

PRODUCER RESPONSIBILITY IN SWEDEN

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By Jonas Ebbesson, © Professor of Environmental Law, Stockholm University.

1 The legal framework

The notion of producer responsibility was introduced in Swedish law in 1994. This drew on a decision by the Parliament dating back to 1975, when the principle of producer responsibility was termed, without resulting in legislation. Producer responsibility implies a market-based instrument, which defines the “physical” and/or economic responsibility for the collection and management of waste, e.g. packaging and various printed papers. The intention of the 1994 legislation was to shift the responsibility for collecting, removing, recycling or reusing waste from the municipalities to the collective of producers.

The system is defined by law, basically by governmental ordinances. The Environmental Code confers power to the Government to adopt regulations on producer responsibility. The Government has made use of this power, and enacted the following ordinances:

- Ordinance (1994:1205) on producer responsibility for news prints,
- Ordinance (1994:1236) on producer responsibility for tyres,
- Ordinance (1997:185) on producer responsibility for packaging,
- Ordinance (1997:788) on producer responsibility for vehicles,
- Ordinance (2000:208) on producer responsibility for electric and electronic products.

In addition, special acts have been adopted concerning the recovery of aluminium containers for beverages and for PET bottles as well as for the dismantling of vehicles. The listed ordinances set the levels of recollection and recovery in legal terms. Yet, these regulations are based on negotiations between the Government and the main actors of producers. One may say that instead of relying on “voluntary agreements”, the negotiated levels of recycling and collection are transferred into governmental regulations. Even so, for some matters not covered by legislation, the level of recovery is based on a voluntary commitment by the branch concerned.¹

The levels of recovery prescribed in the ordinances on producer responsibility are not really defined as legal obligations addressed to the producers. Rather, they are defined as objectives to be achieved by the collective action of the producers concerned. This is not to say that the levels are not taken seriously. They are, but the reaching of them does not depend much on legal enforcement or sanctions. Resembling voluntary agreements, the efforts depend on the kind a consensus among the branches involved and the public administration, and the awareness that

¹ This is the case with office prints, the objective being 50 per cent recovery, and 75 per cent recovery from 2006.

a failure may result in more stringent control in the future. To the extent there are legal disputes related to producer responsibility, they mostly concerns local issues, for instance the allocation of responsibility between the municipality and the producer(s) when adequate sites for collection are set up.

Producer responsibility can be said to implement or even develop the polluter pays principle, but it is not necessarily the most effective way of controlling such waste. In practice, the justifications are more of a pragmatic than principled kind, and it was recently questioned whether the system should be abandoned and the responsibility transferred back to the municipalities. In the end, however, the Government proposed to keep the system of producer responsibility, and the Parliament agreed. The main reason is that the rates of recovery for most wastes are considered satisfactory. The table below shows the prescribed levels as well as the achieved levels as of 2001.

Matter	Prescribed level	Achieved level²
News prints	75 % recovery	82 % recovery
Packaging:		
• Cardboard, carton	70 % recovery, 40 % recycling	41 % recovery, 41 % recycling
• Corrugated cardboard	65 % recycling	85 % recycling
• Sheet-metal, steel	70 % recycling	68 % recovery, 67 % recycling
• Aluminium (not bev.)	70 % recycling	22 % recovery
• Plastics (not PET)	70 % recovery, 30 % recycling	30 % recovery, 15 % recycling
• Glass	70 % recycling	84 % recovery, 84 % recycling
• Wooden packaging	70 % recovery, 15 % recycling	No figures yet
• Other packaging	30 % recovery/m, 15 % recycling/m	
• PET bottles	90 % recycling	98 % recovery
• Glass bottles (return)		99 % recovery
• Aluminium (beverage)	90 % recycling	85 % recycling
Tyres	No land-fill, 80 % recovery	No land-fill, 30 % recycling, 55 % mat. subst.
WEEE	Obligation to take back WEEE	10 kg per inhabitant annually
Vehicles	85 % recovery/recycling*	close to 85 % recovery
Batteries**		Pb: +95 %; NiCd: net reduction on the market; Hg: 79 % collected, recycling prohibited
	* 95 % by 2015.	
	** Not subject to producer resp.	

² Naturvårdsverket [Swedish Environment Protection Agency], *Samla in, återvinn!* [Collect, Recover!], Report 5237, 2001.

2 Not only Producers Involved

The main responsibility for collection, transport and recovery thus rests with the producers, but the system also involves households, consumers and municipalities. In addition to prescribing levels of recovery, the governmental ordinances prescribe more specific duties for the producers as well as the other actors.

