

Circular Economy: EUROPEN recommendations on the EU legislative proposals for the Packaging and Packaging Waste Directive and Waste Framework Directive

EUROPEN supports the objectives of the Circular Economy package and much of the content of the legislative proposals, which have important implications for the sustainable growth and competitiveness of the packaging supply chain in Europe. EUROPEN's members include material producers, packaging converters and brand owners in Europe across a wide range of sectors and all materials, offering a broader supply chain perspective without favouring any packaging material or system. The roles and functionalities, but also packaging's environmental performance, are relevant at different stages of a packaged product's lifecycle and are different for each packaging type.

On average in the EU, considerable progress has been made in increasing packaging waste recycling and recovery rates¹ over the last two decades. However, substantial differences in packaging waste management performance, infrastructure and culture in Member States still exist today. A finalised Circular Economy package will need to fully capture those different realities and yet set a harmonized legal framework that is fit for purpose for all 28 Member States. For instance, having an integrated waste management system is one of the preconditions that must be included in current and future policies for packaging and packaging waste.

EUROPEN's membership has over 20 years of relevant experience on the ground in packaging and packaging waste management via Extended Producer Responsibility (EPR). We have identified a number of regulatory gaps in the Commission's legislative proposals and have made recommendations that are intended to overcome both of these weaknesses and increase the likelihood of the Circular Economy objectives and targets being met in a cost-effective and resource efficient manner.

1. Safeguard the free movement of packaging and packaged goods in the Internal Market

The ambition of a Circular Economy in Europe would be fatally undermined if the Internal Market does not function properly. The Packaging and Packaging Waste Directive (PPWD) has the EU Internal Market as its legal base and includes a notification procedure under Article 16. This requirement safeguards against national protectionist or discriminatory measures and thus against barriers to the free movement of packaging and packaged goods in the EU Internal Market. Therefore, the PPWD remains fundamental for this Internal Market guarantee. Given the differences in legal base between the Waste Framework Directive (WFD) and the PPWD and the specific sector policy needs of packaging (versus products), EUROPEN maintains the need for explicit provisions within the PPWD. For instance, the impact of national EPR schemes modulating fees for packaging risks fragmenting the Internal Market due to different criteria used but also due to the divergent impacts of similar criteria for fee modulation per EPR scheme, Member State and related packaging waste management infrastructures.

Recommendations

- Include in the PPWD proposal an explicit **obligation on the Commission to report annually on the**

¹ Eurostat (2013) - Packaging recycling rates have been rising from 47% in the EU-15 in 1998 to an estimated 65% in the EU-28 in 2012.

implementation of the PPWD and the WFD and its impact on the functioning of the Internal Market.

- **Remove the word “notably”** in the WFD proposal Article 8a (4)b on “General requirements for Extended Producer Responsibility schemes” because it implies that EPR fees could be modulated based on an infinite number of criteria when being implemented at national level.
- Add a new provision to the WFD Article 8a to **guarantee the Internal Market** safeguard for packaging and packaged goods.
- **Introduce EPR² minimum requirements for packaging waste in the PPWD** (see also point 2 below).

2. Harmonise EU waste legislation where relevant, while keeping the sectoral policy approach for packaging and packaging waste (packaging is not a product)

- Packaging optimises resource use, helps to minimise (product and food) waste, protects products along different value chains and provides consumers with varied uses, choices and benefits of the products it contains. Packaging is a product facilitator, as part of a packaged product.
- Unlike pure EU waste stream directives that only address the end-of-life of certain *products*, the PPWD covers the full life cycle of packaging. As packaging is not a product, policy harmonisation between the WFD and the PPWD needs to be carefully assessed case-by-case. For instance, EUROOPEN welcomes the harmonisation of definitions in the PPWD with the WFD, but requiring EPR schemes to “gather data on products placed on the Union market by producers subject to EPR” (WFD proposal Article 8a (1) third indent) would create a disproportionate and onerous administrative burden if EPR schemes for packaging waste are required to collect data about individual packaged products. This is just one example of the potential misinterpretation of the proposed harmonised EPR minimum requirements in the WFD, applicable to all waste streams. EUROOPEN maintains the need for explicit provisions in the PPWD for EPR minimum requirements for packaging waste. This will also facilitate the update and accurate transposition in national packaging laws.
- A specific sectoral policy approach for packaging remains essential. Targeted measures are necessary to ensure that packaging, including post-consumer packaging³, gets collected separately for recycling in those Member States where recycling capacities are in place. Legislation in some Member States permits heavy reliance on the collection and recycling/recovery of industrial, commercial and institutional (IC&I) packaging waste to meet legal targets. Although it is easier and cheaper to collect, focus on IC&I packaging waste only weakens both Member States’ and industry’s ability to achieve higher recycling and recovery rates.
- The Commission should continue to be assisted by the Committee for the Adaptation to Scientific and Technical Progress, composed of the representatives of the Member States and chaired by the representative of the Commission as stated in the initial PPWD Article 21 Committee. However, this Article 21 Committee has been modified in the new PPWD so that it now refers only to “a” Committee which composition is no longer specified. EUROOPEN would like the composition of this Committee to explicitly include national environmental/waste and industry experts in order to mirror the PPWD’s legal base and dual objectives.

