



Post Consultation Brief on the transposition of the Waste Legislative Package 2020

March 2021



EXECUTIVE SUMMARY / GENERAL COMMENTS

On 5th October 2020, seven draft legal notices were published for public consultation:

- 1) Waste Management (End of Life Vehicles) (Amendment) Regulations, 2020
- 2) Waste Management (Waste Batteries and Accumulators) (Amendment) Regulations, 2020
- 3) Waste Management (Electrical and Electronic Equipment) (Amendment) Regulations, 2020
- 4) Waste Management (Landfill) (Amendment) Regulations, 2020
- 5) Waste (Amendment) Regulations, 2020
- 6) Extended Producer Responsibility Framework Regulations, 2020
- 7) Waste Management (Packaging and Packaging Waste) (Amendment) Regulations, 2020

These Legal Notices transpose the four directives known as the “Waste Legislative Package” (Directive (EU) 2018/849 of the European Parliament and of the Council amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment; Directive (EU) 2018/850 amending Directive 1999/31/EC on the landfill of waste; Directive (EU) 2018/851 amending Directive 2008/98/EC on waste; and Directive (EU) 2018/852 amending Directive 94/62/EC on packaging and packaging waste).

The draft Legal Notices were issued for public consultation for a period of six weeks, beginning on the 5th October 2020 and ending on the 16th November 2020. ERA organised two online public consultation sessions, in order to present the draft Legal Notices and better explain their application. The first session held on the 12th October 2020, focused on the amendments to the Waste Regulations and the Waste Management (Landfill) Regulations whilst the second session held on the 13th October 2020 focused on the new Extended Producer Responsibility Framework Regulations, as well as the amendments to existing waste legislation on packaging, batteries, end-of-life vehicles and WEEE.

Members of the public were invited to make comments and suggestions as to how the proposed regulations could be improved to reach their ultimate aim. Various feedback was received during the consultation including written submissions made by four entities.

DETAILED CONSULTATION FEEDBACK

Ref No.	Name of Stakeholder	Written comments received through email	Response / Remarks
1	Lucie Rofé Friends of the Earth Malta	<p>After having attended the public consultation online sessions taking place on the 12th and 13th of October, regarding the waste legislative package, Friends of the Earth Malta wish to raise certain points.</p> <p>We insist that separate collection must be mandatory. It was indicated during the session that there can be derogations, according to certain conditions, to the compulsive nature of separate collection. We are especially worried about the “Separate collection would entail disproportionate economic costs” condition, which should not be a justification for mixing waste. We are adamant that this must not be a loophole that would allow regional councils to not have to comply with the requirements.</p> <p>We encourage the development of bring-in sites. Nevertheless, in the past, these sites have been found to be in a bad state and these sites have been dumping grounds for waste in Malta. Therefore, we wonder how the upkeep of the sites will be ensured. A mitigation strategy regarding this issue needs to be thought of.</p> <p>Furthermore, measures should be taken to accentuate efficient reuse of items. Repair café initiatives and warehouses dedicated to the reuse of items should be encouraged, and in that perspective, individuals should be allowed to collect reusable items from the civic amenities sites if they feel that they can put them to use. Moreover, as was already promoted in 2018, mechanisms need to be put in place to ensure that discarding an item would be more costly for individuals and businesses than fixing it. In addition, we believe that electrical and electronic items could be sorted and that the recovered materials could then be exported. As part of the EU targets promoted by the newly proposed</p>	<p>ERA would like to thank you for your detailed comments, which have all been duly noted.</p> <p>ERA would like to clarify the following points in reply to specific queries from your feedback:</p> <p>1. <u>Separate Collection:</u></p> <p>Pursuant to the draft Waste (Amendment) Regulations, 2020, separate collection is mandatory for the following waste streams: paper, metal, plastic, paper, metal, plastic and glass, and, by 1 January 2025, for textiles. Moreover, separate collection of household hazardous waste will also be mandatory as from 1st January 2025.</p> <p>With regards to the proviso referred to in your comments (“<i>separate collection would entail disproportionate economic costs</i>”), we would also like to clarify that this exemption emanating from the amended Waste Framework Directive (WFD) relates to very specific cases and thus does not represent a loophole. Recital 42 of Directive (EU) 2018/851 amending the WFD accurately clarifies this point:</p> <p><i>“...While the obligation to separately collect waste requires that waste be kept separate by type and nature, it should be possible to collect certain types of waste together provided that this does not impede high-quality recycling or other recovery of waste, in</i></p>

		<p>Circular Economy Package, Malta could also put in place some economic incentives that would encourage producers to support recovery and recycling schemes regarding the products they put on the market.</p> <p>The Beverage Container Refund Scheme planned by the government must be implemented imminently, since this has not been done since the initial public consultation in 2018. As highlighted by the FoEM recommendations back in 2018, it is crucial to extend this deposit system to other products to ensure an increase in recycling percentage. These products could be further product-packaging material.</p> <p>Regarding the textiles collection in 2025, will the textiles collected be recycled or reused? Fabric scraps, soiled clothes etc. must be collected and properly recycled.</p> <p>We also believe that food waste can be limited by redistribution to food banks. This measure would make sense both from an environmental and social point of view.</p>	<p><i>line with the waste hierarchy. Member States should also be allowed to deviate from the general obligation to separately collect waste in other duly justified cases, for instance where the separate collection of specific waste streams in remote and scarcely populated areas causes negative environmental impacts that outweigh its overall environmental benefits or entails disproportionate economic costs. When assessing any cases in which economic costs might be disproportionate, Member States should take into account the overall economic benefits of separate collection, including in terms of avoided direct costs and costs of adverse environmental and health impacts associated with the collection and treatment of mixed waste...”.</i></p> <p>2. <u>Number of Bring in Sites/recycling points:</u></p> <p>Your comments are duly noted - ERA, in cooperation with key stakeholders and the general public, shall endeavour to ensure the upkeep of such sites. With regards to the frequency of Bring-In-Sites (recycling points), ERA agrees that recycling points encourages separation of waste at source, and in light of the comments received through this consultation, the Legal Notice will be amended such that the proposed regulation 10(2) of the Waste Regulations will oblige the setting up of recycling points for every 2,000 inhabitants, as opposed to 3,000.</p> <p>3. <u>Re-use:</u></p> <p>In line with the new EU Waste Legislative Package, the seven draft Legal Notices emphasise the importance to take appropriate measures to</p>
