

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)

A general guideline is good and is probably the best option as a first step. In any case, a general guideline should only constitute a starting point on which to base further evaluation.

Beyond that, the general approach should be that the more binding the better. Ultimately, amendments to or clarifications for the existing producer responsibility guidelines will also need to be considered.

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)

According to the OECD policy papers, EPR means that environmental objectives are to be achieved effectively and efficiently by shifting responsibility to the manufacturer. The emphasis is on "environmental objectives", "efficiency" and "effectiveness". EPR should in particular provide a stimulus to pursue eco-design. Therefore, the OECD recommends individual instruments such as taxes or subsidies and expresses scepticism regarding collective actions such as takeback systems, mainly because these also provide incentives to form cartels, as can/could be seen in Austria and Germany (until 2004) with regard to packaging waste.

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.

Incentives to pursue eco-design and to make the usage phase of products environmentally compatible should therefore be given top priority in terms of the objectives of EPR, even though the Waste Framework Directive 2008/98 seems to have somewhat lost sight of the essence of the idea of EPR and instead focuses too much on the end-of-life phase and the interest in well-organised disposal. The trend towards the expansion of takeback systems for waste is resulting in the individual fulfilment of environmental goals by manufacturers becoming more difficult (e.g. as a result of forced participation in order to minimise the free-rider problem). Professionally managed takeback systems are usually a financing instrument for the disposal of waste, but hardly offer individual manufacturers any further incentive to pursue eco-design. These conflicting goals need to be acknowledged and scientifically scrutinised.

The question of "how can we provide incentives to pursue eco-design?" needs to be sufficiently addressed in future legislation as well as when making amendments to existing legislation, and it needs to be looked at with a view to finding possible solutions. The limits of the EPR instrument will become apparent in this context: manufacturers have no natural interest in waste avoidance i.e. avoidance of their products. The legislation must therefore always ask which actor/stakeholder can best implement this specific objective? It does not always have to be the manufacturer

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)

In situations in which policies provide incentives for the creation of takeback systems or where these are required by the Member States, the European Commission should clearly state that the abuse of takeback systems in terms of cartel formation is undesirable and must always be taken into consideration in the initial stage / start-up phase. In cases where cartels or cartel-like ownership structures result from the establishment of of takeback systems, the Member States should be encouraged to work, with the assistance of competition authorities, to dismantle such structures.

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)

Before legislation is enacted it is important to investigate which actor can best (i.e. most efficiently and effectively) fulfil the specific objectives.

But EPR is not an end in itself. It makes no sense, for example, to force manufacturers or PROs to inform consumers of waste prevention measures or measures for encouraging reuse or to promote waste prevention measures financially, as is provided for in Austria. Manufacturers would not do this, or would only do it reluctantly, because manufacturers want to sell new products. Such information or promotion obligations must remain non-delegable duties of the Member States.

Thought must always be given to which instrument is most appropriate in each situation. If the technical standards regarding waste are poor, the formation of takeback systems will not solve the problem.

In the case of Austria there are few mainly positive experiences with multi-stakeholder platforms that are of any significance. The closest example that comes to mind is the Advisory Board of the WEEE Clearing House in Austria (EAK), which is the responsibility of the Austria Economic Chamber. The obligations of the individual actors and the interests of the owners of the EAK quite clearly highlight the scope of what is possible in such bodies in this context.

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)

Insert text

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)

This statement contains interesting approaches, but is based on an incorrect premise: It is important to distinguish between

- *Dispensation systems, such as Fost Plus, which themselves do not want to act as buyers of collection and recovery services - i.e. the local authorities continue to mandate the collection and sorting of waste, but receive financial support from the manufacturers - and*
- *Dispensation systems such as ARA or DSD (prior to 2004), which do not want to be limited merely to the levying of funds for financial support, in particular for municipal plastic collection, but which themselves definitely want(ed) to also act as buyers of collection and recovery services.*

It is no coincidence that a system like Fost Plus (Belgium) is not the subject of investigation by the competition authorities, because competition in the market for disposal is not restricted by it.

But when dispensation systems themselves act as buyers of collection and recovery services, it must be ensured that multiple dispensation systems can compete against each other on the market. Experience shows that dispensation systems with cartel-like ownership structures, such as ARA or DSD (prior to 2004), have no interest in opening up the market to competition because the dominant owners in them (large grocery chains, recycled materials utilisation industries) do not want this to happen. This may require the implementation of measures by competition regulation bodies or even legislative measures – see the working paper issued by DG Comp in 2004 http://ec.europa.eu/competition/sectors/energy/waste_management.pdf

An intermediate solution, as implied in statement n° 3, does not exist. It is unrealistic to believe that a private monopolist will be willing, through strict controls (".. strong public control .."), to provide transparency, to refrain from using its market power and to work purely for the common good. Cartel-like ownership structures know very well how to promote their ownership interests, as was highlighted in the dual systems sector investigation (Federal Cartel Office) with regard to DSD. This is also evident in the case of AT 39759 ARA foreclosure: service provider interests from the recycled materials utilisation industries and major food retailers (representing major waste accumulation points) dominate the decision-making bodies of ARA. The effects thereof could not be nullified in Austria despite strict control measures and are now the subject of an investigation by the DG Comp. The Chamber of Labour has participated in this process as an interested consumer organisation.

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

In situations in which policies provide incentives for the creation of takeback systems or where these are required by the Member States, the European Commission should clearly state that the abuse of takeback systems in terms of cartel formation is undesirable and must always be taken into

consideration in the initial stage / start-up phase. In cases where cartels or cartel-like ownership structures result from the establishment of of takeback systems, the Member States should be encouraged to work, with the assistance of competition authorities, to dismantle such structures.

