

# EPR GUIDELINE DOCUMENT PREPARATION

Report version (3-DRAFT)

Commissioned by:

**The Environmental Protection Agency**

Tolderlundsvej 5  
5000 Odense C  
Denmark

Published on 17<sup>th</sup> July by:



**cyclos GmbH**

Westerbreite 7  
49084 Osnabrück  
Germany

- Dr. Stephan Löhle
- Jana Brinkmann
- Thilo Vogeler
- Nicola Drotos
- Nidhi Thakkar



- Priyen Tanna

*Disclaimer:*

*This study was commissioned by and completed exclusively for the Environmental Protection Agency of the Ministry of Environment of Denmark. The opinions expressed in this study are those of the authors and do not necessarily represent the opinions or positions of the Environmental Protection Agency. For further inquiries, please contact the Environmental Protection Agency directly.*



**Ministry of Environment  
of Denmark**

Environmental  
Protection Agency

Contact person:

Janne Winther Jørgensen (jawjo@mst.dk)

## How to read

Extended Producer Responsibility in Kenya has so far only been carried out voluntarily and was mostly limited to some fractions as PET bottles and bread bags. Currently, Kenya is moving towards a mandatory EPR system covering all products. A prerequisite for this is the establishment of a legally binding framework which provides guidance to all stakeholders in this regard. This has become necessary as the Sustainable Waste Management Act 2022 requires the introduction of a corresponding EPR regulation within two years (*as per Part 3 13. (3) of the SWM Act*). As a result, the Ministry of Environment, Climate and Forestry (MoECCF) and the National Environment Management Authority (NEMA) commissioned the preparation of a draft EPR Regulations for Environmental Management and Coordination<sup>1</sup> (hereafter referred to as "regulation") in cooperation with the Kenya Private Sector Alliance (KEPSA) and the Kenya Manufacturers' Association (KAM).

This guidance document (from here on referred to as "guideline") explains relevant issues in the draft regulation and provides suggestions for improvement. It acts as a clear guidance for stakeholders who have been assigned tasks and responsibilities under the regulation. Its scope includes, but is not limited to, system design, requirements for the roles of producers, requirements for PROs and roles and responsibilities at government level, as well as aspects of individual and collective EPR compliance schemes.

The guideline is structured as follows: Section 1 sets out the definitions, the system set-up, and principles of EPR as they are put in the current Kenyan sub-regulation. Section 2 focuses on the responsibilities of obliged parties and all producers as defined in the regulations, along with details to product clusters and help producers understand and clarify their obligations including the registration process. Section 3 describes the details of collective compliance schemes, where sections 3.1-3.3.3 include all aspects of a PRO's functionality, application, obligations, operationalisation, and resources required. Section 3.4 and 3.5 dive deeper into two utterly important plans to be handed in by the PRO – the EPR Plan and the Work Plan. Section 3.6 elaborates on the finances of a PRO and where exactly its financial flows are addressed to. Section 3.7 addresses roles and responsibilities of affiliated stakeholders, i.e. county governments, retailers (introducing goods onto the market), or waste service providers. The option for carrying out the EPR system individually is limited by the regulation as it is only possible in case of a sole producer for any product. Therefore, section 4 briefly touches on this aspect. Last but not least, section 5 discusses the roles and responsibilities at the governmental level (Ministry and Authority) and the resources needed for EPR systems.

---

<sup>1</sup> It is to note that the regulation that has been examined in this guideline is still under development and has not been finalised yet.

## Content

<b>How to read</b> .....	<b>I</b>
<b>1 Basic explanations and definitions</b> .....	<b>1</b>
1.1 Definition “Guideline” .....	1
1.2 EPR system setup in Kenya.....	1
1.3 Relevant definitions in the context of EPR.....	5
<b>2 Obligated producers</b> .....	<b>10</b>
2.1 Producer’s obligations.....	10
2.2 Product clusters.....	14
2.3 Registration as a producer with the Authority.....	17
<b>3 Collective extended producer responsibility compliance scheme</b> .....	<b>19</b>
3.1 Role of Producer Responsibility Organizations .....	19
3.2 PRO’s obligations.....	21
3.3 Application as a PRO.....	30
3.3.1 <i>Registration of a Producer Responsibility Organisation</i> .....	30
3.3.2 <i>Interim permit for PROs</i> .....	33
3.3.3 <i>Annual operating licence as a collective extended responsibility compliance scheme</i> .....	34
3.4 EPR Plan.....	36
3.5 Work Plan .....	43
3.6 Financing of the PRO .....	48
3.7 Affiliated stakeholders .....	53
3.7.1 <i>Roles and tasks of County Governments</i> .....	53
3.7.2 <i>Roles and tasks of waste service providers</i> .....	53
3.7.3 <i>Roles and tasks of retailers</i> .....	54
3.7.4 <i>Roles and tasks of citizens</i> .....	54
<b>4 Individual extended producer responsibility compliance scheme</b> .....	<b>55</b>
<b>5 Governmental level</b> .....	<b>56</b>
5.1 Role of the Ministry .....	56
5.2 Role and responsibility of the Authority .....	56
5.2.1 <i>Registration and licensing</i> .....	57
5.2.2 <i>Monitoring</i> .....	59
5.2.3 <i>Further regulatory development</i> .....	61
5.2.4 <i>Sanctioning</i> .....	61
5.2.5 <i>Other tasks</i> .....	62
<b>Bibliography</b> .....	<b>63</b>

---

<b>Annex.....</b>	<b>64</b>
A1 – First schedule: Form A .....	64
A2 – First schedule: Form B .....	66
A3 – First schedule: Form C .....	67
A4 – First schedule: Form D .....	68
A5 – Second schedule: Form E.....	69
A6 – Second schedule: Form F.....	70
A7 – Third schedule: Fees .....	71
A8 – Outline of an EPR Plan .....	72
A9 – Outline of a Work Plan .....	76

## List of Figures

Figure 1:	Overview of products in scope and relating obliged parties in the Kenyan EPR system ....	2
Figure 2:	Overview of implementation of the Kenyan EPR system .....	3
Figure 3:	Exemplary organogram of a PRO .....	23
Figure 4:	Revenues and expenditures of a non-profit PRO.....	50
Figure 5:	Overview of submitted licenses and reports in collective compliance schemes.....	58

## List of Tables

Table 1:	Stakeholders and foreseen tasks and responsibilities .....	4
Table 2:	Relevant definitions in the context of the regulation .....	5
Table 3:	Recommended product clusters and its sequencing .....	14
Table 4:	Application for registration for producer responsibility registration at the Authority as laid out in Form A.....	17
Table 5:	List of required recordings of products, eco-design standards, and contracts with agents .....	27
Table 6:	Application for registration of a PRO (documents and information).....	30
Table 7:	Application for an interim permit by the PRO (documents and information).....	33
Table 8:	Attachments to the application of an operating license by a PRO .....	34
Table 9:	Price differentiation per item under the EPR scheme (example non-hazardous packaging, EEE/batteries/cables) .....	52
Table 10:	Roles and tasks of County Governments .....	53
Table 11:	Offenses as laid out in the regulation .....	62

## List of abbreviations

3R .....	Reduce, Reuse, Recycle
BOD .....	Board of Directors
CEO.....	Chief Executive Officer
DRS .....	Deposit Refund Scheme
EA .....	Environmental Assessment
EPR .....	Extended Producer Responsibility
EPRA.....	Energy and Petroleum Regulatory Authority
IBC .....	Intermediate Bunk Containers
KPI .....	Key Performance Indicator
KRA.....	Kenya Revenue Authority
LCA .....	Life cycle assessment
MRF.....	Material Recovery Facilities
NEMA .....	National Environment Management Authority of Kenya
PRO.....	Producer Responsibility Organisation
SWM.....	Solid Waste Management
WSP .....	Waste Service Providers

## 1 Basic explanations and definitions

This section and the following subsections describe the ground layers of the foreseen implementation of Extended Producer Responsibility in Kenya. This includes a further definition of the guideline document, principles of EPR, the anticipated set-up of an EPR system in Kenya, and, lastly, some relevant definitions used thereof.

### 1.1 Definition “Guideline”

The principle of EPR is introduced in Kenyan legislation via section 13 of the Solid Waste Management (SWM) Act (herein after referred to as ‘the Act’). It states that every producer shall bear these obligations. The soon to be gazetted ‘SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER RESPONSIBILITY) REGULATIONS, 2023’ (in the following ‘the regulation’)<sup>2</sup> provides the requirements and tasks for the responsible producers and related stakeholders. The regulation in this context states that the Authority shall develop guidelines on EPR implementation and reporting (section 26 (1d)):

*The Authority shall [...]*

- › *Develop guidelines on extended producer responsibility implementation and reporting.*

This guideline is defined as a document “to put the proposed EPR regulation into action” and thus follow section 26 (1d). It is primarily addressed to the actors to whom the regulation assigns responsibilities and tasks, i.e. particularly addressed to producers, individual compliance schemes and collective compliance schemes (*per sub-regulation 4(1)*).

**The guideline explains how tasks can be implemented and which measures, structures and human resources are necessary to meet the requirements.** In addition, this guideline describes the intended interactions between the actors involved and explains them with examples of practical implementation and provide guidance on the timely order of implementing the tasks.

**Note:** The guideline will constantly be updated to continuously align with the development and progress of the regulation.

### 1.2 EPR system setup in Kenya

**The concept of Extended Producer Responsibility (EPR) is an emerging environmental policy approach based on extending the responsibility of producers to the end-of-life of their products,** instead of only the in-use phase e.g. through complying to certain health and safety standards. This includes being responsible for the collection, sorting and recycling once the product has turned into waste. Thus, it is based on the ‘polluter pays’ principle as the costs and responsibilities of waste management are widely shifted to the producers, releasing the cost burden from the public sector and the consumers.

EPR can support the transition to a circular economy and ease chronically underfunded waste management structures. Especially in contexts where covering the operating costs of waste management services is a challenge for Governments and municipalities, **EPR might be a useful mechanism to contribute to the effective financing and organisation of appropriate waste collection and treatment infrastructure – given that the EPR framework(s) in place cover the respective waste fractions.**

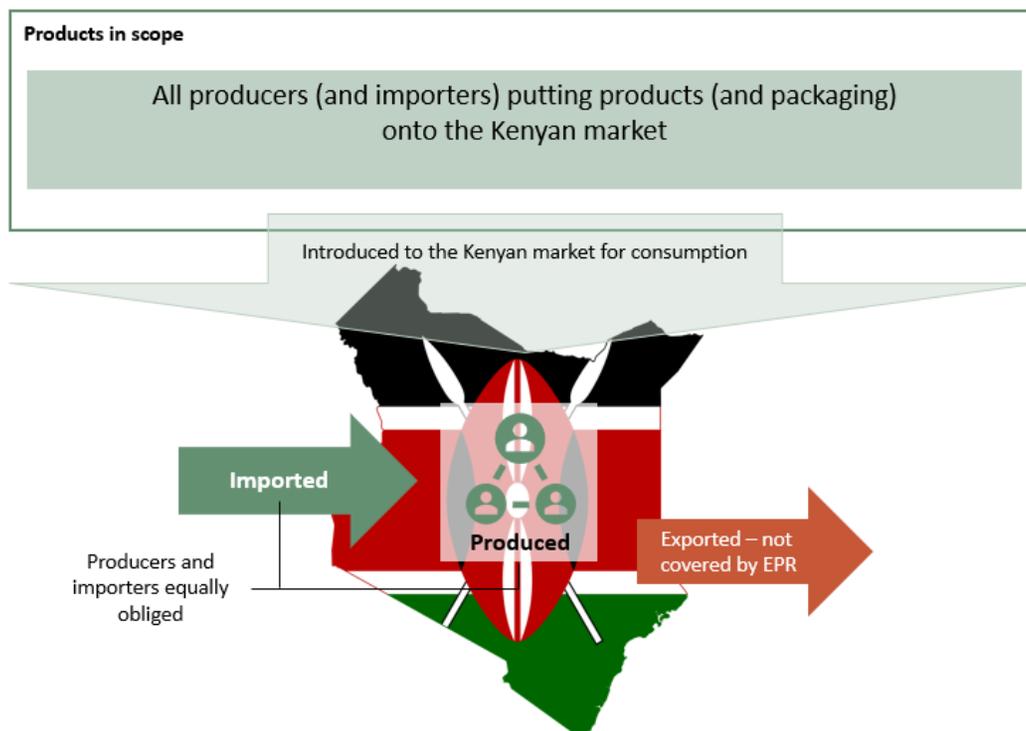
<sup>2</sup> Amended version as of 29.05.2023. This proposed regulation falls under the Sustainable Waste Management Act (No. 31) as of 12 July 2022.

The **purpose of the regulation** is to provide an overarching framework for the establishment and operation of mandatory EPR schemes.

The aim of the Kenyan EPR system is, amongst others (*per sub-regulation 3(1)*):

- › to extend the responsibility of a producer over a product and its packaging during the entire life cycle,
- › to provide a framework for establishment and operation of mandatory extended producer responsibility schemes, and
- › to operationalize the “Polluter Pays Principle”.

**All producers** who introduce products and packaging onto the Kenyan market are obliged by section 13 of the Act and *per sub-regulation 5(1)* to follow EPR. The explicit EPR regulation, on which this guideline builds, is transposing section 13 (for interpretation and definition see Table 2). This includes both products manufactured domestically and imported (*per sub-regulation 2*). On the contrary, products exported for consumption abroad are not subject to this regulation. As a consequence: Every producer is addressed with the regulation as long as its products are consumed in Kenya and turn into waste there.<sup>3</sup> Figure 1 illustrates this.



**Figure 1: Overview of products in scope and relating obliged parties in the Kenyan EPR system**

To comply with the EPR system requirements mentioned in the regulation, every producer is **obliged to reduce pollution and environmental impacts of the product that they introduce onto the market and waste arising thereof** by fulfilling obligations, either

<sup>3</sup> The regulation does not apply to products that are being used-up during in-use phase (e.g. a pencil).

- › **individually**, by setting up an individual EPR compliance scheme (*per sub-regulation 7(1a)*, only applies for “sole” producers *per sub-regulation 8*), see section 4), or
- › **collectively**, by joining an established collective EPR compliance scheme. The collective scheme requires the establishment of a PRO, through which the producers can transfer part of or the complete obligations subject membership agreements (*per sub-regulation 7(1b)*, see section 3).

The latter option requires a clustering of products based on similarity in product identity, their uses and the nature of waste arising therefrom (*per section 9 and 10 (2)*). Every product cluster should have up to three PROs to execute the single producer’s obligations (see section 2.1). For this, **the regulation refers mainly to producers and their (individual and/or collective) EPR compliance schemes (via PROs)** (for definitions, see section 1.3). Figure 2 illustrates this. Since the regulation provides for multiple PROs per product cluster and, in addition, individual EPR compliance schemes, these should coordinate with each other in regard to their waste management operations in order to

1. reduce the effort for all impacted stakeholders, and
2. bundle and standardise the collection systems for the sake of efficiency and consumer convenience.

As EPR systems generally need multiple stakeholder interactions, EPR schemes do not only affect the producers but also further stakeholders along the chain. Table 1 shows these actors grouped in as public sector, private sector, and other affiliated stakeholders covered in the regulation and this guideline. The table addresses overarching tasks and responsibilities for each of these stakeholder groups.

