

9 December 2022, Brussels

FEAD response to the Commission's call for evidence/fitness check on the Polluter Pays Principle (PPP)

FEAD welcomes the Commission's fitness check aimed at assessing whether EU and national policies ensure polluters bear the cost of measures to prevent, control and remedy pollution. The efficient application of the PPP is of key importance, as it should be the starting point of prevention and depollution. FEAD looks forward to the Commission's assessment to set further targets for preparing for re-use and recycling of additional flows, such as construction and demolition waste, textile waste, and commercial and industrial waste. With the EU legislator working at full capacity on the implementation of the Green Deal, the envisaged evaluation of the Polluter Pays Principle should also take into account the future legislative landscape (new and revised legislation) on its potential to comply with the PPP expectations.

EPR schemes and B2B contracts to apply the PPP to waste management

In relation to waste management, B2B contracts and the Extended Producer Responsibility play an important role in the application of the Polluter Pays Principle. Under the Waste Framework Directive, the Polluter Pays Principle determines that the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders. At the same time, for certain waste flows, such as packaging, electric and electronic waste (WEEE), end-of-life vehicles (ELV) or batteries, the financial and organisational responsibility of the producers is fully extended to the post-consumer end of life stage of those products and packaging through an Extended Producer Responsibility (EPR).

FEAD supports a producer's responsibility that reaches the post-consumer stage to ensure appropriate human health and environmental protection. Based on this, the producer should seek the best treatment for its waste, whilst waste managers can compete to provide the best and safest treatment. **However, to ensure the efficiency of the PPP, FEAD stresses the need to ensure that EPR schemes are not extended to all waste flows as this could jeopardise open markets.** EPR schemes can put the producer in the position of becoming a prescriber of technologies and objectives (sometimes in a monopoly situation), imposing waste operators "low-cost environmental practices" in order to minimise costs in detriment of an environmentally sound management of the waste. Therefore, the use of **EPR schemes should only be considered where open markets and waste contracts are not sufficient to develop an entire waste management chain**, covering collection, treatment, recycling, recovery or final disposal, as necessary in each case.

For example, in the case of batteries, an EPR scheme is completely inappropriate and unnecessary for lead-acid batteries since the value of this waste has been highly positive for over 20 years. In contrast, for conventional consumer batteries, an EPR is needed to establish an appropriate waste management chain, but also to ensure education and awareness of consumers. For these reasons, while acknowledging that EPR schemes can play a positive role for difficult flows, such as household waste, FEAD deems that B2B contracts are an equally effective way to apply the Polluter Pays Principle. In addition, **based on competition principles, the B2B approach covers the cost of an effective but also efficient waste management that guarantees the highest level of protection**

of the environment and human health. Hence, there is no need to create new EPR schemes where there are existing and performant B2B schemes. FEAD strongly supports B2B contracts for industrial and commercial waste and, in general, the following factors should be fulfilled before deciding to implement a new EPR scheme:

1. Assess whether any of the issues in the market could be solved by employing other policy instruments;
2. Carry out independent third-party audits at MS-level in order to assess the costs supported by all stakeholders for the collection and treatment of end-of-life products, taking into consideration the applicable regulatory constraints;
3. Decide on the most appropriate form of EPR (financial EPR or organisational EPR and bearing in mind that operational EPR close the market to alternative operators).

EPR should cover all the necessary costs

In the specific cases for which EPR schemes are established, the effective and efficient application of the PP principle is essential. In this sense, **FEAD believes that the producers need to be requested to pay for what is necessary, meaning to cover the full waste management services and considering all the externalities inherent to the overall waste management processes in a cost-efficient way.** This ensures the competitiveness of the waste management sector and enables the necessary innovation and creativity that can guarantee the highest level of protection of the environment and human health according to the Polluter Pays Principle. **Innovation is crucial for reaching EU's climate ambitions, and the private waste management sector is the cost-efficient solution to that.**

To ensure an adequate implementation of the PPP in EPR schemes, **FEAD suggests that the performance of EPR schemes and the achievement of their objectives should be better framed and controlled, while at the same time sanctions are enforced to tackle incompliances. In addition, there should be incentives through the eco-modulation of fees according to the environmental performance of the product,** for example, in the form of lower fees for less polluting materials (e.g., homogeneous and easily recyclable materials). This eco-modulation of fees needs to be accompanied by appropriate information for the consumer to identify the most sustainable choices.

