

# COMMENTS ON THE PLANNED REVISION OF THE WASTE FRAMEWORK DIRECTIVE

*PARIS/MAINZ, FEBRUARY 2022*

European Recycling Platform (ERP) welcomes the Commission's initiative to revise the Waste Framework Directive (WFD) and would like to thank them for the opportunity to contribute to the ongoing stakeholder consultation.

Given our expertise and years of experience in operating producer responsibility organisations (PRO) for waste electrical and electronic equipment, batteries, and packaging in 13 European countries<sup>1</sup>, we would like to draw attention to some aspects that, in our view, need to be addressed in the revision.

With our comments, we focus mainly on the extended producer responsibility (EPR) provisions in Articles 8 and 8a of the current WFD.

## **Modulation of financial contributions (Articles 8 (5) and 8a (4) point b)**

The WFD requires Member States to ensure that the financial contributions paid by producers to comply with their EPR obligations are modulated. It also requires the Commission to publish guidelines on how to implement this modulation mechanism.

Such guidelines, ideally defining harmonised criteria, are very important to ensure a proper functioning of the mechanism. Leaving the modulation of EPR fees to PRO alone would have a significant negative impact on the single market. If each Member State or even each PRO set individual criteria, this would translate into potentially different design criteria within the European Union or even within Member States. Moreover, fragmented criteria would significantly increase the complexity of producer reports, creating a major burden for all producers and in particular SMEs. Only harmonised European-wide criteria would assure the desired impact on product design.

Since the Commission has not yet published these guidelines and since no publication date has been announced either, **the necessary harmonisation of the criteria must be addressed in the revision of the WFD.**

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<sup>1</sup> Learn more about our policy recommendations for an innovative and sustainable circular economy in our Landbell Group White Paper "Innovative and sustainable: Transitioning Europe towards a circular economy". Link: <https://erp-recycling.org/wp-content/uploads/2019/09/Landbell-Group-White-Paper-September-2019-final.pdf>.

## Waste management targets (Article 8a (1) point b)

Waste management targets, such as collection targets, are an effective means to increase circularity, e.g. by incentivising all relevant actors to improve collection and treatment of waste products and packaging. However, **these targets need to be realistic in a sense that they are achievable** given the circumstances of both the Member State and the waste stream concerned, and **they need to relate to a parameter that can actually be influenced by the responsible actors**. This is particularly important if the achievement of these targets is linked to certain legal rights.

With regard to collection targets for waste products and packaging, the above-mentioned principles imply that such targets must be based on volumes available for collection rather than on an arbitrary percentage of volumes put on market. With increasing lifetimes of certain products, e.g. batteries, put on market volumes are typically way higher and faster growing than available for collection volumes, meaning that collection rates based on put on market volumes are not a proper indicator for the collection performance. The revised WFD should therefore require that **collection targets are to be calculated according to the available for collection principle**.

Further, it needs to be assured that **all collection volumes, including so called parallel flows bypassing PROs, count towards the PRO's collection target**. Such parallel flows result for example from the possibility for municipalities or other actors to hand over waste products or packaging directly to waste management operators. Unless it is ensured that these parallel flows are reported and counted towards the fulfilment of the targets, they hinder the PRO's ability to reach their mandatory collection targets. Alternatively, parallel flows shall be prohibited assuring all related waste is handed over to producers or PROs.

## Equal treatment of producers (Article 8a (1) point d)

With a view to a possible further specification of the requirements for equal treatment of producers and while fully supporting the polluter pays principle, we would like to point out that discussed financial contributions based solely on the producer's put on market volumes ignore the fact that a PRO's administrative cost (e.g. handling the producer's registration and reporting) are not volume-triggered, but defined by administrative efforts for a specific customer. Hence, larger producers would need to cross-subsidize this, which could be against the goal of equal treatment. We suggest that PROs are allowed to charge a minimal flat fee covering fixed administrative costs.

## Incentives for waste holders (Article 8a (2))

The WFD requires Member States to incentivise waste holders, e.g. via economic incentives, to assume their responsibility and dispose of their waste correctly. We would like to point out that rewarding actors for a compliant behaviour contradicts general principles. Rather, incorrect behaviour should be penalised in a proper enforcement process.

In addition, we would like to take the opportunity to point out that, in our view, economic incentives in the form of deposit-refund schemes are not always an effective means to increase waste collection. A deposit-refund scheme may be suitable for fast moving goods such as beverage bottles, but not for products such as batteries or electronic equipment having different shapes, sizes, compositions and, most importantly, much longer lifetimes. A deposit-refund scheme would not only bind significant capital over many years, but also create significant operational complexity such as clearing mechanisms, pay-out of deposits avoiding fraud / counterfeit equipment or batteries, and deposit tourism among Member States. In some occasions, it would even lower the density of collection points because important collection points such as schools, offices, municipalities will not be willing or able to fulfil the refund part and might consequently stop their related collection.

