



Executive Summary, Conclusions and Recommendations

Executive Summary, Conclusion and Recommendations

1. The National Audit Office has conducted a performance audit of the initiatives that Government has undertaken to implement producer responsibility for packaging waste recycling. This study gauged the extent to which producers have assumed the responsibility to recycle a set percentage of the packaging waste put on the market, as required by law, and to comply with the relative reporting obligations.

2. Government's role in producer responsibility is to establish the mechanisms that enable effective regulation, enforcement and monitoring. In this respect, Government has also assumed the role of facilitator and has only intervened to stimulate the market and to provide for certain facilities in view of potential market failures. Consequently this audit analysed the main components used by Government to bring about producer responsibility for packaging waste recycling, namely:

- The management of the implementation process;
- The regulation and enforcement of this producer responsibility;
- The economic instruments used to incentivise this producer responsibility.

3. Despite Government's initiatives, it is ultimately producers themselves who have to shoulder their legally set waste-related responsibilities. Producer responsibility is an extension of the "polluter pays" principle. This principle emphasizes that producer responsibility extends to the proper management of any waste arising from the product, particularly at the product's end-of-life.

4. The Packaging and Packaging Waste Regulations (LN/2006) require packaging producers to recycle a set percentage of the packaging waste resulting from the packaging they put on the market. Maltese legislation defines packaging producers as local manufacturers and importers. These were estimated at 2,676 in 2008, from National Statistics Office (NSO) business-related data. Total packaging waste resulting from all producers'

packaging put on the market was estimated by Malta Environment and Planning Authority (MEPA) to be 48,000 tonnes in 2007. However, the MEPA estimation diverged from the estimated projections given in the 2009 Waste Management Strategy Update. For the purpose of this audit the MEPA estimation was utilised.

The Prevailing Situation

5. Since 2001, Government has sought to put in place the organisational, legal and infrastructural frameworks required to implement the packaging waste legal obligations in accordance with European Union (EU) requirements. Additionally, Government, and lately producers, initiated educational and awareness campaigns to promote consumer participation in recycling.

6. These initiatives enabled producers to gather momentum in recycling packaging waste. Packaging waste recycling declared by producers for 2006 and 2007 was very low. This audit could not assess producer recycling performance for 2008 and 2009 since 2008 recycling declarations have not yet been validated, and 2009 declarations have only recently started being compiled by MEPA. Public declarations by producers for these latter years indicate that producer packaging waste recycling has registered significant progress. However, this is still considerably below the legally-set target for 2009 which obliges producers to recycle 50 percent of the packaging placed on the market.

7. The minority of producers who are recycling packaging waste are bearing the collection and administrative costs entailed. However, producers have still not settled or made payments on account for the costs entailed in recycling packaging waste through Government facilities since June 2009. This situation has, to an extent, been fuelled by the fact that an agreement between Government and producers relating to processing costs is still to be finalised. WasteServ has also noted that the

invoicing process is rather lengthy since it is dependent on recyclables' prevailing markets and also the issuing of final documentation by the recycling facility.

8. Producers are legally obliged to register with MEPA and to declare the packaging that they annually put on the market. However, the compliance rates regarding these two legal obligations were found to be low and on a declining trend. Moreover, the reliability of the producers' declaration to MEPA regarding the amount of recycling undertaken cannot be ascertained since most of the producers who submitted a declaration did not submit documentation issued by a recycling facility substantiating the producers' recycling claims. To date, MEPA has not audited producer declarations.

9. Producers' low packaging waste recycling is creating environmental and financial costs which are being borne nationally. Between 2005 and 2007, producers' low recycling resulted in the resource loss of over 43,000 tonnes of recyclable packaging waste. In the same period, the packaging waste that producers failed to recycle constituted 5.5 percent of total waste landfilled taking up about 54,000 cubic metres of landfill space.

10. Additionally, between 2005 and 2007, producers' low packaging waste recycling resulted in Government incurring financial costs of €2.5 million which were recouped from the Eco-Contribution paid on items which result in packaging waste at their end-of-life. This amount excludes the financial and social costs of the ensuing environmental externalities. Between 2006 and 2009, Government additionally spent over €650,000 to help start-up producer responsibility implementation and almost €3 million on educational recycling campaigns.