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			<p>increase the reuse of products. Such measures form part of the new draft Waste Management Plan, upon which stakeholders and the general public were duly consulted.</p> <p>4. <u>BCRS:</u></p> <p>The implementation of the BCRS falls outside the scope of this consultation. With regards to new potential Deposit-Refund Scheme/s, we would like to indicate that the proposed amendments single out the establishment of such schemes as a measure to encourage the environmentally sound reuse of packaging and collection of used materials and products.</p> <p>5. <u>Textile Collection:</u></p> <p>The proviso establishing separate collection of textiles refers to textile waste. Bearing in mind that waste cannot be reused directly, such textile waste would need to be prepared for re-use. In this context, used textiles will be subject to other provisions, notably those relating to waste prevention.</p> <p>6. <u>Food waste:</u></p> <p>As indicated in our previous replies, the new draft Waste Management Plan includes a number of measures to reflect the concept of waste management hierarchy. Specifically, the new waste prevention programme within the Waste Management Plan also caters for food waste.</p>
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2	<p>Ing. Mario Schembri GreenPak Cooperative Society Ltd.</p>	<p>Attached, please find GreenPak’s feedback to the proposed amendments to the Waste Management Regulations</p> <p>_____</p> <p>GreenPak COOP Society Ltd is a Producer Responsibility Organization (PRO) established in 2006 which provides compliance to producers related to the Packaging and Packaging Waste Regulations, Waste Electrical and Electronic Equipment Regulations and the Batteries and Accumulators Regulations.</p> <p>GreenPak is putting its feedback forward on the proposed amendments to the Waste Regulations as it seeks the best transposition of these EU Directives into Maltese Law.</p> <p>List of recommendations</p> <ol style="list-style-type: none"> 1. There must be one licenced PRO responsible for each thematic waste stream. 2. Regulation needs to focus on ownership, good governance, financial stability and accountability of PRO so as to allow PRO space to invest, innovate and grow, thereby achieving National/EU Targets. 3. Term of PRO permit increased to 10 years to allow stability, growth and innovation and in-line with the WMP. 4. PRO market share for packaging is calculated on a 3-year moving average (in case of multiple PROs) 5. Newly set up WEEE PRO must not be exempted from putting in place a Bank Guarantee in its first year of operation. 6. Stronger Legislation to motivate producers not to free ride the system 7. Obligation for waste separation needs to extend to the waste holders 8. Reduction of fragmentation within Local Councils 	<p>ERA would like to thank you for your detailed feedback, which has all been duly noted.</p> <p>As a general reply to your feedback, ERA would like to point out that most comments are relevant mainly for the consultation on the Waste Management Plan, rather than on the proposed Legal Notices which transpose the Waste Legislative Package, and to which this consultation directly relates.</p> <p>With this in mind, ERA would like to indicate that the proper forum to submit any proposals and comments on potential new national systems for the effective implementation of the Extended Producer Responsibility (EPR) Principle, was the public consultation on the new Waste Management Plan for the Maltese Islands. The proposed amendments transposing the EU’s Waste Legislative Package set a new legal framework, in particular with respect to EPR, without however delving into such details.</p> <p>Nonetheless, ERA would like to clarify the following, in reply to the specific points and recommendations listed in your feedback:</p> <ol style="list-style-type: none"> 1. <u>One licensed PRO for each waste stream:</u> <p>This discussion falls outside of the scope of this public consultation exercise.</p> <ol style="list-style-type: none"> 2. <u>Governance:</u> <p>ERA would like to clarify that under the EPR Framework Regulations, ERA will retain its regulatory power vis-à-vis the implementation of the</p>
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	<ul style="list-style-type: none"> • Ability to impose stiffer Bank Guarantees on PRO to safeguard guaranteed public service • 100% coverage of Malta guaranteed - no issue with 'orphaned' LCs • Facilitates eco-modulated fees which is a legal requirement • No excuse for not reaching Ambitious targets <p>In the case of competition at PRO level in the WEEE stream, the anomaly and potential for abuse exists in relation to the exemption to provide a Bank Guarantee in the first year of operation (WEEE Reg. 21) of a new scheme. In order to safe guard public service, good governance and accountability a Bank Guarantee is to be asked for every year of operation, not to mention the unfair competition aspect in relation to other operational PROs which have a Bank Guarantee in place.</p> <p>Good Governance</p> <p>The regulations need to focus on five main themes when looking at the operation of PROs for any waste stream covered by EPR:</p> <ul style="list-style-type: none"> • Ownership • Good Governance • Financial Stability • Transparency • Accountability <p>GreenPak recommends that it should be ERA's role to oversee that PROs employ good governance. The setting up of the EPR Consultative Committee through Regulation 5 and 6 of the EPR Regulations is creating another administrative burden on the PROs without concretely addressing the main issue at hand related to PROs – good governance. GreenPak believe that the setting up of Consultative Committee, whilst</p>	<p>same year of its placing on the market (packaging is characterised by a very short life-span unlike EEE). As such, the allocation of Local Councils without an agreement needs to be driven by the placement on the market of that specific year, since this is the most accurate indication of the amount of packaging waste generated from the packaging placed on the market in that year by the producers participating in the PROs.</p> <p>5. <u>The quarterly audited declaration:</u></p> <p>ERA acknowledges the difficulty in obtaining an audited declaration as specified in the draft and has therefore removed the auditing requirement. However, ERA stresses the importance of receiving timely, reliable and accurate data.</p> <p>6. <u>Bank guarantee for first year:</u></p> <p>The formula contained in the text does not allow for a bank guarantee to be calculated for the first year since there is no placement on the market from previous years.</p> <p>7. <u>Free riding:</u></p> <p>Comments duly noted.</p> <p>ERA, in cooperation with key stakeholders and the general public, shall endeavour to continuously improve the implementation, including enforcement, of the EPR principle in Malta, notably through the implementation of this waste legislative package and the new Waste Management Plan.</p>