The involvement of “non-producers” is indeed critical for the system to work. The reason is self-evident: if households and consumers refrain from separating the matters at source or do not bring them to the designated sites, there is no possibility for the producer to get hold of the matter. In fact, a main concern in the recent review of the system was the availability and design of the collection sites and the incentives for households to actually bring their waste to these sites. Therefore, the intention of the Government has been to clarify the burden of municipalities and producers respectively.

a Producers

Again, legally speaking the obligation to achieve the prescribed levels rests with the collectives of producers. It is their responsibility either to practically arrange for the recovery of wastes, in many cases with more precise duties as to the method (recycling, energy recovery etc.) or to pay charges for the collection, transport and removal of waste arranged by the municipalities (“economic producer responsibility”). But the responsibility of producers go further than that.

First, there is a general requirements that packaging be *adequately designed, presented and marketed* in order for them to be reused, recycled or recovered in a way that limits the impact on the environment. Moreover packages should be produced so as to minimise the release of harmful substances when being disposed of or combusted.

Second, producers are responsible for ensuring *adequate treatment* of the waste, whether it be recovery, recycling, energy recovery etc. The arrangements for recovery may include providing *adequate facilities* for households and others to separate the relevant matter from household wastes and to dispose the waste. This is the case with news prints and packaging. Alternatively, the producer may be obliged to take back the item once it is torn down, as is the case with tyres and wastes of electric and electronic equipments (WEEE).

Third, it is a duty of producers to *remove and transport* the waste. On the other hand, when the producer is in charge of such transport, nobody but the producer or the one engaged by the producer is allowed to transport the waste in question.

Finally, for most matters, the producers are also obliged to provide *information* to those concerned (households, consumers) about the collection and means of separating the matter or about the possibilities of bringing the matter back to the producer.

As shown in the above list, the governmental regulations prescribe to what extent the matter shall be reused or recycled. Still, each branch is given a leeway to decide on how to practically coordinate and arrange the collection, transport and recovery. For most matters, the different branches have established particular companies with the task of reaching the set levels, so called material recovery companies. Such companies have been established e.g. for corrugated cardboard etc. (*Returwell*), plastics (*Plastkretsen*), cardboard and cartons (*Svenske Kartongåtervinning*), various metals (*MetallKretsen*), newspapers (*Pressretur*), and glass (*Svenske GlasÅtervinning*).

b Consumers and Households

The obligations of consumers and households differ depending on the kind of waste. It is explicitly stated in the regulations on news prints and packaging, that households and consumers must separate the matters from other household wastes and bring them to the collection facilities provided by the producers. There is no corresponding provision concerning WEEE or tyres.

It is possible for the municipalities to request, if necessary with the threat of a fine, that an individual household or consumer fulfil this duty, but in practice this is rarely – if ever – done. While the duty to separate matters and bring them to the collection site are not criminally sanctioned, littering in public spaces is a criminal act.

c Municipalities

The municipalities have a general responsibility under the Environmental Code for ensuring that household waste is duly transported and recycled or removed. To the extent the responsibility for a particular waste is subject to producer responsibility, the municipality may still have to take an active role in the implementation. As far as packaging is concerned, a specific section of the municipal waste disposal plan should provide information on measures to prevent packaging wastes as well as to promote recovery.

To simplify, the municipalities are obliged to plan for the system and make places available for recycle stations, whereas the producers are to make sure that the matters are collected and managed in a satisfactory way. The municipalities also act as supervisory authorities for waste management under the Environmental Code. Accordingly, when carrying out their obligations the producers must cooperate with the municipalities.

The Government is considering giving the municipalities the responsibility of informing the households, whereas it should remain a responsibility of the producers to inform other actors.

3 Supervision and Enforcement

There is hardly any realistic way of enforcing the prescribed levels by purely legal means. The main incentive for producers to reach the recovery rates is that they are under continuous scrutiny and that a failure may lead to a new, stricter system. *Naturvårdsverket* regularly reports on producer responsibility, and if the levels are not reached, it is quite likely that another system will be developed.

The Environmental Code confers the supervisory power on waste management to the municipalities. As supervisory authorities they may impose injunctions and make formal requests, that an individual producer takes certain measures in order to contribute to the recovery levels. Such measures may refer to the packaging of goods as well as to the method of recovery. It is also possible for the supervisory authorities to request certain measures by the established material recovery companies mentioned above. Such requests can be made with the threat of a penalty fine. Still, it is a characteristic of this system that it lacks adequate means of enforcement. There are no proper legal means to enforce the prescribed levels if they are not reached. The overall objectives of these regulations are rather considered as political or policy-oriented.