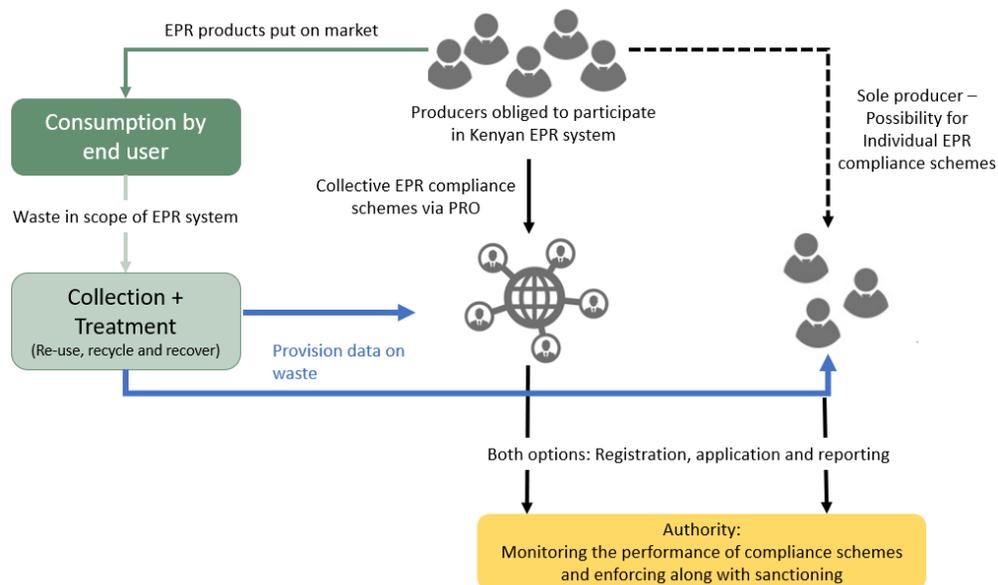


Figure 2: Overview of implementation of the Kenyan EPR system

**Table 1: Stakeholders and foreseen tasks and responsibilities**

Stakeholder	Tasks and responsibilities
<b>Public sector stakeholders (Governmental level)</b>	
The Ministry	Responsible for legislation governing the EPR system. Issues collective national objectives, frameworks and targets, publishes the targets and procedures, and facilitates stakeholder consultations (for more details refer to section 5.1).
The Authority (NEMA)	The Authority monitors the operation of individual and collective EPR compliance schemes (PROs) (for more details refer to section 5.2).
Counties/local authorities	Set up facilities for waste segregation, collection, sorting at MRF's, onward processing of valuable waste and final disposal of residual waste at authorized landfills, facilitate intercounty waste management infrastructure, work with PROs to ensure adequate waste management along all stages from collection to recycling/disposal of products, establish suitable mechanisms for waste management operationalisation, provide linkages between consumers and WSP through communication and the provision of information, and by supporting collection (for more details refer to sections 3.5).
National Environment Tribunal	Operates as an instance for conflict resolution. It rules within a time period of 60 days concerning grievances related to the regulation's stipulations (for more details see section 5.2.4).
Waste Management Council	Consults the Authority to recommend to the Ministry collective national objectives, frameworks and targets for EPR compliance schemes (both individual and collective).
<b>Private sector stakeholders (obliged party's level)</b>	
Producers	Producers are the centre of the EPR system, as their responsibilities are extended to the end-of-life stage of the products put on the Kenyan market. They need to assure adequate management, collection and recycling/disposal of the waste from their products. They are held accountable for operationalisation, monitoring, and reporting of all respective waste management tasks (for more details refer to section 2.1).
Individual EPR compliance schemes	Individual EPR schemes refer to all activities a producer undertakes to assume its individual EPR obligations. <b>Note:</b> This only applies for the unlikely case that a producer is the only one introducing a specific product on the market – in this case defined as the 'sole producer'. Furthermore, the regulatory setting of individual EPR compliance schemes act as a fall-back solution for members of a collective EPR compliance scheme / PRO as far as this is revoked. The sole producer is held liable to the adequate management of its products' waste through its individual EPR compliance scheme activities (for more details refer to section 4).
Collective EPR compliance schemes/Producer Responsibility Organisation (PRO)	PROs assume the obligations on extended producer responsibility in a collective manner. PROs are the centre of any collective EPR systems, as they bear the responsibilities for registering producers, reporting, and operationalisation along with certain monitoring aspects (for more details refer to section 3).
Agents	Agents are registered persons working under a PRO to deliver specific services within EPR. They usually organise and support the PROs interaction with County Governments and waste service providers.
<b>Other affiliated stakeholders</b>	
Raw material suppliers, manufacturers, converters	The first step in the product value chain. Provide raw materials for domestic producers and importers – either from virgin raw materials or secondary resources (recyclates).
Retailers (synonym for distributor)	Shopfronts, supermarkets, wholesalers and any other stores which distribute products in scope of EPR to the consumers. Distributors and retailers might be part of take back systems as far as they are contracted by EPR compliance schemes. This might also cover aspects on education and awareness building to their customers about environmentally sound ways of disposing of relating waste (for more details see section 3.7.3).
Consumers/ Citizens	Consumers should dispose of their waste products correctly, ideally by segregating the waste at source as established and promoted by the County Governments to ensure high-quality recycling.

	They need to be aware of strategies for waste reduction and observe strict hygiene standards (for more details see section 3.7.4).
Informal sector	<b>Note:</b> The informal sector is not explicitly mentioned in the regulation. Nevertheless, the integration and formalisation of the workers into the EPR scheme’s waste management should be pursued by all stakeholders. Details of such integration and formalisation processes may vary depending on the product clusters and particular waste management activities performed.
Waste service providers (WSP)	Responsible for collection, sorting, and recycling among other tasks under the EPR scheme based on contractual agreements – either with producers directly (in individual compliance schemes) or the PRO (in collective compliance schemes). Waste service providers need to be licensed to get into contract and cooperation with PROs (for more details see section 3.7.2).

### 1.3 Relevant definitions in the context of EPR

Relevant definitions related to EPR (*per sub-regulation 2(Part I)*) are explained in detail below (see Table 2/3). In addition to the legal definition provided in the regulation, further explanations specify the definitions.

**Table 2: Relevant definitions in the context of the regulation**

Term	Legal definition	Further explanation
Act	The Sustainable Waste Management Act, 2022	The Act is the law prevailing this regulation
Actors	The different players in the extended producer responsibility value chain	-
Agent	A registered entity contracted by producer responsibility organization to deliver specific extended producer responsibility services on its behalf	Agents are responsible persons working in County Governments to organise and support the PROs interaction with County Governments and waste service providers. All these activities are carried out by the agents on behalf of the PRO.
Authority	The National Environment Management Authority established under section 7 of the Environmental Management and Co-ordination Act, 1999	NEMA is the responsible Authority to monitor and govern this EPR regulation.
Brand	A registered trademark under which a product is sold	It means any mark, word, name, symbol, design, device or graphical element, or a combination thereof, including a registered or unregistered trademark, that identifies a product and distinguishes it from other products.
Brand owner	The registered owner of the trademark	An owner of the brand is not necessarily a producer of a product under the EPR scheme and thus not necessarily obliged to follow the EPR rules.
Circular economy	An environmental management approach that promotes initiatives for designing and redesigning out waste from products, extraction of maximum value from natural resources, closing of material loops and creation of new value from materials that would otherwise have been considered as waste	-
Collection	Refers to the gathering of products under EPR at the end of their in-use phase. This collection can be either carried out at the place of origin or a designated other	

Term	Legal definition	Further explanation
	space (i.e. collection point) and by a waste picker, collector or WSP.	
Collection point	A place to handle waste or recovered materials. It must be registered by the County and the Authority.	
Collective extended producer responsibility compliance scheme	A system where producers execute their extended producer responsibility obligations in a producer responsibility organisation	Operationalised through the Producer Responsibility Organisation. For details see section 3.
Collector	A licensed person or entity who picks up, removes, collects or consolidates waste. Under this definition transfers (without processing) to an aggregator, a licensed material recovery facility or waste processing facility also fall.	
Converter	An entity that transforms or combines secondary raw materials to produce a new product	As far as converters bring new products onto the Kenyan market, they are obliged companies equal to a producer (see definition below).
Consumer	The end user of a product	This applies to private (citizens) and commercial and industrial end users.
Control audit	An operation commissioned by the Authority to evaluate performance of the extended producer responsibility schemes in order to confirm compliance or management systems implementation gaps	Further information on audits are described in section 5.
Compliance schemes	Refers to both individual and collective extended producer responsibility schemes	Umbrella term for all schemes used by producers to assume their responsibility, also includes the PRO (see 3.2) who is collectively assuming responsibility on behalf of producers.
Deposit refund scheme	A collection system that requires a monetary deposit on a product at the point of sale where consumers redeem the deposit when they return the product	This can only be applied to a certain selection of products or packaging (e.g. bottles) as far as they can clearly be accounted for and labelled.
Extended producer responsibility	An environmental management approach in which a producer's responsibilities for a product is extended to the post-consumer stage of a product life cycle	-
Environmentally friendly	The practice of reducing environmental degradation and pollution by producing products that comply with environmental sustainability that includes minimal waste production, reusability, recyclability, composability, biodegradability, and safe disposability	<b>Note:</b> To assess this criterium clearly and accountable, requirements are defined by the Authority, including in the form of standards and/or norms. These are specific for the relating products and have so far not been developed. The Authority undertakes a review as soon as accountable requirements are set out.
Environment sustainability	Responsible interaction with the environment to avoid pollution, depletion or degradation of natural resources and allow for long-term environmental quality	<b>Note:</b> To assess this criterium clearly and accountable, requirements are defined by the Authority, including in the form of standards and/or norms. These are specific for the relating products and have so far not been

Term	Legal definition	Further explanation
		developed. The Authority undertakes a review as soon as accountable requirements are set out.
Free-rider	An individual or entity that does not contribute to a collective scheme but benefits from the actions or efforts of another producer. It includes a producer who fails to manage own products at the post-consumer stage; producers who under-declare their volumes, or fail to demonstrate fulfilment of individual extended producer responsibility obligations, producers in a pooled scheme who fail to pay their subscriptions, submit inaccurate information or fulfil their membership requirements	Key definition as basis for penalties. Note: Free-riders are not only the ones that do not contribute to a collective scheme. Additionally, producers who fail to fulfil their responsibilities in any form are considered free-riders, too.
Individual extended producer responsibility compliance scheme	A system where direct execution of the extended producer responsibility obligations falls on an entity that is a sole producer of a product	For details see section 3.7.
Mandatory initiatives	Producer responsibility compliance schemes implemented through government regulation	Clearly defines that only mandatory EPR is compliant
Material Recovery Facility (MRF)	As per Act 14.(2), an MRF shall be used for final sorting, segregation, composting and recycling of waste generated or transported to the county and transport the residual waste to a long-term storage or disposal facility or landfill.	As per Act 14.(3), an MRF shall be licensed by the Authority. As per Act 14.(4), the Cabinet Secretary shall, in consultation with the Authority and county governments, make regulations for the establishment and proper management of MRFs.
Packaging	The material in which a product is wrapped or covered in in order to protect it or prevent it from being contaminated, facilitate handling, transportation and delivery and for purposes of these regulations, shall also be considered as a product	Applies to non-hazardous packaging and hazardous products packaging.
Post-consumer	As defined by DIN EN ISO 14021:2016, this is all about material generated by households or by commercial, industrial and institutional facilities in their role as end-users of the product which can no longer be used for its intended purpose.	-
Producer	An entity that introduces goods, products and packaging into the country using authorised means by manufacturing, importing, distributing, converting, selling or re-selling or otherwise brings	All producers are obliged to participate in the EPR system in Kenya.
Product	A good or packaging introduced in the Kenyan market by any entity or person through production, importation, franchising, marketing, a distribution	The term “product” functions as a nomenclature also includes the term “packaging” in the regulation.

Term	Legal definition	Further explanation
	outlet and channels, for consumption by the consumer	
Producer responsibility organisation	A producers' membership organization set-up to assume legal obligation to implement extended producer responsibility on behalf of its members in a collective extended producer responsibility compliance scheme	Through the PRO, the collective extended producer responsibility schemes are operationalized.
Product life cycle	The process a product goes through in all its stages from raw material extraction, design, production, transportation, distribution, consumption or use, repair and maintenance, recycling and end-of-life disposal	-
Reuse	The action or practice of using something again whether for its original purpose or to fulfil a different function	Reuse is clearly to be distinguished from recovery and recycling.
Recovery	The controlled extraction of a material or retrieval of energy from waste for the production of another product	Recovery is an umbrella term including both 'recycling' as well as 'further recovery processes' - the process by which waste serves a useful purpose by replacing other materials that would otherwise have been used in the economy or the plant, by substituting waste for those materials. It includes energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations but not disposal actions. For this, recovery is clearly to distinguish to treatment options of collected waste (= amount in recovery + amount in disposal).
Recycle	The process by which materials are reclaimed from waste for further use as product, raw materials or input in the production process	Recycling means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes.
Sole product	A product or packaging is defined as a 'sole product' if it is the only one of its kind introduced to the Kenyan market.	
Sole producer	<b>Note:</b> Not defined in regulation	The term 'sole' applies to producers who are the only ones introducing or importing a specific product and/or its packaging onto the Kenyan market, whereby the product and or its packaging needs to distinguish from competitors not only by all characteristics, but also in the brand, and vice versa. In practice, due to this definition there might only be very little up to none 'sole producers' in Kenya; also as competitors might always appear.
Take-back	A mechanism through which producers collect their products from consumers	Takeback are measures initiated by the producer while collection can be by other actors in the waste value chain not limited to the generator of waste. NEMA has licensed waste handlers whose scope covers collection transportation and disposal of waste.
Waste	Refers to (a) any substance, material, or object that is intended or required to be discarded or disposed of by its holder, whether or not it can be reused, recycled, or recovered and includes	-

Term	Legal definition	Further explanation
	<p>municipal waste, domestic waste, waste from agriculture, construction waste, commercial waste, waste from horticulture, aquaculture and forestry, medical waste, chemical waste, hazardous waste, toxic waste, industrial waste, pesticides, e-waste and toxic substances but does not include radioactive waste;</p> <p>or</p> <p>(b) a substance, material, or object that may be designated as waste by the cabinet secretary in consultation with the Authority by notice in the gazette provided that waste or a portion of waste specified in paragraphs (a) and (b) shall cease to be waste</p> <p>(i) Once an application for reuse, recycling or recovery has been approved by the Authority or, after such approval, it has been reused, recycled or recovered;</p> <p>(ii) Where approval for reuse, recycling or recovery is not required, it has been reused, recycled or recovered;</p> <p>or</p> <p>(iii) Where the cabinet secretary in consultation with the Authority has, by notice in the gazette and in the prescribed manner, excluded any waste stream or portion of any waste stream from the definition of waste.</p>	
Waste management	Means to control and monitoring of production to minimise waste, handling of post-consumer products including segregation at source, collection and take back schemes, transportation, processing of material recovered from waste, treatment and safe disposal of unrecoverable materials	In the sense of EPR, responsibilities according to waste management is transferred to individual and/or collective EPR compliance schemes.
Waste Service Providers	Includes collectors, transporters, waste processors, material recovery operators, recyclers and landfill operators. It's meaning originates from the Act.	Need to be licensed to fulfil their relating operations, are listed per County.

## 2 Obligated producers

### 2.1 Producer's obligations

**Every producer who introduces products onto the Kenyan market is responsible** for fulfilling the following obligations addressed to them. A producer is considered compliant by fulfilling these requirements. If a producer does not comply with their obligations, they are considered a free-rider and can be sanctioned *per sub-regulation 28*.

