



**EU Guidance for the design and governance of producer responsibility (EPR) schemes  
SUEZ ENVIRONNEMENT's recommendations**

October 2012

Interest Representative Identification Number: 27799842497-69

**EXECUTIVE SUMMARY**

**Preamble**

- ✓ Extended producer responsibility is a key policy and technical tool, if well applied in combination with other instruments, to promote sustainable production and consumption, enhance waste management performance and move towards a EU resource-efficient society.
- ✓ SUEZ ENVIRONNEMENT welcomes the EC intention to produce guidance to help MS enhance the efficiency and get the best economic and environmental benefits out of the existing EPR schemes, and support the development of new EPR schemes when relevant.
- ✓ EPR has delivered positive outcomes but it also had adverse impacts which should be avoided in the future: some failures among schemes, the development of low-cost recycling, the closing down of several recycling plants and free-riding behaviours.
- ✓ Key challenges should now be addressed: promoting a level-playing field among MS and enhancing the transparency of EPR schemes, ensuring fair competition and avoid monopolistic situation, increasing cooperation between all relevant stakeholders.
- ✓ EPR organizations should work hand in hand with local governments, producers and waste management operators (WMO), respectful of public interest as well as legitimate business interests. WMO have a key role to play since they are the main providers of know-how and investments in waste collection, treatment and recycling infrastructures.

**10 proposed EU-wide golden rules for the design & governance of EPR schemes**

1. Producer responsibility is not a municipal responsibility. It can be, on a case by case basis, a delegated responsibility from producers to municipalities.
2. Carry out a proper cost-benefit analysis and impact assessment, before setting up a new EPR scheme, with the involvement of all relevant stakeholders.
3. Set an explicit national legal framework and strong public control by MS to supervise the sound development of EPR schemes (see detailed provisions page 4).
4. Define balanced and clear roles between all relevant actors: EPR organisations, producers, waste management & recycling operators and local governments.
5. Implement the full-cost recovery principle along with more stringent controls towards free-riders and source-separation.
6. Respect basic criteria when selecting and renewing the agreement of EPR organizations: past performance and cost-effectiveness, accessibility for SMEs and experienced WMO.
7. EPR organizations should target both households and consumption of products 'away from home', excluding commercial and post-production waste.

Terminology: in this memo, "EPR schemes" refers to the overall organization of EPR in a country, whereas "EPR organizations" are the bodies responsible for implementing EPR schemes and "operators" are waste management companies



8. Select waste management operators through open and non discriminatory call for tenders, in compliance with business law, public procurement and competition rules, targeting high recycling standards.
9. Ensure control and enforcement mechanisms, enabling effective and strengthened public oversight.
10. Improve transparency on EPR organizations through reporting and regular audits commissioned by MS, to ensure that national regulation and EU guidelines are fully enforced.

## I – Preamble

Extended producer responsibility (EPR), if well applied in combination with other economic and legal instruments, and with education, is a key policy and technical tool to promote sustainable production and consumption behaviours, enhance waste management performance and move towards a European recycling society.

As of 2012, according to the roadmap to a resource-efficient Europe, the EC will assess the extension of producer responsibility for key products and support Member States (MS) to favour such extension. "Setting criteria / producing guidance for the design of producer responsibility schemes", as suggested in BioIS recent report on the "use of economic instruments and waste management performances"<sup>1</sup>, is now clearly a policy option envisaged by the EC, by 2014, to accompany the revision of the waste targets.

SUEZ ENVIRONNEMENT welcomes this initiative and considers that :

- **EPR has delivered very positive outcomes in the past** notably through • better understanding of the "resources-products-waste" chain and a new 'way of thinking' among producers, taking into account the whole life-cycle of their products • the development of quality standards for secondary raw materials fulfilling industry requirements • more links between products' manufacturers, waste managers and public authorities, at national, regional and local levels • more financial means to develop separate collection and effectively increase recycling and recovery rates of under-performing waste streams.
- **Unfortunately, EPR also had adverse impacts which should be avoided in the future:** • the development of low quality recycling pushed by fierce competition exclusively based on price regardless of environmental / health considerations • some failures of schemes due to the involvement of too many and/or mismanaged EPR organizations • the closing down of recycling plants, because of monopolistic situations disrupting the economic viability of existing installations • the development of free-riding behaviours due to poor enforcement.
- **Key challenges should now be addressed** if cost-efficient EPR is to be further extended throughout the EU starting by • promoting a level-playing field among MS on waste management performance as well as the implementation of, and compliance with EU waste legislation • enhancing the transparency of schemes (flows, performance) and the reliability of data provided by MS, which will be key to develop benchmarks and identify best practices from an environmental & economic point of view • ensuring fair competition and avoid monopolistic situations in line with EU public procurement rules

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<sup>1</sup> BioIS final report to the EC released in April 2012, notably p. 3-13 (summary), p. 147-152 (lessons learned from the existing EPR schemes), p. 170-173 (policy option 2 recommended on EPR schemes). <http://ec.europa.eu/environment/waste/use.htm>



- Increasing cooperation between government, industry and all relevant players, and clarifying their respective role.
- **Capitalizing on existing best practices, EU guidance is needed to help MS**
  - enhance the efficiency and get the best economic and environmental benefits out of the existing EPR schemes
  - support the development of new EPR schemes where needed.