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	<p>good on paper, is a poor attempt at overseeing good ethics and function of PROs.</p> <p>Regulations need to focus on ownership, good governance, financial stability and accountability of PRO so as to allow PRO space to invest, innovate and grow, thereby achieving National/EU Targets. The current Intense regulation is micro-managing PROs stifling their growth, ability to excel and innovate.</p> <p>The term of PRO permit needs to increase to 10 years in order to allow market stability, growth and innovation, in-line with the objectives of the Waste Management Plan 2021-2030.</p> <p>Until such time that Local Councils are organised in regions, the PRO market share for packaging needs to be calculated on a 3-year moving average and not on forecasts or quarterly reviews, as being proposed. Once regions are established, the current method of allocating so called orphaned localities becomes obsolete on two counts: regions cannot be fragmented as well as the current mechanism cannot be extended to regions. More on this further below.</p> <p>Newly set up WEEE PRO cannot be exempted from raising a Bank Guarantee in its first year of operation. If such a measure were to be in place, it would introduce unfair competition with existing players as well as promote the setting up fraudulent WEEE PROs whose only intention would be to make some quick cash before disbanding before the first year is out.</p> <p><i>Excessive administrative Burden on PROs - Suffocating growth</i></p> <p>The Packaging and Packaging Waste Amendments Reg. 17 quadruples the requirement of audited reporting. GreenPak recommends the adaptation of the methodology currently used for WEEE PROs, namely that the PRO market share is calculated on a 3-year moving average. In such case, the data needed will be already audited every year through</p>	<p>8. <u>Obligation for waste separation on waste holders:</u></p> <p>ERA appreciates the importance of source separation of waste, and would like to indicate that this issue is being tackled through a specific measure in the new Waste Management Plan, upon which stakeholders and the general public were consulted.</p> <p>9. <u>Reduce fragmentation within Local Councils:</u></p> <p>This issue is tackled within the context of the Waste Management Plan.</p> <p>With respect to the proviso laid down in the new regulation 10C of the amended Waste Regulations, whereby the responsibility to attain the targets can be placed on the Local Councils or Regional Councils or both, we would like to clarify that the legal text solely establishes this option and the modalities whereby the Minister can place such responsibility on the above-mentioned entities, without setting any specific mechanism, so as to include some degree of flexibility to cater for any potential reform vis-à-vis the national waste management system.</p> <p>10. <u>Generation of revenue by Local Councils:</u></p> <p>This comment is noted, however is beyond scope of these regulations and related consultation process.</p> <p>11. <u>Replace the term ‘Bring in Site’ with ‘Recycling Points’:</u></p> <p>ERA agrees that the terminology “Bring-In Site” (BIS) may give rise to confusion, and agrees with the use</p>
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	<p>the annual report. Adopting such an approach, there will not be a need to quadruple reporting obligations on the PROs.</p> <p>The current Intense regulation is micro-managing PROs stifling their growth, ability to excel and innovate. This intense regulation needs to be toned down and focused on ownership, good governance, financial stability and accountability of PRO so as to allow PRO space to invest, innovate and grow, thereby achieving National/EU Targets. Recommendations above.</p> <p>General Minimum Requirements</p> <p>The introduction of the General Minimum Requirements through regulation 6 of the proposed EPR regulations is a positive step in the right direction. However, we feel that the regulations need to be bold and further supplemented in order to make sure that there is the legal framework to ensure that the general minimum requirements are adhered to.</p> <p>Geographical Coverage & Waste Collection Systems</p> <p>This requirement would be easier to attain in the case of Malta when there is one PRO per waste stream financing the collection and management of the specific waste stream. As has been experienced in the past, both locally and abroad, when there is competition at PRO level an element of cherry picking by the PRO operators is witnessed in order to release Local Councils which come at a high operational cost. Should one PRO be permitted there will not be an issue of market share versus population coverage and hence orphan local councils will no longer be an issue.</p> <p>Necessary financial and organisational means to meet the EPR obligations with Adequate self-control mechanism and an Element of transparency</p> <p>These requirements can only be achieved through clear regulations and legal obligations of PROs to have in place self-control mechanisms</p>	<p>of the term “Recycling Points”. The Legal Notices will be amended to reflect this change.</p> <p>12. <u>Increase BIS to at least one per 2,000 people, with minimum capacity of 1.1m:</u></p> <p>ERA agrees that recycling points encourage separation of waste at source, and in light of the comments received through this consultation, the Legal Notice will be amended such that the proposed regulation 10(2) of the Waste Regulations will oblige the setting up of recycling points for every 2,000 inhabitants, as opposed to 3,000.</p> <p>Notably, the capacity of the bins is not regulated by the waste legislation.</p> <p>13. <u>Contradiction surrounding the “Operator of last resort”:</u></p> <p>This comment is noted, however is beyond scope of these regulations and related consultation process.</p>