11. Achievement of producer recycling targets is necessary so that Malta may attain its national packaging waste recycling targets under EU legislation. Malta has received a pre-infringement letter querying why the 2006 packaging waste targets have not been met.

The Implementation Process

12. Producer responsibility was set as a key principle for waste management in Malta in the 2001 Solid Waste Management Strategy for the Maltese Islands (SWMS) and reiterated in the 2009 Strategy Update. The implementation of this policy is particularly challenging because it actually aims to simultaneously implement two new concepts for Malta: producer responsibility and packaging waste recycling.

13. Matters are further complicated since the fast implementation pace required to attain recycling targets has to be balanced with economic and social considerations. The implementation of this policy is also constrained by

Malta's small island circumstances which limit economies of scale opportunities for recycling waste. Moreover, the financial viability of recycling is largely dependant on the international price of recyclates.

14. Producer packaging recycling is significantly below target for a number of reasons. Generally, Government's producer responsibility implementation efforts have not yet fully borne fruit since most initiatives undertaken have been start-up in nature. Various critical milestones for the implementation of producer responsibility have been or are being undertaken with a significant time lag.

15. Critical initiatives which suffered delay include the building of a Material Recovery Facility (MRF) to process recyclable waste. Producer-organised systems to collect separated packaging waste started in 2006 but only gathered significant momentum when producers started taking on responsibility for the Recycle Tuesdays Scheme in 2009. From 2009 onwards, two collective producer recovery scheme operators have entered into arrangements so as to pay for the collection of separately collected recyclable waste from most local councils. This arrangement has been a catalyst in raising the packaging waste collected by collective producer recovery schemes for subsequent recycling.

16. Data and information gaps, such as those related to the amount of packaging waste put on the market, may have hindered the implementation of producer responsibility. A situation analysis is determined through the undertaking of waste surveys on a periodic basis. However, three attempts to carry out the relevant waste survey did not yield the desired results.

17. Producer responsibility implementation may have been slower than necessary because non-compliant producers were not being prodded with any enforcement measures by the regulatory body, MEPA. Additionally, conflicting views held by the diverse economic operators concerned had to be resolved before producer recycling could take off.

The regulation and enforcement role in producer responsibility implementation

18. As the designated regulatory body, MEPA is to monitor and enforce producer packaging waste responsibilities.

19. The number of packaging producers registered with MEPA declined between 2006 and 2008. MEPA did not undertake any research to determine the actual reasons for such a decline. The Authority attributes this decline to three plausible causes, namely:

- Producers might have been under the impression that registration was a one-time procedure.
- Producers may have ceased to remain producers or ceased operations.
- Lack of enforcement action, which is attributable to MEPA's limited human resources.

20. To date, the Authority has not initiated any legal action against non-compliant producers. In order to be able to fully enforce the packaging waste regulations MEPA has identified a number of additional staff requirements as part of the MEPA reform underway. It is envisaged that by mid-2011, fourteen additional staff will be allocated on waste-related work.

The role of economic instruments in producer responsibility implementation

21. In 2001, Government set out the objective of removing subsidies of landfill fees over three years. In October 2009 landfill fees were raised from €0.77 to €20 per tonne of mixed municipal waste for Local Councils. In June 2010, this increase became applicable to the private sector as well. This raised landfilling fee is still €10 per tonne less than the full landfilling cost incurred by Government. According to Legal Notice 382/2009, this outstanding subsidy will be removed by 2012.

22. To mitigate the recycling price disadvantage, through WasteServ, Government is also seeking to provide recycling services to producers at break-even cost and by striving to improve the waste processing efficiency of Sant' Antnin Waste Treatment Plant (SAWTP).

23. Because recycling costs are generally significantly higher than landfilling costs, optimising the landfill-recycling price differential is not likely to be sufficient to induce producers to recycle. For this reason, Government has sought to strengthen the incentive for producers to recycle through another economic instrument – the Eco-Contribution system.

24. The Eco-Contribution is levied on beverage, detergent and toiletry items as these are deemed by the Authorities to be the major sources of packaging waste. Between 2006 and 2008, the number of packaging waste producers paying Eco-Contribution increased marginally, from 462 to 526 producers. This amounts to approximately 20 percent of the producer population subject to packaging waste obligations.