Although penalty fines can be imposed on actors who do not comply with requests by supervisory authorities, administrative penalty charges – frequently “used” in Swedish environmental law – cannot be imposed for general failures to comply with the regulations on producer responsibility.

What, then, about penal sanctions? While there are no prescribed penal sanctions with respect to producers’ responsibility to recover prints, packaging or tyres, a failure by a car producer to take back the car or to provide for its dismantling in accordance with the law is subject to penal sanctions. This is also the case if a producer of WEEE fails to take back such waste.

Members of the public, including environmental associations, have limited possibilities, if any, to enforce the obligations of producers.

4 Other Concerns

In practice, the establishment of material recovery companies by the different branches may lead to different monopolies. It may also result in free-riders, i.e. producers who neither contribute to the establishment of such companies nor provide for recovery by other means. The Government has addressed the issue, but so far it has not resulted in any action.

5 Concluding Remarks

In all, the system of producer responsibility is quite “non-legal”, for good and bad. The positive aspect is that it is pragmatic, and in many respects it seems to achieve

the intended levels of recycling and recovery. The negative side of it is that in case the set level is not reached, then there is no clear allocation of responsibility; one may say that the collective of producers in the specific branch becomes responsible. Nevertheless, from an environmental point of view, the experience of producer responsibility is generally considered acceptable, although the results differ from one category of waste to the next. According to a study by *Naturvårdsverket*, the prescribed levels of recovery for packaging are generally higher than those set out in European Community law, and Swedish law seems to go beyond the measures required by the 1994 Directive on Packaging and Packaging Waste.³

The report does not tell whether Swedish law complies with the 2002 WEEE Directive. The report boasts that the achieved level of recovery of WEEE thus far, about 10 kg per inhabitant annually, “seems to be an unofficial world record.”⁴ That may be true and of course it is better to have the WEEE separated and collected than have it dispersed otherwise. Yet, what these figures really tell is that in Sweden there is an enormous consumption of electric and electronic equipment, and that the “life-expectancy” of each product is not very long. In this context, the hierarchy of methods for waste management under EC law should be recalled; reducing the amount of waste in the first place is preferable to any scheme of recovery.

When reviewing the system it is essential to keep in mind that it requires far-reaching cooperation by households and consumers. As a consumer you not only need to clean certain packaging before disposing it the right container at the collection site, you also need to separate your waste into at least 8-10 different categories. Speculating on why the system has been relatively successful for some kinds of wastes, this must be brought into the picture. Although the willingness to separate wastes differ from one person to the other, the involvement of Swedish households and consumers in general is quite remarkable. It is amazing that households and consumers still separate. Usually, such activities and trends tend to decline after some years, but here the degree of separation at source is still quite high.

Even so, the situation may change rather quickly. To be functional, the recycle systems must be coordinated by the municipalities and the producers in order to make it easily available for consumers. That is why the Government, *Naturvårdsverket* and the producers of packaging are concerned with the regular complaints of citizens about litter on the ground near the collection sites.

When the Government prepared its recent proposal to the Parliament on the future of producer responsibility for recovery of wastes, a study was distributed for comments to a great number of municipalities and other actors involved in waste management. Interestingly, several institutions responded that the responsibility for collecting and recovering news prints and packaging should be transferred from the

³ Ibid.

⁴ Ibid., p 20.

producers back to the municipalities. The main reasons for this, they argued, are the problems of littering, discussions on construction permits and difficulties to cooperate among the actors concerned.

As mentioned, the Government decided to maintain the system of producer responsibility and to take measures for improving the situation on the collection sites. Much of the work of the producers of packaging has also been devoted to reducing littering. The report by *Naturvårdsverket* provides some figures also on this: the number of considerably littered recycling stations in Sweden in 2001 was reduced from 1100 to 600, and the number of containers that were not duly emptied in time were reduced from seven to three per cent.

The packaging producers have established a clean-up company for the municipalities in the Stockholm and Malmö regions. Also sport associations have been engaged in cleaning up at collection sites, resulting in about 1,2 million Euros in all to the Swedish sport associations. This, again, indicates that the system of collection and recovery is dealt with and implemented in a pragmatic rather than legal way. In the public debate, the system is not justified by reasons of fairness. Rather, the results achieved are the main justifications and critical for the survival of the system.