**Note:** Producers shall not place any products on the market if they are not listed in the Authority's register (of producers) *per sub-regulation 18(7)* (see section 2.2). All retailers within the product value chain shall only place products on the market from producers published in the updated register of the Authority (of producers) *per sub-regulation 18(8)*.

**Important:** The lack of an established extended producer responsibility compliance scheme shall not exempt any producer from their general EPR obligations (*per sub-regulation 7(3)*), for the producer's obligations see section 2.1). Any producer who, before the commencement of this regulation was marketing products shall apply to the Authority for a registration within six months after the commencement of this regulation and shall ensure compliance with the provisions of this regulation (*per sub-regulation 30*).

To achieve their obligations in reducing pollution and environmental impacts of their products introduced by producers onto the market and waste arising from it (*per sub-regulation 6(1)*), the producer has to oblige to the following, *per sub-regulation 6(1a-j)*. In this sense a producer shall:

- › (a) **Establish a take back scheme** which may include a deposit refund system

This is one of the main services under EPR, which the producer is eligible for and can respectively carry out through a PRO. These services must apply to the whole country and need to cover the total range of the certain product cluster that the compliance scheme is responsible for. This includes making sure that products do not end up being disposed of in a non-environmentally sound manner.

Since County Governments are also responsible for ensuring proper collection and setting up such schemes and relevant facilities, the cooperation between producers (via PROs, see section 2.1) and County Governments needs several agreements, formulated in the so-called Work Plan (see section 3.5).

In case of implementing a DRS, it is recommended that the responsibility of the product shifts to the entity setting up the DRS and those that subscribe to the DRS system. These products (e.g. PET-bottles) are the designated to be collected via the DRS system (e.g. using reverse vending machines in the supermarket) and forward it to recycling facilities.

- › (b) **set up an individual or a collective extended producer responsibility compliance scheme or join a collective extended producer responsibility compliance scheme**

Due to their obligations in (a), the producer must join an existing PRO or implement a PRO together with other producers for their products (for more details of application as a PRO see section 3.3). The registry of existing PROs and their relating product clusters are to be published by the Authority.

**Note:** The Kenyan regulation theoretically gave the option to also form an individual EPR compliance scheme. However, only producers who act as 'sole producers' may do so. The definition of a sole producer can be found in section 1.3.

- › (c) **Register as producer with the Authority and provide reports of the status of the implementation** of their extended producer responsibility obligations to the Authority through the reporting system established by the Authority

**All producers need to register** their company and products with the Authority as a first step, no matter if they are already member of a PRO or intend to establish one. In principle, information to be included in the registration document includes the company's tax ID, or another unique national identity number, the company's name and address, the company's staff members responsible for the registration, including contact details, a list of products the company introduces to the market, and the packing type being used. Upon the so-called Producer Responsibility Registration, and approval from the Authority, the company shall receive a specific extended producer responsibility number along with the Registration Certificate for their registration with the PRO (for more details see section 2.3). An overview of submitted licenses and reports in collective compliance schemes can be found in Figure 5.

**Note:** Reports of the status of implementation comprise of information of the so-far accomplishment of a fully taken over responsibility to be fulfilled. In terms of participating in a PRO, the collective compliance scheme is taking over this task.

- › (d) **Design products materials** that minimize waste, facilitate reuse, recycling, recovery, use of secondary raw materials where possible and are environmentally friendly at their end-of-life

A producer has to design their own products in the most environmentally-friendly way. Life-cycle-assessments can offer suitable recommendations on how to achieve that. However, specific design recommendations vary significantly between products and demand specific guidance.

**Note:** This is a general requirement. Further details regarding the implementation will be laid out after the initial implementation of the regulation. Established PROs are assigned to fulfil this obligation after the initiation period.

- › (e) **Take financial, organizational and physical responsibility** for the management, treatment and disposal of their post-consumer products and end-of-life treatment for the waste generated by their products

With participating in a PRO, this organisation is taking over this obligation. The producers have to finance the PRO through their fees, which are to be used to achieve their EPR obligations (*per sub-regulation 20(1)*).

- › (f) **Provide updated information on quantities of products** they introduce into the national market, recyclability and reusability, interpretation of packaging labels, market traceability mechanism and any other prescribed information through the reporting system established by the Authority

This information is to be provided to the PRO in a collective compliance scheme of which the producer is a member. It shall be updated continuously. This includes passing on stated information in a document or online on the products that were put on the market by the respective producer.

**Note:** Each PRO can decide how this information is to be provided. As far as multiple PROs may exist for one product cluster it is recommended to agree on unified data transfer.

- › (g) Provide consumers with **information on their role on reuse, return, take back points and schemes**, meaning of recycling and recovery labels and symbols on the products

With participating in a PRO, this organisation is taking over this obligation. The PRO thus has to inform the consumers and users of the producers' products on how to return them, how to best reuse them (if applicable), where to find take back points if take back schemes apply, and how to best know how to segregate products according to the symbols printed upon them. The exact meaning of applied recycling and recovery labels shall also be communicated.

- › (h) **Raise awareness** on management of post-consumer products that they introduce in the market

With participating in a PRO, this organisation is taking over this obligation. The EPR fees paid by producers to the PROs shall not only cover infrastructural actions, but also be used for raising awareness on waste management matters and appropriate disposal matters, including household waste separation. This includes suitable and appropriate labelling on the products to enable consumers to properly dispose of the waste.

**Note:** Since standardised labels among all producers and across the country are to be used, labelling is not obligatory from the beginning, but should be aligned with the Authority (this step comes at a later stage). Consumer targeting is also to be done in different ways of addressing, e.g. via radio, social media, TV, sign advertising, etc., and to be proven in terms of cost and type.

- › (i) **Carry out product life cycle assessment** in relation to their products for enhancing environmental sustainability

A life cycle assessment is a tool to assess the potential environmental impacts throughout the product's life cycle. It covers all stages from natural resource acquisition to production until its waste stage, incl. the different treatment options. The existing standard ISO 14040 provides further information.

**Note:** This obligation is not enforced during the initial phase of the EPR system. It comes into force as soon as further requirements are developed.

- › (j) **Put in place circular economy initiatives and any other measures** to reduce the impact of their products on health and environment

**Note:** This obligation is not enforced during the initial phase of the EPR system. It comes into force as soon as further requirements are developed. Nevertheless, producers should be encouraged to join or set up initiatives and/or measures compensating the negative impact of the product introduced or (partly) reducing the impact on health and environment.

All producers shall maintain updated records of products managed, eco-design standards, contracts entered into with agents, by licensed waste service providers and recyclers, and level of performance as per the Work Plan (*per sub-regulation 25(1)*).

**The producer is also obliged to register with the PRO.** The following information needs to be submitted to the PRO:

- (i) the company's tax ID, or another unique national identity number,
- (ii) the company's name and address,
- (iii) the company's staff members responsible for the registration, including contact details,
- (iv) the brands or categories of the products the company introduces to the market (e.g. groceries, electronics).
- (v) Each product and/or its packaging and waste components must have an associated description or specification to categorize which PRO it is being associated with

(vi) In addition, producers also need to submit the producer license number provided by the Authority as part of the monitoring obligations of the PRO.

In principle, it should be possible for obliged companies to submit reports online. A web-based registration and data reporting is most efficient. Since small enterprises are also subject to the registration requirement, the necessary electronic equipment and internet access might not always be available. In exceptional cases, the possibility of paper-based registration might therefore also be allowed. Upon registering a producer as member in a PRO, the Memorandum of Association and/or a contract needs to be signed by both parties (see also Figure 5 and Table 6). Upon registration with the PRO and licencing from the Authority, the legal responsibility of waste management of the respective member and its registered products transfers to the PRO.

**Data reporting from the producers to the PRO** regarding the weight, number of sales units and material of products put on the market (e.g. empty weight of the packaging or, in terms of EEE, just the weight of EEE and not its packaging). Based on this information and the fees set by the PRO, the total amount of contribution that a producer has to pay to the PRO is determined. Data is reported on a monthly basis based on a product put onto the market.

**Important:** Since the data reported to the PRO is sensitive/ confidential data, the PRO needs to ensure the utmost confidentiality of the database and system (hardware and software). In addition, only the PRO-staff responsible for the register is allowed to have access to the confidential part of the data. No member company nor any other stakeholder involved (including board members) is allowed to have access to that data.

Any published data resulting from this are in aggregated form and have no direct connection to any specific company.

## 2.2 Product clusters

As all producers are subject to the Kenyan EPR system, it is necessary that so-called product clusters are formed, which are jointly managed together in collective EPR compliance schemes via PRO due to their similarity of products, their uses and the nature of waste arising therefrom (*per sub-regulation 10(2)*). The following, recommended product cluster are intended to achieve both synergies in the establishment of PROs and the best possible efficiency in the organization of the collection and treatment of waste products.

**Note:** Initially, only products are included that are not consumed during their in-use phase and whose product identity is thus largely preserved. For products where this is not the case (e.g. paints, medicines), specific solutions must be found in the course of further development (e.g. food solutions).

For the product clusters shown in Table 3, a step-by-step implementation is outlined reflecting that the appropriate institutional and infrastructural framework conditions are not currently in place for all waste products streams.

**Table 3: Recommended product clusters and its sequencing**

No.	Product cluster	Further explanations	Sequencing for EPR (priority)*
01	Non-hazardous packaging	<p>This category involves any emptied packaging that was used to pack non-hazardous products and hazardous products as far as no hazardous substances evolve in the packaging. It includes both industrial, commercial, transport, household, service packaging and any other form of packaging</p> <p>It includes packaging made of different materials (plastics, paper/carton, glass, metals and its composites, e.g. liquid packaging board):</p> <p>All products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer.</p> <p>There are three packaging categories, all assigned to the term “non-hazardous packaging”:</p> <p>(a) sales packaging or primary packaging, i.e. packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;</p> <p>(b) grouped packaging or secondary packaging, i.e. packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting its characteristics;</p> <p>(c) transport packaging or tertiary packaging, i.e. packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packaging in order to prevent physical handling and transport damage. Transport packaging does not include road, rail, ship, and air containers.</p>	Once EPR regulation comes into force (high)

		Excluded is packaging contaminated with hazardous substances.	
02	Electronic and electrical equipment (EEE), cables and batteries/accumulators	<p>EEEs means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields. They need a plug or batteries to run. EEE are used in households and for commercial purposes.</p> <p>EEEs comprises of many elements and parts, some of which can be hazardous.</p> <p>Cables are included as assembled cables (with plug) or also as meter goods.</p> <p>Batteries and accumulators means all existing battery and energy storage types regardless of use.</p>	Once EPR regulation comes into force (high)
03	Textiles and shoes	Products made of textile fibers or in which the percentage by weight of textile fibers must be at least 80%, regardless of whether they are domestic textiles or commercial applications (e.g. from the health or construction sector). Examples of products are: Clothing, footwear, household and professional linen, accessories incl. wigs and artificial hair, mattresses, carpets, bedspreads, curtains, cloths, fleeces, carpets.	After initial evaluation of the EPR regulation and creation of the organizational and infrastructural basis (see below, middle)
04	Vehicles and tyres	means any type of vehicle, whether on land (e.g. cars, trucks, locomotives, bicycles), on water (e.g. boats) and in the air (e.g. airplanes). This includes both motorized and non-motorized vehicles. Furthermore, all associated tires.	After initial evaluation of the EPR regulation and creation of the organizational and infrastructural basis (see below, middle)
05	Products made of wood	Means any type of product made of wood (> 80 % in mass), e.g. furniture and construction timber. <b>Note:</b> Form sub-cluster by product service life (< 1 year, 1 to 10 years, > 10 years), to reflect different financing structures depending on when the end-of-life phase of the product starts, as well as weight and size, since collection structure depends on this.	After initial evaluation of the EPR regulation and creation of the organizational and infrastructural basis (see below, middle)
06	Products made of inertia	Means any type of product made of inertia (> 80 %), e.g. bricks, porcelain. <b>Note:</b> Form sub-cluster by product service life (< 1 year, 1 to 10 years, > 10 years), to reflect different financing structures depending on when the end-of-life phase of the product starts, as well as weight and size, since collection structure depends on this	After initial evaluation of the EPR regulation and creation of the organizational and infrastructural basis (see below, middle)
07	Products made of plastics, paper/carton, glass, metals and its composites	Includes all other products made of plastics, paper/carton, glass, metals and its composites not mentioned above (01-04). This scope is very broad and requires further specification based on the registrations of the relevant producers. It is planned to form further sub-clusters for this purpose. Examples of products are e.g. artificial hair to pipes (plastics), graphic paper / books (paper), windows (glass), gutters to cutlery (metals) as well as products consisting of several of the named materials (composites). <b>Note:</b> Form sub-cluster by product service life (< 1 year, 1 to 10 years, > 10 years), to reflect different financing structures depending on when the end-of-life phase of	After definition of precise sub-clusters by the Authority and creation of the organizational and infrastructural basis (see below, low)

		the product starts, as well as weight and size, since collection structure depends on this	
08	Other products	Means any other product not mentioned before under 01 to 07. This scope is very broad and requires further specification based on the registrations of corresponding producers. It is planned to form further sub-clusters for this purpose. <b>Note:</b> Form sub-cluster by product service life (< 1 year, 1 to 10 years, > 10 years), to reflect different financing structures depending on when the end-of-life phase of the product starts, as well as weight and size, since collection structure depends on this	After definition of precise sub-clusters by the Authority and creation of the organizational and infrastructural basis (see below, low)

\* Even if the start of the EPR operations for product clusters (e.g. via collective EPR compliance schemes) is scheduled for a later stage, producers must register with the Authority as producers when the EPR regulation comes into force (see section 2.3).

**Note:** Since almost all products are packaged in some form, it is planned to start with the cluster of non-hazardous packaging. Thus, all manufacturers of packaged products must participate in this EPR system (for the packaging, not for the packaged good) and will already be familiar with the system and the associated obligations.

The execution of the respective cluster of the EPR system should not start until it has been

- › ensured that appropriate collection systems are in place and/or planned to be implemented for the waste stream of such a cluster
- › a group of producers applies for a PRO (see section 3.3) and/or a PRO has been established; and
- › a treatment/recycling infrastructure is in place (during transition phase also export of treated fractions is also possible if in compliance with waste transshipment regulations, as producers will always remain responsible and thus need to become active and comply with their obligations to avoid penalisation).

### 2.3 Registration as a producer with the Authority

All producers (see definition under section 1.3) are obliged to follow certain registration structures with the Authority. These are laid out in this sub-chapter.

**All producers**, regardless of the amount or type of product placed onto the Kenyan market, **are obliged to register themselves at the Authority (NEMA). Every product subject to EPR is only attributed to one ‘producer’**. The producer is not allowed to introduce a product and/or packaging into the country, unless they have applied to the Authority for producer responsibility registration (A1 – First schedule: Form A shall be used for this purpose) and obtained a Producer Registration Certificate through A3 – First schedule: Form C (*per sub-regulation 12(1)*). This registration also means that these producers are directly registered with the Authority, irrespective of the chosen PRO. Electronic registration can be carried out as soon as the authority has set up an electronic register.