25. Although, the Eco-Contribution system started being implemented in 2005, the legal framework regulating the Eco-Contribution refund and exemption systems came

into affect in January 2010. The exemption application form for producers was subsequently issued in August 2010 and 85 such applications have been submitted as on September 2010.

26. As an economic tool, the Eco-Contribution system has had mixed results. It has managed to generate revenue to offset the costs of producers' non-compliance. It also played a positive role in the modest packaging waste recycling achieved. This could be concluded from the following:

- Packaging producers subject to Eco-Contribution reported a significant increase in recycling between 2006 and 2008: from a mere 51 to 7,763 tonnes.
- In 2008 Eco-Contribution payers reported about 60 percent of the total declared packaging waste recycled. (The 2008 packaging waste-related data has not yet been verified by MEPA).

27. Despite these positive factors significant levels of non-compliance with packaging waste regulations by producers subject to Eco-Contribution payers prevail. It is likely that the Eco-Contribution's full potential was circumscribed for a number of years because the legal link between Eco-Contribution exemptions and packaging waste recycled was not crystallized until 2010, namely because Government wanted to see sound packaging-related audit trails from producers.

28. This performance audit has also noted a gap in the economic instruments aimed at boosting the recycling capture rate from households, which in 2008 stood at 28 percent. Government's proposed deposit-refund system for single-use beverage containers was rejected by producers and retailers, on account that it would stifle competitiveness. Producers currently offer little direct incentive to boost recycling by households and other consumers.

Overall Conclusions

29. This performance audit has shown that the implementation of producer responsibility is gathering momentum. Despite the progress attained, the amount of packaging waste recycled by producers is still considerably below the legally set national targets. This in turn renders it difficult for Malta to reach the national packaging waste recycling targets set by EU legislation.

30. The audit noted an insufficient administrative capacity in the entities concerned with producer responsibility implementation. Particularly, a lack of human resources prohibited MEPA from fully exercising its regulatory and enforcement function. Despite the prevailing producer non-compliance, the Authority was not

in a position to take any enforcement action. Additionally, MEPA has not been able to verify producer declarations regarding the amount of packaging put on the market and recycled.

31. The economic instruments used to boost recycling by producers have, until recently, been marked by slow implementation. Due to landfill fees subsidies, the landfill - recycling price differential is still weighted in favour of the former. Recently, improvements in this regard have been registered as the landfill price subsidy has been reduced. The current fee charged remains significantly below the break-even level. However complete removal of subsidies is envisaged to take place by 2012. The gradual removal of the subsidy is deemed partly justified because of the need to avoid inflationary backlash.

32. As an economic tool, the Eco-Contribution system has had mixed results. It is likely that the Eco-Contribution's full potential was limited for a number of years because the legal link between Eco-Contribution exemptions and packaging waste recycled was not crystallized until 2010. This was mainly because Government first wanted to see sound packaging-related audit trails from producers.

33. Producer responsibility implementation for packaging waste was undertaken as part of the overall strategy for sustainable waste management. Despite the complexities associated with the implementation of producer responsibility for packaging waste, notable progress has been registered. However, significantly more needs to be done. In this regard, the concerted efforts of Government, producers and other critical stakeholders, such as local Government and consumers, is crucial to enable the objectives of the packaging waste policy to be fulfilled.

34. To date, Government has provided the legislative and infrastructural frameworks needed to enable producers to implement their packaging waste recycling responsibilities. It has also undertaken the role of facilitator and carried out regular educational campaigns. However, the mechanisms to regulate and enforce have as yet not proved fully adequate. Producers' recycling efforts have increased significantly, albeit from a minority of producers. However, greater efforts, from more producers, are still needed.

Recommendations

35. In view of the issues raised by this audit, the National Audit Office proposes the recommendations outlined below. Given that certain factors influencing packaging recycling are externally determined, it becomes particularly important that Malta optimizes the implementation components which are internally determined.

i. Give increased logistical assistance to producers

Increased Government logistical assistance to producers may help quicken the pace at which producers undertake the substantial start-up tasks required for packaging waste recycling. For example, assistance appears critically needed to help producers estimate the packaging they put on the market annually, given that less than half the estimated producer population is declaring the packaging put on the market annually. Such capacity building assistance is particularly needed since over 95 percent of Malta's businesses are micro-enterprises, with limited human resources specialized in waste management.

ii. Improve the administrative capacity of Government entities concerned

The audit noted a significant shortage in the administrative capacity of most Government entities involved in producer responsibility implementation. Now that the infrastructural and legislative frameworks are in place, producer responsibility implementation pace will significantly quicken if the management and enforcement components are optimized.

