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## General comments and suggestions on the Waste Management Law Draft

Around Europe one can find many approaches to extended producer responsibility (EPR). Partly this is for historical reasons, as national implementations preceded shared regulation at the European Union (EU) level. Moreso the differences can be attributed to the fact that the subject matter was loosely defined in the first *Waste Framework Directive* (WFD, 2008/98/EC), since there was little evidence for the superiority of any one mode of implementation. With time understanding improved and the circular economy agenda [became center stage](#), as evidenced by the third European Commission (EC) in a row pushing it forward with its *Circular economy action plan* ([CEAP](#)).

Previous commissions progressively made EPR regulations stricter — for example with the Directive on *Waste Electric and Electronic Equipment* (WEEE, 2012/19/EU), 2018 update of the WFD and the new *Directive on the reduction of the impact of certain plastic products on the environment* (SUPD, 2019/904/EU). Considering the EC’s [Zero Pollution Ambition](#), its Sustainable Products Initiative in the making and the fact that well functioning EPR systems are widely recognized as majorly contributing to the shift from waste to resource management, it is clear we can expect further improvements and applications of EPR to new material and waste streams. Be that for things like textiles, which already are under EPR in some countries, or to address more novel problems like [microplastic pollution](#).

The first suggestion is therefore to think about which waste streams are the most problematic (environmentally or economically) in Montenegro

and whether additional EPR systems would be sensible. Beyond the minimum mandated by EU legislation. France is the champion when it comes to using EPR with 22 systems enshrined in law (article L.541-10-1 of the *Environmental Code*). Besides the obligatory EU ones, those notably include construction and demolition waste, furniture, textiles and footwear, several chemical products and pharmaceuticals, syringes, toys, sports and leisure goods, common handyman and gardening tools, graphic paper and tyres. Similarly Slovenia has a few additional systems, where EPR for **grave candles** stands out the most. It was enacted due to abnormally large quantities of this waste. Considering similar problems in Croatia and Poland, it is worth checking if a similar measure is needed in Montenegro.

The proposed law has a negatively surprising requirement for producer responsibility organizations (PRO), mandating that they need to be part of an existing producer. This is non-standard and unseen in the rest of Europe, unfathomable in its core, forcing producers to start to also work in waste management. Even if it wasn't about producers, but existing waste management companies (private or public), it would still be a bad idea, as vertical integration has plagued many EPR systems, leading to higher costs, corruption and lower performance (Adelphi, 2021). The **PRO should therefore be a separate entity**, not something tacked onto an existing producer, **and vertically unconnected** to other actors in the waste management field.

Experience shows they work best when they are organized as **non-profit companies established by producers themselves**, since it drives costs down, clarifies the mission and helps prevent malfeasance. Considering the law is largely based on the new WFD, it makes sense to copy also this implicit requirement — article 8a states that financial contributions paid by producers *“do not exceed the costs that are necessary to provide waste management services in a cost-efficient way”*. To comply, PROs have to minimize costs whether they are organized as for-profit or non-profit organizations, so it makes sense to mandate non-profit status to reap the other mentioned benefits.

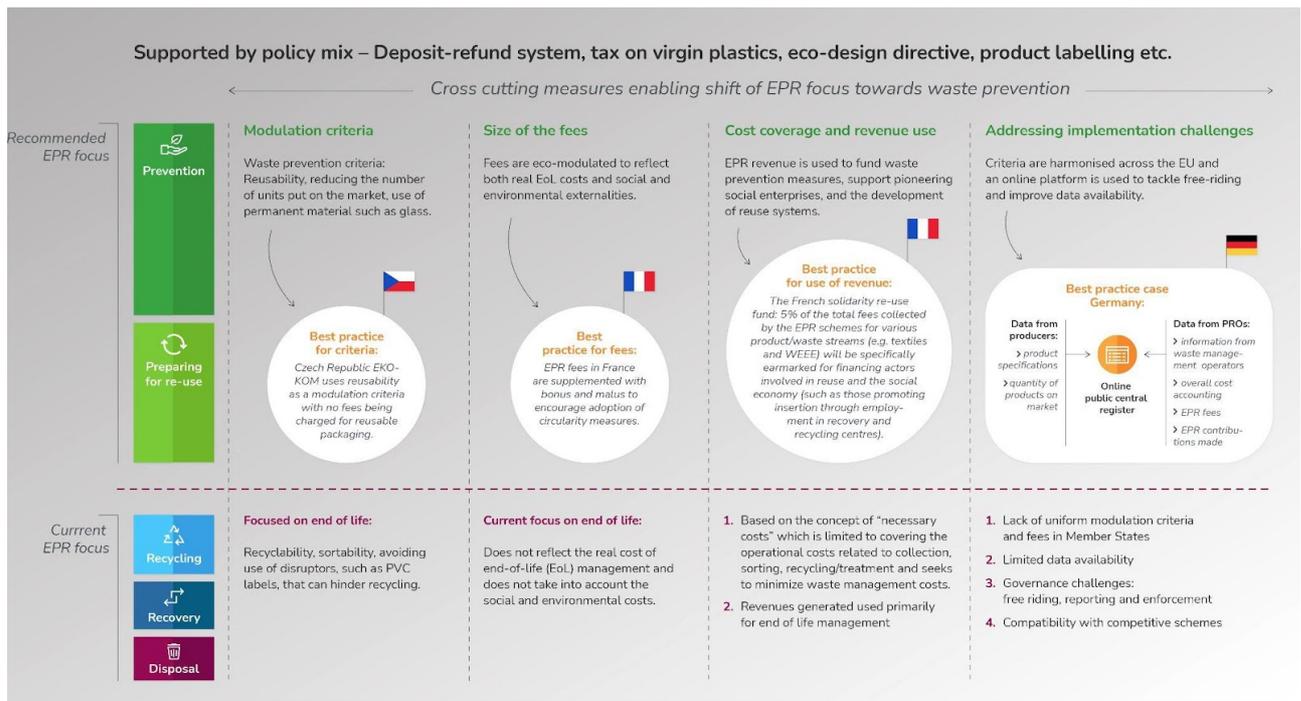
As another safety measure, EU PROs are now required to provide yearly **bank guarantees** to be allowed to operate, a solution that has been first enacted for WEEE. This is easily amended in article 13, paragraph 6, point 5. Guarantees are a simple financial instrument ensuring that even if something goes wrong with the PRO, there is money in the system to deal with the waste and further taxpayer money doesn't need to be spent. They are paid up front, so ensuring PROs have enough assets in the first place, but more importantly, that their liquidity through the year does not influence the capacity of the government to use the guarantee. Slovenia