**Note:** As an example, if the producer introduces EEE on the market, which most likely also contains plastic parts, the producer is accountable to join a PRO for this EEE product. The PRO shall cover all parts of the EEE product, also the parts that do not contain electrics (e.g. all the parts of a radio, except for the packaging). Therefore, double fees and responsibilities shall be avoided. However, if the producer introduces an EEE product and a packaging product thereof, the producer shall join multiple PROs (here: PRO for EEE and PRO for packaging) and pay the respective EPR fees taking care of the respective products.

Within the registration process, the applicant must provide the required information to the Authority listed in Table 4 taken from A1 – First schedule: Form A. Furthermore, the applying producer must also pay the fee set out in the Third Schedule of the draft regulation (see annex A7 – Third schedule: Fees) and provide evidence of the payment.

**Table 4: Application for registration for producer responsibility registration at the Authority as laid out in Form A**

Documents to be handed in	Further clarifications
Application form	‘FORM A’ - found in the First schedule of the draft regulation (see also annex A1 – First schedule: Form A) - needs to be filled out by the applicant. This comes with the additional requirement to pass a documentation indicating the type of products introduced to the Kenyan market.
Certificate of registration for the company	As laid out in the application form, the producer must submit a copy indicating that they have registered their company at the Registrar of Companies. This certificate should clearly state your registration number.
Documents indicating the type of products and packaging introduced to the Kenyan market	The applicant shall hand in a list that clearly and in great detail states all products and packaging types introduced onto the Kenyan market. As soon as it is known that further products are being introduced in the future which have not been declared in this list yet, the list shall be updated by the producer and handed in again.
Proof of payment of the fees set out in the Third Schedule	A producer needs to show that the EPR fees have been paid and It therefore is obliged to hand in a proof of these. This proof can be in the form of a referral slip, a transaction receipt or a bank statement. The payment needs to be sent to the following bank account: Account Name: NEMA Revenue Account Account No. 1102298158 Bank: KCB, KICC Branch The fee structure can be found in annex A7 – Third schedule: Fees.

After the application has been carried out successfully and the Authority approved the producer, the producer will be handed out a Registration Certificate in Form C set out in the First Schedule (*per sub-regulation 12(1)*) (see annex A3 – First schedule: Form C), indicating the extended producer responsibility number of the then at the Authority registered producer. Here, it is important to note that the Authority

is allowed to revoke, suspend or cancel an extended producer responsibility Certificate of Registration if the producer/individual EPR compliance scheme does not comply with statutory requirements.

**Note:** The application system is yet to be built and further specifications are to be clarified. It is advised to carry out the whole application process electronically.

As a next step, the producer shall elaborate whether it prefers to operate an individual producer responsibility (see section 4) or join a PRO operating in the respective product cluster as a member (see section 3) (*per sub-regulation 7(1)*). However, the former case is only possible if the producer is the 'sole' producer in the country and therefore quite unlikely (see section 1.3). In a collective scheme, the producers and importers transfer their waste management responsibility to a third party (a Producer Responsibility Organisation). Therefore, the producers obliged can perform their obligatory duties by working together in managing waste. It is to note that the producers stay accountable of their products even if the EPR-management is carried out by PROs.

**Note:** In the case of an individual extended producer compliance scheme, the producer must, by principle, implement all obligations on its own. This only applies to "sole" producers, who are not yet present in the Kenyan market. In this respect, the practical implementation of an individual compliance scheme is currently purely theoretical and all producers must participate in a PRO in the sense of a collective compliance scheme.

**Important:** A lack of an already present EPR compliance scheme does not exempt any producer from fulfilling their obligations.

**After the registration, the process is as follows:**

- › The producer shall be included in the Authority's public register (e.g. to enable retailers to fulfil their obligations, see section 3.7.3),
- › The producer receives a registration number, and
  - › elaborates whether they are a 'sole' producer (see definition in 1.3). If they are, they are free to take on their extended producer responsibility individually (see section 4), or
  - › applies with its registration number to existing PROs to become a member, or
  - › The producer founds his own PRO with other producers of his product cluster (see section 3.3).

### 3 Collective extended producer responsibility compliance scheme

This section of the guideline outlines the roles and obligations of the PRO. This includes its application, registration, operationalisation, and requirements of a producer and a PRO under a collective EPR compliance scheme.

**In collective EPR compliance schemes, producers set up a producer responsibility organisation (PRO) to which they delegate all operational tasks** for their waste management responsibilities. These PROs shall be established based on a similar product grouping if these are registered by more than one producer, their uses and the type of waste arising therefrom (*per sub-regulation 9 and 10(2)*). Figure 2 in section 1.2 shows the Kenyan EPR system set-up.

In order to be established as a PRO, the organization shall comprise of at least 30% of the registered producers of similar products (*per sub-regulation 10(4)*). An overview of the registration in a collective EPR scheme and other obligations can be found in Table 5 until Table 8 and Figure 5.

**Note:** The regulation also mentions the possibility of producers fulfilling their EPR obligations individually (*per sub-regulation 7(1a)*, refer to section 4). However, it can only be carried out individually if they are a "sole" producer, i.e. a producer who is the only one to place a product on the market in Kenya (given it is covered by EPR) (*per sub-regulation 8*). This circumstance is almost impossible in practice, which is why producers must join a collective responsibility scheme as described below.

**Important:** If you as a producer do not participate with your EPR obligations in a PRO, you are not allowed to introduce any products onto the Kenyan market (*per sub-regulation 12(1)*).

#### 3.1 Role of Producer Responsibility Organizations

Every producer shall bear its extended producer responsibility obligation to reduce pollution and environmental impacts of the products and packaging that they introduce into the market and waste arising therefrom (*per sub-regulation 5(1)*).

A PRO takes over the responsibilities of the obliged producers (members) in its collective EPR system. This allows the producers to take joint responsibility for their products and/or packaging and waste created. With the paid contributions (see section 3.6), the PRO manages the central organisation and becomes **responsible** for collection and recovery of the waste. Thereby, the PRO becomes the central body for organising all activities associated with the collective EPR scheme. Specifically, this means the PRO is:

- › The most important stakeholder for operating the collective compliance scheme.
- › Responsible for setting up, developing and maintaining a circular economy system.
- › Responsible for fulfilling the take-back obligations of the obliged companies participating.
- › Responsible for communication, awareness and providing information and research and development.
- › Reporting to all relevant stakeholders.

To fulfil this, the PRO is to be established based on product clusters i.e., similarity of products, their uses and the nature of waste arising therefrom (*per sub-regulation 10(2)*), and should be made up of at least 30% of registered producers marketing similar products (cluster) (*per sub-regulation 10(4)*).

**Note:** It is possible to apply for a PRO with less than 30% of registered producers. The Authority will provide 3 months of time to gather the remaining members.

Additionally, the PROs are mandated to:

- › apply to the Authority for registration and issuance of an annual operating licence before they can proceed to carry out EPR obligations (*per sub-regulation 10(5)*),
- › establish appropriate mechanisms and structures from an organisational structure (*per sub-regulation 10(3)*), and
- › enter into **formal agreements and cooperation frameworks** for joint research, collection, take back schemes, appropriate infrastructure, end-of-life treatment and disposal mechanisms for the products under its scope (*per sub-regulation 10(6)*), with their members, waste service providers, recyclers and other key actors as required by the compliance scheme in regards to operationalise the system (*per sub-regulation 23*) (see section 3.5).

Additionally, if the products of a PRO's member threaten the sustainability of the environment, the PRO can recommend the Authority to restrict or ban the use of harmful or dangerous substances (*per sub-regulation 20(3)*).

The Kenyan EPR system allows for multiple PROs per product cluster (see Table 3) to be established. According to the sub-regulation the nature of each PRO is as follows:

- › The PRO shall be responsible for executing extended producer responsibility obligations on behalf of its members (*per sub-regulation 19(1a)*).
- › The PRO's members are responsible for the management of PRO (*per sub-regulation 24(1)*).
- › The producers shall be shareholders of the PRO to which they belong (*per sub-regulation 24(2)*).

This means, every PRO is initiated and set up by the impacted private industry with each producer as member being a part of it by shareholding and managing this entity. Furthermore, a PRO must cover all items of a certain product cluster (see Table 3) regardless of their value.

**Note:** It is not allowed to selectively cover only specific items of a waste stream. However, a PRO is allowed to form sub-committees managing specific items or items group of a waste stream if this enables a better management – as long as the PRO as entity still covers the entire product stream.

**Important:** The contract between a producer and a PRO is annual. Therefore, producers can only switch between different PROs at the beginning of a new contract year and after giving a 3 months' exit notice to the PRO and copying NEMA to it, i.e. no inter-clearing during a business year (*per sub-regulation 13(9)*). For more information see section 3.2.

Each PRO has to operate across the entire country. This is important to prevent a concentration of operationalisation only specific areas.

**Important:** It is expedient that all Counties can be covered by operations, not whether each PRO actually carries out its service in all Counties. It is also an option to form agreements and cooperation frameworks between PROs to service the entire country of Kenya. The Work Plan will detail for each County which PRO has the operative mandate for the County concerned.

## 3.2 PRO's obligations

A PRO is responsible for taking over all obligations borne by the producers who are part of the respective PRO. Therefore, the following obligations are addressed at it. A producer participating in a PRO is compliant, if its PRO meets these requirements. If a PRO fails in fulfilling its obligations of EPR system, the producer still stays responsible for his obligations (see section 2.1). This means that he must either join another PRO and/or form a new PRO in a group with other producers. Nevertheless, individual EPR compliance schemes (see section 4) might be used as fall-back options for producers not associated to a PRO.

**Note:** Contracts entered between the producer and the PRO shall be annual (*per sub-regulation 13(8)*). A producer shall not switch from one PRO to another unless at the beginning of a new contract year and after giving a 3 months' notice to the PRO and copying the same to NEMA (*per sub-regulation 13(9)*).

For this, it can follow the given modalities:

- 1) Changing from one PRO to another can only happen within a "trading window" of 3 months starting January 1<sup>st</sup> and no later than March 31<sup>st</sup>
- 2) A Clearance certificate must be obtained from the existing PRO before another PRO can accept the registration of the switching member. A clearance certificate can only be issued once all obliged volumes put into the market are paid for by the member as the PRO is legally responsible for the waste declared and put onto the market.
- 3) The switching member must first re-register with the Authority and declare the new PRO they are switching to.
- 4) The new PRO will certify a new switching member unless it has provided both a clearance certificate from the outgoing PRO and a re-registration licence from the Authority.

**Important:** The lack of an established extended producer responsibility compliance scheme shall not exempt any producer from extended producer responsibility obligations (*per sub-regulation 7(3)*, for the producer's obligations see section 2.1). Furthermore, a PRO may establish any other lawful mechanisms and systems for enforcing extended producer responsibility of its members.

The regulation highlights the PRO's obligations *per sub-regulation 19(1a-m) and 19(3)*. In that regard, a PRO shall

- › (a) at an **agreed upon fee**, be responsible for executing extended producer responsibility obligations on behalf of its members

This means, the producers choose to comply with an existing collective EPR compliance scheme or form a new PRO, and pay a fee for the purpose of the PRO carrying out the producers' obligations;

- › (b) take the **organisational and managerial responsibility for collection, sorting, material recovery, recycling, treatment** and end-of-life management of its members' products

This means, the PRO must not only organize the collection or take back of products but also assume all physical responsibilities ascribed to it and finance all concomitant steps. This includes making sure that products do not end up being disposed of in a non-environmentally sound manner. The PRO must also comply within the Act and in doing so direct its resources in helping set up the requirements within the Act.

For PROs to take the organisational and managerial responsibility, they are also obliged to set up registers. **Each PRO needs a register to maintain a data base of the producers and its respective products and/or packaging, which are members of the PRO, and for which the PRO has to assume their responsibilities on their behalf.** When a producer contracts a PRO to join the collective compliance scheme and thereby becomes a member, the producer has to register with the PRO. Details on the information from the producer to be provided to be PRO can be found in section 2.1.

Each PRO must ensure that an appropriate software is used for the register and the confidentiality of the data submitted by the members.

As producers cannot switch between PROs of the same product cluster during a business year, no inter-clearing between PROs is needed. Producers are allowed to switch at the beginning of the new year, with 3 months exit notice, and can apply to the new PRO in timely manner to be included in the collective compliance through this other PRO (*per sub-regulation 13(9)*).

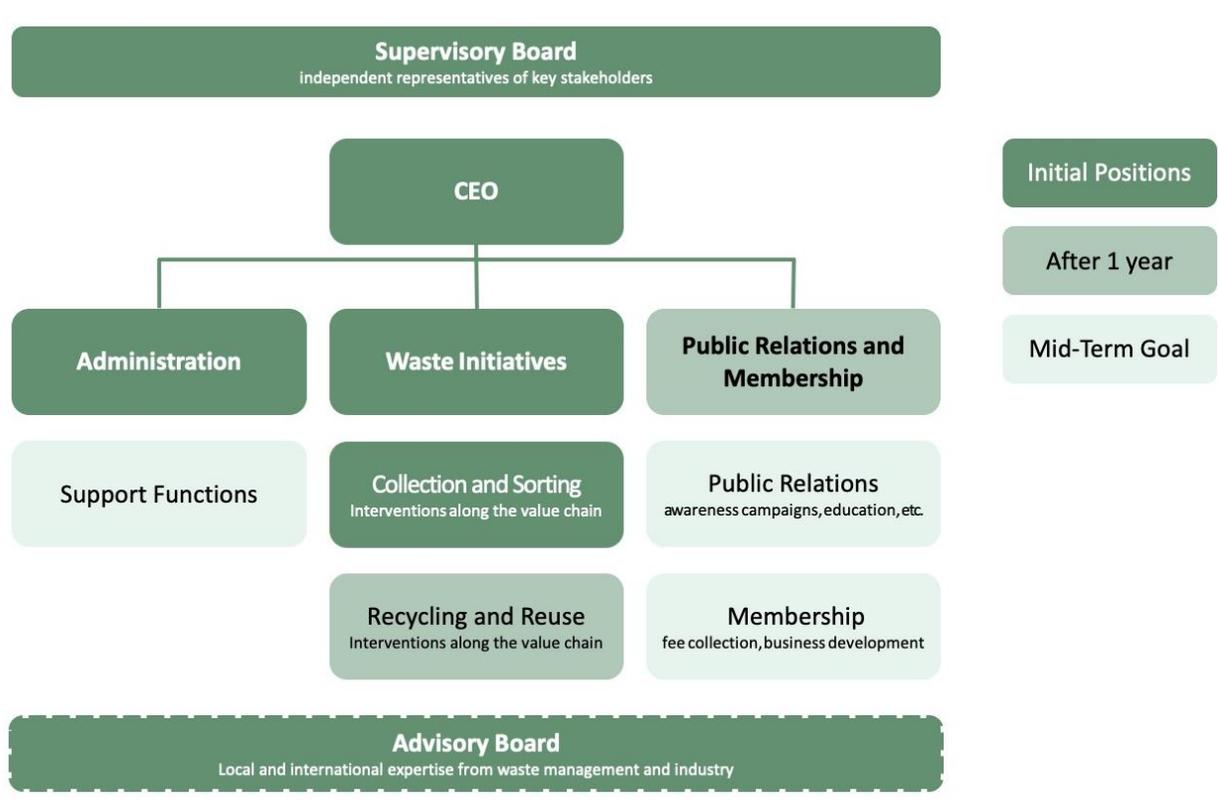
Other registers run by the PRO are optional, such as a PRO-internal register on waste management providers.

To fulfil the organisational and operative tasks of the PRO (as outlined in section 3.1 and 3.2), **each PRO needs an administration and personnel concept.** The staff of the PRO cannot work for any of the PRO's member company due to the sensitivity of the data.