**An enhanced enforcement by national authorities combined with continuous and suitable communication towards consumers will be more effective to increase the overall collection results.**

### Publicly available information (Article 8a (3) point e)

According to the current WFD, PROs are required to make publicly available information about, among others, its ownership and membership as well as the financial contributions paid by producers. We would like to point out that this information is extremely sensitive and can be used not only by competitors (especially other PROs), but also by upstream or downstream actors in the value chain (e.g. waste management operators) to improve their negotiating position to the disadvantage of the respective PRO. The revised WFD should take this into account and **make sure that the information requirements are at least in line with national competition regulations.**

### Necessary costs (Article 8a (4) point c)

While it sounds very reasonable that the financial contributions paid by producers to comply with their EPR obligations shall not exceed the costs that are necessary to provide waste management services in a cost-efficient way, as mentioned in the current WFD, it is not clear what exactly is meant by this requirement and how its fulfilment is to be evaluated in practice.

The most effective and easiest way to ensure that PROs operate cost-efficiently is to let them do so under a competitive environment and on a level-playing-field like in any other business. Competition between multiple PROs has proven over the years to not only ensure high service levels and to stimulate innovation, but also to keep prices at the “right”, i.e. necessary level. They do not require artificial benchmarks like they were suggested in the “Study to Support Preparation of the Commission’s Guidance for Extended Producer Responsibility Schemes”.<sup>2</sup> The WFD should follow this principle and **improve the conditions for competition-based EPR by prohibiting single PRO setups.**

Costs of the compliance system can also be inflated by unrealistic and costly overregulation. The revised WFD should clearly require Member States to ensure that the system they put in place via local legislation fulfils EPR obligations in an efficient and cost-effective way.

### National body independent of private interests (Article 8a (5))

Where multiple organisations are implementing EPR obligations on producers’ behalf, the WFD requires Member States to appoint at least one body independent of private interests or entrust a public authority to oversee the implementation of these obligations.

In order to create a fair and competitive market environment, **this requirement needs to be extended to any markets including those with just a single PRO and to cover enforcement of the roles and responsibilities of all actors involved** including the implementation of the minimum operational requirements.

Further, in case of multiple competing PRO, the body or authority appointed by the Member State shall also have **the obligation to set up an adequate waste allocation mechanism** given that in the absence of such a mechanism waste allocation between multiple competing PRO has proven to be difficult due to anti-trust regulations. Lack of waste allocation to PROs may also result in waste hoarding or speculation by owners of the waste, and PROs being under pressure to achieve their target may be forced to pay extortionary fees for access to waste. As a result, many Member States have already successfully transferred waste allocation responsibility to independent clearing houses.

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<sup>2</sup> Link: <https://op.europa.eu/en/publication-detail/-/publication/08a892b7-9330-11ea-aac4-01aa75ed71a1/language-en>

## Minimum treatment standards (Articles 8a (3) and 27)

In order to ensure high quality and environmentally sound treatment of waste, **Member States shall define and agree on harmonised minimum standards** to be followed by all actors involved. This would not only contribute to the transition towards circularity, but also create the necessary trust among stakeholders in waste that is shipped to the most efficient and innovative treatment facility, even if located in another Member State or outside the EU.

In addition, it needs to be ensured that **PRO may cooperate only with those suppliers being compliant with the harmonised minimum treatment standards**, thereby enabling a healthy competition benefiting both the environment and the consumer.

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## About European Recycling Platform

European Recycling Platform (ERP) was founded in 2002 in response to the introduction of the European Union's Waste Electrical and Electronic Equipment (WEEE) Directive. ERP's mission is to ensure high-quality and cost-effective implementation of the WEEE, batteries and packaging directives, for the benefit of its customers and the environment.

In June 2014, ERP joined Landbell Group, a global platform for extended producer responsibility. ERP and Landbell Group have collected more than 6 million tonnes of packaging, more than 4 million tonnes of e-waste, and over 90,000 tonnes of portable batteries.

ERP is the first and only company authorised to operate producer responsibility organisations in Austria, Denmark, Finland, Germany, Ireland, Israel, Italy, Norway, Poland, Portugal, Slovakia, Spain, and the UK. By passing on the advantages of multinational recycling operations to customers, ERP has proved to be the most competitive solution for companies in the countries where it operates for WEEE, batteries and packaging compliance, as well as take-back services.

For more information on ERP, please visit: [www.erp-recycling.org](http://www.erp-recycling.org)

