



## JULY 2016

The following are the proposed amendments to the Commission's proposal on the Waste Framework Directive by Producer Responsibility Organisations (PROs) for packaging, who represent obliged industry in Austria, France, Germany, Ireland, Poland, Portugal, and the United Kingdom (the "G7").

Signatories:

- ARA, Austria
- Eco Emballages, France
- Der Grüne Punkt – Duales System Deutschland GmbH, Germany
- Repak, Ireland
- Rekopol, Poland
- SPV, Portugal
- Valpak, United Kingdom

## Amendment 1

### Recital 8 c (new)

*S. Bonafè's proposal*

***(8c) Extended producer responsibility provisions in this Directive aim to support the design and production of goods which take fully into account and facilitate the efficient use of resources during the whole life cycle of the product including their repair, re-use, disassembly and recycling. Extended producer responsibility is an individual obligation on producers that should be accountable for the end-of-life management of products that they place on the market. Producers should be able, however, to shift their individual responsibility to a collective one by establishing and steering producer responsibility organisations. Those organisations should implement non-profit services of general economic interest, through the practical organisation of extended producer responsibility schemes.***

*G7's amendment*

(8c) Extended producer responsibility provisions in this Directive aim to support the design and production of goods which take fully into account and facilitate the efficient use of resources during the whole life cycle of the product including their repair, re-use, disassembly and recycling. Extended producer responsibility is an individual obligation on producers that should be accountable for the end-of-life management of products that they place on the market. Producers should be able, however, to shift their individual responsibility to a collective one by establishing and steering producer responsibility organisations.

### *Justification*

*OECD defines Extended Producer Responsibility (EPR) as an environmental policy approach in which a producer's responsibility for a product is extended to the post-consumer stage of a product's life cycle. An EPR policy is characterised by:*

- The shifting of responsibility (physically and/or economically; fully or partially) upstream toward the producer and away from municipalities; and*
- The provision of incentives to producers to take into account environmental considerations when designing their products.*

*EPR is thus a policy approach under which producers of products accept significant responsibility for the treatment or disposal of post-consumer products.*

*As a result, private companies have accepted to carry a mission of general public interest.*

*EPR cannot therefore be rightly defined as a service of general economic interest as this clearly entails to consider producers of products as acting upon a public service delegation which is in total contradiction with its genesis.*

*Hence, the proposed deletion.*

## Amendment 2

### Article 8 paragraph 5

*S. Bonafè's proposal*

5. The Commission shall organise **a regular** exchange of information between Member States, **local authorities, and the actors involved in producer responsibility schemes** on the practical implementation of the requirements defined in Article 8a and on best practices to ensure adequate governance **and cross-border cooperation** of extended producer responsibility schemes. This includes, inter alia, exchange of information on the organisational features and the monitoring of producer responsibility organisations, the selection of waste management operators and the prevention of **waste generation and littering**. The Commission shall publish the results of the exchange of information.

*G7's amendment*

5. The Commission shall organise a regular exchange of information between Member States on the practical implementation of the requirements defined in Article 8a and on best practices to ensure adequate governance of extended producer responsibility schemes. This includes, inter alia, exchange of information on the organisational features and the monitoring of producer responsibility organisations, the selection of waste management operators and the prevention of waste generation. The Commission shall publish the results of the exchange of information.

### *Justification*

*The draft Waste Framework Directive contains several provisions entrusting EPR schemes with littering prevention actions, including this one. Yet, littering prevention actions and litter management strategies are not the producers' responsibility. Anti-littering and enforcement campaigns must be led by the local authorities, which are responsible of the waste inadequately disposed of on their territory in their quality as of ultimate waste holders, and which may enforce fines to fight against littering. It is accepted that EPR schemes have a support role to play in education and awareness raising to promote behaviour change regarding the environment while promoting sorting and recycling, but the key anti litter measure is strong, robust enforcement which is not within the remit of EPR schemes.*

*However, EPR already contributes significantly to the fight against littering as it constitutes per se a barrier to pollution. EPR provides indeed the waste holders with the means to properly dispose of their waste, while educating them through awareness-raising campaigns on separate collection and recycling.*

*Forcing such responsibility on EPR would not only constitute a distortion of the EPR principle (and of its interaction with the polluter-pays principle and other economic instruments) but it would also represent an unfair, inequitable additional charge for EPR or, in the best case, less money to finance the separate collection and sorting system, and the related awareness-campaigns.*