In line with SITA's active involvement in discussions taking place in some member states, SUEZ ENVIRONNEMENT would like to contribute to the reflection now launched at European level, capitalizing on its experience as a waste management & recycling operator (WMO) providing services to EPR organizations in several MS but also as an operator of such EPR organization (eg. Bellandvision in Germany).

We provide below ten proposed golden rules for the design of EPR schemes.

## II – SE proposed golden rules for the design of EPR schemes

SUEZ ENVIRONNEMENT golden rules derive from its analysis and assessment of BioIS study, and on its long-term experience of operating under a number of different EPR schemes across the EU.

Firstly, and above all, SUEZ ENVIRONNEMENT would like to underline that:

- **EPR organizations should work hand in hand with local governments, producers and waste management and recycling operators**, respectful of public interest as well as legitimate business interests i.e. • enabling producers to comply with their legal extended responsibilities while preserving their competitiveness • providing predictability to waste management and recycling operators, which is key to support investment, R&D and HR development, hence the consolidation of a strong and viable EU recycling sector.
- **Waste management & recycling operators (WMO) have a key role to play** all along the value chain to contribute to EPR implementation, enforcement and its improvements, since they are the main providers of know-how and investments in waste collection, sorting, dismantling, shredding and recycling infrastructures.  
WMO should be able to:
  - Take part to the governance of EPR schemes and EPR organizations through WM federations, along with public authorities and other key stakeholders;
  - Launch and operate their own EPR organisation, thus contributing to the sustainability and reliability of EPR schemes and further pushing to make circular economy and eco-design thinking inherent in the system;
  - Provide a full range of value-added services, including through innovative partnership agreements with manufacturers to develop product eco-design, easier dismantling and recyclability, and ensure the supply of high-quality secondary raw materials.



> Proposed EU golden rules

1. **Producer responsibility is not a municipal responsibility. It can be, on a case by case basis, a delegated responsibility from producers to municipalities.**

# collect

2. **A proper cost-benefit analysis and impact assessment should systematically be carried out before setting up an EPR scheme for new waste flows.** With the involvement of all stakeholders, such preliminary assessment is key to determine the relevance of such decision (from an environmental, economical, sanitary point of view...), take into account the existing collection and treatment infrastructures, hence preventing unnecessary market disruption.

The goal shouldn't be to set as many EPR schemes as possible but rather, as a first step, to ensure that for key flows existing EPR is properly enforced, under the best environmental, social, technical and economic conditions, be it by the producers individually or collectively through EPR schemes.

Such a focalised approach is all the more important as some MS have limited capacity to adequately set-up, manage and regulate these schemes, each of which requires the engagement of a particular economic sector. Particularly in such cases, waste management service providers continue to be the strongest element to manage post-consumer and commercial/industrial waste, and contribute to the implementation of, and compliance with EU waste legislation.

3. **An explicit national legal framework and strong public control by MS are required to supervise the sound development of EPR schemes.** The legal framework should include:

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- o a "cahier des charges" to define the missions, precise scope of actions of ERP organisations and their responsibilities. About the scope: Products which shall be subject to EPR have to be unmistakably defined and distinguished from products outside the scope of the EPR regulation concerned in order to minimize legal uncertainty and free-riding behaviour. (see point 5 in annex)
- o every 5 years, an in-depth assessment of the EPR organisations by public authorities, conditioning public agreement's renewal;
- o regular control and enforcement mechanisms by authorities, including third party auditing;
- o collection and recycling / recovery targets (preferably high targets, following the waste hierarchy and stringent EU recycling standards);
- o sanctions for deviation from the targets;
- o transparency of data with respect to volumes (which are covered by EPR organizations) and volumes recovered/recycled;
- o variable fees, over a minimum threshold: a "minimum eco-contribution" to prevent the development of unsustainable inferior recycling and a "reduced eco-contribution" to incentivise eco-designed product falling under EPR scheme on the basis of defined criteria such as the degree of eco-design attempted or achieved by a producer, the recyclability of the materials used by a producer, or the past performance of a producer within a scheme.