² EPR definition: the producer’s full or partial financial and/or operational responsibility for a product, extended to the post-consumer state of a product’s life cycle, as a means for Member States to meet EU recycling targets.

³ EUROOPEN position on EPR for post-consumer packaging in the EU (2013) - Post-consumer packaging definition: packaging that arises daily in household and, increasingly, on-the-go. It arises in significant volumes and is not homogenous.

- The WFD Article 4(2), which allows specific waste streams to depart from the waste hierarchy when doing so is justified by life-cycle thinking and will deliver the best overall environmental and economic outcome, has rightly been maintained. Therefore, Article 6(3) from the PPWD, which upholds the same principle, should also be retained.

Recommendations

- Amend the WFD proposal Article 8a (1) third indent to specify that EPR schemes should **gather data on the collection and treatment of products or, as appropriate, packaging waste.**
- Call for **EPR minimum requirements for packaging waste in the PPWD** (see above point 1 fourth recommendation).
- Ensure **full implementation of separate collection of post-consumer packaging** in the PPWD.
- Continue Commission support by the Committee for the Adaptation to Scientific and Technical Progress under the PPWD (**Article 21 Committee**). This Article 21 Committee should explicitly include both national environmental/waste and industry experts to mirror the legal base and dual objectives of the PPWD.
- Ensure that the harmonised **calculation method for the ‘preparation for re-use’ / recycling rate in both the WFD and PPWD is applicable and appropriate for packaging** (see also point 5 below).
- Ensure that the **five-year extension period allocated to seven Member States** - Estonia, Greece, Croatia, Latvia, Malta, Romania and Slovakia - to attain the municipal waste targets in the WFD **is also duplicated in the PPWD to attain the packaging recycling targets.**
- Retain **option** for Member States to consider **energy recovery for packaging waste**, where it delivers the best overall environmental and economic outcome (article 6(3) in the PPWD).

3. Support minimum requirements on transparency and accountability for EPR schemes for packaging waste

- Below comments should be assessed in joint consideration with our above strong calls to introduce EPR minimum requirements for packaging waste in the PPWD. Given our longstanding expertise in the packaging waste stream, our comments below regarding the EPR minimum requirements in the WFD are made in the context of packaging waste and our related specific market and value chain needs.
- We welcome the Commission’s intention to improve the transparency of and rule enforcement for EPR schemes, which will help to avoid cherry-picking of materials and geographic scope and improve cost-efficiency among all EPR schemes. We also welcome Article 8a (5), which will facilitate full implementation and enforcement and will secure improved accountability among obliged industry, EPR schemes, waste management operators and all other actors involved in EPR implementation at national level.
- We fully support the introduction of the net cost principle under Article 8a (4)a first indent in the WFD proposal. In order to ensure the full application of this principle, EPR schemes for packaging waste should be required to be transparent about the revenues received from the sales of secondary raw materials from their packaging. This requirement is also relevant within the context of the Circular Economy Action Plan to boost markets for secondary raw materials and their traceability. Data on secondary material pricing within EPR will serve as a measure of the economic benefit of returning materials back into the economy and as a long-term indicator for growth in this important market.

- In addition, we believe that Member States without EPR schemes for packaging waste must also be required to ensure that their packaging waste management systems deliver results in an enforceable, transparent and accountable manner entirely consistent with the EPR minimum requirements for packaging waste.

Recommendation

- **Add revenues from the sale of secondary materials from packaging** to the list of information required under the EPR minimum requirements for packaging waste.