Each PRO will consist of both a board of directors (BOD) and a secretariat. The BOD will consist of elected oversight officials from within its membership and may also be made of outside experts. The BOD is a non-executive body and is mainly in place to ensure governance, transparency, and strategic oversight of the PRO. The elected BOD will appoint a Chair and respective sub-committee leads.

The secretariat will be run by a Chief Executive Officer (CEO), who will report to the BOD. The CEO of the secretariat will form an operational and functional team to execute the strategic reaction set by the BOD. The CEO is also main point of liaison for stakeholders, including the Government, the regulator, other relevant public sector agencies as well as members and other private sector actors. Key departments in a PRO may include waste management operations to fulfil its responsibilities, administration, and membership management. Other key functions include public relations, legal department and IT. However, the PRO can also sub-contract these tasks to specialised companies. Further details of the personnel set-up can be decided by each PRO. Supervisory and advisory boards are optional elements.

Every PRO needs to lay down its internal structure and personnel conception with an organigram. An example for such an organigram could look as follows:



**Figure 3: Exemplary organogram of a PRO**

Since every PRO has to manage the entire range of products that they are responsible for, it is advisable to form sub-committees if the products within a cluster have little to no operational overlap. The sub-committees act as functional EPR business units focused on their specific fractional waste stream under a cluster. For example, within product cluster 1 (non-hazardous packaging, see Table 3), the PRO could form a sub-committee for plastic packaging and a further subsection for PET or liquid packaging board given these are unique fractions and waste management streams.

As all PROs are only allowed to spend money on their outlined functions (see section 3.6), they need to be non-profit and any potential monetary surpluses have to be used as financial reserves for the subsequent year and **are not allowed to be paid as bonus or similar to the staff**. The PRO should review its operating costs annually as part of its business plan and strategic outlook and revise membership fees as required to continue to operate on a not-for-profit basis. On top of the fees received by the producers, the PROs can also receive donations from other sources (*per sub-regulation 22(1)*).

In order to receive contributions from their members, **each PRO needs a bank account**. The amount, ceiling and collection methods for the determination of financial contribution under this regulation shall be as set out in the terms of reference of the membership agreement (*per sub-regulation 21(5)*). Given that the clusters have a wide base of material fractions with varying EPR fees (e.g. EPR price for PET will be different to paper due to its different costs and benefits in treatment and recycling), it's important that the PRO develops reporting systems that allow for the funding to flow to the correct sub-committee to manage their respective volumes with dedicated resources with a specific EPR waste management plan.

To manage the data submitted by their members and other tasks and responsibilities, every PRO needs to have well-functioning **IT infrastructure including both hardware and software elements**. The structure

and organisation of the database and data transfer needs to guarantee the confidentiality of the data. Only highly aggregated data are required for publication, such as the data used to calculate collection and recycling rates.

- › (c) be responsible for **establishing post-consumer collection and take back schemes** which may include a deposit refund system

A PRO must collect the products, i.e. the equivalent amount of its members' packaging which they placed on the market after they have been disposed of. This can be carried out in various forms through an individual collection scheme, through contracting a third party (WSP), or through other forms (e.g. deposit-refund systems). It is to note that when contracting WSP's these must fulfil certain, previously agreed upon standards, e.g. regarding health and the environment and they must be registered with the Authority (the County and NEMA). A PRO may enter into formal agreements and cooperation frameworks for joint research, collection, take back schemes, appropriate infrastructure, end-of-life treatment and disposal mechanisms for the products under its scope. The PRO needs to lead and document agreements with all Counties which are covered by its collection system.

PROs must make sure that their envisaged collection structures cover all products for which they are responsible in accordance with the EPR obligations and that organised operations in collection cover all Kenyan regions where relating products are consumed and become waste. If necessary, the regulations allow for the PRO to subcontract or outsource the management of a waste stream under a product cluster or a region/county. These agreements and contracts must be well thought of and managed as the ultimate responsibility still falls upon the PRO.

Therefore, the PRO shall only engage with waste service providers **licensed** by the Authority **and** the respective County Government (*per sub-regulation 20(6)*) (for more detail see section 3.7.2).

For this purpose, the following is to be carried out by producers and/or PROs and be recorded for validation purposes:

- (i) Tender and conclude contracts with relevant locations where the producers' end-of-life products can be disposed of or returned by consumers. For instance, these includes business premises as well as places where the respective product waste is usually generated (e.g. retailers, public facilities, petrol stations, garages, hairdressers, electronic stores, and so on) and service providers for collection at household level.
- (ii) Tender and conclude contracts with logistic providers transporting the waste between e.g. collection points, transfer stations, MRFs, and treatment plants. For this purpose, appropriate service providers with the necessary licences should be contracted. To identify eligible service providers, the relating County Governments publish and maintain an updated inventory of companies carrying out these services. It must be specified in the contract at which place the waste is collected and at which place the waste is to be forwarded to the next recovery step (it is best to have the receipt and acceptance signed).
- (iii) Conclude contracts with treatment companies that process these quantities and dispose of residues. For this purpose, appropriate service providers holding the necessary licences (appropriate licenses according to the Act) and capacities must be engaged (e.g. expressed through tons/items per year). It is important to emphasise that the treatment can take place in several steps and that not only the handling of targeted materials, for e.g. recycling must be regulated, but also the handling of residual and reject materials that arise in the course of the processes. Finally, it must be determined whether target materials generated through these processes belong to the recycler (which usually results in a more favourable treatment price) or to the **producer**.

**Note:** The establishment of collection and take-back requires extensive coordination with the respective County Governments, which are responsible for the collection and implementation of MRFs according to the Act. These agreements are to be recorded in the so-called Work Plan (see section 3.5). A key requirement is that all waste products in scope of EPR are processed into MRFs after collection for the purpose of sorting and pre-treatment.

It is important to note that these contracts do not only regulate the handling of waste, but should also be accompanied by a quantity report to be sent to the PRO at regular intervals. Therefore, weighing has to be provided at all points where waste or materials are transferred. All information collected by this chain must be prepared by the PRO and transmitted to the Authority according to its annual reporting. PRO's should ultimately be responsible for reporting of collection and recycling and an EPR plan should be created accordingly to deliver up the targets set by the Authority.

The amount, ceiling and collection methods, which are paid for by the fees, shall be as set out in the terms of reference of the contract (*per sub-regulation 19(2) and 21(5)*). Moreover, PROs shall establish a registry and data centres for their respective members, products and report the same to the Authority quarterly (*per sub-regulation 19(3)*).

**Note:** Since multiple PROs can be active in the same products cluster, it is necessary that the Authority establishes an own register, in order to triangulate the data reporting from producers and multiple PROs.

- › (d) be responsible for the modulation of extended producer responsibility fees according to established environmental criteria listed in sub-regulation 19(3) on product design, useful life and end-of-life management as set out in the membership registration requirements and as reviewed during the annual members' general meeting

Modulation of ERP fees refers to determining different fees for different product clusters. EPR fees should be set by material fraction based on targets set by the Authority on collection, recycling, and any additional costs the PRO sees necessary to fulfil its legal obligations as set out within the regulations (e.g. awareness raising). These fees must be diverted to the respective subcommittee within the PRO to meet the requirements set forth in the EPR plan.

EPR fees are usually based on the material and weight of the packaging or product. Within the framework of an EPR system, EPR fees can be scaled in such a way that the fees are lower for packaging that can be recycled well (so-called eco-modulation). These modulated fees can be used to influence recyclability given that the difference in fees is significant. It is to note that all PROs shall apply the same criteria for all product clusters (see Table 3). The modulation criteria are to be published the PRO.

The PRO may set an average fee, but it is to note that costs for collection and other services might be greater in remote areas and lower in urban areas. Therefore, the price set must also take into account the county specific plans i.e. work plans (see section 3.5) to mobilize awareness, segregation, collection and recycling. Ultimately, the PRO is responsible on behalf of its members to entirely manage the waste within the boundaries of Kenya for all declared volumes and fractions without exception.

**Note:** Since collection and treatment costs are yet to be calculated by the operating PROs, the PROs may start to run the system with a lump-sum payment in place for the producers to pay. At a later stage, it is still possible for the PROs to pick a more differentiated approach and define the costs and fees clearly.

**Important:** Financing and fee setting are explicitly explained in more detail in section 3.6. In any case it is not possible that the PRO excludes some products under the Kenyan EPR scheme from producer payments at all.

- › (e) be responsible for **raising awareness** on waste prevention, post-consumer product management and payment of a contribution to finance cross-sectorial communication campaigns in their territory of operation

The EPR fees shall not only cover infrastructural actions, but also raising awareness on circular economy matters and appropriate disposal matters, including household level separation.

PROs shall inform the consumers and users of their products on how discarded products can be returned to them, how to best reuse them (if applicable), where to find take back points, and how to best segregate products according to the symbols printed upon them. The exact meaning of used recycling and recovery labels shall also be communicated.

**Note:** The labelling should indicate PRO participation of producers. Since standardised labels among all PROs and across the country are to be used, labelling should be aligned with NEMA (this step comes at a later stage); it is not obligatory from the beginning. Consumer targeting, however, is to be carried out from the beginning on. Channels can vary and be e.g. radio, social media, TV, sign advertising, and to be proven in terms of cost and type.

**Important:** Subject to conditions and limitations set out in the PRO agreement, a proportion of the waste recovered by PROs may be set aside for reuse or for recovery of usable parts.

- › (f) undertake **market development for the secondary raw materials** market of the products under their scope

In order to increasingly include more secondary materials into products, such as packaging, the manufacturers must have the respective purchasing options of such secondary materials. Therefore, a sufficient market has to be created providing adequate quantities. A PRO shall support such market developments through suitable instruments for the product clusters.

**Secondary markets should first be created locally**, and exports should only be considered when and where required. In addition, the PROs must look into the **quality of waste** in order to maximize the opportunities for secondary raw material markets. Highly contaminated input waste will always result into low quality and low value secondary markets. Therefore, the necessary investments into MRF's in collaboration with counties as per the SWM Act to enable for awareness, segregation at source, **mandatory diversion of waste to MRFs**, sorting and onward processing by recyclers would be a necessary step in order to establish and maximise on secondary markets.

- › (g) **fund research and development programs** on emerging technologies to improve material recovery

To best fulfil the goal of a circular economy eventually, appropriate technologies shall be promoted financially which could increase the reuse or recyclability of the products or packaging types the producer has put on the Kenyan market.

- › (h) **set for its members' minimum targets** for reuse, recycling and recovery based on the national targets and **may offer** incentives for registered waste service providers to encourage sorting of waste at source

It is possible to have more specified targets per sub-clusters within a relating product cluster. However, it should be ensured in the end, that the separate targets from these sub-clusters can be aggregated into a combined target per product cluster, that can be compared in reference to the foreseen national targets.

**Note:** National minimum targets are set by the Ministry on recommendations by the Authority. As of June 2023, these targets are still not clearly set out, but shall be initially oriented/based on the current situation and practice. Nevertheless, the PRO is advised to at least meet these perspective targets, which may also be over-fulfilled. It is possible to introduce specific targets per each product cluster or sub-cluster or single products.

**Important:** Target setting is explicitly explained in more detail in section 3.4.

- › (i) **undertake organised monitoring** of its membership activities to ascertain that objectives are being achieved and to trigger inspections in view of applying sanctions to members who fail to fulfil their membership obligations

A PRO must guarantee the information and data, and monitor it accordingly, mainly, that the information regarding the quantity which the PRO members place on the market and the quantities of waste recorded and put into treatment are correct. Thereby, the PRO must set up an appropriate auditing and monitoring system, which allows possible undesirable developments to be identified at an early stage and resolved. For this purpose, the PRO shall use independent auditors/experts to confirm the accuracy of the information to be reported to the Authority. The audit frequency and plan should be included as part of the EPR plan.

The PRO should also ensure the safety, privacy, and security of its members data in accordance with the laws already established in Kenya (e.g. in accordance to the Data Privacy Act).

**Recordings of data and information are essential to prove compliance with the defined collective compliance schemes.** This forms the basis for a reporting mechanism to be provided. Recordings can also be used by the Authority or auditors to validate the collective compliance scheme and its reporting. The following Table 5 lists the recordings required in this context and provides further explanations (*per sub-regulation 25(2)*). An overview of and reports in collective compliance schemes to be handed in can be found in Figure 5 (*per sub-regulation 25(1)*).

**Table 5: List of required recordings of products, eco-design standards, and contracts with agents**

	Information to be recorded	Further clarifications
01	Updated records of products managed	Maintain a list or up-to-date system recording the amount, materials and weight of products placed on the market in Kenya during each period (recorded e.g. by an inventory control system, selling records such as invoices) via the PRO.
02	Updated records of eco-design standards	It is suitable to use existing and developed standards for relating products. After identification it is to demonstrate how these products have been adapted in their design in order to <ul style="list-style-type: none"> <li>a) save resources during manufacture, and/or</li> <li>b) reduce the use of harmful components that interfere with the production process,</li> <li>c) increased circularity through recycling.</li> </ul> If no such standard exists for the product area concerned, it must be developed as a written document. These standards are to be permanently updated according to the technical development and must cover all products handled by the collective EPR compliance scheme.

03	Updated records of contracts entered into with agents, licensed waste service providers and recyclers	Maintain a list of actual contracts concluded with partners during the relevant term. This list provides at least the following aspects: <ul style="list-style-type: none"> <li>- Name, address and responsible person (contractor)</li> <li>- Duration of the contract</li> <li>- Contracted tasks (e.g. collection, recycling; best with relating amounts, capacities)</li> </ul> Ensure that registration can be approved by original documentation.
04	Updated records of level of performance as per the Work Plan	Maintain a calculation and description on how far the achievement of set targets actually (e.g. monthly) is. This especially addresses criteria of the EPR Plan (see section 3.4) as it is: <ul style="list-style-type: none"> <li>No. 1: amount of products put on Kenyan market</li> <li>No. 2: amount in collection and safe handling (highlighting calculation)</li> <li>No. 3: achievement of set targets (highlighting calculation)</li> <li>No. 7: implemented processes and efforts concerning public awareness and consumer education</li> </ul>

These records are to be kept in eligible and suitable manner at the specified head office (in Kenya) for possible inspection and audit. Thus, it is recommended to implement an appropriate records management system and to use electronic systems to support it.

The public, the Authority, and Counties have to be informed about the activities of the collective EPR compliance scheme by means of reporting based on the above-mentioned records and further gathered information of the collective EPR compliance. In this context the collective EPR compliance scheme has to:

- a) publish its annual extended producer responsibility reports by 31<sup>st</sup> January of every year (*per sub-regulation 25(3)*); this can be carried out, e.g. through providing this information on the website of the collective EPR compliance scheme/PRO of the obliged producers,
- b) submit up-to-date annual reports of the preceding year to the Authority by January 31<sup>st</sup> of every year (*per sub-regulation 25(4)*); for this purpose, the Authority shall establish a reporting mechanism, and
- c) provide annual reports on volumes of products collected, transported and subjected to end-of life treatment to the respective Counties (*per sub-regulation 25(5)*); for this purpose, the Authority shall establish a reporting mechanism (*per sub-regulation 25(6)*)

Every PRO shall submit an annual Work Plan and progress report to the Authority (*per sub-regulation 18(2)*). The Work Plan must consider the initially set out information and goals and describe how these will be reached.