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	<p>which really work. In the case of GreenPak, self-control mechanisms are in place at various stages of operations. The management is answerable to the board of directors while the board is answerable to the AGM. In addition, accounts of each operational year are audited by external auditors and presented for scrutiny to the AGM.</p> <p>The transparency on ownership and financial contributions paid by producers can only be achieved through PROs being owned by obliged industry. In addition, as competition will only be at waste management operators' level then the selection procedure of waste management operators will equally be transparent.</p> <p><i>Financial contributions paid by producers</i></p> <p>Only through clear and transparent governance of the PRO will the fees paid by producers guarantee that the costs to provide Separate collection & treatment; Providing adequate information to waste holders; Data gathering and reporting; will be met</p> <p><i>Modulation of Fees</i></p> <p>The promotion of modulated fees is being promoted by GreenPak through the Extended Producer Responsibility Alliance (EXPRA). However, in a competitive market at PRO level such modulation cannot be attained and implemented due to the race to the bottom by PROs for fees to obliged industry. Thus, this requirement can only be achieved if single PROs are in place for each thematic stream.</p> <p><i>Recommendations related to Free Riding</i></p> <p>It is estimated that one third of the resulting packaging waste is undeclared originating from online sales, unregistered producers as well under declarations of registered producers. This gap places an unfair burden on honest producers by bringing upon them higher compliance costs and even worse, places them at a disadvantage when competing with these free riders.</p>	
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	<p>Therefore, if one is to apply the current methodology (market share) for allocation of Region to PROs, the allocations to PROs can only take place in multiples of 83,333 inhabitants. This needs to be viewed in the current context that provides a finer market allocation; for example Xaghjra has 1,830 inhabitants; Haż-Żebbuġ has 12,239 inhabitants and Sliema has 22,591 inhabitants. With 16.67% blocks, it is not possible to arrive at fair and equitable market allocations on PROs.</p> <p>In addition, as Local Councils are unable to generate revenue from the provisions of waste collection services to the small businesses in the community there is no motivation to move away from the current status quo.</p> <p>A positive addition is in the Waste Management Reg. 10 which places responsibility on Local Councils to setup at least one BIS per 3,000 inhabitants. We are of the opinion that the number of recycling points should be increased to one site per 2,000 inhabitants and a minimum capacity of 1.1 m³ is set in order to ensure that no loop holes are present in the legislation when it comes to the installation of such collection points.</p> <p>The term “Bring-In Sites” creates confusion in people’s mind as this is often thought of as the “Civic Amenity Sites”. GreenPak believes that “Recycling Points” is better terminology. GreenPak has upgraded the Recycling Points it operates with smart and intelligent bins. ERA should also consider promoting this technology in moving forward.</p> <p><i>Recommendations related to Operator of Last Resort/Local Agency</i></p> <p>The role of Wasteserv is being enshrined in local legislation through the amendments of Regulation 5 of the Waste Management Regulations (Waste Electrical Electronic Equipment). This is contradictory to an operator of last resort concept as this regulation is a clear statement that WEEE collected from Local Councils has to be delivered to the local agency (Wasteserv) thus there is no motivation for PROs to carry out innovation and commence with direct collection from households.</p>	
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3	Joe Attard WEEE Malta	<p>Kindly find attached the feedback of WEEE Malta Limited in relation to the Amendments to the Waste Management (Electrical and Electronic Equipment) (Amendment) Regulations, 2020.</p> <p>We thank you for your invite to be part of the consultation and look forward to further discussions prior to concluding the said final legislation for the better operation of the sector.</p> <p>_____</p> <p>Waste Management (Electrical and Electronic Equipment) (Amendment) Regulations 2020</p> <p>Introduction</p> <p>The amendments to the WEEE legislation are aimed to strengthen the arms of the Authority, ERA but are not geared towards a transparent operation of a sector which should include a fair and level playing.</p> <p>This is an issue of paramount importance which has not been looked at in the amendments. In addition the amendments have made sure that producers or producer organizations or producer responsibility organization continue to bear the brunt of the legislation.</p> <p>Furthermore the amendments clearly note that the Authority places an onus on producers but then does not in any way ever promote the fact that legislation put in place creates additional financial burdens on producers. The issue relates to the fact that the Authority is guided by politicians. This indirectly means that politicians would never outline to the public or the producer community that the environmental</p>	<p>ERA would like to thank you for your detailed feedback, which has all been duly noted.</p> <p>ERA would like to clarify the following, in reply to specific points and recommendations listed in your feedback:</p> <ol style="list-style-type: none"> 1. <u>Use of terminology ‘authorised waste electrical and electronic equipment collective organization’:</u> <p>Kindly note that the previous terminology of “scheme” is not correct since an EPR scheme is a set of measures for producers of products to have extended producer responsibility. The Waste Framework Directive (WFD) refers to such organisations as “<i>organisation implementing extended producer responsibility obligations on behalf of producers of products</i>”, thus the new terminology “<i>authorised waste electrical and electronic equipment collective organization</i>’.</p> <ol style="list-style-type: none"> 2. <u>Distance Selling:</u> <p>ERA is aware that Distance Selling is a fast growing issue. ERA continues to investigate all complaints received related to distance selling. Additionally, ERA is striving to identify additional options to tackle such issues.</p>

	<p>obligations are a must and should be shouldered, so they use producer responsibility organizations to shoulder this responsibility.</p> <p>The comments below follow the sequence as issued by the Authority and should be construed as such for all intents and purposes</p> <p>Article 3 Pg B 15</p> <p>The name change to ‘authorised waste electrical and electronic equipment collective organization’ is not the same as defined in the EU Directive.</p> <p>Article 3 c Pg B 15</p> <p>The local scenario presents plentiful problems in relation to both parallel selling and distance selling and the amendment to the regulations do not meet the requirements of this small island state of Malta. Producers should operate on a fair and level playing field and the current online selling and parallel trading on the market require additional regulations to provide less free riders to the market. The legislation does not go far enough.</p> <p>Article 4 a Pg B15/16</p> <p>The words ‘be handed over ‘ needs a definition</p> <p>Article 4b Pg 16</p> <p>The words ‘proportionately distributed’ need to be extensively defined.