4. Clarify the shared responsibilities in packaging waste management

- Financial contributions assigned to producers/importers must be consistent and proportionate to their nationally defined roles and responsibilities. We agree that clear roles and responsibilities need to be established for producers, EPR schemes, public or private waste operators, local authorities and, for the relevant waste streams, recognised re-use operators where appropriate. The roles of distributors (retailers) and consumers/citizens should also be established and made explicit. We also welcome and look forward to contributing to the Commission's proposed exchange of information between Member States and the actors involved in EPR schemes (WFD proposal Article 8a (5)) and the national EPR stakeholder dialogue platforms (WFD proposal Article 8a (6)).
- We support coverage of real end-of-life net costs for separate collection and sorting for recycling (WFD proposal Article 8a (4)a first indent). While including coverage of "treatment operations"⁴ might make sense for other waste streams, it goes beyond the producer's role and responsibility for packaging. In addition, an unlimited obligation for producers/importers "to cover the entire cost of waste management" (WFD proposal Article 8a (4)a) is disproportionate to the producer/importer's role and responsibility for the collection and sorting of used packaging for recycling.
- EUROOPEN welcomes the requirement for EPR schemes to base their fees on the optimised cost in situations where waste management operators (both public or private) are responsible for operating collection and sorting systems, though some clarification of "the services provided" may be needed (WFD proposal Article 8a (4)c).

Recommendations

- **Ensure the costs on producers/importers are consistent and proportionate to their role and responsibility** by changing "entire cost" to "following costs", removing "including all the following" in the WFD proposal Article 8a (4)a. In addition, we recommend deleting "treatment operations" from the WFD proposal Article 8a (4)a first indent.
- **Add distributors and consumers/citizens** to the list of actors for whom roles and responsibilities must be established and made explicit in the WFD proposal Article 8a (1).
- **Include all actors with a defined role and responsibility** in Member State EPR dialogue platforms (WFD proposal Article 8a (6)).
- State more clearly in Article 8a (1) that **Member States** are to carry out the actions specified under that point. The current wording may be misinterpreted as tasks assigned to EPR schemes.
- Introduce above recommendations as **EPR minimum requirements for packaging waste in the PPWD**

⁴ WFD Article 3 (14) defines 'treatment' as recovery or disposal operations, including preparation prior to recovery or disposal.

(see also above points)

5. Support harmonised though clarified calculation method for 'preparing for re-use' / recycling targets for packaging

- We welcome the proposed harmonised method for calculating 'preparing for re-use'/recycling targets. Robust measurement and accurate reporting will be crucial to ensure transparent and comparable data across the EU. The PPWD proposal rightly establishes the point of measurement for packaging recycling as the point of input to a final 'preparing for re-use' or recycling process, after sorting operations have been completed. The option to count output from sorting operations under certain conditions is fully consistent with this measurement approach.
- We welcome the formula proposed in the PPWD Annex IV, though the definitions in the proposed 'preparing for re-use' calculation method (PPWD proposal Annex IV) should be clarified. For instance, in contrast to other waste statistics, Eurostat's data on "packaging waste generated" does not mean the amount of "packaging collected" but rather all packaging "placed on the market" and Annex IV should reflect this reality⁵.

Recommendations

- Support the PPWD proposal Article 6a (3) on the **conditions for reporting the output of sorting operations**. The proposed 10% threshold constitutes a realistic level for all packaging materials⁶.
- Support the formula proposed in the PPWD Annex IV under the condition that our understanding of the definitions of variables E, R and P is confirmed as follows:
 - The E variable refers to the **adjusted recycling and preparation for re-use rate** in a given year to be consistent with the proposed PPWD Article 6.
 - The R variable could be clarified as the **weight of packaging prepared for re-use**, rather than products and components.
 - Finally, we recommend specifying that the P variable is the **weight of packaging placed on the market** in a given year to reflect Eurostat's current data gathering methods.

EUROPEN looks forward to continue to work constructively with the EU institutions to help ensure that the Circular Economy delivers tangible and sustainable benefits for European citizens, businesses and society as a whole.

EUROPEN -- the European Organization for packaging and the Environment -- is an EU industry association in Brussels presenting the opinion of the packaging supply chain in Europe on issues related to packaging and the environment, without favouring any specific material or system. EUROPEN members are comprised of multinational corporate companies spanning the packaging value chain (raw material producers, converters and brand owners) plus national packaging organizations all committed to continuously improving the environmental performance of packaged products, in collaboration with their suppliers and customers. **Email:** packaging@europen-packaging.eu, **Website:** www.europen-packaging.eu, **Twitter:** @EUROPEN_ORG

⁵ Eurostat (2015) Packaging waste statistics – see 'Definitions' http://ec.europa.eu/eurostat/statistics-explained/index.php/Packaging_waste_statistics

⁶ cyclos/HTP (2014) Impact assessment: The European Commission's Proposed Changes to the Calculation Method for National Packaging Recycling Rates. Brussels: EUROPEN. (Based on previous July 2014 Commission proposal) – Study available upon request.