- › (j) **communicate to County Governments** the information they have on the quantities of waste collected and recovered through the extended producer responsibility mechanisms that have been declared in their territory of operation (see section 3.5)

Agreements and communication with County Governments is crucial, since they are responsible for implementing separate collection (organic waste, hazardous waste and dry waste) in the certain regions (*per SWM Act Article 17(c)*). Beside this, County Governments have specific county wide regulations, which

must be considered as well. Furthermore, County Governments are responsible to ensure that MRFs are set up and implemented (*per SWM Act Article 17(b)*).

In order to cooperate effectively between County and PRO, alignments and agreements are formulated in the so-called Work Plan. As soon as a PRO has been established, the counties must be approached to develop this Work Plan. For this purpose, the PRO should have a presence in the counties, the so-called agents, who on behalf of the PRO should implement the cooperation and agreements on the ground in the counties.

As soon as the PRO is active in a county from an operational perspective, the respective data on amounts collected and recovered (3R) shall be passed on to the County on a regular basis.

**Important:** Content and proceeding of the Work Plan is explicitly explained in more detail in section 3.5.

- › (k) **comply with the sustainable waste management objectives** set by the Authority;

The information which shall be provided to the Authority shall be updated in a constant manner. This includes passing on stated information in a document or online on the products that were put on the market by the PRO. This reporting is done on an annual basis.

- › (l) shall hold an **annual general meeting** to deliberate on the progress and performance of the organization, governance, management and administrative systems;

The PRO shall hold an annual meeting inviting all members of its organisation. This meeting covers subjects as the progress and performance of the organization, governance, management, and administrative systems. This meeting is to be documented.

- › (m) **ensure effective management** and harmonious relations between the different actors involved in the scheme;

All actors' interests shall be aligned and considered to best fulfil the criteria of a functioning EPR system. For this purpose, it is also crucial to hand in the dispute resolution mechanism plan (*per sub-regulation 13(2t)*).

**Important:** All retailers within the product value chain shall only place products on the market from producers published in the updated register of the Authority.

### 3.3 Application as a PRO

The following section describes the application process for a PRO to be established.

**Important:** Producers willing to participate in a PRO must first register its producer responsibility with the Authority (*per sub-regulation 6(c)*, see in specific section 2.1), before they can join a PRO. This registration includes a payment to the Authority according to A7 – Third schedule: Fees. With receiving your Producer Responsibility Registration Certificate and specific EPR number, it is possible to become a member of a PRO. If a PRO does not exist for a respective cluster, members are required to come together to form and register a PRO to collectively manage their product and/or packaging waste.

#### 3.3.1 Registration of a Producer Responsibility Organisation

Before carrying out the EPR obligations, a PRO needs to apply to the Authority for the registration. In order to apply for this registration, the applicant (which shall be the PRO in progress) must fill out Form B of the First Schedule of the regulation (see annex A2 – First schedule: Form B) and provide the required information to the Authority and pay the fee set out in the Third Schedule of the regulation (see A7 – Third schedule: Fees) (*per sub-regulation 13(1)*) and provide evidence of the payment.

**Note:** The registration of a PRO shall be approved by the Authority for a maximum period of four years, renewable upon request, provided the PRO has the necessary technical, managerial, financial, staffing, and operational capacity to meet the requirements of its articles of association and agreements with its members and stakeholders (*per sub-regulation 17(2)*).

When applying, in addition to the application form, the following information needs to be handed in according to the regulation (*per sub-regulation 13(2a-u)*).

**Table 6: Application for registration of a PRO (documents and information)**

	Documents to be handed in	Further clarifications
(a)	Proof of registration as a company limited by guarantee as provided by the Companies Act	As laid out in the application form, you must submit a copy indicating that you have registered your company at the Registrar of Companies. This certificate should clearly state your registration number.
(b)	A certified copy of current register of producer responsibility organisation members per product	Since the PRO has to establish and implement a register of obliged producers this list gives evidence about participating producers. It contains at least the following relevant information: <ul style="list-style-type: none"> <li>- Producer's name/address</li> <li>- EPR number (issued with Producer Responsibility Registration, see section 2.3)</li> <li>- Time of admission to PRO/exit</li> <li>- Specific product cluster / sub-cluster</li> </ul>
(c)	Copies of contracts entered into with actors of the extended producer responsibility scheme	Contracts with respective parties carrying out other than waste management operations (e.g. support in awareness campaign or other services).
(d)	<b>Certified copy of contracts</b> with the approved waste service providers	Contracts with respective parties carrying out the collection, providing the collection points, with waste sorting and recycling facilities should be proved in a copied form.
(e)	Signed minutes of the annual general meeting	The PRO shall hand in a document that summarizes the minutes concluding the topics of the general meeting (i.e. arrangements, goals, proceedings) including the date, time and signature which shall prove the presence of the participants. <b>Note:</b> Not to be provided with the first application.
(f)	Workplan developed in consultation with the Department responsible for	The PRO must develop aligned workplans covering all Counties (for) and hand in.

	Waste Management in each county on EPR implementation.	<b>Note:</b> For more information see section 3.5.
(g)	Copy of the extended producer responsibility fees structure agreed among members calculated using guidance provided under these regulations ( <i>per sub-regulation 19(3)</i> );	The fee structure needs to be item and/or material based, calculated by the emerging costs in collection, recycling and disposal. The structure and the way of calculating it is to be provided here. <b>Note:</b> For more information see section 3.6.
(h)	Progress report on achievement of set targets, in case of renewal of license	A report highlighting the achievements of set targets of the collective EPR compliance scheme as described in the EPR Plan as part of the annual reporting shall be handed in. <b>Note:</b> Not applicable for the first application. For more information on the EPR Plan see section 3.4.
(i)	Copy of annual EPR audit report conducted by an Environmental Assessment (EA) expert, licenced by the Authority	A copy of the annual audit report carried out by an Environmental Assessment expert should be handed in. This report needs to be conducted by EA expert licensed by the Authority. <b>Note:</b> Not to be provided with the first application. As far as a licensing scheme for auditors is not in place within the implementation phase, the applicants give written description on the auditor's independence.
(j)	Copy of list of directors (CR12) issued by the Registrar of Companies	A document issued by the Registrar of Companies should be handed in that clearly states who the directors of the applying companies are.
(k)	Copy of the PIN Certificate issued by the Kenya Revenue Authority	The Kenyan law requires a Kenya Revenue Authority PIN for carried out specific transactions. These inter alia include buying and selling land, importing goods, and registering a business. A copy of this PIN certificate shall be handed in.
(l)	Copy of a lease agreement or proof of ownership of the facility of operation	This only applies if the PRO itself runs facilities in operation (e.g. MRF, recycler). This circumstance must also be described in the Work Plan.
(m)	Extended producer responsibility plan prepared in accordance with the requirements stipulated under these Regulations	The EPR Plan gives detailed description on how the PRO plans to fulfil its obligations and thus forms the core. It is the basis for annual reports on the PRO's performance to be generated from it. <b>Note:</b> For more information on the EPR Plan see section 3.4.
(n)	Budget or financial plan for the scheme	This planning on an annual basis gives evidence on all related financial streams. This means in particular, received finances (i.e. registration fee, annual subscription fee and extended producer responsibility fee calculated by parameters based on the specifics of a producer's products) as well as expenses and their use. <b>Note:</b> For more information on financing see section 3.6.
(o)	Copy of signed minutes of the meeting adopting the extended producer responsibility plan signed by representatives of products	This shall be carried out in the course of the annual reporting and acts as a proof that all participating members of the PRO hold aligned knowledge of this. <b>Note:</b> Not to be provided with first application.
(p)	Organogram for the producer responsibility organisation	This organogram shows the different layers of responsibility, relating tasks and decision making within the PRO. It covers all relating personnel as well as board and affiliated members (see section 3.2).
(q)	Work Plan and budget for the coming year	In addition to o) and p) foreseen planning and expectations in regards to amounts handled and budgeting are provided for the coming year.
(r)	Certified copy of annual audited financial accounts	The annual financial account serves as proof and reconciliation of budgeting. It includes both revenues and expenditures. Audited accounts need to be signed off by a certified accountant within 3 months of financial year end. PRO's should try to adopt a Dec 31 <sup>st</sup> year end to align with all the PRO's recertification, licencing and annual reporting requirements to The Authority. Different year ends would create a misalignment between PRO's and with the Authority. <b>Note:</b> For more information on financing see section 3.6.

(s)	Copy of a dispute resolution mechanism for the actors in the scheme	The dispute resolution mechanism must clearly highlight how members and actors will be dealt with if they act against the agreed rules and the legal basis. These general dispute resolution mechanisms need to be worked out in advance.
(t)	Copy of the Memorandum of Association of the company declaring that the sole business of the company is to undertake extended producer responsibility obligations on behalf of the members	The Memorandum of Association has to clearly indicate that the PRO is only dedicated towards the EPR obligations in the context of the regulation. This Memorandum is part of the agreement of the PRO with its members and for this is binding for all involved parties.
(u)	Proof of payment of the fees set out in the Third Schedule	<p>A PRO needs to show that his EPR fees have been paid and therefore is obliged to hand in a prove of these. This prove can be in the form of a referral slip, a transaction receipt or a bank statement. The payment needs to be sent to this bank address:</p> <p>Account Name: NEMA Revenue Account  Account No. 1102298158  Bank: KCB, KICC Branch</p> <p><b>Note:</b> The fee structure can be found in annex A7 – Third schedule: Fees.</p>

**Note:** For online applications, it is possible to attach scanned original copies.

The extended producer responsibility number is issued to all producers of all products on initial registration by the Authority (*per sub-regulation 13(6)*, see section 2.3). With this given EPR number, the producers shall apply to a PRO to become a member. Meanwhile, EPR schemes are also given out an EPR number after their application.

**After the application, the process is as follows:**

- › The PRO shall gather members (producers) to join their PRO. These members shall have to applied to the Authority before and will pass their EPR number to the PRO upon registration.
- › A PRO shall be given an interim permit prior to the Authority processing the application (see section 3.3.2)
- › It is to note, that the Authority is allowed to revoke, suspend or cancel an extended producer responsibility Certificate of Registration if the collective EPR compliance scheme does not comply with statutory requirements (*per sub-regulation 14(1)*). A PRO whose Registration Certificate has been revoked may apply to the Authority for registration upon compliance with the conditions set out in the revocation (*per sub-regulation 14(2)*).
- › Besides registration, the PRO must also apply for an operating license. More information on the operating license can be found in section 3.3.3.

### 3.3.2 Interim permit for PROs

Prior to processing the application, the Authority shall issue the producer responsibility organization with an interim permit, valid for 90 days as outlined in Form D in the Second Schedule (see annex A4 – First schedule: Form D) which enables the producer responsibility organization to engage stakeholders and sensitise its members (*per sub-regulation 13(3)*). The requirements for this interim permit are therefore reduced accordingly.

**Note:** At the time of registration to the Authority, the respective PRO must have 10% of the registered producers per product cluster (*per sub-regulation 13(4a)*). Within 90 days, the PRO shall gather 30% of the registered producers per product cluster. PROs shall be able to obtain the publicly available register of registered producers in order to check that the given PRO has enough members to enable them for registration as a PRO (for more information see section 5.2).

After a transitional period of 90 days, the interim permit will either expire or be converted into an official registration according to section 3.3.1, accompanied by the documents requested therein.

In order to apply for this interim permit, the applicant must provide the following documents to the Authority (*per sub-regulation 13(4a-d)*).

**Table 7: Application for an interim permit by the PRO (documents and information)**

	Documents to be handed in	Further clarifications
(a)	Minutes of the resolution to establish the producer responsibility organisation by the members which shall comprise of at least ten percent of the registered producers	The PRO shall hand in a document that summarizes the minutes concluding the topics of the general meeting (i.e. members shall be informed about the PRO’s obligations and their own roles) including the date, time and signature which shall prove the presence of the participants as well as their interest to be members of the PRO (i.e. a signed letter of interest). <b>Note:</b> The registered PRO with 10% of the members is given 90 days to reach the 30% minimum limit per the regulation. If the minimum number of 30% cannot be reached for certain product cluster, this circumstance must be coordinated with the Authority.
(b)	Copy of business name reservation at the Registrar of Companies	This reservation shall indicate that the PRO wishes to operate under an already determined name.
(c)	List of interim officials of the producer responsibility organisation elected at the meeting, drawn from different products covered by the producer responsibility organisation	List of persons who have been elected in the interim to lead and initiate the PRO (name, company, profession and assigned responsibilities within PRO), whereby these professionals shall represent different product clusters (see Table 3).
(d)	List of the members of the producer responsibility organisation	The PRO shall hand in a list which names all members on the PRO (name, address, responsible contact, product cluster). The contracts between producers and the PRO shall be carried out and renewed annually.

Upon approval the Authority issues an interim permit for the designated PROs, which is valid for a maximum of 90 days (see annex A4 – First schedule: Form D). Upon the lapse of the ninety days of the interim permit issued, the Authority shall, on verification of the application for registration (see section

3.3.1), issue a Certificate of Registration to the producer responsibility in Form E set out in the Second Schedule (*per sub-regulation 13(5)*) (see annex A5 – Second schedule: Form E).

### 3.3.3 Annual operating licence as a collective extended responsibility compliance scheme

A PRO shall, upon registration (see section 3.3.1), apply to the Authority for an annual operating licence through Form B set out in the First Schedule (see annex A2 – First schedule: Form B) and pay the fee set out in the Third Schedule of the regulation (see annex A7 – Third schedule: Fees) (*per sub-regulation 13(1) and 15(1)*) and provide evidence of the payment.

**Note:** After being approved and registered, including having received all documents and numbers, and receiving the operating license, the PRO can officially proceed with the operationalisation

Accompanying the application, the following documents (*per sub-regulation 15(2a-j)*) shall be handed in:

**Table 8: Attachments to the application of an operating licence by a PRO**

	Documents to be handed in according to the regulation	Further clarifications
(a)	Copy of the progress report for the preceding year	A report highlighting the achievements of set targets of the collective EPR compliance scheme as described in section 3.4 shall be handed in. Not applicable for the first application.
(b)	Copy of the list of Directors of the Company issued by the Registrar of Companies	If not made clear on the registration documents handed in under section 3.3.1, a second document issued by the Registrar of Companies should be handed in that clearly states who the directors of the applying companies are. The PRO must maintain an up to date register of its appointed directors. The company secretary should be appointed to maintain and manage this legal aspect and any others.
(c)	Certified updated copy of current register of producer responsibility organisation members and their products	A PRO shall hold a list of all members in this organisation. This list includes information on the name, address, contact person, and their EPR registration number.
(d)	Certified copy of contracts with the registered waste service providers and any other actors in the scheme	In the case of having contracted separate service providers who might carry out the collection or further waste management operations, the copied agreements signed with these shall be handed in a certified/signed form.
(e)	Copy of the Certificate of Registration	Provide a copy of the certificate according to your registration described in section 3.3.1 provided by the Authority (Form E, see annex A5 – Second schedule: Form E).
(f)	Work Plan and budget for the coming year	The PRO shall write up a Work Plan how the tasks assigned will be performed and which budget will be assigned to these. This Work Plan must also be attached to the application.
(g)	Work Plan developed in consultation with the Department responsible for Waste Management in each county on EPR implementation.	The PRO must develop aligned workplans covering all Counties (for more information see section 3.5) and hand this in. This is also to be provided with registration (see section 3.3.1).
(h)	Certified audited financial accounts	Whenever the license of annual operation shall be renewed, all audited financial accounts shall be handed in again. <b>Note:</b> Not applicable for the first application, valid in case of a renewal of licence.
(i)	Proof of payment of the fees set out in the Third Schedule	A PRO needs to show that the EPR fees have been paid and therefore is obliged to hand in a proof of these. This proof can be in the form of a referral slip, a transaction receipt or a bank statement. The payment needs to be sent to this bank address: Account Name: NEMA Revenue Account Account No. 1102298158

		Bank: KCB, KICC Branch The fee structure can be found in annex A7 – Third schedule: Fees (collective).
(j)	Signed minutes of the annual general meeting	A general meeting between all stakeholders in the value chain must be carried out annually and signed and handed in with the registration. Not applicable for the first application.