*Such a general requirement could also lead to excessive demands such as requesting EPR to equip every container with anti-littering messages (for instance, in France, the cost just to renew the stickers with sorting instructions to be affixed on separate collection containers is*

*estimated around 100 million euros).*

*It is worth noting that packaging represents only 3% of the total waste generated in Europe. Imposing such an obligation only for producers obliged under EPR would thus be totally discriminatory as it would only cover streams under an EPR obligation, and given also the fact that where EPR schemes operate and there is an adequate collection infrastructure put in place (be it by drop-off or door-to-door collection) there is little excuse for not depositing packaging waste in the proper places.*

*Finally, regarding the exchange of information, it should only involve Member States. The actors of EPR schemes and the Member States are already taking part in the newly-created platform. The platform and this exchange of information will inevitably result in overlaps. As it is an operational matter, cross-border cooperation falls within the scope of the EPR schemes and not the Member States.*

### **Amendment 3**

#### **Article 8a paragraph 1**

*S. Bonafè's proposal*

1. Member States shall **ensure that extended producer responsibility schemes established** in accordance with Article 8, paragraph 1:

- define in a clear way the roles and responsibilities of producers of products placing goods on the market of the Union, organisations implementing extended producer responsibility on their behalf, private or public waste operators, **distributors**, local authorities and, where appropriate, **reuse and repair networks and** recognised preparation for re-use operators;

*G7's amendment*

1. Member States shall in accordance with Article 8, paragraph 1:

(a) define in a clear way the roles and responsibilities of producers of products placing goods on the market of the Union, organisations implementing extended producer responsibility on their behalf, private or public waste operators, local authorities, **consumers (in the capacity of waste producers, be they residential, services, retail or industry)** and, where appropriate, reuse and repair networks and recognised preparation for re-use operators, **taking into account their respective influence on the environment;**

(b) **ensure that the costs borne by extended producer responsibility schemes reflect upon the respective roles and responsibilities of producers, importers, distributors, waste producers and waste holders in accordance with the first indent;**

#### *Justification*

*The clear definition of the roles and the responsibilities of the packaging chain stakeholders is at the core of the efficiency of EPR as an economic tool to incentivise recycling.*

*EPR shall indeed neither substitute the waste producers' and/or the waste holders' failure to sort properly (packaging disposed of with residual waste) or, to dispose adequately of waste (littering), nor shall it remedy the failure of public authorities to use other economic instruments to tackle those issues which are widely recognized as efficient (pay-as-you-throw, fines).*

*Producers' responsibility should be strictly limited to what falls within their remit and influence as for any other stakeholder of the value chain.*

*The consumers (in the broad sense and according to the proposed amendment) should thus be added to the list of the stakeholders as if there is no sorting, there shall be no recycling.*

*For the same reasons, the costs borne by EPR should also reflect upon the respective roles and responsibilities of each stakeholder. Producers' responsibility should indeed be strictly limited to what falls within their remit and influence.*

*Finally, "distributors" fall within the wording of producers as understood in EPR, hence the proposed deletion. If they were to be mentioned, importers should added to be complete as in paragraph (b).*

#### **Amendment 4**

##### **Article 8a paragraph 1**

*S.Bonafè's proposal*

1. Member States shall **ensure that extended producer responsibility schemes established** in accordance with Article 8, paragraph 1:  
(...)  
- define measurable **waste prevention targets and** waste management targets, in line with the waste hierarchy, aiming to attain **the objectives contained in the waste prevention programmes referred to in Article 29 of this Directive and** at least the quantitative targets relevant for the scheme as laid down in this Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and **Directive 2012/19/EU**;

*G7's amendment*

1. Member States shall in accordance with Article 8, paragraph 1:  
(...)  
(c) define measurable waste management targets, in line with the waste hierarchy, aiming to **contribute to** the quantitative targets relevant for the scheme **or schemes** as laid down in this Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and **Directive 2002/96/EC**;

## *Justification*

*The G7 welcomes that these targets be measurable, yet, the prevention targets laid down in article 29 are out of the scope of EPR and falls under the responsibility of the State in a general manner.*

*Indeed, EPR does not deal with the composition of products but with their management when they become a waste. The “progressive removal of toxic substances” is for instance outside its scope.*

*Likewise, EPR does not deal with the design of product for other reason than its management as a waste. It cannot therefore be assigned a target of “50% reduction of food waste generation by 2030”.*

*Finally, “a 50% reduction of land-based litter by 2030” is also outside its scope of influence for the reason exposed above.*

*Regarding the recycling targets, target achievement is the responsibility of each Member State. EPR schemes contribute to attain the European targets, together with the other stakeholders of the value chain.*

## **Amendment 5**

### **Article 8a paragraph 1**

*S.Bonafè's proposal*

1. Member States shall **ensure that extended producer responsibility schemes established** in accordance with Article 8, paragraph 1:

(...)