</p> <p>Article 4c Pg 16</p> <p>‘shall collect the share of the WEEE allocated to it within eight (not six) months subject to the Minister’s approval’</p> <p>A methodology has to be put in place in order for this amendment to become part of the law. Unless Wasteserv has built in weighing facilities at its own facilities this is not acceptable to Schemes. Furthermore WS would need to go into a procurement procedure and not undertake direct orders in order for private industry to accept such</p>	<p>3. <u>Definition of ‘be handed over’ is required:</u></p> <p>ERA would like to clarify that the terminology “be handed over” used in the WEEE Regulations indicates allocation of the WEEE collected at the Local Agency’s facilities without implying actual transfer of such WEEE. The rationale behind this terminology is used in the context of the WEEE being handed over to PROs which are collected through systems funded by Local Councils. Moreover, this term indicates allocation of WEEE rather than transfer of WEEE to PROs. This terminology was already used in the WEEE Regulations.</p> <p>4. <u>Definition of ‘proportionately distributed’ is required:</u></p> <p>ERA tends to disagree that there is a need to include a definition of this term, as the proposed amendments clearly define the mechanism whereby WEEE is allocated.</p> <p>5. <u>Time for collection of WEEE allocated:</u></p> <p>It is imperative that WEEE is collected at the earliest date possible and thus such period cannot be extended further than 6 months.</p> <p>6. <u>Obligation to ensure continuity of waste management services throughout the year:</u></p> <p>This comment is noted, however, ERA would like to point out that according to the EPR principle, producers and organisations acting on their behalf are responsible for all waste arising from the products they place on the market. In this context,</p>
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	<p>an amendment. Gov should be aware the for some materials Malta has economies of scale and as such there is no way that such materials can be exported for recycling in the six month period. In addition we have an issue with a fair and level playing field. Take back systems by Schemes are not operated on a fair and level playing field. This is the result of the fact that CN notes are not public information. Waste management facilities continue to breach regulations by the way they provide CN notes and the material they state they received on a CN note Unless these issues are seen to, the fair and level playing field will remain hiersay.</p> <p>Article D (6) Pg B 16</p> <p>Whilst Schemes must ensure continuity of collection of WEEE even if they exceed their legal targets, Schemes would obviously require additional financing in this respect. Legislation should state that Schemes are obliged to take whatever is collected by the local agency. It is enough that as a Scheme we effect a takeback system on a daily basis and export extensive tonnage of refrigeration without placing this inside a WS facility.</p> <p>Article 8A (3) Pg B 17</p> <p>The issue of enforcing this amendment needs further extrapolation. A definition of ‘is to provide’ is required or further explained.</p> <p>Article 6 (5) Pg B 18</p> <p>We ask that the word ‘shall’ be changed to ‘may’. This is due to the fact that if the Scheme /s actually collect all the WEEE available in the market and even that at WS and do not meet the required EU targets pursuant to regulations 12(1) and 13(1), the Authority would have to still seize the financial guarantee, whilst if this is changed to ‘may’ , the Authority has the ability to consider the scenario.</p> <p>Article 10(4) Pg B20</p>	<p>the targets laid down in the WEEE Regulations represent the minimum for PROs to not be in breach of such regulations. Thus, they have to be considered a starting point rather than the end one. In view of this, the fees charged to producers participating in PROs should reflect the full cost of waste management. Notably, this is now a legal obligation emanating from the amended Waste Framework Directive being transposed into the national legal framework through the EPR Framework Regulations.</p> <p>7. <u>Definition of ‘is to provide’ is required:</u></p> <p>ERA is of the opinion that the wording “is to provide” is sufficiently clear, and that therefore no definition is required - it establishes a legal obligation on establishments and undertakings exporting WEEE on behalf of third party to give the proof in question to self-compliant producers/PROs.</p> <p>8. <u>Forfeiture of the financial guarantee:</u></p> <p>ERA would like to point out that the provisions referenced in this sub-regulation relate to the obligation on self-compliant producers to finance the collection and treatment of WEEE, rather than the attainment of the targets laid down in the WEEE Regulations.</p> <p>9. <u>Calculation of bank guarantee:</u></p> <p>The methodology used for the calculation of bank guarantee is essentially based on the methodology for the calculation of the placement on the market of EEE. In this context, producers participating in a</p>
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	<p>Bank Guarantee</p> <p>We would request the Authority to consider the following request</p> <p>The calculation method of the Bank Guarantee. ERA in Schedule 14 of the draft amendments is proposing that the amount of “bank guarantee shall be calculated as $A*B$ = Bank Guarantee: where A = is the average of the actual weights in tons, of the EEE places on the market as declared by the authorized WEEE collective organization in its annual reports submitted in accordance with regulation 32(2) covering the three (3) proceeding operational years”</p> <p>With the above rationale, if a Scheme would have less producers than in the previous three years, the producers in that particular year would burden a greater cost to cover the bank guarantees for others who left or migrated. Again a fairer methodology would be to calculate the average POM of the previous three years on the registered producers within that particular year only.</p> <p>Article 12 (2) Pg 22</p> <p>The presentation of an annual report within 3 months to the Competent Authority should be extended to six months as it previously was. This even more now when collections from WS have a time frame of six calendar months.</p> <p>We also request that Part B of Schedule 16 is also made public information.</p> <p>We also request that final recycling certificates presented by Schemes or their third parties are public information although the commercial names and destinations can be obliterated for confidentiality purposes.</p> <p>Article 17 Schedule 16 (regulation 23) Pg B25</p> <p>The required information in both half yearly and yearly report should be in the form of a template so that reporting structures are the same for any Scheme without any reason of doubt relating to interpretation.