learned this the hard way with several public money interventions needed to dispose of packaging waste that some PROs suddenly refused to manage.

Another key improvement of the WFD revision was to make EPR systems **full-cost** (100% financial responsibility), with barely any derogations and even those are severely limited (article 8a). The second paragraph of article 98 should thus be modified and the optional partial cost diction removed. For example, in Slovenia the waste sector estimated (EBM, 2018) that producers of packaging cover only around a third of the cost of management of waste from their products, undermining the whole system and contributing to bad results.

Furthermore, it's important to ensure **producers are fully responsible for all the produced waste under EPR**, which would fit well into article 13. It should also say that producers of a particular waste stream under EPR are collectively responsible for the management of the complete stream. Meaning that regardless of any anomalies in the system or perturbations in the market, no waste will remain unmanaged, at least when it falls under the auspices of EPR. This measure was another stop-gap addition to Slovenian legislation to prevent further cherry-picking and untreated waste accumulation. Together these changes should ensure there's always enough funding in the system to prevent economic and environmental damage.

To encourage management following the waste hierarchy the proposed differentiation of EPR fees on recyclability, repairability etc. ("**ecomodulation**") is key. It should be mandatory and it's easiest to start based on national capacities for recycling (or better) of particular material streams. Later it can be upgraded to full-fledged models as seen in France with packaging and e-waste. The Ecologic Institute [created a report](#) in late 2021 on how to push ecomodulation forward to maximize the circularity of results, also listing some existing good practices. As it is a young area of regulation, the suggestion to start with simpler approaches is pertinent for Montenegro. It is good to see ecomodulation mentioned in the law at least in passing!



Source: Ecologic Institute, 2021  
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*Measures to shift EPR focus towards waste prevention; advanced clearing house complications (Source: Ecologic Institute, 2021)*

Ecomodulation does not need to be limited to EPR fees. Since non-recyclable plastic packaging is such a big resource management problem, the [EU adopted](#) a plastic contribution of 0,80 €/kg on non-recycled plastic packaging in 2021. The goal is to stimulate the recycling sector, help reduce landfilling and (co)incineration, and to promote adoption of efficient waste policies at Member State level. It is not a direct tax per se, but when connected back to packaging put on market, it can nudge producers to improve product design and better follow the waste hierarchy. It can be woven into the EPR system or done as a [separate regulation](#) like in the case of Slovenia. There everyone that puts packaging on the market has to pay a packaging pollution fee upfront. Minor ecomodulation is applied to it, which for example successfully reduced the amount of PVC packaging, since it is much harder to viably recycle. France additionally puts 5 % of EPR fees towards reuse programmes (*Anti waste law for a circular economy*, L-2020-105), which is a best practice example, as the collected funds are used purposefully to further the law's goals and do not go back to the country's integral budget. Montenegro should consider a similar packaging and WEEE pollution fee.

To further follow the waste hierarchy, waste disposal should be economically penalized, be it landfilling or (co)incineration. The law should introduce a gradually increasing disposal tax (gate fee) for both landfilling

and (co)incineration as seen in many countries already (most recently the Czech Republic). A special environmental fund should be created (if an appropriate one does not exist) for the collected funds, which would then finance **work higher up the hierarchy** (like prevention and recycling capacity) and the soft measures that often get neglected — awareness raising, information sharing, education and capacity building.