scope

lead  
project  
development



- a dedicated commission set up to follow the achievements, arising difficulties and perspectives of each waste stream under EPR scheme; (see point 3 below)
  - provisions ensuring sound and flexible relationships between EPR organisations and municipalities. Indeed, the latter's' involvement in the EPR collection infrastructure is key to ensure that general interest is fulfilled (quite identical service everywhere) and to preserve close relationships with citizens. Flexibility should prevail for local governments to determine the level of control that they want to keep: either a turnkey contract whereby the EPR organisation finances and operates the collection and treatment of waste flows falling under EPR ("centralized" option), or a "financing only" contract, whereby the local authority keeps full responsibility on the management and recovery of these flows (ie. "decentralized" option). The legal framework should leave room for both options.
4. **Balanced & clear roles between EPR organisations, producers, WM & recycling operators and local governments is needed**, although different options can be envisaged in this field such as i) EPR operational orientation board, ii) a dedicated regulation system iii) mixed entities iv) or a combination of such options...
- Example: EPR operational orientation boards, under development in France for each product subject to EPR, gathering representatives from EPR organisations and WMO. With a consultative role towards public authority, the goals of such boards are notably to develop strategic foresight on the economic and technological development of the sector considered; to agree upon minimal technical requirements and measurement methods; to communicate towards the relevant stakeholders.
5. **The full-cost recovery principle should be implemented** along with more stringent controls towards free-riders and source-separation. Producers shall cover all waste management steps, including information of the public, needed to meet the targets defined by the EPR regulation concerned. Addressing the issue of "free-riders" is part of the responsibility of EPR organizations whereas municipalities have a key role to play to promote source-separation. The introduction of targets on residual waste (such as in Flanders?) could be introduced as a incentive to ensure their involvement in this field, hand in hand with EPR organizations.
6. **Basic criteria should be observed when selecting or renewing the agreement of an EPR organization:**
- First of all, it is key to ensure that the EPR organisation has the necessary resource and expertise to fulfil its obligations on the long run. Looking at past performance in managing the operation of the scheme, in data monitoring and reporting, etc... is a pre-requisite.
  - Cost-effectiveness, in relation to the volumes recycled, respectful of environmental regulations and (public) procurement rules, should then be the main criteria when selecting an EPR organization. Fair competition should prevail in this regard as it is more appropriate than monopolistic non for profit EPR organizations.
  - Non-discrimination should nevertheless be ensured towards SMEs. All the same experienced waste management operators should be able to act as EPR organizations, as they can likely succeed in making circular economy and eco-design thinking inherent in the system.
  - Last but not the least, an optimal number of EPR organizations per material or product is to be found to guarantee sound competition: not too many EPR

organizations to keep the overall system manageable by the authorities; enough EPR organizations to ensure that a monopoly cannot be established on the backs of producers and consumers. Instead of one centralized system, either the shared use of a collection infrastructure through EPR competitors or decentralized systems should be favoured.

**7. EPR organizations should target both households and consumption of products 'away from home', excluding commercial and post-production waste.**

- o Household waste are generally managed by large scale management contracts in order to gain appropriate scale effect. EPR organizations, in co-operation with municipalities, organize calls for bids in a so-called "centralized" system. EPR organizations then cover the three pillars: financial, data management and operational organization, unless the municipalities opt for a "de-centralized" option (see below).
- o For C&I waste, the diversity of waste producers (SME, large companies) requires dedicated services adapted to the needs of the clients (frequency, type of containers, types of fractions...). This approach benefits from direct B2B contracts between waste management operators and waste producers, which enables free competition between operators and market stability. Waste producers pay the WMO according to the services they ordered, and get financial support from the EPR organization according to their recycling records. In this co-called "de-centralized" system, EPR organizations cover only two pillars, financial and data management, while the operational aspects are left to the B2B agreements between waste management operators and waste producers.

→ **8. Open and non discriminatory selection of operators** through call for tenders, in compliance with business law, public procurement and competition rules. Recycling standards (i.e. not only price) respectful of safety, health and environmental issues, and the need to solidify the recycling industry within EU boundaries should be taken into account when producers or compliance schemes delegate EPR obligations. Audits or inspections of operators should be carried out by third parties committed to preserve the integrity of the processes developed.

**9. Control and enforcement mechanisms**, enabling effective and strengthened public oversight, should be set up by EPR. The cost of such mechanisms should be covered by the existing eco-contributions, implying no additional cost for the authority nor producers or citizens.

→ **10. Transparency on EPR organizations** should be ensured through reporting and regular audits commissioned by MS, with a view to ensure that national regulation as well as EU guidelines are fully enforced. Data sharing will notably facilitate benchmarks between organizations and between MS. Transparency on costs should be compulsory when a EPR organisation covers more than a defined threshold of materials placed on the market (eg. above 50% market share). In other case, transparency rules should not contravene free competition.

With total revenues in Europe of €10,5 billion, and 68,316 employees as of December 31, 2011, SUEZ ENVIRONNEMENT is a reference player in the environmental market. The Group is active at each stage of the water and waste cycles, and operates both on behalf of public authorities and private sector players.

In 2011, through its SITA subsidiaries operating in 18 Member States, SUEZ ENVIRONNEMENT provided waste collection services to nearly 43 million people in Europe and over 500,000 industrial and commercial clients and treated nearly 36 million tons of waste. Nearly 15 million tons of secondary raw materials were produced by the Group, thus saving the EU approximately 5 million tonnes of CO2 equivalent.