</p>	<p>PRO during the three preceding years should have financed, through their contributions, the bank guarantee due in the following year. Hence, even in case of migration, the bank guarantee due in e.g. 2021, should have already been financed by the fees charged to the producers participating in the PRO during 2018, 2019 and 2020.</p> <p>10. <u>Annual report to be submitted within 6 months:</u></p> <p>Due to the importance of having information on waste flows in Malta as soon as feasible for monitoring and reporting purposes, the proposed timeframe of 3 months is reasonable. Nonetheless, due to concerns raised, ERA can agree to extend this timeframe to 4 months and the Legal Notice will be amended accordingly. Notably, the recently published report by the National Audit Office in Malta on plastic waste management emphasised the importance of timely reporting and recommends that National Authorities significantly shorten the time for collating and reporting annual waste management data.</p> <p>11. <u>Publication of information:</u></p> <p>The information listed in Part B of Schedule 16, as well as most information within the final recycling certificates, is confidential information, and therefore is excluded from disclosure under regulation 7(2) of the Freedom of Access to Information on the environment Regulations (S.L. 549.39). Notably, Part A of Schedule 16 continues to be available online.</p>
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	<p>In the manner proposed, the containment for each requirement is subject to say the least.</p> <p>The Collection Rate:</p> <p>Article 7 of the WEEE Directive says “...From 2016, the minimum collection rate shall be 45 % calculated on the basis of the total weight of WEEE collected in accordance with Articles 5 and 6 in a given year in the Member State concerned, expressed as a percentage of the average weight of EEE placed on the market in the three preceding years in that Member State.” The Directive makes it clear that the collection rate shall be calculated of a National basis, i.e. all producers within that particular year either with EPR Schemes + the Self Compliant Producers.</p> <p>The WEEE transposition reflected into the annual Operational Permit of the Scheme says the following: “by 31st December 2020 a rate of separate collection of 60%, which collection rate shall be calculated on the basis of the total weight of WEEE Collected in 2020, expressed as a percentage of the average weight of EEE placed on the market by its members in the three proceeding years within Malta”</p> <p>ERA interprets the above local definition as expressed in Section A.4 of the annual reporting template. Basically they say that “EE placed on the market by its members in the three proceeding years within Malta” means the average of all the POM by all the producers that the Scheme had in the three preceding years and NOT the average actual POM of what the members of the Scheme within that particular year have put in the three preceding years.</p> <p>This is causing discrepancies and unfair calculation of the collection rate when there are migrations from one scheme to the other. Let’s say for e.g. Scheme ‘A’ had 300 producers who together put 6k tons of EEE in 2017, 2018 and 2019. Then in 2020, 15 producers of Scheme ‘A’ have migrated to Scheme ‘B’ and the actual POM went down to 5.5k tons. According to ERA, the collection rate of those 285 producers registered with Scheme A in 2020 shall be calculated of the average POM of the</p>	<p><u>12. Format for reporting:</u></p> <p>The reporting formats are outlined in the permit. However, ERA will consider the drafting of guidance documents for such reporting.</p> <p><u>13. Collection rate:</u></p> <p>Producers participating in a PRO during the three preceding years should have financed, through their contributions, the collection and treatment of the WEEE generated during the reference year from the EEE they placed on the market during the said three preceding years.</p> <p>Hence, even in case of migration, the costs for collection and treatment of the WEEE generated in e.g. 2021 should have already been financed by the fees charged to the producers participating in the PRO during 2018, 2019 and 2020.</p> <p><u>14. Concluding remarks:</u></p> <p>ERA, in cooperation with key stakeholders and the general public, shall endeavour to continuously improve the implementation of the EPR principle in Malta, notably through the implementation of the new waste legislative package and Waste Management Plan.</p>
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		<p>producers (300) that the Scheme had in the previous 3 years. We believe this is not a fair. We believe that the calculation rate should be calculated on the average POM of what the 285 producers put in the 3 proceeding years and not of the 300.</p> <p>Conclusion</p> <p>Our requests to modify these amendments come at a time when EPR regulations are also being amended. It is fair to note that we either ascertain that amendments are made not only for the Authority to strengthen its arms but also to put in place a fair and level playing field. Our call for a ‘Clearing House’ for all EPR waste streams continues to fall on deaf ears. Our calls for transparency in this sector continues to fall on deaf ears. Reports to the Authority over the way in which scrap metal facilities with permit or without permits breach the rules without any enforcement does not auger well to the future of this sector. But the icing on the cake in this sector continues to be the full operation being effected by an unlicensed scrap metal facility at Triq Garibaldi, Luqa. Without fail the Authority continues to show that it is mighty with the small and afraid of those who are mightier than the Authority.</p> <p>Whilst the Authority might beg to differ, it is useless to amend regulations and place additional onus on producers or their representatives when they blatantly continue to allow an illegal operation in the sector to move on unabated.</p>	
5	Joe Attard Green Mt	<p>We are attaching herewith our feedback in relation to Amendments to the Packaging and Packaging Waste Regulations.</p> <p>We would like to thank the Authority for providing us with the opportunity to such a consultation and we would ask the Authority to consider our requests diligently and in a fair manner. We are open to further discussions on the subject matter for the better of the sector.</p>	<p>ERA would like to thank you for your detailed feedback, which has all been duly noted.</p> <p>ERA would like to clarify the following, in reply to specific points and recommendations listed in your feedback:</p> <ol style="list-style-type: none"> 1. <u>Definition on of Authorised packaging waste recovery organization:</u>

