worth noting is that the cost driver is very sensitive.

On the other hand, in a single PRO system with the PRO being controlled by obliged industry, there is a natural incentive to have the appropriate, transparent prices for the services that are provided. In such a situation, the proposed measure is superfluous. Therefore, competition should take place on the level of collection, sorting and recycling where usually over 85% of the costs are caused.

Especially in cases that a local authority decides to use the non-standard collection system, the costs that the PRO has to bear should be limited to the agreed reference costs for the optimum collection system.

On this topic, what would you expect from the European Commission (technical guidance on the elaboration of a reference cost)? (max. 15 lines)

EXPRA would welcome additional analysis by the Commission to identify and propose the factors and criteria that need to be considered when establishing a reference cost. However, the analysis and the exercise of setting it up should be done at national level, in order to guarantee the participation of all parties concerned.

Statement n°7: The fees paid by a producer to a collective scheme should reflect the true end-of-life management costs of his products.

Today, through the development of collective schemes for obliged companies to fulfil their EPR requirements, there is a risk of “averaging” of the costs among producers, thereby disincentivising individual efforts towards eco-design.

Whereas the technical specifications of such a modulation of fees paid by producers are yet to be defined, there should be a clear requirement for EPR schemes to set up differentiated fees aiming at reflecting as far as possible the real costs of end-of-life management of products, based on the strict application of the waste hierarchy, i.e. with a clear priority on prevention, reuse and recycling.

These costs should be established by independent third parties and regularly updated.

Furthermore, this modulation should be made explicit and transparent, in order to guide consumers' choices.

What is your opinion regarding this statement? (max. 15 lines)

EXPRA agrees overall with this approach with some reservations.

First, the most appropriate end of life option for each product needs to be taken into consideration, as not all products are suitable for recycling, for example, but instead more appropriate for energy recovery. Nevertheless, energy recovery should not be the economically much more attractive than recycling, for example because of overcapacities or cross – subsidies.

Second, the establishment of the costs by a third party is not necessary if the EPR scheme can document in a transparent manner the real costs.

Third, it is important that the concept of EPR is not expected to drive packaging and product optimisation alone.

On this topic, what would you expect from the European Commission (in terms of technical guidance on fees modulation, targets and objectives on prevention, etc.)? (max. 15 lines)

EXPRA would welcome that the Commission analyses this matter in further detail. We are however not of the opinion that EU-wide measures should be set by the EU institutions on this matter, as national circumstances need to be kept in consideration.

Statement n°8: Transparency is required on performances and costs.

Information on the environmental performance of the EPR schemes (achievement of recycling and collection targets) as well as on the financial aspects of the schemes should be provided and made publicly available, taking into account that cost effectiveness is part of the performance measurement.

This would contribute to several objectives, for example:

- for public authorities (national and European), to monitor and evaluate cost effectiveness as a fundamental part of the performance of a scheme; in order to allow for benchmarking, performance evaluation, and continuous improvement of national and European policies, transparent information on costs should be provided;
- for producers, who are financially and/or physically responsible for the end-of-life management of their products, to have sufficient information to help their decision-making in terms of product design and contribution to the waste management chain;
- for citizens, who contribute to the waste management costs both as tax-payers (contributing to the share of the costs supported by local and national authorities) and as consumers (contributing to the share of the costs supported by the obliged industry, through the eco-fees integrated in the purchasing prices of the products), to get better information about the efficiency of the systems they pay for.

What is your opinion regarding this statement? (max. 15 lines)

EXPRA fully agrees that there should be transparency on performances and costs, and efforts should be made to increase this. It is however important to ensure that information provision requirements are not disproportionate or imply non-justified administrative burdens for industry and EPR schemes.

On this topic, what would you expect from the European Commission (in terms minimal level of information on performance and costs to be provided and made public)? (max. 15 lines)

EXPRA would welcome the Commission setting minimum requirements of information that Member States should report, and make it compulsory for Member States to include this into their national legislation. However, prior to doing so, it is important to ensure that harmonized concepts and calculation methods are in place and used.

Statement n°9: Harmonisation of key definitions and reporting modalities is needed at the European level

Generally speaking, there is today a lack of harmonisation in the definition and reporting modalities for performance of EPR schemes among EU Member States. It is sometimes argued that there is also a lack of control at the European level of figures provided by Member States. This makes performance comparison very difficult.

Key definitions (definition of treatment operations – recycling, recovery; definition of products and waste categories – household, municipal, industrial, commercial, professional, post-consumer, etc.) and reporting modalities (type of data submitted to national authorities, frequency of updates, scope and perimeter) should therefore be harmonised at the European level, and a more thorough quality check and control of the provided data should be performed, in order to allow for benchmarking of performance, share of best practices, and continuous improvement of European and national policies.

The European Commission could develop and propose a set of common definitions and reporting modalities, to be applied by Member States once they are available.

