

Cefic views on Extended Producer Responsibility in water policies

Cefic has taken note of the recent proposals made by the European Commission and European Parliament to integrate the Extended Producer Responsibility (EPR) scheme into water policy. **It is crucial to ensure that any legal framework to implement the 'polluter pays principle' is founded upon well-designed, actionable, and enforceable requirements.**

Currently used EPR schemes only address pollution coming from a single source, for example plastic packaging, electronics, wasted oil etc.

Designing EPR schemes for a wide variety of pollutants found in water and coming from different sources presents several big challenges. First, this type of pollution is often transboundary as waterways can cross borders between the countries. Secondly, many pollutants undergo transformation while in water. Thirdly, it is difficult to assess whether pollution comes from the production or use of a substance. These three aspects alone make it extremely difficult to pinpoint the exact source of pollution and assign responsibility accordingly.

To incorporate an EPR scheme for water pollution in general into the European Water Management legislative framework, the co-legislators should therefore address several critical issues :

- Establish a definition of EPR that is tailored to a specific context of water pollution : it should take into account the original concentration, the toxicity index and the fact that pollutants may undergo transformation after prolonged contact with water.
- Develop a targeted list of substances that will fall under the scope of such an EPR scheme. The list should only target substances that stay in water and have an adverse effect at a later stage.
- Set up criteria to identify who is responsible for water pollution.
- Develop a methodology to make sure everyone, from producers to consumers and recyclers, pay a fair share of the cost of pollution. This methodology should take into account all actors of the supply chain, including importers.
- Establish an EU Producer Responsibility Organisation (EU-PRO) to define the mandate and role of the local, national and regional EPR organisations and ensure the supervision and harmonised implementation of the EU methodology. Since most of water pollution crosses the national borders, the collaboration across regional PROs is crucial.

As this is the first attempt to apply EPR to water pollution in general, we believe that a thorough impact assessment and further consultation with all stakeholders should be held to ensure that the scheme can effectively tackle pollutants that cause concerns while remaining feasible to implement and enforce.

See below our detailed proposal for design principles of an EPR scheme for water pollution:

1. Make the scope of the EPR scheme manageable and enforceable

First, set up an **actionable list of substances** deemed to drive polluters responsibility. Listed substances should be selected based on their relevance to the European-wide waters quality, CAS numbers, toxicity index, hazard and concentration. Examples of targeted lists can be found e.g. in Groundwater and Environmental Quality Standards (EQS) Directives Annexes I. **Specific to the pollutants found in Urban Wastewater Treatment Directive (UWWTD)**, a similar set of criteria should be used to define the relevant substances to the quaternary treatment, as well as for monitoring/reporting.

Secondly, **any extension of the defined substances to 'micro-pollutants'** shall be carefully assessed to avoid clogging the EPR scheme with thousands of substances. We would propose the following definition: *'micro-pollutant' means an organic or inorganic substance which is proven to be toxic, persistent and bio accumulative in the medium at low concentration (usually measured in microgram per litre) that is usually present in the environment and urban wastewaters'.*

In fact, in the current Commission proposal for UWWTD the proposed definition of **micro-pollutant is not fit for purpose and not actionable** since it embraces thousands of substances. According to the proposal (Article 2(16)), *'micro-pollutant' means a substance, including its breakdown products, that is usually present in the environment, and urban wastewaters in concentrations below milligrams per litre and which can be considered hazardous to human health or the environment based on any of the criteria set out in Part 3 and Part 4 of Annex I to [the CLP Regulation]'*. According to this proposed definition any substance classified for human health or environmental safety, regardless of the type of hazard or the toxicity/severity, would be considered in scope. It could potentially concern many thousands of substances. In [Cefic's assessment of the economic impact of the Chemicals Strategy for Sustainability](#) (CSS) conducted by an independent consultant (Ricardo) and published in 2021, we found that 12.000 substances could be impacted by CSS measures, and this assessment only reviewed some of the hazard classes covered in Parts 3 and 4 of CLP Annex I. **Such a broad scope would make the application of an EPR scheme unmanageable** (even if it is only to look at the levels / potential presence of these chemicals in water). In addition, it would be clearly **disproportionate** and would fail to address what matters: pollutants that have the capacity to stay in water and have an adverse effect at a later stage (thus, pollutants that need to be removed). For instance, even mild chemicals like citric acid (*found in lemon juice*) would qualify as being a micro-pollutant.

2. Develop clear and pragmatic methodology, definitions and criteria

To be actionable and legally sound, the EPR scheme for water pollution needs a clearer **definition of the parties involved** e.g. those who should pay the fees, together with the criteria to identify the relevant producers (including the importers) and the extent of their responsibilities.

In the case of **diffuse pollution** that cannot be directly attributed to the activity of one or several operators, or could even result from the consumers uses, the application of the EPR will prove much more complex. For instance, how to identify the source of a pollutant when the substances originate from various sources and are measured in concentration in waters? Sources could be multiple e.g. manufacturers, consumers using chemicals substances in either European or imported goods like for personal care products or pharmaceuticals. Moreover, pollution could be transported across regions hence adding to the difficulty to identify sources.

Therefore, **Cefic recommends developing a clear and pragmatic methodology**, including the criteria to decide how much each party along the value chain should contribute. The biodegradability, proven hazardous properties of the pollutants emitted and their proportion in the total quantity emitted should be taken into consideration.

Any EPR for pollutants found in waters shall take the **diversity of pollution sources** into account with the different associated responsibilities of every single polluter along the entire lifetime of a product. It should embrace all parties involved in the lifecycle of the substances found in waters e.g. either production or consumption side and recycling.

The methodology should be granular enough to identify the **producer(s) and the importers** of chemicals in products found on the EU market place. Any real costs of end-of-life management of products should be reflected in the fees. All relevant stakeholders must be consulted on the methodology as well as on the definition of the list of relevant pollutants/substances.

3. Establish a Producer Responsibility Organization on EU level

An **EU Producer Responsibility Organisation (EU-PRO)** should be established, similar to the one in charge of the waste management. The purpose of this organisation would be to define the mandate and role of the local, national and regional EPR organisations and ensure the **supervision and harmonised implementation of the EU methodology**. Taking into account that waterways flow across borders, the collaboration across regional PROs is crucial.

EU-PRO should ensure coherence with the other instruments and measures to reduce pollution in water in order to avoid any double taxation and overlapping of objectives. In addition, it should preserve the subsidiarity principle as many measures are already taken at national/regional/local level.

Any EPR scheme should be designed to ensure that financial resources derived by the scheme are properly used to fund specific preventive or remedial measures. In order to successfully implement the polluter pays principle, schemes should contain concrete and substantial incentives, for the actual polluters to minimise their own emissions. In order to achieve this, we would recommend developing clear criteria and guidelines at EU level to explain how the financial resources from the EPR schemes should be used.

The **regional PRO** shall administer the financial resources. This organisation should have the mandate to collect information on the relevant substances in water bodies, and report to the authorities and to the EU-PRO which would ensure the European coordination. It should ensure a transparent exchange of information with Member States and stakeholders to apply the safeguards necessary to protect sensitive information through confidentiality.

Cefic looks forward to sharing its ideas and exploring potential policy solutions with the European Commission and stakeholders in due course.

For more information please contact:
Ioana Alexandra Blaj
Health, Safety, Security and Environment (HSSE)
Manager,
+ 32 2 436 9407 or ibl@cefic.be

About Cefic
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