

MODULATED FEES

DISCUSSION OF PRACTICAL IMPLICATIONS FROM THE POINT OF VIEW OF A PRODUCER RESPONSIBILITY ORGANISATION (PRO / EPR)

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The new Waste Framework Directive requires in article 8a 4(b) a modulation of the financial contributions paid by the producers (“modulated fees”) as an incentive for producers to design products that contribute to waste prevention and facilitate recycling. *“Where possible”, this shall be defined “for individual products or groups of similar products, notably by taking into account their durability, reparability, re-usability and their recyclability and the presence of hazardous substances hereby taking a life-cycle approach and aligned with the requirements set by relevant Union law, and when available, based on harmonised criteria in order to ensure a smooth functioning of the internal market.”* In order to assure harmonization, article 8-5 requires the *“European Commission to publish”* related *“guidelines, in consultation with Member States”*.

In terms of extended producer responsibility this approach sounds reasonable and logical as it would reward producers who design their products accordingly. At the same time, modulated fees have some potential practical implications, which should be considered. As the only pan-European producer responsibility organisation (PRO) for WEEE, batteries and packaging, the European Recycling Platform (ERP) would like to make the following remarks from the point of view of a PRO utilizing its market experiences:

1. Criteria for the fee modulation

- There is a risk that criteria overlap or even contradict with the Ecodesign Directive (ErP Directive), the RoHS Directive or the REACH Regulation. In principle criteria shall be **fully relevant and limited to the targets of WFD**.
- Criteria should have a sufficiently **“universal character”** to be relevant for many products and producers, objective, achievable and measurable - easing the enforcement.
- Because most producers design products for multinational markets, criteria shall be **harmonized**. Any specific national criteria would interfere the functioning of the internal market and would increase the administrative burden for a proper European enforcement.
- Having the above in mind, criteria shall not be defined nationally (neither by national authorities nor by the PROs), but should strictly follow the Commission’s guidelines. In any case, **all actors/stakeholders** should be involved to reach well-balanced criteria.

2. Enforcement

- PROs need to modulate the fees based on information provided by producers. Hence, to assure a fair level playing field a key question is *“Which enforceable **evidence documentation** is to be provided, that*

is trusted and accepted by all stakeholders? Also who decides about those?"

Like for the criteria, the documentation needs shall be **harmonized** in order to keep the administrative burden to a minimum. European standardization bodies have experience with CE mark related directives.

- Once the required documentation is defined, a proper **enforcement process** needs to be established. Who needs to check what? Are the PROs empowered to audit the declarations of the producers? Or do the PROs trust the producer declarations and the enforcement is solely done by the competent national authorities? Those questions shall be clarified, while considering that in case PROs should play a role, they would need to audit their customers, but would probably not be able to enforce any sanctions.
- In case non-compliance is being found, it shall be defined which **sanctions**. Who can enforce those? In order to avoid competition distortion, penalties' amounts and mechanism should be best defined by law and applied by Authorities. However, what would be the role of a PRO in this process having a damage of missing fees due to modulation based on false declarations (+ see above)?

3. Financial Mechanism

- Which **modulation approach** is envisioned? Modulations could be implemented as two-level (standard fee and bonus or malus fee) or a three-level approach (standard fee and bonus fee and malus fee). From a practical standpoint, a two-level approach is preferable as it limits the administrative efforts. A malus approach (increased price when a design does not meet the criteria) is desirable as it would limit the financial risks of the PROs (see also below point d). The modulation should be expressed in % of the PRO's standard price ("amplitude" e.g. + x%) considering that final prices cannot be discussed under competition laws in many countries.
- The amplitude of the **modulation must be sufficient to actually create an incentive and impact**. If the cost of implementing the design change and gathering the modulation information exceeds the reward achievable by reporting along the selected criteria, the approach would miss the objective.
- Aiming for a fair level playing field a **standard modulation amplitude** shall be applicable to all PROs. It shall be defined via law. Also, it shall be set on the basis of product categories and it should ideally be harmonized.
- **Licensed volumes and not brand-sorted collection volumes are not directly linked**. – In the worst-case a PRO makes losses if having mainly incentivised customers with products meeting the criteria, while the PRO is facing standard cost in collection/recycling from a mixed WEEE flow. On the contrary, a PRO can make a surplus if it is having mainly customers whose products do not meet the criteria (charging malus prices but having also standard cost in collection and recycling).
How to bridge the missing link? How to assure a fair level playing field?

Finally, ERP believes that it should be evaluated in the implementation review process if the targets couldn't possibly be reached faster and more efficiently if the relevant criteria would be added to existing design related directives such as the ErP Directive. It partially contains related criteria already today. By this all products would need to fulfil those requirements at the same time - leading to 100% better products, less waste and 100% easier to recycle products. In addition, the ErP Directive is a CE Directive having an established process to set criteria and well-defined documentation / enforcement procedures. Such an approach would simplify legislation avoiding additional processes as well as the spreading of design related requirements into several directives - something the Commission currently addresses with its roadmap "*Analysis of the interface between chemicals, products and waste legislation and identification of policy options*"¹.

¹ Link: http://ec.europa.eu/smart-regulation/roadmaps/docs/plan_2016_116_cpw_en.pdf

Contact

Dr. Thomas Fischer, Head of Market Intelligence & Governmental Affairs, Landbell Group
Email: t.fischer@landbell.de, Phone: +49 6131 235652436

About ERP

European Recycling Platform 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 Directive, for the benefit of its customers and the environment. In June 2014, ERP became part of the Landbell Group, an international supplier of service and consulting solutions for environmental and chemical compliance. ERP and Landbell Group have collected more than 7 million tonnes of packaging, more than 3 million tonnes of e-waste, and over 50,000 tonnes of portable batteries.

ERP is the first and only pan-European producer responsibility organisation authorised to operate in Austria, Denmark, Finland, Germany, Ireland, Israel, Italy, Norway, Poland, Portugal, Slovakia, Spain, Sweden, 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



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