- ***Strengthen the MRRA's administrative capacity***

The Ministry for Resources and Rural Affairs (MRRA) may benefit from having additional human resources allocated to waste policy implementation tasks, particularly to liaise with the multiple stakeholders concerned.

- ***Strengthen MEPA's administrative capacity***

The Unit within MEPA responsible for the regulation and enforcement of producer responsibility is severely understaffed. This audit highlighted the need for MEPA to be given the relevant human resources to be able to undertake its regulatory and enforcement obligations. The recruitment of non-scientific staff should not be overlooked as various tasks, such as data compilation and management, are not technical in nature.

- ***Strengthen OPM's administrative and coordinating capacity***

The audit notes that, since March 2008, the policy-making, regulatory and coordinating remit has been shifted from MRRA to Office of the Prime Minister (OPM). Consequently, the latter needs to build up the relevant administrative capacity. It is recommended that OPM develops an adequate administrative capacity so that it may fulfil its vast environment-related role.

This would also enable OPM to provide the top level, central coordination that is critical for effective waste management strategy implementation. It would also enable a more robust regulatory and enforcement function.

iii. Set up an integrated waste management database

Waste data of relevance to OPM, MEPA, MRRA, and NSO should be compiled in an integrated up-to-date electronic database. Each entity in question would have retrieval and input access dependant on its role within the waste management policy process.

iv. Undertake an empirically-based packaging waste situation analysis

MEPA's current estimates of packaging waste generated annually depend upon an extrapolation from data submitted by a proportion of producers. The audit recommends that the entities concerned, namely MEPA, NSO and the MRRA, undertake a detailed study including field research as necessary, so as to arrive at more reliable estimates of packaging waste generated.

v. Give direct enforcement powers to MEPA

Currently MEPA is empowered to take defaulting producers to court – a lengthy and expensive process. It is recommended that MEPA be also empowered to levy financial penalties on producers who fail to submit their annual packaging waste-related returns.

vi. Link financial assistance to private stakeholders with specific packaging waste recycling improvements

It is recommended that Government financial assistance to private stakeholders, including refuse vehicle owners, be linked to specific improvements required.

vii. Continue gradual removal of subsidies on landfill fees

So as to minimize the current financial advantage of landfilling over recycling, it must be ensured that the necessary mechanisms be put fully in place, so that the outstanding landfill subsidies may be removed by 2012, as contemplated by Legal Notice 382/2009.

viii. Continue improving efficiency of recyclables' collection and processing systems

The recyclables collected through Bring-in-Sites only cost about €20 per tonne to process, while those collected through the Recycle Tuesdays scheme require €150 per tonne to process. Consequently, it is recommended that further studies be undertaken, by producers and Government, to explore how processing costs may be reduced and how the revenue potential of the collected recyclables may be improved. Particularly, consideration should be given to collect certain packaging waste streams separately from households.

ix. Minimise port-related recycling expenses

Since 2001, Government and producers have noted that potential recycling cost savings may be reaped if port-handling procedures and charges are revised with regard to waste being exported for recycling. It is recommended that this long identified savings potential be realized so as to enhance packaging waste recycling by producers.

x. Review the Eco-Contribution's effectiveness with regard to producer responsibility

In the longer-term, a review of the Eco-Contribution's effect on packaging waste recycling by producers should be undertaken so as to evaluate the Eco-Contribution's appropriateness and effectiveness in this regard.

xi. Finalise the relevant payment mechanism so that producers recycling packaging waste through Government-owned facilities pay the costs incurred promptly and fully

Now that producers have been recycling packaging waste at SAWTP for over a year, the payment mechanism involved should be finalized as the crux of producer responsibility for recycling is financial responsibility.

It is recommended that the present invoicing time lag of about one year be reduced and that producers be requested to pay the initial agreed rate promptly. Additionally, it is recommended that the payment terms agreed with producers be set out in a written agreement.