	<p>Waste Management (Packaging and Packaging Waste), (Amendment No 2) Regulations 2020</p> <p>Feedback to Draft Legislation</p> <p>Introduction</p> <p>The draft legislation being proposed continues to strengthen the arm of the Competent Authority and does little in the way of providing a better level playing field with the inclusion of enforcement requirements.</p> <p>As part of the Waste Package changes being transposed into Maltese law the legislation falls short of setting the required standards in the Maltese islands. It is well to be said that maybe the Waste Management Plan being drafted for 2021 to 2030 will stand up to be counted and will prevail where the draft legislation has not.</p> <p>Primarily Malta needs a straight forward legislation obliging one and all , any waste generator to segregate waste at source and such an obligation should be across the board without any discrimination.</p> <p>In addition the Authority once again continues to disregard the dissemination of information in respect to legal obligations of producers and allows the Schemes to place further onus of the legislation upon producers without ever outlining publicly in any way that these environmental obligations are mandatory. The Authority does so because finally it is led by a politician who needs the public vote at the end of the day.</p> <p>This feedback follows a sequence according to the provided draft document for all intents and purposes.</p> <p>Article 3(ii) Pg B 29</p> <p>‘definition of Authorised packaging waste recovery organization’ is different to that referred to in the EU Directive.</p> <p>Article 4 (8) (2) Pg B32</p>	<p>Kindly note that the previous terminology “scheme” is not correct since an EPR scheme is a set of measures for producers of products to have extended producer responsibility. The WFD refers to such organisations as “organisation implementing extended producer responsibility obligations on behalf of producers of products”, thus the new terminology “authorised waste packaging waste recovery organization”.</p> <p>2. <u>Mandatory waste separation:</u></p> <p>ERA appreciates the importance of source separation of waste, and would like to indicate that this issue is being tackled through a specific measure in the new Waste Management Plan, upon which stakeholders and the general public were consulted.</p> <p>3. <u>Establishing an effective system of quality control and traceability:</u></p> <p>From a technical point of view, the establishment of an effective system of traceability is a necessary step to improve the national waste management system.</p> <p>ERA is aware of these issues and is currently in discussion with Wasteserv Malta.</p> <p>4. <u>Establishment of a DRS system:</u></p> <p>The Waste Framework Directive and Packaging and Packaging Waste Directive, which are being transposed through the proposed Legal Notices, do encourage the establishment of DRSs as an option to fulfil the requirements emanating from the said Directives.</p>
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	<p>The targets as established by the EU Directive would all need the application of the derogation of 24 months if Government does not oblige all waste generators to segregate waste at source mandatory. Should this not be the case, the Minister should made sure that by January 2023 the Commission is provided with the derogation notice required.</p> <p>Article 4(6) Pg B33</p> <p>‘The Competent Authority shall establish an effective system of quality control and traceability of the packaging waste.’</p> <p>At present the Authority has lacked by far in nearing anywhere to ascertaining the above. Not only so but the Competent Authority has lacked the necessary impetus to take the bull by the horns. The Authority is aware that currently most recyclable waste has been collected and deposited at Wasteserv Malta Limited and most of this has actually been landfilled. This is the reason why Wasteserv Malta Limited are even at present desisting to provide Schemes with final recycling certificates.</p> <p>Whilst improvements seem to be in the pipe line we cannot have amendments to legislation put in place just because the EU wants Malta to transpose legislation. We need to together walk the talk and the Competent Authority needs to put its foot down with WS in the same way it continues to put its foot down with PRO’s.</p> <p>Article 7 Pg B36</p> <p>The measures outlined in 10(A) are commented upon as follows :</p> <p>The establishment of a DRS system needs to also comply with the packaging and packaging waste regulations , otherwise this will lead to eventual pick and choose and as thus create an internal unfair level playing field. Whilst the first established DRS in the country has been exmpted from these regulations, the Schemes or PRO’s have an</p>	<p>5. <u>Requirement for a definition of ‘municipal packaging waste generated’:</u></p> <p>In the first place, ERA would like to clarify that the concept of municipal packaging waste is defined in the proposed amendments. Secondly, given the current material coverage of the PROs (i.e. all categories of packaging), such organisations are legally obliged to collect all packaging waste generated from municipal sources (as per the new definition of municipal waste) through the systems set up and financed by them (door-to-door collection and recycling points). In this context, ERA would also like to clarify that packaging waste management obligations (i.e. amounts to be collected and treated) are strictly linked to the placement on the market of the producers participating in the PROs. By way of example, if the producers place on the market 100 tonnes, they are obliged to collect up to 100 tonnes of packaging waste through the above-mentioned systems.</p> <p>6. <u>Establishment of direct allocation by a ‘Clearing House’:</u></p> <p>ERA is of the opinion that the new Waste Management Plan is the most appropriate forum to put your views on the forward on this matter.</p> <p>7. <u>Increase BIS to one set of four fractions per one thousand inhabitants:</u></p> <p>ERA agrees that recycling points encourage separation of waste at source, and in light of the comments received through this consultation, the</p>
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	<p>obligation to collect packaging waste from door to door from Local Councils. The Scheme objects to such a mandatory situation as a Scheme like a DRS should have its own options and methodology of collection without having a mandatory obligation at law.</p> <p>Secondly Schemes are collecting recyclables which in most cases are not considered as Packaging waste and since WS last characterization shows that over 40% is non packaging then Schemes should be allowed to collect what they should be collecting and not spending funds of producers to collect what they should not and are not obliged to collect.</p> <p>Article 8 (7) Pg 39</p> <p>We ask for the definition of ‘municipal packaging waste generated’. This in order to eliminate future grey areas. It is not the intention of the Scheme to collect any fraction which it has no legal obligation to collect. As such defining ‘municipal packaging waste’ is a must.