

Response ID ANON-PYAU-PH86-5

Submitted to Consultation on Reforms to the Packaging Waste Recycling Note (PRN) and Packaging Waste Export Recycling Note (PERN) System and Operator Approval

Submitted on 2022-05-13 16:04:19

Part 1: Introduction

1.2 Purpose of the consultation

1.5 Responding to the consultation

Part 2: Consultation

1 What is your name?

Name:

Simon Ellin

2 What is your email address?

Email:

simon.ellin@therecyclingassociation.com

3 Which best describes you? Please provide the name of the organisation/ business you represent and an approximate size/number of staff (where applicable).

Business representative organisation/trade body

If you answered 'Other', please provide details:

Organisation:

The Recycling Association Limited

Size of organisation/number of staff (if applicable):

115 members. 6 staff. £10m turnover.

4 Would you like your response to be confidential?

No

If you answered 'Yes', please provide your reason.:

2.2 Proposals

Proposal 1: Mandatory monthly reporting of reprocessing/export data

5 Do you agree or disagree with the introduction of mandatory monthly reporting for reprocessing/export data?

Agree

Please provide the reason for your response:

The Recycling Association (TRA) agrees with mandatory monthly reporting. However, this is contingent on establishing the point the PERN can be raised. If it is when evidence of recycling has taken place, then this could be a 3 month time lag and there could therefore be a distortion of the data. If it is when the material leaves the UK, we would ask for an absolute minimum of 21 days to collate and post the data.

The same requirement for evidence of recycling should also be placed on the UK market too.

TRA would like more details on the appropriate sanction for non-compliance. This has to be in line and proportionate to any sanctions incurred by producers for failing to meet their obligations on time. For the PRN/PERN system to function correctly, there must be a level playing field between obligated companies and processors/exporters.

Proposal 2: Mandatory monthly reporting of PRN/PERN prices and revenue data

6 Do you agree or disagree with the introduction of mandatory monthly reporting of PRN/PERN prices and revenue data?

Neither agree nor disagree

Please provide the reason for your response:

In principle, TRA agrees with greater transparency of PRN/PERN prices. The reporting system must be equitable though and producers should be required to provide the same report in the same time frame. Also, and very importantly, it must be recognized that some companies that have their own compliance schemes also have subsidiaries or vice versa that issue PRNs/PERNs - they have the ability to influence the market by manipulating the figures through their own internal trading - this has to be addressed.

We do not see how the current publishing of prices eg on T2E benefits reprocessors/exporters only, as surely the data is also used by producers/compliance schemes when buying their evidence too.

An area here that needs further scrutiny is the PRN/PERN entity itself. With the advent of on line trading platforms (a great utility), the PRN/PERN has become a commodity itself and therefore has an intangible value and therefore can be argued contributes to a higher or lower price of the commodity it is raised for at any one time in the marketplace. Will the publication of more pricing data contribute to this, and is it perceived as a problem? Perhaps greater modelling is required.

More information is also required on how the data will be collected and reported.

Any penalties should take account of our answer to Q 5.

2.2.2 Revenue reporting

7 Do you agree or disagree with the proposed approach to revenue reporting for reprocessors and exporters?

Agree

Please provide the reason for your response:

We agree with the greater transparency of how the revenue is used, but please do not underestimate the basket of areas where the revenue is used and which has tangibly facilitated the achieving of targets across the range of materials.

More information is required however on how the data will be collected and at what frequency. Any penalties for non-compliance need to proportionate to any penalties imposed on obligated companies for non-compliance.

It is also important to understand that there are many other costs of compliance for exporters over reprocessors, - for example the increasing use of notification procedures for exports to ensure compliance, or sampling and inspection costs. Perhaps there should be separate reporting requirements for UK and export which covers the different compliance requirements.

8 Please suggest any other categories/sub-categories that you think should be included

Please suggest any other categories/sub-categories that you think should be included :

We cannot see the costs of compliance included in here as per the current reporting requirements. This is a tangible and often significant cost and should be included.

2.2.3 Timeframes

Option 1: Reducing the timescale over which PRNs/PERNs can be traded from an annual to a monthly or quarterly system

9 Do you agree or disagree with the proposal to reduce the timescale over which PRNs/PERNs can be traded?

Disagree

Please provide the reason for your response:

The response below in Q9 also relates to Q10 and Q11.

TRA do not believe that Q9 is a workable scenario as it will distort the free market, and favour producers by artificially lowering or flat lining PRN/PERN prices (the stated purpose in this consultation). The assumption is that high prices are bad and low prices are good - this only for the producer! Compulsory trading of PRNs/PERNs on a monthly/quarterly basis is likely to artificially force the price down, as large cash rich compliance schemes could still refuse to sell the PRN/PERN until the end of the reduced trading period (the objective of this option), thus destroying the free market principle, reducing collections and missing targets. Indeed this method would exacerbate the problem by increasing the number of times and thus pressure points in a compliance year when markets could allegedly be manipulated.

