# 13 July 2012: Waste management and materials recycling

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**The Autorité de la concurrence confirms the need for PROs to implement transparency measures, owing to the influential power they have within the framework of Extended Producer Responsibility (EPR) sectors**

**>Version française**

Following referrals on 3 November 2011 and 28 February 2012 by the French federation of waste management services (Fédération nationale des activités de dépollution et d'environnement - FNADE), which represents waste management professionals, the Autorité has issued an opinion on the involvement of Producer Responsibility Organisations (PROs) in the waste management and materials recycling sector, and particularly the potential risks in terms of competition, primarily in the waste treatment market and the sale of materials from waste treatment.

**After the producer services market and the materials recovery market, the Autorité de la concurrence examines the action of Producer Responsibility Organisations in the waste collection, sorting and treatment market**

The opinion issued today addresses the action of PROs in the waste collection, sorting and treatment market and the materials recovery market, but does not concern the producer services market.

The opinion follows on from previous opinions[1] and decisions[2] issued by the Conseil and then the Autorité de la concurrence, regarding the compatibility of

PRO action with competition law, particularly competition between PROs in the producer services market.

**The role of PROs is compatible with competition law, but the structuring influence they are given demands certain transparency requirements**

In its opinion, the Autorité seeks to clarify the conditions in which PROs take action in these markets[3] : PROs do not operate in the markets as service providers, but as investors, key influencers, controllers and principals. They have considerable influence as a result of their buying power, their often monopolistic position within a sector and their legally recognized resources. The structuring action of PROs has led to high concentration in demand for waste treatment. In many sectors, there is also only one PRO, the latter thus enjoying a ***de facto*** monopoly situation, further reinforcing concentration of demand (***see box below***).

To prevent potential failures that such influence could cause, the Autorité made a number of recommendations in its opinion, targeting both public authorities and PROs:

**Recommendation to public authorities:**

- The ***Autorité de la concurrence*** recommends carrying out an impact assessment including a focus on competition, prior to creating new sectors or extending existing sectors, and subjecting all PROs to the principle of Government approval and control.

**Recommendations to PROs:**

- The ***Autorité*** recommends that PROs implement transparent and proper tender procedures when awarding contracts to waste treatment operators. It further recommends observing the principle of equality and neutrality in relationships between PROs and waste treatment providers.

- Lastly, the ***Autorité de la concurrence*** considers the statutory missions of a PRO to be incompatible with the conduct of business of collecting, sorting or treating

waste within the same organisation.

## Role of PROs and Extended Producer Responsibility (EPR)

The involvement of PROs – such as Eco-Emballages, Eco-systèmes (waste electrical and electronic equipment), Eco Folio (paper), Aliapur (tyres), Cyclamed (medication), Corepile (cells and batteries), etc. – in waste management began in the 1990s, with the adoption of the principle of Extended Producer Responsibility (EPR). In a number of production sectors, this principle transfers responsibility for waste management from the producer or the last holder of waste to the manufacturer of the product which generates waste after use.

A PRO, which is set up and financed by these producers, is a tool enabling them to collectively assume their responsibility. The number of PROs has grown significantly in recent years, particularly pursuant to decisions made at the "*Grenelle de l'environnement*" conference. They therefore contribute to achieving both European and national environmental goals with respect to waste treatment. With over twenty sectors, France is the European country with the most PROs.

PRO action has substantially changed waste treatment methods and markets. Waste treatment has moved away from landfill solutions to recycling and reclamation systems. It has given rise to major investments and has led to the creation of industrial pollution abatement and recycling sectors. The resulting markets are currently in a phase of sustained growth.

The creation of PROs also results in high concentration of waste treatment demand, insofar as most PROs relieve local authorities of their responsibility for household waste collection, sorting and disposal.

[1] Refer in particular to Opinion 10-A-21 of 19 November 2010 on the management of perforating waste with a risk of infection produced by self-treating patients.

[2] In its Decision 10-D-29 of 27 September 2010, the Autorité had already set

forth guidelines to be applied in PRO action on the materials recovery market. Also refer to Decision 09-D-22 of 1 July 2009 on the preparation of a geographic information system project for waste collection and treatment by the company Eco-Emballages.

[3] Waste collection, sorting and treatment market, and the materials recovery market.

> Read the full Opinion 12-A-07 on the waste management sector governed by the principle of extended producer responsibility

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