- establish a reporting system to gather **reliable and accurate** data on the products placed on the Union market by the producers subject to extended producer responsibility. Once these products become waste, the reporting system shall ensure that **reliable and accurate** data is gathered on the collection and treatment of that waste specifying, where appropriate, the waste material flows;

*G7's amendment*

1. Member States shall in accordance with Article 8, paragraph 1:

(...)

**(d) ensure that extended producer responsibility schemes:**

- establish a reporting system to gather reliable and accurate data on the collection and treatment of waste **derived from the products subject to extended producer responsibility**, specifying, where appropriate, the waste material flows;

## *Justification*

*Requiring PROs for household packaging to “gather data on products placed on the Union market by producers subject to EPR” is out of their scope of action, which only relates to packaging waste, never to products, and more specifically, to packaging waste treatment only.*

## Amendment 6

### Article 8a paragraph 1

*S.Bonafè's proposal*

1. Member States shall **ensure that extended producer responsibility schemes established** in accordance with Article 8, paragraph 1:

(...)

- ensure equal treatment and non-discrimination between producers of products and with regards to **small and medium** enterprises.

*G7's amendment*

1. Member States shall in accordance with Article 8, paragraph 1:

(...)

**(d) ensure that extended producer responsibility schemes:**

(...)

- ensure equal treatment and non-discrimination between producers of products, **distributors and importers** and with regards to enterprises **of a similar category**.

### *Justification*

*The G7 guarantees its clients, through various processes, that they are all treated equally when fulfilling their obligation. The G7 thus welcomes the general requirement of non-discrimination.*

*Yet, this general principle may entail that SMEs bear the same declarative burden as larger businesses. This may be problematic as this could deter them from complying voluntarily with their obligation, and increase free-riding.*

## Amendment 7

### Article 8a paragraph 2

*S.Bonafè's proposal*

2. Member States shall take the necessary measures to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with Article 8, paragraph 1, are informed about the available **take back systems, re-use and repair networks, recognised preparation for re-use operators**, waste collection systems **and the prevention of littering**. Member

*G7's amendment*

2. **Without prejudice to article (14) (1)**, Member States shall take the necessary measures to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with Article 8, paragraph 1, are informed about the available take back systems, re-use and repair networks, recognised preparation for re-use operators, waste collection systems. Member States

States shall also take measures to create incentives for the waste holders to **deliver their waste into** separate collection systems in place, notably through economic incentives or regulations, when appropriate.

shall also take measures to create incentives for the waste holders to deliver their waste into separate collection systems in place, notably through economic incentives or regulations, when appropriate.

### *Justification*

*The draft Waste Framework Directive contains several provisions entrusting EPR schemes with littering prevention actions. However, prevention of littering does not fall within the producers' responsibility. Anti-littering campaigns must be led by the local authorities, which are responsible of the waste inadequately disposed of on their territory in their quality as of ultimate waste holders, and which may enforce fines to fight against littering.*

*However, EPR already highly contributes to the fight against littering as it constitutes per se a barrier to pollution. EPR provides indeed the waste holders with the means to properly dispose of their waste, while educating them through awareness-raising campaigns on separate collection and recycling.*

*Forcing such responsibility on EPR would not only constitute a distortion of the EPR principle (and of its interaction with the polluter-pays principle and other economic instruments) but it would also represent an unfair additional charge for EPR or, in the best case, less money to finance the separate collection and sorting system, and the related awareness-campaigns.*

*Such a general requirement could also lead to abusive demands such as requesting EPR to equip every container with anti-littering messages (for instance, in France, the cost just to renew the stickers with sorting instructions to be affixed on separate collection containers is estimated around 100 million euros).*