What is your opinion regarding this statement? (max. 15 lines)

EXPRA is of the opinion that there is a strong need to improve data reporting, and that this should be harmonised at EU level. We do not only need harmonised definitions, but points of measurement should also be clearly defined and made obligatory.

It is crucial that the EU has a sound, accurate and reliable data basis. This is not only key to measuring and comparing Member State performance, but also to set new and ambitious, but realistic, targets as these need to be based on an analysis of existing Member States performance.

EXPRA members Nedvang, EcoRom, Valorlux, Fost Plus, Herrco and Ecoembes were among the participants in a project aimed at analysing data reporting in 9 countries and identifying good practices. This study has been shared with EC DG-Environment and Eurostat.

On this topic, what would you expect from the European Commission (in terms of definitions to be harmonised, clarification of reporting modalities, etc.)? (max. 15 lines)

EXPRA would welcome that the definitions and points of measurement are integrated into European legislation.

EXPRA would also welcome an increase in control, analysis and verification of the data provided by the Member States, by the EC. Efforts are needed at both European and national level to improve quality and reliability of waste statistics.

Statement n°10: Member States and obliged industry are co-responsible for the enforcement, and should ensure that the adequate means for monitoring and control are in place.

The minimum requirements in order to undertake this control would be:

- a formal authorisation procedure of the PROs by the authorities, including control procedures over PROs;
- public control (endow relevant administrations with sufficient staff to fulfil effective enforcement, put in place a system of compliance promotion and enforcement that effectively discourages free-riders, define ambitious targets and develop the indicators and reporting obligations to allow their monitoring, ensure the quality of statistics reported, define and enforce control procedures on quality of recycling for exported materials);
- auto-control by obliged industry/PROs (perform regular audits on data reported and waste management activities, ensure the quality of reporting through third-party verification, ensure complete transparency on data management methods and results, assist national authorities in control, e.g. controls on exported materials);

This control should ensure producers compliance, respect of minimum requirements regarding collection, treatment and recycling operations, control over waste shipments, sound financial management of the systems.

What is your opinion regarding this statement? (max. 15 lines)

EXPRA supports this statement. There are currently only a few Member States that report how their figures on packaging statistics are compiled. This means that the EC cannot guarantee that the reported figures are complete, reliable and accurate. This situation will not change if Member States say they have implemented the measures as described above.

We believe that most of EPR schemes are in favour of increasing control and transparency about functioning and results. In fact, some systems have already implemented several controls and verifications. Monitoring and transparency distinguish systems which fulfil the law and focus their efforts on improving their processes. It should also be taken into consideration that some of the newer Member States will require additional assistance, beyond the inclusion of certain provisions in an EU framework and waste stream directives.

Finally, it is crucial for every legislation putting obligations to companies or persons that the level of free riding is kept very low to avoid that more and more follow the bad example. Therefore, it is one of the main obligations of a government to enforce its legislation in an appropriate way which means installing clear responsibilities on the body which has to enforce and to provide this body with sufficient means.

On this topic, what would you expect from the European Commission (in terms of minimum level of control, share of responsibility and between national authorities and obliged industry)? (max. 15 lines)

EXPRA would welcome a further assessment of whether it is suitable to make these measures compulsory or not.

Additional comments

Is there any other topic you would like to share with us and that could be developed into guidance or common principles by the European Commission? The topic could cover for example one of the following aspects: status of PROs (profit or non-for-profit, open to all economic actors or owned by obliged companies), ownership of waste, access to the waste streams for private operators, additional instruments favouring good implementation of EPR etc. Please elaborate (max. 30 lines)

- 1. EXPRA would like to emphasize that national authorities must control and also enforce the application of the legislative framework to ensure that all obliged companies comply with legislation in place. Lack of control can result in unfair competition between obliged companies and may even jeopardise the existence of the PRO; but also in case of competing PRO's. The Commission therefore has a key role to assess Member State reports and ensure that national controls are performed correctly.*
- 2. Non-for-profit or profit-not-for-distribution EPR schemes, driven by the obliged industry is the genuine implementation of EPR. Under this approach, obliged industry pursues the highest environmental and economic efficiency, searching for the best possible service at the lowest cost. Also, industry will always try to optimize all processes and services, controlling the expenses. On the contrary, when the waste management companies or private investors lead the EPR systems, they search for maximum personal benefit and maximum income per tonne collected and recovered. This can contribute to a lack of interest in prevention and in reducing the environmental impact of materials placed on the market, or the amount of waste generated. It can also result in a cutting down of communication or education to citizens as this means expense (opposite to the clear commitment of industry participating in a non-for-profit EPR system). Please find enclosed the 10 best practices for a packaging EPR system which is based on the learnings from 20 years running EPR schemes.*
- 3. EXPRA would welcome the introduction of legal requirements for Member States to ensure that nationwide waste collection infrastructure on the municipal level is in place.*