What would the value of unsold PRNs/PERNs be at the end of the selling period? There is also a huge risk for processors/exporters who have used the market value of the PRN/PERN in the price they pay to the seller, which is the way the system works and facilitates the flow of revenue in the system for investment etc (the whole purpose of the system). More frequent reporting could crash the price overnight making it impossible to pass the revenue on with any confidence.

TRA believes that the current situation where there is no market intervention should have been included as an option too, because we believe the rationale for interventions set out in this consultation are far too simplistic to cover what are quite complex factors that effect the trading and thus the price of the PRN/PERN. In addition, some of the assumptions in this consultation are incorrect/unclear. For example the statement of the trend for PRN/PERN prices to rise at the compliance year end, when paper for example has actually dropped at the year end for the past 4 years. Much greater analysis and modelling is thus required on a commodity by commodity basis, and indeed any introduction of time frames should be considered on a

commodity by commodity basis.

The whole essence of a refined system should be to improve it, not undermine it.

The PRN/PERN system is a market based system and the free market principle that has been applied has underpinned the success of the system. When material is short, the price goes up and when material is in over supply, the price goes down. This has worked over the years to meet targets set and therefore any intervention, which may have unintended consequences needs to be considered and modeled very carefully.

PRN/PERN price spikes have been common for many materials, as have price reductions/crashes, and any market intervention needs to cater for both scenarios. Price spikes are a burden on the producer and we have seen examples of this in recent years, eg aluminium and plastics. There have however been significant price crashes eg paper finished at £0.2 in the compliance year 2022 and this is a burden for the reprocessor/exporter. Therefore any "market intervention"/time frame needs to include a mechanism to address both scenarios - i.e a floor as well as a ceiling. Compulsory accreditation for reproducers/exporters as well as much tougher penalties on freeloading producers could help address this

The consultation does not adequately look at the reasons for the perceived volatility in prices other than the free market described above. There are very few examples where one company has a market share large enough to influence the market by withholding PRNs/PERNs. Although TRA agrees that there is the scenario with aluminium, where a large reprocessor allegedly (not proven) withheld PRNs/PERNs from the market and to drive the price up,, and we would ask the question do we need a solution for yesterday's alleged problem?

Likewise though, larger producers can enter the market late when the price is lower and can force it even lower. If a mechanism is put in place, to prevent this practice, it needs to work for reproducers/exporters and producers equally. Likewise, there are other complex factors that affect the price of the PRN/PERN - for example the PRN/PERN itself is a tradeable commodity in its own right. On line trading platforms, rather like a stock exchange fuel the trading of the PRN/PERN and thus buyers and sellers follow these platforms which can lead to panic buying and panic selling or just following the trend. This can lead to high prices (advantage seller) or lower prices (advantage buyer) but it can be argued that this is the free market (supply and demand) taking its course - it has worked when meeting targets.

Likewise, there are many other looming factors which may affect the prices of PRNs/PERNs going forward and must be taken into account when considering interventions/time frames. These include EPR, the requirement for reprocessing a commodity before the PRN/PERN is raised, export bans and general greater controls.

The effect of much improved regulation and enforcement should also be considered.

A possible very significant factor affecting the market and the potential volatility of prices going forward could be the increased reporting requirements outlined in this consultation. The data that will be produced will give buyers and sellers much more detailed information with which to make their commercial decisions and this could have the effect of smoothing prices. This reporting, along with the many other factors outlined above presents a good case TRA believes to park the time frame scenarios for now and to stand back and look at the effect all the changes will bring which may well provide the solution without any intervention being required.

Option 2: Extending the flexibility of the current compliance period

10 Do you agree or disagree that there should be a mechanism for extending the compliance period for the trading of PRNs/PERNs?

Disagree

Please provide the reason for your response:

It has not been necessary to implement such an intervention since the system commenced 25 years ago. The closest to an extension being considered was in 2019 after the China ban, but ultimately the situation righted itself as the PRN/PERN system did its job and targets were met - another great example of why the free market should not be interfered with. If this option was introduced, it merely places further pressure on the following compliance year, and if the problem was medium to long term, you will just carry the problem from year to year and continue to extend the periods for compliance - ever decreasing circles and likely to break the system for good if targets were not then subsequently reduced.

This intervention is also likely to favour producers who buy late following the extension and thus give them a competitive advantage over those who bought at the height of the free market,

Although much a greater degree of modelling is required, we believe the compliance year should only be extended by a month in absolute extreme cases which would need defining. ACP could be given this power but we would advise extreme caution.

