

EPR Schemes: FEAD's recommendations for EU Guidance

FEAD is the representative body of the private waste management and resource industry in the European Union. In this capacity, FEAD considers the Commission's guidelines to interpret Article 8a of the Waste Framework Directive relating to the "General minimum requirements for extended producer responsibilities", providing non-binding guidance to member states, to be of utmost importance in the transition towards a circular economy. **FEAD members have prepared key principles that should be taken into account when interpreting the definition of "producer responsibility" and drafting guidance to member states.**

While acknowledging the added value provided by EPR schemes for household waste, FEAD stresses that key factors are needed for success, such as the size of waste flows, the existence of markets for materials deriving from waste after collection and preparation for re-use, recycling, recovery as well as the need for efficient governance.

EPR schemes were initially created for household packaging waste. EPR schemes allowed to finance and ensure the separate collection of flows that are, by essence, not easy to capture and to group so that critical tonnages are reached. Significant tonnages could be collected and create the conditions for a robust, stable and credible offer of recycled materials. EPR schemes were also useful for better – and selectively – collecting and treating small sized household waste as well as waste to which a certain environmental risk is attached (e.g. batteries). Expanding the philosophy and functioning of historical EPR schemes is not the right way forward for waste flows where needs, or conditions for success, do not exist. FEAD would like to avoid that commercial and industrial waste, now managed by private waste operators, will be managed by EPR schemes in the future.

As far as waste from economic activities is concerned, FEAD considers EPR schemes as potential tools only in the absence of efficient B-to-B systems or as complementary measures for reaching additional results when existing B-to-B contracts deliver good performances.

When market and competition-based solutions allow innovation, adaptable and tailor-made solutions at the best costs, one should capitalise on successful schemes. Why should alternative systems be competing against them?

1) EPR schemes: "to be or not to be?"

A) EPR schemes should be set up after a preliminary economic impact study

In addition to numerous EPR schemes already in place, FEAD observes the creation of an increasing number of projects for EPR schemes across member states.

Except for packaging waste, it is of utmost importance to explicitly state that member states can voluntarily set up EPR schemes, without any obligation to do so. As a matter of fact, other options are currently available, such as "own initiative" independent systems, B-to-B contracts,

implemented without an EPR body. Moreover, in order to ensure their economic viability and environmental performance, EPR schemes should be established on the basis of a preliminary impact study.

Our recommendation:

- Guidelines should clearly mention that systems based on independent, own initiative schemes (without EPR bodies) are a valid alternative to EPR schemes.
- A recommendation to conduct preliminary in-depth impact assessments before setting up new ERP schemes should be addressed to member states, in order to assess their viability.

B) Existing and performant B-to-B systems that are not EPR schemes: no need to create EPR schemes

EU guidelines should establish a fundamental distinction among member states and waste flows characterised by good recycling performances, as for construction and demolition waste, from those with a crucial need for improvement.

Our recommendation: Alternative options to EPR schemes should be clearly foreseen for waste flows where recycling performances are already achieved, such as targeted action plans, based on traceability and transparency of costs.

C) Existing and performant B-to-B systems, combined with EPR schemes

In some cases, existing and performant B-to-B schemes can reach high recycling and recovery rates, without implementing article 8a, 4(a)'s full cost recovery principle. An exemplary case in Belgium is *Valipac*, the EPR scheme in charge of commercial packaging. The latter relies on free market B-to-B collection and treatment services. It does not apply the full cost recovery principle, while reaching an 88% recycling and 96% recovery rate. It becomes evident that there is no economic or environmental reason to change a system that has proven its efficiency for more than 20 years.

Our recommendation: A “do nothing option” should be also clearly foreseen when B-to-B schemes perform successfully for industrial & commercial waste streams.

2) Full Cost Responsibility

According to recital 14 of the Waste Framework Directive, “producer responsibility” refers to a set of measures taken by member states requiring producers of products to bear organisational and/or financial responsibility for the management of the waste stage of a product’s life cycle including separate collection, sorting and treatment operations. This principle follows the rationale of the **polluter-pays principle**, according to which producers are set to bear the cost of the waste stage of a product’s life cycle, to establish a solid link between waste prevention, recyclability and product design.