</p> <p>The mandatory obligation of making arrangements with Local Councils should be deleted and a concept of direct allocation by a ‘Clearing House’ to be established at law. The issue needs to be tackled now whilst the collection of waste via regions is about to be borne. Schemes should not be made to enter into a one year agreement with a Local Council and then disrupting this agreement due to the changes being brought about by Government in relation to regionality</p> <p>Neither should the Scheme be obliged to set up collection of material fractions through Bring in Sites unless the minimum amount of Bring in Sites relate to one set of four fractions per one thousand inhabitants without any exception at all.</p> <p>The EPR Consultative Committee should never have a say in allocating Local Councils to Scheme A or Scheme B. neither should the Competent Authority be responsible for this. A ‘Clearing House established</p>	<p>Legal Notice will be amended such that the proposed regulation 10(2) of the Waste Regulations will oblige the setting up of recycling points for every 2,000 inhabitants, as opposed to 3,000.</p> <p>8. <u>EPR Consultative Committee:</u></p> <p>Article 8A of the new Waste Framework Directive stipulates that “<i>Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of producers of products, the Member State concerned shall appoint at least one body independent of private interests or entrust a public authority to oversee the implementation of extended producer responsibility obligations</i>”. Thus, the EPR Consultative Committee, although it is not a decision-making body, must be fully independent of private interests.</p> <p>Moreover, the Committee will assist ERA in fulfilling the Authorities’ responsibilities vis-à-vis the implementation of the EPR principle in Malta, which responsibilities include the allocation of Local Councils with no agreement in place. Hence, such allocation will remain the sole responsibility of ERA.</p> <p>9. <u>The quarterly audited declaration:</u></p> <p>ERA acknowledges the difficulty in obtaining an audited declaration as specified in the draft and has therefore removed the auditing requirement. However, ERA stresses the importance of receiving timely, reliable and accurate data.</p>
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		<p>between Government and the Schemes should be responsible for such a responsibility.</p> <p>The establishment of an EPR Consultative Committee continues to be objected to by the Scheme, more and more since Schemes are not an integral part of this EPR Committee.</p> <p>Article 10 (d) Pg B41</p> <p>A quarterly audited declaration places the Scheme with additional costs. Since we are heading towards regionality, Schemes should be allocated directly by ERA until a 'Clearing House ' is established. From discussions held it seems that Government is opting for six regions, five in Malta, one in Gozo. If this is the case Era should take decisions based upon economies of scale for both operating Scheme. A methodology of how Scheme A pays back Scheme B for any additional operations made should also be established since regionality will take over these operations.</p> <p>Schemes should be allocated three regions each with the nearest proportion, but after an agreement is reached on a methodology of how Schemes will pay back each other if the need arises. This is the way other EU member states have tackled this matter. We should not reinvent the curve.</p> <p>Article 10(2) Pg B41</p> <p>Reporting to the Authority on an annual basis should be left to be presented to the Authority within six months of the end of the calendar year as it is now.</p> <p>Article 16 (C) Pg B 45</p> <p>The reporting formats to be established by the Authority need to be discussed in order to ascertain that a template is correctly built to meet the obligations of the written and mandated legislation. In the course of</p>	<p>10. <u>Annual report to be submitted within 6 months:</u></p> <p>Due to the importance of having information on waste flows in Malta as soon as feasible for monitoring and reporting purposes, the proposed timeframe of 3 months is reasonable. Nonetheless, due to concerns raised, ERA can agree to extend this timeframe to 4 months and the Legal Notice will be amended accordingly. Notably, the recently published report by the National Audit Office in Malta on plastic waste management emphasised the importance of timely reporting and recommends that National Authorities significantly shorten the time for collating and reporting annual waste management data.</p> <p>11. <u>Format for reporting:</u></p> <p>The reporting formats are outlined in the permit. However, ERA will consider the drafting of guidance documents for such reporting.</p> <p>12. <u>Additional fee:</u></p> <p>ERA, in cooperation with key stakeholders and the general public, shall endeavour to continuously improve the implementation of the EPR principle in Malta, notably through the implementation of this waste legislative package and the new Waste Management Plan. Having said so, ERA would also like to indicate that neither the current waste acquisition nor the proposed one include obligations on producers/PROs to make use of any specific waste management operator, locally or abroad. In this</p>
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		<p>the fact that the template is not made available by the Authority reporting by the Scheme will be made in bona fide.</p> <p>Article 18 Part B Addittional fee for an authorised packaging waste recovery organization</p> <p>It is to be understood and noted that a the time of writing Wasteserv Malta Limited are not providing Schemes with final recycling certificates for reasons known to them. The Scheme continues to request such certification on a quarterly basis and no feedback is provided.</p> <p>The Scheme notes that if view of this and in view of the fact that the Authority knows why Wasteserv is not issuing these certificates it should change the word 'shall submit an additional fee' to 'may be required to submit' .</p> <p>Producers or their representatives are not here to burden the lack of responsibilities showed by others but being Government entities are side lined when it comes to penalties and fines. We wonder why the legislation does not anywhere direct itself to waste management facilities stating that their lack of actually doing what they are permitted to do will provide a breach of their permit and the Competent Authority would issue fines and penalties . Saying this, penalties and fines will not help Malta Achieve targets, so it would be best if our taxes are made use off more diligently by at least continuing to work on providing an MRF for the sector which can operate and provide the required result. Now that industry has not been allowed to actually set up and operate an MRF Government hould at least make sure that private industry and the business community are not fined because Wasteserv are not doing the right job.</p>	<p>context and in line with the EPR principle, it is the responsibility of producers/PROs to ensure the environmentally sound management of the waste arising from the products they place on the national market as well as to attain the targets. Thus, the importance to retain the environmental fee mechanism laid down in the Packaging and Packaging Waste Regulations in the proposed form.</p>
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