**After the application for an (annual) operating license, the process is as follows:**

- › Upon correct application, the Authority shall issue an annual operating licence in Form F set out in the Second Schedule (see annex A6 – Second schedule: Form F) to the collective producer EPR compliance scheme that fulfil their performance standards as set out in the Work Plan and are assessed to be of good standing by the Authority (*per sub-regulation 15(3)*).
- › It is important to note that even after having approved the operating license, the Authority has the right to cancel or revoke it again later, or suspend it for up to a maximum of 6 months, if it is in breach of the terms of the licence (*per sub-regulation 16(1)*). The following consequences apply in that case:
  - › Whenever a licence is revoked, suspended or cancelled, the holder of it shall not proceed with the collective EPR compliance scheme (*per sub-regulation 16(2)*).
  - › The responsibility of waste management reverts back to the individual members (*per sub-regulation 16(2)*).
  - › The Authority may also prohibit the PRO’s members (producers) from placing the polluting products on the market (*per sub-regulation 16(5)*). The individual member may reorganize the PRO or switch to a second PRO as per the requirements set out in the regulation switching (section 3.2)
- › Whenever the Authority cancels, revokes or suspends an operating license, the Authority needs to indicate in written form the reasons for such cancellation, revocation or suspension (*per sub-regulation 16(4)*).
- › In the case of revocation, the PRO’s members shall nominate an interim committee to manage the PRO for a period not exceeding six months within which the PRO shall reorganize itself (*per sub-regulation 16(3)*).

After being approved and registered, including having received all documents and numbers, and holding the operating license (see section 3.3.3), the PRO may start or continue to operate with the mandate to deliver upon the approved EPR plan (see section 3.4).

If the envisaged collection system of the collective EPR compliance scheme affects the Counties' spheres of influence, corresponding agreements must be made and documented (for more detail see section 3.7.1 and 3.5). The same applies for interactions with PROs working in the same product cluster (see section 3.2)).

### 3.4 EPR Plan

The regulation has set out that every PRO shall develop and **submit an EPR Plan covering the next four years**. This EPR Plan is to be submitted to the Authority prior to registration as laid out in section 3.3.1 (*per sub-regulation 18(1)*). The information should cover the following:

**Note:** In case that the PRO has an interim registration, within 90 days the PRO shall gather all necessary documents for full registration; including the EPR Plan.

**Important:** The EPR Plan is the core of a PRO and describes how the PRO intends to fulfil its obligations (see section 3.2). The EPR Plan also forms the basis for subsequent reporting obligations, which are foreseen after the annual progress report.

→ An outline for an EPR Plan to submit to the Authority is provided in annex A8 – Outline of an EPR Plan.

- › (a) The **baseline** for the products and packaging handled

The PRO must first define the various sub-categories of material fractions it is responsible for within the given defined clusters (see section 2.2). The PRO can subcategorize further if required (e.g. non-hazardous plastic packaging can be further broken down into flexible, rigid, PET-(bottles), PEHD, PELD, recyclable / non-recyclable, etc.).

The PRO must then be able to identify the respective material fractions being put onto the market on behalf of its registered members. This forms the baseline for collection of what has been put onto the market on a fractional basis.

It is efficient for the PRO to use systems to track the declared fractions as well as respective fees collected so proper funding can be allocated to the respective waste streams. Without the use of data management systems, the credibility, traceability and reliability of the data and EPR plan leads to high efforts as well as losses in traceability.

Among the minimum requirements for a PRO is to keep a list of the weight and amount of sales units put on the Kenyan market by its members and to be able to prove the entries with accompanying documents (e.g. invoices). This shall happen per each cluster, preferably more differentiated in sufficient sub-clusters following the PRO's EPR fee setting (see section 3.6).

**Note:** In any case it is important that the sum of the individual sub-clusters can be clearly aggregated to the sum of the entire product cluster. If sub-clusters are used in a product cluster, they must apply equally to all producers participating in the PRO. In this sense, the application of sub-clusters must also be agreed on with other PROs operating in the same product cluster.

- › (b) **Plan for safe handling, processing** and disposal of 100% of equivalent volume of products declared by the producer

A separate plan needs to be developed and included outlining the handling (first: collection), processing, and disposal mechanisms of the waste in a safe and environmentally sound manner. Here, it is important to take the amount put on the market (see (a)) as the reference and plan for the equivalent amounts. Furthermore, the plan must cover all of Kenya's regions. **PROs need to collect the same amounts of waste of their members put on the market** – therefore being an equivalent of 100%. Taking this collected quantity as a base, the minimum targets are being calculated as followed:

Amount of safe handling, processing, and disposal (*per 18(1b)*) [tons]  
= Baseline for the products and packaging handled (*per 18(1a)*) [tons]  
= 100%

**Note:** Identifying and measuring the amount of collected amounts is crucial for further reporting and validation. For this, input volume (total of all chosen sub-clusters, so called baseline) relative to the collected amount becomes the first tangible target a PRO must create a plan for. Given the PRO is taking on the legal obligation on behalf of its members, it is critical to know input amounts (i.e. amounts placed on the market) and what PROs have respectively collected. The Authority foresees this target being implemented, however, as of June 2023, it is not yet existing in the regulation.

- › (c) **Plan to meet national minimum targets** for reuse, recycling or recovery operations and end-of-life management

**It is expedient that all rates are calculated in the same way, which must be explicitly laid out.** While there are generally several possibilities for calculating, the most suitable option in the sense of EPR is to always use the number of products put on the market. In addition, **there must be individual targets set for the product clusters or even several sub-targets for sub-clusters.**

In particular, the following interfaces are defined for the numerator of the targets:

- › **Amount of reuse:** Weight in tons of products reused. How reuse can be enabled varies significantly between the different products; for instance, for multi-use beverage bottles, the amount of bottles washed and then refilled can be an indicator.
- › **Amount or recycling:** Weight in tons of products delivered to a recycler after the reject has been subtracted (input weight), which has been classified as suitable for treatment. If this input weight is not available, the output weight of the waste of an MRF or sorting plant, which has been classified as suitable can be used for calculation. ‘Suitable’ in this case means that rejects are not being considered here.
- › **Amount of recovery:** Weight in tons of products delivered to a recovery facility (input weight), which has been classified as suitable (see above) for treatment. If this input weight is not available, the output weight of the waste of an MRF or sorting plant, which has been classified as suitable can be used for calculation.

For the denominator, the amount as weight of products shall be defined as put on the market since targets need to be streamlined between national ones and the ones of each PRO. For this it is mandatory to use the calculation method of the different rates for recycling, reuse, and recovery as follows:

Re-use target [%]  
= Amount in re-use [tons] / Baseline for the products and packaging handled (*per 18(1a)*) [tons]

Recycling target [%]  
= Amount in recycling [tons] / Baseline for the products and packaging handled (*per 18(1a)*) [tons]

(Energetic) Recovery target [%]  
= Amount in energetic recovery [tons] / Baseline for the products and packaging handled (*per 18(1a)*) [tons]

**Important:** The regulation so far does not include minimum targets to be achieved by PROs. Nevertheless, the Ministry shall implement collective national objectives, frameworks and targets for extended producer responsibility compliance schemes (*per sub-regulation 26(3a)*) upon recommendation by the Authority and by notice in the Gazette. The Ministry shall also publish the national targets and procedures (*per sub-regulation 26(3b)*). The Authority currently elaborates on minimum targets in consultation with the Council.<sup>4</sup> These targets will be product cluster specific.

**Note:** Given the situation that currently only weak data is available, the PRO has to assess targets possible to achieve from a practical perspective in the initial phase to gain more experiences. Therefore, PROs need to have differentiated targets per at least product cluster (better more specific sub-clusters) in order to enable them to account for their financial demand. After the consultation phase and gazetting national targets, they become mandatory. These targets should reflect the current situation of implementation and then rise over time, considering evaluations on this and data generated in the meantime. The Authority reviews these and links it with the permits of the several PROs.

These targets are to be set by the PRO for a specific period within the 4-year timeframe (yearly basis). The annual reporting targets may be over-fulfilled but not under-fulfilled. Under-fulfilment should be penalised with fines and in extreme cases, a warning of de-registrations or revocation of licence over subsequent years can be issued.

- › (d) **Plan for continuous additionality** in material recovery and recycling including circularity

The PRO must put in place an actionable plan that shows continuous improvement of its Key Performance Indicators (KPIs) including collection, segregation and recycling (i.e. the targets and rates). It must also foresee how to gradually increase these targets and enhance these KPIs such as (but not limited to), awareness raising, infrastructure building and subsidies.

The PRO must track these KPIs and be able to demonstrate the necessary actions that enable the improvement. Understanding the ability to improve based on action, will allow the PRO to continue its course of action, change and/or supplement its course of action. This will help the PROs put its membership resources to efficient use in managing its legal waste management mandate.

Given the competitive nature of PROs, this will become an important determining factor for members to participate in certain PROs in future years.

**Note:** PRO's should create and adopt a plan that puts into action e.g. a 5% increase in KPI's on an annual basis. Nevertheless, the Authority will evaluate the regulation as well as target setting (see above) on a regular basis and will therefore prescribe a gradual increase over the years.

- › (e) **Collection, logistics, recycling** and composting system and end-of-life disposal mechanism

A description of the waste management concept shall be included, i.e. in which locations and in what form (kerbside, bring system) and by whom the material is collected, to whom the material is delivered for which treatment process (reuse, recovery, recycling and disposal via landfilling), and where the respective material flows remain. This has to be laid out for at least each product cluster with the possibility to use sub-clusters. As producers need to hand in the contracts with other parties to the Authority under registration, these logistics should have already been worked out at this point (see section 3.3.1). County-

---

<sup>4</sup> The national Waste Management Council established with Act consults the Ministry on the national targets for reuse, recycling or recovery operations. The Council is comprised of ten persons. One of them, the vice-chairperson, is appointed by the Council of Governors, thus representing the Counties. Through the Waste Management Council, the County Governments exercise a certain influence on these national targets.

specific plans to track KPIs of collection, segregation, and recycling are detailed in the Work Plan (see section 3.5).

- › (f) **Modulation of extended producer responsibility membership fees** and parameters based on environmental sustainability criteria

The PRO must develop and present within its EPR plan how a fee is derived. Key aspects are the costs associated with collection, setting up of infrastructure, awareness and recycling subsidy. The PRO will need to consider the volume contribution on behalf of its members into the market, the current infrastructure set-up to manage the end-to-end lifecycle of the waste.

**Note:** The amount of the EPR fees depends primarily on the financial needs of the PRO for the implementation of its obligations on behalf of the participating producers. Securing this financial requirement is a top priority. Therefore, a differentiated modulated fee structure can only be implemented at a later point in time after the successful implementation phase of the PRO.

It's generally a good idea to have a small financial buffer every year in the event of unforeseen issues. These fees are to be used towards operating costs as part of the EPR plan and PRO budgeting process.

The EPR plan should consider the following aspects for fee modulation:

- › Material specific pricing based on quantity (price/kg)
- › Billing frequency on a monthly basis.
- › The ERP fee must be declared and paid by producers within the agreed timeframe, otherwise membership certification and legal obligations will cease.
- › The ERP fee must be kept in a separate fund within the PRO's account so that the relevant sub-committee can use these funds to take action and achieve targets.
- › The EPR fee should take into account the cost of waste management in all parts of Kenya and the EPR plan and report should be able to demonstrate collection and recycling by region.
- › The EPR fee is paid by the member when the product and/or packaging is placed on the market and is self-declared and paid at an agreed time.
- › The EPR fee is reviewed annually against the volumes collected and recycled against the target and improvement. Fees will then be adjusted upwards or downwards.
- › Finally, the PRO must also have a means of verifying the volumes reported by the member at a specified frequency. These volumes on a material fraction basis are then aggregated upwards and become a volume collection target for the sub-committee.

**Therefore, the EPR plan for financing should clearly elaborate for every kg put into the market paid for by its registered members, the PRO will have an EPR plan based on the above to create at a minimum awareness, collect, separate and recycle.** Other items that achieve the set KPIs are also welcome.

**Important:** It is important to note that the Authority will set a target and a minimum price which the PRO must then use as a baseline to set its plan. All PROs must not go below the EPR price set nationally and must also ensure that the EPR plan is appropriately developed as the PRO will be held accountable to failure to which penalties can be charged by the Authority, annual licencing can be suspended and ultimately the registration of the PRO can be revoked. In all cases the membership and its PRO is ultimately liable as per the regulations.

- › (g) **Programme on public awareness** and consumer education and information on waste segregation and proper handling of post-consumer products

The EPR plan must have a section focused on awareness programmes and creation. Points to consider include the following:

- › The awareness plan should be based on clear objectives to achieve the KPIs and strategic objectives laid out in the EPR plan.
- › The communication strategy should be focused on a national, County, and local level and where possible should be able to measure impact based on improvement of collection and segregation.
- › PROs may collaborate with each other (counties, other PROs) to create a common message.
- › PROs should also create a short-term impact plan and a long-term culture change plan.
  - Short-term plan may include campaigns like importance of segregation or the value of waste.
  - Long-term plans could include the collaborative development of national education curriculums for schools, design for recyclability campaigns to change producer perception through consumer awareness etc.
- › The EPR plan and report should try to quantify the number of consumers it has impacted and in which regions

**Note:** Programmes on public awareness are also to be carried out by the counties. It is crucial that counties and PROs collaborate on this matter and communicate the same information on e.g. at-source separation.

- › (h) Verifiable **paid up membership list**

A membership list which documents that the respective members of the PRO have paid the registration fees and/or the annual subscription fee to the PRO and are therefore full members. This updated membership list shall be handed in to give evidence about the current status of participating producers.

The PRO will identify the number of members in its registry and further categorize them by sub-material fraction and volume. This forms the basis of collection and waste management requirements for the PRO.

The PRO will also develop a plan to manage the non-compliant members creating false declarations and/or not paying their legal obligation of fees. This should also include stringent plans for:

- › Data privacy
- › Data management
- › Audit plans to validate volume declarations (frequency, information shared, contracted auditor)
- › Plan to manage non-compliant members (members who do not pay or declare false volumes)

It may also include a plan to manage free-riders. However, this is mainly a matter for the Authority and having a plan at PRO level can help identify the first non-compliant members and create more transparency between all members.

- › (i) **List of waste service providers** and actors in the scheme

A list covering all names of the contracted waste service providers has to be prepared and submitted. This includes waste collectors, contracts with various organisations, contracting agents, sorting facilities (specify with fractions are being sorted as well as location), and recycling and disposal plants. As producers need to hand in the contracts with other parties to the Authority under registration, this logistics should have already been worked out at this point (see section 3.5). This information has to be recorded as well.