*It is worth noting that packaging represents only 3% of the total waste generated in Europe. Imposing such an obligation only for producers obliged under EPR would thus be totally discriminatory.*

*Finally, The G7 strongly believes that the producers (whether under an EPR obligation or not) are not the polluters and therefore, that the industry should be left free to decide upon its contribution on how to tackle this issue, through for instance their Corporate Social Responsibility policies.*

## **Amendment 8**

### **Article 8a paragraph 3 (d)**

*S.Bonafé's proposal*

3. Member States shall take the necessary measures to ensure that any **organisation** set up to implement extended producer

*G7's amendment*

3. Member States shall take the necessary measures to ensure that any **regime** set up to implement extended producer

responsibility obligations **on behalf of a producer of products**:

(d) **makes publicly available the information about:**

- its ownership and membership;
- the *aggregated* financial contributions paid by the producers;
- *the financial contributions paid by producers per unit sold or per tonne of product placed on the market*;
- the selection procedure for waste management operators;
- *the waste prevention targets and waste management targets referred to in the second indent of paragraph 1 and their attainment.*

responsibility obligations:

(d) *operates in an effective and efficient manner and demonstrates an appropriate degree of transparency, and shall, upon request of the respective national authorities, provide information about:*

- its ownership and membership *in accordance with applicable national requirements* ;
- the aggregated financial contributions paid by *all* the producers;
- the selection procedure for waste management operators;
- the waste management targets referred to in paragraph 1(c) and their *contribution to their* attainment.

#### *Justification*

*While supporting transparency and fair competition, the G7 would welcome that the publicity requirements respect the applicable national laws, in particular, as regards to corporate governance and business confidentiality.*

## **Amendment 9**

### **Article 8a paragraph 4 (a)**

*S.Bonafè's proposal*

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:

**(a) cover the entire cost of waste management for the products it puts on the Union market, including all the following:**

- **costs of separate collection, sorting and treatment operations required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from re-use or sales of secondary raw material from their products;**

*G7's amendment*

4. 4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations *are in proportion to its role and responsibilities in helping reach the waste management targets set.*

**-costs of providing adequate information to waste holders in accordance with paragraph 2;**

**-costs of data gathering and reporting in accordance with paragraph 1, third indent;**

#### *Justification*

*This provision sets an unlimited financial obligation for producers/importers “to cover the entire cost of waste management” including undefined “treatment operations”. Stakeholders should only be financially responsible for the costs falling within their remit and influence.*

*It may not be consistent with EPR as an economic instrument to encourage recycling. It may, for instance, be implemented as including the treatment costs of packaging disposed of with the residual waste. In such a case, pay-as-you-throw (PAYT) systems which are promoted in the CEP would become irrelevant.*

*Likewise, this provision may be interpreted as encompassing the treatment costs for littering even though incivilities are the responsibility of the waste holder. The enforcement of a penalty system would thereby become superfluous.*

### **Amendment 10**

#### **Article 8a paragraph 4 (b)**

##### *S.Bonafè's proposal*

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:

(...)

(b) are modulated on the basis of the real end-of-life cost of individual products or groups of similar products, notably by taking into account their **repairability**, re-usability, recyclability **and the presence of hazardous substances**;

##### *G7's amendment*

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:

(...)

(b) are modulated on the basis of the real end-of-life cost of individual products or groups of similar products, notably by taking into account their repairability, re-usability **and their** recyclability;

#### *Justification*

*The G7 supports the modulation of the net costs on the basis of the real end-of-life cost of individual products or groups of similar products.*

*However, EPR regimes does not deal with the composition of products but with their*

management when they become a waste. The “presence of hazardous substances” is thus outside their scope.

*In line with the EPR’s scope, the fees can be modulated in view of designing fewer, lighter and recyclable packaging (reuse of a household packaging which has not become a waste yet as defined in the rapporteur’s proposal on article 3 of the PPWD, is very limited).*

*This can be triggered through the setting of a fee per unit and per material weight. The latter encourages fewer packaging while the last incentivises lighter packaging as well as the use of recyclable material since the fee can be higher for non recyclable packaging material.*

*The French bonus penalty system is complementary and does not suffice in itself.*

*In fact, even the modulation of the fees as an eco-design incentive is one tool among others. It must indeed be combined with services to make the obliged companies in the capacity to eco-design their packaging, such as a good practises platform, diagnosis tools, etc.*

*The fees modulation is thus not a panacea and must be thought as part of a whole to prove to be efficient.*

*In competitive markets, such complex calculations might furthermore become inapplicable.*

## **Amendment 11**

### **Article 8a paragraph 4 (c)**

*S.Bonafè’s proposal*

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations

(...)