It is not possible to say which of the above-mentioned options is better. However, the Chamber of Labour has a clear preference for models such as Fost Plus. Interface problems between packaging waste collections and other local collections, as could be observed in Austria until recently, cannot occur here: the synergies between local systems providing services of general interest and the EPR systems are in fact well utilised; private end consumers are provided with a solution from a single source.

In order to be able to make more concrete statements about the respective strengths and weaknesses, the current system designs for packaging collection in Belgium and perhaps also in France should be compared in detail with those in Germany. It may also be of interest to take a look at the new framework for the collection of packaging that is set to come into force in Austria from 1.1.2015, as the recent amendment to the law on waste management in Austria has given more weight to the legitimate interests of the municipalities than is currently the case in Germany.

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)

The text is reminiscent of proposals for an independent body to coordinate packaging collection in Austria from 2015. It should first be noted that there is no willingness in Austria to set up a real regulatory authority for this purpose. So, effectively, it would be a question of nominating one of the bodies from the participating business communities. It is of the utmost importance to seek to ensure that this is at least independent from the interests of individual dispensation systems.

In Germany, many of the above tasks are performed by the joint agency solely on the basis of contracts between the dispensation systems. The path taken in Austria i.e. to secure these tasks in law, appears more likely to lead to the desired aim.

The view that such a body should be responsible for consumer information tasks is not accepted. It also makes no sense, for example, to force manufacturers or PROs to inform consumers of waste prevention measures or measures for encouraging reuse or to promote waste prevention measures financially, as is provided for in Austria. Manufacturers would not do this, or would only do it reluctantly, because manufacturers want to sell new products. Such information or promotion obligations must remain non-delegable duties of the Member States.

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)

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

Insert text

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)

It cannot be deduced automatically from either the polluter pays principle or considerations of shared responsibility that all costs should be passed on to the manufacturer. Cost internalisation takes place when commercial users of products are confronted at the products' end of life phase with the cost of environmentally sound disposal of those products. This does not require takeback systems and the collection of disposal fees from the manufacturer.

It is therefore also the case in this regard that it must always be examined in detail whether the "forward displacement of the costs to the manufacturer" best achieves the desired environmental goal (i.e. efficiency and effectiveness) in each case. It will mostly only make sense in cases where products are supplied to private consumers.

But even then it must also be decided what the manufacturers may derive in terms of powers from the fact that they bear the costs (and will include these in the prices of products). If manufacturers can derive from the fact that they bear the costs the ability, for example, to determine the content and priorities of consumer information, this would be counterproductive.

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)

The European Commission should - including with regard to all existing guidelines for producer responsibility - make it clear that, even if the manufacturer or the operating EPR systems bear the costs of providing consumer information, the national environmental authorities should still continue to independently determine the content and priorities of consumer information.

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)

This view is fully agreed with. If local authorities are responsible for the collection of packaging under such circumstances, benchmarking systems of this kind also contribute to the professionalisation of municipal waste management.

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

Insert text

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)

The statement, the analysis of the initial situation and the concern are fully agreed with.

However, it seems doubtful whether and to what extent EPR systems are or will be actually capable of implementing such a commitment to set ecologically differentiated disposal fees.

If we look at the dispensation systems operating in Austria that are or will soon be in competition (packaging, electrical equipment, ..), we think that it is totally unrealistic to assume that this system can become active of its own accord here. Differences in the fees would only be possible if the underlying costs and the differentiation to be carried out are so precisely specified that, in effect, no further room for manoeuvre remains.

The initial situation might look somewhat different if only a single national EPR system was operating - basically acting as an umbrella organisation for all manufacturers. But even here, it will depend on the ownership structure whether or not such an approach can be pursued voluntarily. In commercially operated systems, no scope for organisational freedom should be anticipated. Adversely affected manufacturers will try to prevent such solutions within the framework of their respective owner committees. The decision about which solutions to implement should not really depend on the balance of power in the owner committees.

In addition, there will also be the accusation of distortion of competition to deal with if any national environmental premiums assume significant proportions and differ significantly from those in other Member States.

In this respect, the question arises: who can be the "independent third party" other than the European legislator?

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)

Insert text

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)

There is full agreement with this statement.

In addition, we want to emphasise the fact that we see no difference in this regard in terms of the design variant applied in practice - see our recommendation regarding statement n°3. In particular, from the experience of packaging collection in Austria we cannot state that the existence of a single monopoly system contributes to a voluntary improvement in data transparency. The fact that data about quantities and costs are provided to the authorities in Austria is a result of the extensive reporting requirements of the systems. This would be unthinkable without such legal obligations.

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)

Insert text

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)

There is full agreement with this statement.

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)

Insert text

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)

There is full agreement with this statement.

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)

Insert text

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 not-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)

Regarding the aspects "profit or not-for-profit" and "open to all economic actors or owned by obliged companies", we refer to our comments about statement n°4:

The problem arises when an EPR system has a cartel-like ownership structure and itself acts as a buyer in the downstream waste disposal markets. There is no difference in relation to both the above-mentioned aspects, regardless of the option chosen. The problem is then the self-dealing business constellations arising from the fact that service providers, for example the paper industry, can influence their contractual terms as recyclers of waste paper packaging in their capacity as owners of the EPR

system. This restricts the competitive environment. It is also doubtful whether in this context it would be sufficient to introduce a strict rule that service providers cannot simultaneously be the owner of the EPR system. It is for exactly this reason that the German Federal Cartel Office (BKA) pursued a prohibition order against Dual System Germany (DSD) in 2002 (see BKA, dual systems sector investigation 2012).