Existing EPR schemes should not jeopardise open markets

In addition to the necessary cost principle, where EPR schemes have played its positive role in establishing an effective waste management chain, and other circular economy policy instruments have or will create the right incentives to develop a strong market for waste and recyclates, **it must be ensured that EPR schemes do not jeopardise the functioning of these free markets. The functioning of these markets for waste and recyclates is key for a circular economy, as it ensures competition on a level playing field and it allows for further innovation both, in the production processes, and in the subsequent management of the waste.**

Competitiveness of secondary raw material recovered from waste

As a way to internalise the negative effects on the climate and the environment of the extraction of raw materials according to the polluter-pays principle, **it has to be ensured, through the right incentives, that raw materials recovered from waste are considered at least equivalent, if not higher recognised than primary raw materials.** Through a circular economy approach, recovered waste can be reintegrated into the manufacturing cycle almost endlessly, saving resources, energy and CO2 emissions.

Appendix: examples of insufficient application of the PPP in waste management

1. Pollution and risks related to wrongly discarded lithium batteries

An example of **insufficient application of the PPP** in the handling of pollution and the risks related to waste can be found in lithium batteries, and especially in **battery-related fire incidents that affect waste management plants and infrastructure on a weekly basis, which are mostly caused by wrongly discarded waste (lithium) batteries, often thrown into the general waste bins or with other waste streams like cardboard, paper, plastics and metals.** E-waste is one of the fastest-growing sources of waste in the world, with approximately 4 million tonnes being discarded in the EU in 2018¹. Such is also the case of e-waste from e-cigarettes, and in particular single-use vapes, whose battery contains toxic chemicals classified as hazardous substances, and which are marketed as disposable with almost zero communications or options for their recycling presented to the public. To respond to the consequences of **the lack of awareness of battery disposal**, the waste management industry is called to invest in fire prevention and cover the costs and remediate the consequences of the fire incidents. **Considering the exponential increase in the demand for batteries that will accompany the transition to a low-carbon economy,**² FEAD strongly advocates for applying eco-modulation to products containing a battery, separate collection and awareness raising of waste batteries disposal, with an appropriate implementation of the polluter-pays principle.

In general, there is a lot of room for improvement regarding the implementation of the Polluter Pays Principle as far as WEEE is concerned. In this regard, FEAD advocates for the necessary expansion of separate collection and of collection infrastructures for WEEE. The financing of such effective collection systems must be ensured according to the Polluter Pays Principle.

2. Substances of concern in waste. Waste containing POPs

FEAD supports ecodesign requirements that strive for true dismantlability and recyclability of products through targets and use of mandatory standards for products, reducing or phasing out harmful chemical substances. However, even when some substances are banned or strongly restricted in manufacturing processes, they will still be present in waste, even after many years, depending on the length of the products' life cycle. Here, a special mention should be made to persistent organic pollutants (POPs) and, particularly, **waste containing those POPs, as they require highly specialised and costly decontamination and treatment processes, which must also be appropriately covered by the Polluter Pays Principle.**

To be able to apply the best waste management treatment, **information on substances of concern is essential.** Therefore, any product placed on the EU market must be accompanied by a full disclosure of such information and (on the basis of a LCA and the EU waste hierarchy) a statement on how the product can (and should) be safely treated at its end-of-life.

The PFAS-crisis in Flanders has shown that many waste treatment operators receive insufficient information from waste producers regarding the potential presence of substances of concern in waste. Waste treatment operators can request additional

¹ Statistisches Bundesamt (DESTATIS), 2021, https://www.destatis.de/Europa/EN/Topic/Environment-energy/E_Waste.html.

² Estimations by the World Economic Forum and the Global Batteries Alliance, global demand for batteries is set to increase 14-fold by 2030 (compared to 2018 levels), mostly driven by electric transport. See: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=SWD:2020:0335:FIN>.

information from the waste producer if they have suspicions about the presence of these substances, but they have no legal tool to force the producer to provide this information. As a result, the waste treatment operator is forced to conduct or order expensive laboratory analyses themselves to ensure that they abide by the emission limits set in their own environmental permit. As a result, the cost and risk of pollution is not fully borne by the waste producer. **To solve this issue, waste producers should be legally obliged to share any information they possess about the potential presence of substances of concern.**

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