Article 8a, paragraph 4 (a) on producer cost responsibility is meant to incentivise waste prevention, promoting product design for the environment as well as supporting the achievement of reuse and recycling targets in a cost-efficient manner.

“Full cost responsibility” is read with the meaning that producers should be financially responsible for all their products, when falling within scope of the directives, and packaging placed on the market, unless article 4(c)’s derogations are applied for all waste streams.

Regarding household waste, EPR schemes can include full cost coverage. Yet, for commercial and industrial waste (B-to-B), waste operators should continue to send invoices directly to their clients. Intervening in a functioning market can lead to undesirable consequences compromising good recycling performances. Data management (tonnage reporting) under B-to-B contracts and reporting to PROs is enough to link commercial and industrial waste in EPR data and recycling performance.

As to ensure cost-efficiency, FEAD stresses the need to limit full cost recovery under EPR schemes to household waste.

Our recommendation: “Full cost responsibility” should be limited to household waste management. Overall, EPR schemes should not be developed in case of existing B-to-B schemes showing satisfactory performances.

Our understanding is that, in some member states, producers have interpreted paragraph 4(a) as meaning that their cost responsibility ceases the moment they have reached the targets set for their producer responsibility material. This could lead to producers of hard-to-recycle products and packaging not having to pay anything if the relevant targets have been met, undermining the aim of encouraging recyclability and risking the effectiveness of modulated fees. For this reason, it is crucial that EU-wide recycling targets are considered.

Our recommendations: FEAD advocates for an undoubted and equal interpretation of EU objectives by each member state.

3) Necessary Costs

Following the full cost responsibility principle, “necessary costs” set out in article 8(a) must reflect cost-efficient collection and treatment. Interpretation should not allow systems where middlemen cause an additional cost-effect in the chain of waste management. It is important to recognise that the more direct the link from waste producer to actual management is, the more cost-efficient a system usually is.

EPR costs should be benchmarked on best practices and competition, under a fair and open market for waste management services. Otherwise, EPR schemes risk to become unnecessarily expensive, thus undermining producers’ confidence in the system, as well as disincentivising efficiency improvements by service providers. Cost-efficiency should not lead to a low-cost policy enabling inappropriate handling.

Our recommendations:

- FEAD believes that in order to realise the circular economy, cost-efficiency must be a central pillar, with necessary costs benchmarking on best practices and fair competition within EPR systems.
- A list of tasks and references should be set up in the guidance as well as recommendations for benchmarking best practices as a basis for collection and treatment services.
- Compliance rules for EPR schemes should be enforced in order to strengthen cost-efficiency.
- Cost-efficiency principle should not compromise good performance and safety of collection, transport, storage and management.

4) Fair and neutral competition

To ensure fair and neutral competition, two key principles should be taken into consideration.

- Neutrality in organising EPR schemes

Interpretation should not lead to models in which one party plays a pivotal role, making competition impossible. It is up to member states to decide how to organize EPR schemes, but they should also ensure fair competition.

- Transparent and fair competition

In the interest of creating an environment for fair competition in the internal market, it is crucial that public procurement mechanisms are used in addition to transparent decision making in the awarding of contracts by producer responsibility organisations.

Our recommendation: FEAD believes that, if EPR schemes are needed, they should be organised by member states in an impartial way. Public procurement mechanisms should be used to ensure fair and transparent competition in the internal market.

For further information, please contact: info@fead.be

FEAD, the European Federation for Waste Management and Environmental Services, represents the private waste and resource management industry across Europe. FEAD's members are national waste management associations covering 19 Member States, Norway and Serbia.

FEAD's members represent over

- 3,000 companies with activities in all forms of waste management;
- 60% share in the household waste market;
- Handle more than 75% of industrial and commercial waste in Europe;
- Combined annual turnover of approximately € 75 billion;
- Employment of 320,000 people who operate around 2,400 recycling and sorting centres, 1,100 composting sites, 260 waste-to-energy plants and 900 controlled landfills.

They enable the transition to a circular economy by producing resources that can be reinjected in the economy and by supplying energy. Our companies add value through innovative and cost-efficient collection, sorting, and recycling of secondary raw materials. As a result, they play a crucial role in achieving the best economic and environmental outcomes.