

EPR: The Cornerstone of a Circular Economy

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Over the last few years, the concept of “circular economy” has gained increased momentum and attention, becoming a buzzword in policy and business circles around the world. A characteristic feature of the circular economy is that natural resources are not disposed of or depleted, but are instead kept in use for as long as possible through their recovery and reuse. This requires, among others, new policies to incentivize companies to implement circular business models, but also to ensure that end-of-life products and materials can be effectively recaptured. And this is where extended producer responsibility (EPR) comes in.

Although the idea has been around for a few decades, EPR is increasingly being seen as an important policy tool to drive the transition to a circular economy. In Europe, for example, EPR has been identified as one of the key elements in the European Commission’s new Circular Economy Package, adopted on December 2, 2015. Similarly, in Ontario, the idea of full EPR is being promoted as the cornerstone of proposed changes to the Waste Diversion Act. This makes sense; by shifting the responsibility—financial and physical—for waste management to the party that has the most control over product design (i.e. manufacturers), there is a greater incentive to design out waste and make products and packaging that are more easily reused or recycled, to reduce costs associated with managing them at end-of-life.

This article intends to highlight areas of alignment and differences between what Europe and Ontario’s legislative frameworks are proposing in terms of EPR, and discusses what some of the implications will be for manufacturers if passed into law.

100% EPR

A notable feature of both Ontario’s and the EU’s proposed waste legislation is that they include provisions to transition to a 100% true EPR system. While both jurisdictions already have EPR programs for packaging in place, these are not full EPR programs because costs and responsibilities are *shared* between the producers and the municipalities that operate the diversion programs.

In Ontario, under the Waste Diversion Act (2002), industry’s obligation is capped at 50% of total recycling program costs, with municipal taxpayers picking up the rest of the tab. If passed, article 11 of Ontario’s new legislation would allow for this cap to be lifted and make industry responsible for the total costs associated with meeting the prescribed outcomes.

Similarly, the new Article 8a in Europe’s Waste Framework Directive (WFD) would require that the financial contributions paid by producers to “cover the entire cost of waste management” for the products they put on the EU market, “taking into account the revenues from re-use or sales of secondary raw material from their products.” Only a few Member States currently require 100% EPR for packaging (like Austria, Germany, and Belgium), which would significantly change the fiscal landscape for producers.

Unilever and Coca-Cola spokespersons in Brussels, the centre of the European Union, seem to accept this increased level of responsibility as long as the costs are “reasonable,” and that there is control for obligated companies over the recycling and recovery system design and operations. That sentiment is understandable and mirrors that seen across most EPR programs, including Ontario’s. On this issue, it is worth noting that unlike its previous legislation, the Waste Free Ontario Act contains no provisions to require “reasonable compensation” for municipalities. Although this may have come as a surprise to some, it is in keeping with the EU’s revised waste proposals, which include the requirement for EPR schemes to base their fees on the “optimized cost of the services” where operations are carried out by public waste management operators (i.e. municipalities).

While the proposed transition to greater industry responsibility is certainly a step in the right direction, the scope of both articles still fall short of true EPR, in that they only require producers to pay for the costs of managing waste that is separately collected. Notably absent from both pieces of legislation is a clear requirement for producers to pay for the costs of handling or disposal of materials that were not captured through stewardship programs (i.e. those that are illegally dumped or that end up in the litter and garbage stream). This suggests that municipalities are still stuck with these costs (unless targets are set at 100%), which can be significant.

Minimum Operating Conditions/Performance Requirements

Aside from enabling a shift to 100% producer responsibility, both Ontario’s and the EU’s proposed legislation include provisions for more stringent rules for EPR schemes. A key part of those rules—and fundamental to the success of a circular economy—is the development of minimum operating standards and performance requirements.

The proposed requirements for EPR schemes in the new Article 8a of the Waste Framework Directive include, among other things, clearly defined producer roles and responsibilities, measurable waste management targets, establishing a data collection and reporting system, and providing equal treatment and non-discriminatory services for all participants. After decades of EPR in Europe, this will be a warm welcome by obligated producers who have long been frustrated by insufficient recycling standards and minimal enforcement.

In a similar way, Ontario’s *Draft Strategy for a Waste-Free Ontario: Building the Circular Economy* includes text around adopting enhanced standards for service providers. Specifically, the Strategy states that the province would consider “adoption of national, international, and industry standards; development of provincial standards (e.g., recycling standards); enhancement of reporting, compliance, and enforcement; [and] third-party monitoring, audits, and transparency with public reporting.” As in Europe, this would offer some long-overdue clarification regarding the “rules of the game” for producers subject to Ontario’s EPR laws.