11 Please provide details of the conditions or criteria you think would be appropriate to trigger an extension of the compliance period

Please provide details of the conditions or criteria you think would be appropriate to trigger an extension of the compliance period:

This is very complex and is beyond the scope of a definitive answer here. Reasons for shortfalls of supply and price hikes are very complex and very fluid and can significantly vary in timeframe. For example, there is a significant shortfall of evidence in Q1 2022 across most commodities and the reasons for this are numerous and linked in many cases. They include include an economic downturn (cost of living crisis and less purchase power), emergence from Covid and changing spending patterns in the UK, the ongoing impact of Covid in for example China, the Russia/Ukraine war, Brexit and ongoing distribution issues.

They also include late accreditation's and non-accredited exporters due to, for example, a collapse in the paper PRN/PERN at the end of the 2021 compliance year where the value fell to 20p. This is allied to more stringent audits resulting in some companies feeling it is not worth their while to re-register.

There are factors relating to new regulations (eg Basel for plastics), the demise of exports to non-OECD countries and more stringent regulation for the

imports of plastics into Turkey. There is also the the Environment Agency's (correct) decision to cancel some plastic PERNs from exports into the Netherlands in Q4 2021 and the impact this has had on exporters into 2022.

This is just a snapshot of the many factors effecting a few commodities and when you add other commodities and other factors, many of which may link together, the analysis becomes very complex and fluid.

TRA believes that if there is the introduction of measure to address the shortfall of evidence and subsequent price spikes dis-advantaging producers, then there also needs to be a mechanism to address over supplies of materials and the crashing of the price of the PRN/PERN which disadvantages reprocessors/exporters.

Consideration should be given to introducing a threshold of shortfall/over supply/price which triggers the ACP, aided by commodity specific industry experts and wider economists to meet to look at any intervention measures. An alternative is that commodity specific industry groups coordinated by the ACP meet on a quarterly basis to analyse each sector, with closely defined terms of references.

Option 3: Increasing the timescale over which PRNs/PERNs can be traded from an annual to a multi-year or rolling system

12 Do you agree or disagree with the proposal to increase the timescale over which PRNs/PERNs can be traded to a multi-year or rolling system?

Disagree

Please provide the reason for your response:

As acknowledged in the description above, this system is far too complex to be introduced at the moment, particularly when there are so many complex factors which could effect the market, not least the introduction of EPR.

Trying to introduce longer trading timescales would be likely to cause even more speculative trading and thus increased volatility.

Also, given some of the factors mooted in our answer to Q11, there is a high possibility of error in the calculations.

Overall, this option is far too administratively complex.

13 Which approach do you believe is the most suitable for addressing the issues of price volatility in the PRN/PERN market?

Option 2

Please provide the reason for your response:

The key word here is "most" suitable. Option 2 is the least worst but gives the most pragmatic solution as it would only be introduced in key circumstances which should allow the essential free market to still work in most circumstances.

The other 2 options are much more likely to undermine and not improve the system.

Overall, far more detailed modelling is required before any market intervention is introduced.

2.2.4 Interface with Deposit Return Schemes (DRS)

14 Do you think that the issuing of PRNs/PERNs on DRS materials that remain in kerbside collections would have an impact on the PRN/PERN market? If yes, what impact would this have, and if no, why not?

Yes

Please provide the reason for your response:

If the modelling data presented here is correct (and they are a pure estimate), then it will have an effect of an over supply situation and thus a negative impact on the PRN/PERN market as it will interfere with the intrinsic free market system, leading to an over supply situation and virtually worthless evidence. The best way to address this therefore is to take all residual DRS materials at MRFs etc out of the PRN/PERN system and pay the waste collector/processor (and thus the local authority), the DRS value of the material they collect that is in scope.

TRA believes the ultimate answer to the problem lies in digital systems. All materials in scope of DRS should have a digital tag (such as polytag which has been trialed successfully in Wales) this will allow the public to redeem their deposits digitally (and in the most environmentally friendly manner) and retrofitted MRFs will be able to identify and thus quantify every individual item of packaging which falls under the DRS scope and thus exclude them from the scope of the PRN/PERN system easily.

Option 1: Find a means to prevent PRNs/PERNs being issued on DRS material collected alongside EPR materials

15 Do you agree with a sampling and modelling approach?

Unsure

Please provide the reason for your response:

This could be supported if used as an interim system. - please see the answer to Q14 and the introduction of a totally digital system and the introduction of measures to identify and differentiate DRS materials remaining in the overall waste stream.. The technology is there already and we could thus get it right from the outset. DRS should not be introduced until the whole system is ready for it.