When it comes to climate change impacts and disposal, it's important to ensure that, as stipulated by the EU *Landfill Directive*, landfilling of municipal waste that hasn't been **biologically stabilized** is prohibited as soon as biowaste treatment infrastructure allows. Through the process not only are methane and water emissions reduced, but also the amount of waste needed to be landfilled is lowered by evaporation, prolonging the lifespan of existing landfills. Article 23 should be amended with an eventual ban. Considering the relative technological simplicity of the infrastructure required, which is also needed to meet other goals of the law, a ban complementing or replacing the 2033 organic content target would speed up achieving compliance.

### EPR, the free market and competition

As it was mentioned in the introduction, there are many ways to design an EPR system, depending on the circumstances and capacity. Years and years of implementation however showed certain ways are better than others, with two systems clearly giving the best results. The current law proposal enables there to be up to six producer responsibility organizations for the same waste stream, since it's limiting them only by combined market share (15 %). This is dangerous; for example in Slovenia this led to waste piling up, fires, general mismanagement and the need for the country to intervene and pay for the damage with taxpayer money. While there was only a single well-run PRO the system worked fine, but as more entered the market, previously referenced legislative deficiencies eventually imploded the system. Adelphi concluded in their 2021 report on several EPR implementations that competition for access to waste may lead to inefficiencies and higher costs, of which Slovenia is a prime, but not the used, example, as it was not studied.

The best systems are organized with a **single PRO per waste stream**, which is also legally the simplest solution. This is what Montenegro should strive for. Some countries are successful with several PROs per stream, but only when an additional "clearing house" entity is in place to keep the system in check. However, that requires more legislation, bureaucracy, funding and is more likely to fail, since it is harder to control. Some others

have a single PRO per sub-stream, eg. one just focusing on metal packaging, another just on plastic packaging and so on, which is also suboptimal and in practice needlessly complicated. Additionally for clearing house systems, the EC expects them to lower the number of PROs through time (*Development of Guidance on Extended Producer Responsibility*, 2014), as the minimum standards and pressure to perform well will increase.

The common argument against the so-called monopolistic system is that it infringes on market competition regulations and increases costs. The first is could be true with for-profit monopolistic PROs, but the plethora of examples across the EU show that it is indeed not a problem. In fact, there's almost as much competition in well designed monopolistic systems as others, since PROs monopolize only the organizational obligations, which represent just around 5 % of the total costs (number from Slovenia), the rest, practical waste management, being transparently publicly tendered. In practice, subversion of competition was seen in the Slovenian WEEE and packaging EPR systems, where PROs didn't have internally unified prices, meaning some producers had preferential treatment, usually those with bigger quantities of more valuable waste, instead of everyone having the same starting position that's then adjusted by ecomodulation. Perhaps more problematic through the lens of competition and achieving environmental goals is the shared nature of work in systems with more than one PRO. Of what quality is the waste treatment, what technical standards are followed, how much awareness raising is being done? Adelphi confirms in their report that monopolistic systems are better at these. In Slovenia the PRO competition led to price dumping, substandard services and the escalation of problems in particular for packaging EPR. Share-based systems introduce additional uncertainty that negatively affects market actors and their legal safety, which was also reported elsewhere (N. Kunz et al, *Extended producer responsibility: stakeholder concerns and future developments*, 2014).

Deliberate cherry-picking can also be seen at municipal collection points. So regardless of EPR system type, it is paramount that all PROs collect waste from the whole country, otherwise competition will be skewed. Having more of them covering a relatively small area (Montenegro, Slovenia) can reduce the overall cost effectiveness as well.

Further details about the Slovenian WEEE and packaging EPR systems, accompanied by analyses of systems in other European countries are available in these two reports (in Slovenian): [WEEE](#), [packaging](#). While slightly dated, they contain the gist of our experience.

Monopolistic systems are typical for countries just starting out with EPR (*Development of Guidance on Extended Producer Responsibility*, 2014). That makes sense, as the set up of the system is heavily dependent on

government action, resources and legislation. It's a simpler approach that still requires a lot of cooperation within the waste management sector and no less control. These systems should thus not be evaluated in isolation.

Clearing house systems can perform just as well, but are harder to get right, as notably the German packaging experience shows. Adelfi notes that in the absence of such a functioning mechanism, some PROs may intentionally over fulfill their obligations and speculate on selling the excess quantities at a profit to other PROs that can otherwise not reach their collection shares, causing further strife.

All across Europe one can see that, despite advanced EPR frameworks and recent EU changes still to be enacted, problems abound, exacerbated by a lack of enforcement and transparency. Clear reporting obligations (who to whom, how often and how, at what granularity), regular verification and public overviews can all contribute to building trust in the system and improving compliance and performance. A clearing house adds an additional layer as an intermediary, which is a complication, but also does not mean an impossibility of good data management, transparency and enforcement.

## Conclusion

The suggestions present in this document come from EU legislation, best practices and bad experience from existing implementations, especially in Slovenia. After long deliberation and opposition from a vocal minority from the waste sector (some PROs), Slovenia decided to [enact most of these changes in the core Environmental Protection Act \(summary\)](#), to finally solve the problems its multiple PRO system created. Going forward only a single PRO per waste stream will be possible, with the Ministry of Environment acting as the clearing house, along an external supervisory board with broad representation. The lesson to be learned is that it's very hard to fix the system once it is in place, so better design it as well as possible from the start.

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