(c) are based on the optimised cost of the services provided in cases where public waste management operators are responsible for implementing operational tasks on behalf of the extended producer responsibility scheme. ***The optimised cost of the service shall be transparent and reflect the costs borne by public waste management operators when implementing operational tasks on behalf of extended producer responsibility schemes.***

*G7’s amendment*

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations

(...)

(c) ***cover the net reference costs of optimised collection and sorting services in accordance with national obligations*** in cases where public waste management operators are responsible for implementing operational tasks on behalf of the extended producer responsibility scheme ***or schemes.***

## *Justification*

*G7 welcomes that the WFD allows EPR systems to be based upon an optimisation principle thanks to the distinction made between EPR systems where waste separate collection and sorting are organised by the producers themselves (actual costs) or, by the local authorities (costs of an optimised system).*

*It is of prime importance indeed to ensure that in both situations, optimisation is looked for as it will contribute to the competitiveness of secondary-raw materials.*

*Where the selective collection and the sorting services are not provided for by those who are obliged under EPR as it is the case in Portugal and in France, the only way to aim at a social, economic and environmental optimum is indeed to define the reference costs for such an optimised collection and sorting system. The notion of “optimised cost” shall thus be defined as the net reference cost of an optimised collection and sorting service. It is indeed the services provided that result in costs which must be optimised.*

*Where both parties bear part of the costs, agreement on the optimisation principle is easier as each still bear part of the responsibility of the system. This is the reason why for instance in France, the Grenelle law provides for EPR for household packaging to finance 80% of the net optimised costs for separate collection and sorting provided that 75% of the household packaging is recycled.*

*Finally, G7 totally agrees with the transparency of the costs when it comes to an optimised system as cost knowledge is a prerequisite to define what the optimisation should be. Yet, the addition made to the proposal of the Commission (“The optimised cost of the service shall [...] reflect the costs borne by public waste management operators”) annihilates the notion of optimisation laid therein, as it actually leads EPR to bear the real costs. Hence, the proposed deletion.*

## **Amendment 12**

### **Article 8a paragraph 5**

#### *S.Bonafé’s proposal*

5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products are implementing their extended producer responsibility obligations, the financial means are properly used, and all actors involved in the implementation of the scheme report reliable data.

#### *G7’s amendment*

5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that ***all persons defined as*** producers are implementing their extended producer responsibility obligations ***including in case of distance sales and online sales***, the financial means are properly used, and all actors involved in the implementation of the scheme report reliable data ***on waste which fall within the scope of the scheme.***

## *Justification*

*Enforcement is needed to tackle willful or non intentional free-riding, both in the market and on the distance sales and online sales,, which creates unfair competition between producers under an EPR obligation.*

*EPR schemes shall only report data which fall within their scope of responsibility, i.e. data on the waste streams they are in charge to manage.*

### **Amendment 13**

#### **Article 8a paragraph 5**

*S.Bonafè's proposal*

5. (...)

***Member States shall establish an independent authority to oversee the implementation of extended producer responsibility obligations and in particular to verify the extended producer responsibility organisations' compliance with the requirements laid down in points (a) to (d) of paragraph 3.***

*G7's amendment*

5. (...)

Member States shall ***ensure*** an independent ***supervision*** of the implementation of extended producer responsibility obligations, ***and in particular by ensuring that the conditions for a free and fair competition are preserved.***

## *Justification*

*The EPR obligation is borne by the producers of products, which shall comply with it individually or organise themselves to set up a collective scheme. Both shall be equally controlled although some provisions of paragraph 3 may not be relevant when a producer individually comply with its EPR obligation.*

*Moreover, fair competition must be guaranteed between competing PROs, in particular, free-riders must be controlled, but this is basically the role of the State and as such, it should not induce the setting up of an extra body draining further costs for the obliged companies as the wording "independent authority" induces.*

*Likewise, where there are several streams under EPR, the setting up of a dedicated body may not be the most proportionate solution.*

*Room must be left to Member States for designing the best suited-solution.*