If politics mean that DRS is introduced prior to the roll out of a digital system, then more frequent MRF sampling (a requirement of EPR) should be able to provide fairly robust data on what DRS elements are still in the kerbside system. It is not the proverbial rocket science to be able to identify a plastic drinks bottle or aluminium/steel can within the scope of DRS, (but impossible for glass), from the in feeds into MRFs, but the significant extra work required should be funded by the unclaimed DRS funds. It is not right that waste management operators should fund any failures of the DRS system.

16 Do you think reprocessors and exporters will be able to differentiate between DRS and EPR packaging materials in issuing evidence?

No

Please provide the reason for your response:

They will rely on the data provided through the MRFs/digital systems which to the best of our knowledge would still have to work on a national (possibly regional) national protocol basis as it would be impossible at the moment to know the precise content of a mixed load of plastics, steel, aluminium or glass. For example, how is it possible to identify a glass drinks container from a non-glass drinks container when it has been broken during collection? However, moving forward, digital systems that have the ability to analyse the exact specifications of all collected materials should be able to make this possible.. We should set the bar high to encourage these new digital systems.

Option 2: Place a recycling obligation on DRS producers for packaging waste that is in scope of the DRS, but not collected by the Deposit Management Organisations (DMOs)

17 Which of the above options do you prefer?

Option 3

Please provide the reason for your response:

Very cautiously, Option 3, will probably have the least impact on the free market system as long as the initial modelling is correct. The initial modeling needs to be backed up by digital systems and/or consistent MRF sampling and subsequent frequent reviews of targets. Option 3 is the least administratively complex and cost effective solution. The data needs to be robust though and more detailed modelling is required across all 3 options.

18 Do you think there will be any issues in the practical implementation of:

Do you think there will be any issues in the practical implementation of: - Option 1:

Yes

Do you think there will be any issues in the practical implementation of: - Option 2:

Yes

Do you think there will be any issues in the practical implementation of: - Option 3:

Yes

If you answered 'Yes' to any of the above, please provide your reason(s):

As discussed above. Option 3 has the least issues with practical implementation, but to reiterate again, is best suited to a digital system.

2.2.5 'Operator Competence' test for compliance schemes, reprocessors and exporters

19 Do you agree or disagree with the introduction of an operator competence test for compliance schemes?

Agree

Please provide the reason for your response:

This is an absolute must to achieve competence and compliance.

20 Do you agree or disagree with the introduction of an operator competence test for accredited reprocessors and exporters?

Agree

Please provide the reason for your response:

The current system largely works, but it is blighted by the illegal operators that are able to exploit the system. The devil will lie in the detail though as we need to understand how a competent person is defined and what kind of technical competence is required. It should also work in conjunction with a fit and proper persons test. All too often, and usually genuinely, failure to comply is as a result of failing to understand quite complex requirements and sometimes vague and lengthy guidance.

2.3 Call for Evidence

21 Do you agree or disagree with the introduction of a compliance fee for producers who do not obtain sufficient PRNs/PERNs to meet their obligations?

Agree

Please provide the reason for your response:

We agree, but it is an absolute must that the compliance fee needs to be high enough to deter producers who do not obtain sufficient PRNs/PERNs to meet their obligations, and TRA believes that using the data outlined in Q6, the fee should be based on the highest PRN/PERN price for that compliance year plus a minimum 25% premium. This means that the defaulting producer cannot gain any competitive advantage over those producers that have satisfied their obligation by buying at the peak of the market. This will also provide a robust incentive to comply.

22 Do you think the introduction of a compliance fee would still be necessary in addition to the proposals (outlined in Section 2.2) to address the issues around price volatility?

No

If you answered 'Yes', please provide the reason for your response:

TRA agree with the rationale here that the setting of a compliance fee may well not be necessary given the other reforms outlined in this consultation and thus the introduction of a fee should be parked for now so we can assess the impacts of the revised system.

23 If you have any other suggestions for improvements to the operation of the PRN/PERN market, please include details here

If you have any other suggestions for improvements to the operation of the PRN/PERN market, please include details here:

Improved and equitable transparency on revenue across the chain, not just reprocessors/exporters.

It should be a compulsory requirement for all competent reprocessors and exporters to be accredited, but to do so the system needs to be more than a data gathering/evidence system and therefore this must be matched by stringent enforcement actions against freeloading producers, otherwise the market will be flooded with excess evidence and the price forced down.

Much better and consistent enforcement, particularly during audits

Consultee Feedback on the Online Survey

24 Overall, how satisfied are you with our online consultation tool? Please give us any comments you have on the tool, including suggestions on how we could improve it.

Dissatisfied

Please give us any comments you have on the tool, including suggestions on how we could improve it. :

It would be great to be able to download a PDF prior to submission for internal consultation purposes.

Being able to navigate straight to a certain page would be beneficial and the ability to navigate to the last page from the first.