- › (j) **Eco-design standard** operating procedure for the products handled by the scheme

PROs have to implement an eco-design standard guide which covers all products put on the market by them covered under the EPR scheme. This guide shall include how waste occurring (especially packaging waste) could be decreased in the following years, how packaging can be designed in a more

environmentally-friendly way (e.g. easy recyclable through using mono-material) and how these efforts might be undertaken in the following years by the producers.

**Note:** The aim is to create specific eco-design standards generally applicable for Kenya. It is valid to refer to already existing standardisations and norms and to apply them to the local situation in Kenya. Since the development of appropriate standards is very complex and specific to each product stream or sub-cluster, these standards are to be developed jointly between the PROs operating in one product cluster in consultation with the Authority.

- › (k) **Mechanism of controlling banned or dangerous substances** in products handled by the scheme

A mechanism should be developed to describe how to monitor products or materials that are considered hazardous or even banned under the relevant EPR schemes. It is appropriate to include this mechanism in the reporting of eco-design standards.

**Note:** If a PRO's member does not comply with the general requirements, the PRO is obliged to consult on this matter with the Authority. This condition only holds as long as official bans are gazetted and the Authority is responsible of controlling these. In case of a member's infringement, the member cannot be part of the PRO anymore but underlays the occurring sanctions.

- › (l) **Annual reporting mechanism**

The plan for reporting to the Authority on the KPIs mentioned in section 3.2 (i) can be clearly included in the EPR plan. The report frequency is recommended to be quarterly in the form of an executive summary and annually as a detailed report. The up-to-date annual report of the preceding year is to be submitted to the Authority by January 31<sup>st</sup> of every year (*per sub-regulation 25(3)*); the Authority is establishing a reporting mechanism for this.

- › **The Executive summary** can be comprised of few pages and reported on quarterly or at least semi-annual basis. **This report includes the interim progress to be submitted to the Authority.** The status of the KPIs in relation to the objectives should be summarised quantitatively in a summary section. The importance of interim reports is to avoid surprises and potential penalties on the PRO.
  - The Authority must then consider the report and, if it approves the report, it may respond by leaving the next reporting frequency indicated unchanged. Alternatively, in the case of a negative report, the Authority may request additional interim reports.
- › The **annual report** is a more detailed report showcasing the positive outcomes as well as the negative outcomes. The report should focus on KPIs relative to the strategic plan and targets set by both the PRO as well as the Authority. Critically, the report should discuss the plan to build on strengths as well as opportunities to close gaps in missed opportunities.
- › In submitting the **EPR plan reporting section**, the PRO has to submit an outline plan for approval, listing all the key sections to be reported. This is differentiated between the reporting requirements between the interim report and the annual report.
- › The **interim report** and the **annual report** should both clearly state quantifiable KPIs to be reported in actual relation to the planned targets with a column discussing gaps and/or commentary on the KPI.

**Note:** The reporting mechanism of the Authority is currently under development. As far as this is not developed, it is sufficient to give written statements according to the aspects mentioned in this section and especially Table 5.

- › (m) **Plan or projection on training and capacity building** of members and actors in the scheme

One of the main tasks of the PRO is to monitor changes, market developments and technical innovations related to the EPR. Such matters should be presented to the members at regular meetings. The planning and projection should include the topics to be discussed, the duration and the form (remote, physical). Lists of participants should be drawn up during the meetings. The meetings should be related to the streams covered by the PRO and to the activities and questions of the members.

- › (n) **Schedule on monitoring of members**, product traceability system, inspections and compliance with these regulations

The PRO must ensure that the data and information provided reflect its actual situation. To this end, the PRO must have appropriate monitoring mechanisms in place to fulfil its obligations under the Regulation. The monetary cost of this monitoring must be taken into account when calculating the funding structures (see section 3.6). The monitoring of the PRO focuses on the interface between the quantities placed on the market by its members, the product traceability system and the data and information from its contractors (waste service providers and their reporting). The timetable will indicate who and how many members and contractors are to be audited and for what purpose. As it is assumed that not all members can be covered, the selection mechanism should be presented in an appropriate form. It should be ensured that different parties are covered in different audits and that the number of parties audited increases over time.

**Important:** The PRO must outline which consequences shall arise if the members do not act in line with the draft regulation.

- › (o) **Model of financing** the scheme integrating financial flows to the entire value chain actors

For collective EPR compliance schemes, this means that all costs and revenues related to the waste management and further actions (e.g. communication and administration) of the products in scope have to be considered and included. For more details see section 3.6.

The PRO has to present a financial plan as part of its EPR plan, outlining key areas for which it plans to allocate funding for and spent on towards these areas. Examples include (but are not limited to):

- › Awareness and communication
- › Segregation at source (this includes bins, bin liners/bags etc.)
- › Collection infrastructure (this could include placement of bins, aggregators, communities etc)
- › **Set-up of infrastructure**, supporting, partnering with counties (for example building MRFs)
- › Subsidies for Recycling

The breakdown of the above will give a clear indication where the PRO plans to focus its activities to achieve its strategic objectives and Targets.

- › (p) **Any other actions necessary** for execution of responsibility as may be requested by the Authority

Action on official request by the monitoring Authority.

**Note:** So far nothing mentioned in the regulation. This open clause allows the Authority to react quickly to developments in the EPR system and, for example, to impose additional requirements in this regard. This needs to be announced by the Authority.

### 3.5 Work Plan

The regulation has set out that every PRO shall develop and **submit an annual Work Plan which elaborates on the interactions between the County Governments and the respective PRO concerning operations in collection and treatment.** This Work Plan is to be developed in consultation with the department responsible for waste management in each county on EPR implementation (*per sub-regulation 13(2g)*).

A Work Plan negotiated with each county on EPR implementation and operationalisation shall be handed in as part of the registration of a PRO (see section 3.3.1) and in order to apply for an operating licence (see section 3.3.3). It clarifies the Kenyan areas and regions, time frame and format for the respective PRO to cooperate with the County Governments.

**Important:** The Work Plan is an essential agreement between counties and PROs, in order to cooperate with the overarching aim not to negatively impact the Kenyan environment caused by waste from products put on the Kenyan market. For the development and subsequent operationalisation of the Work Plan, so-called agents (see section 1.3) can be involved, who represent the PRO in the county on the ground.

→ An outline for an Work Plan to submit to the Authority is provided in annex A9 – Outline of a Work Plan.

A close partnership between County Governments and related municipalities/local authorities and the collective EPR compliance schemes/PROs is a necessary condition for the overall success of the whole Kenyan EPR system, as well as in ensuring its economic and environmental sustainability. As the County Governments are responsible for the implementation of the collection and MRF per the SWM Act, the Work Plan is of particular importance, as the PROs are supposed to support these activities and are responsible for the takeover and further treatment of their material flows. This can be regulated solely financially or can also include operational services.

Relevant requirements of the SWM Act in context of Work Plan are:

- › Firstly, all waste to be segregated at source according to the various fractions stipulated by the Authority.
- › Secondly, all waste to be collected under the guidance of the county. This can be done by the county itself, or a licenced private company. All waste must be collected and transported in segregated trucks and/or compartments.
- › The segregated waste must first be taken to MRFs where further separation, segregation and sorting will occur into the various valuable waste fractions. **These MRFs must be built** and set up by the county and / or outsourced to a private licenced entity.
- › Once the valuable waste is segregated and bailed, **the MRF will contact a recycler for offtake and further processing.**
- › Only residual waste from the MRF can be taken back to the county landfill by licenced county waste trucks. The weight and various fractions and any other data required by the county must be provided before transportation along with the necessary fees and / or costs.
- › It's important that the MRF maintain records of what is collected (received), what is sent to recyclers, and what is sent to landfill.

PROs may need to assist with the establishment and public/private partnerships or build the infrastructure for MRFs themselves. Ideally each County should eventually have at least one MRF. It is also possible for

one MRF to be shared with neighbouring Counties (cluster of Counties). Such agreements must be separately established between the respective Counties.

It is also possible for collectors to take waste to aggregation points and eventually to the MRFs. All recyclers are allowed **to only** buy waste, which is subject to EPR, for processing via MRFs in order to control the collection of data and volumes.

PROs must establish a work plan over a period of time with each County (or cluster of counties) to set up the above infrastructure in accordance with the SWM Act as well as the ERP regulations.

PROs can establish generic workplans which they implement either by themselves or via partnerships with private entities or with the County. The important aspect would be timeline and scale-up plans on a County to County specific basis so both the Authority as well as the Counties are aware when implementation might eventually occur.

In the case of multiple PROs, collaborative discussions or tenders by the County won on their own merit can be implemented. A County can also work together with more than one PRO of the same product cluster. Alternatively, PROs of the same product cluster can collaborate to jointly operate and share the volumes and costs associated with the other PRO(s).

PROs can also establish MRFs across categories. For example, two PROs handling different kinds of waste can jointly agree to set up a PRO in a specific county or region.

According to the regulation, **County Governments** play a relevant role (for more details see section 3.7.1). Comprehensive coordination is required between PROs and County Governments in waste management to set out their precise operational responsibilities and how they will resolve conflict with the operational systems in collection and waste treatment of the ERP compliance schemes.

**Note:** Possible separation at source and a differentiated collection system for biowaste, for dry (recyclable) waste, and for hazardous waste is already implemented from a regulatory perspective in the SWM Act Article 12(1-3)) and lays in the responsibility of the counties. Therefore, the counties shall implement legislations for this cause accordingly.

**Important:** It is well known that waste picker integration and informal waste treatment is an issue. This needs to be addressed and discussed in more detail e.g. on county level and the relating Work Plan in order to ensure enabling them to participate as stakeholders in the waste management system. Ideally and eventually, these informal waste pickers must eventually be **incorporated** into the formal waste management work stream within collection, aggregation points, MRF's and/or recycling.

The following areas are to be coordinated in accordance with the responsibilities of the Counties in the framework of the Work Plan:

**Note:** All agreements between County Governments and EPR compliance schemes have the nature of private contracts, with respective conflict resolutions mechanisms applying.

› **An agreement on the collection and takeover of material in scope of EPR by the respective PRO:**

In order for PROs to fulfil their operational obligations, access to the waste fractions collected by them must be coordinated between the County Governments and the compliance scheme. This applies in particular to the collection of waste from households, but also to access to central collection points (e.g. aggregation points) and/or MRFs to take over for further sorting/treatment in responsibility and cooperation with the PROs.

Ultimately, MRFs will work with counties and all categories of PROs to fund and establish both collection and take-back agreements. In the case of private MRFs, the same will apply, with PROs having to establish take-back arrangements for volumes they cannot source from elsewhere to meet their membership tonnages.

As far as the County Governments are responsible for providing and establishing the collection infrastructure, the Counties and PROs must agree on what financial or infrastructural support comes with that.

**Important:** In the event that several PROs operate in parallel in a county for a product cluster, the PROs and the County Government should coordinate their activities in order to achieve the best possible synergies and uniformity in the recording and adoption of data.

› **An agreement regarding the flow/steering of collected waste:**

The locations where waste fractions are transferred from the responsibility of the County Governments to the PROs must be determined. It is envisaged that this will be done centrally for waste from the product clusters via existing and to be established MRFs (waste fractions that have a certain bulkiness are to be recorded separately in coordination between County Government and PRO). Direct landfilling of waste streams should **not be permitted** (e.g. possible via county waste legislation). In this sense, MRFs act as a “bottleneck” where mixed dry (recyclable) waste is directed to, measured, aggregated, and pre-treated and accounted to the PROs.

The MRFs therefore need to be licensed and meet certain, best standardized requirements, e.g. storage, sorting, and providing material for further treatment (e.g. recycling) in a sufficient way (e.g. opt. shredded, baled – specification on quality).

PROs offtake this material and also are responsible for the treatment and disposal on collected non-recyclable waste. To this end, the quality (e.g. purity) of the waste fractions collected by the county must be agreed with the PROs for further treatment.

As the Act requires the County Governments to provide MRFs for the recycling of materials, it is necessary to agree whether and how this material can be accepted by the PRO for further treatment. To this end, minimum standards for the quality of the material accepted must be set so that the quantity is remunerated accordingly. As there are residues along the waste treatment chain, agreements should be made with the County Governments on how these residues will be dealt with from a financial and organisational point of view.

MRFs are designated to become the nucleus in data collection (concerning in and out flows, and in different waste streams). The data is afterwards to be provided to PROs. For this, all incoming and outgoing waste fractions in scope of EPR need to be weighed and traceable in amount and origin and respectively their whereabouts. Recyclers (to be licensed) must receive their material solely from MRFs for waste fractions in the scope of EPR.

**Note:** The Act gives a definition on MRFs. Therefore, an MRF is a “specialised facility that receives, separates and prepares recyclable material for marketing to end user manufacturers” used for “final sorting, segregation, composting and recycling of waste generated or transported to the county and transport the residual waste to a long-term storage or disposal facility or landfill”.

**Important:** In the event that several PROs operate in parallel for a product cluster in a county, joint agreements must be reached between the PROs and the County Government on how a fair takeover of

the material (e.g. oriented to the mass share put on market) and fair financial participation (e.g. for the disposal of the non-recyclable parts) can take place.

› **Agreement on MRF's implementation and processing:**

The Act clearly states that the ownership, responsibility, collection of waste and setting up of MRFs is responsibility of the counties. As **the rollout of waste management facilitated by the EPR compliance schemes relies on infrastructure and facilities (MRFs) to be provided for by the Counties, a direct coordination is foreseen**. The implementation and operation of these facilities can be done as per the Act either:

- a) by the County Government itself,
- b) by a Public Private Partnership (PPP)
- c) by private waste service providers or PROs. This may include funding from PROs to establish MRFs.

**Note:** It is possible to have multiple MRFs in a county and also to cluster MRFs to multiple Counties as far as this is beneficial.

› **Agreement on communications and awareness campaigns:**

An indirect obligation to interact with the Counties derives from the awareness raising activities to be carried out by the EPR compliance schemes. As the exact mode of collection - e.g. kerbside or take-back points - differs between and within counties, coordination is needed to inform consumers about the exact mode of disposal.

Since PROs need to communicate and pass on the information on the quantities of waste collected and recovered to the County Governments through the extended producer responsibility mechanisms (*per sub-regulation 19(1j)*), agreements on this matter are to be addressed in the Work Plan as well. This data provision is also a reporting obligation for PROs (see section 3.2 (i)) and should use the same formats as in the other reporting obligations for simplification and standardisation purposes. These and additional aspects should be described in the Work Plan and signed by responsible persons at County level and at the EPR compliance scheme.

Awareness campaigns and consumer approaches are obligations of the PRO (*per sub-regulation 6(2h)*). For this, PROs should establish funding mechanisms to establish segregation at source through education and awareness as well as make provision to collect segregated waste (e.g. by colour coded bins and/or liners/bags). In order to coordinate and align these approaches, this should also be addressed in the Work Plan, as well as the associated responsibilities in the respective county and the associated financial subsidies.

› **Agreement on further services:**

The services to be provided can include any service in waste management operations (e.g. collection, sorting, treatment) as long as the County Government or its relating municipalities offer it. If the municipalities decide to do so and offer such a service, they act as a common waste service provider who would otherwise be contracted through an EPR compliance scheme. The County Government is to be reimbursed for these tasks if they exceed the original responsibilities according to the Act. Services and tasks carried out by the Counties are to be specified in respective contracts, which clarify the time frame, the scope and reimbursement.

**Note:** Minimum criteria must be applied to the services that a County Government or relating municipalities (or any other waste management service provider) provide for the PRO. These criteria can

be highly specific for each product cluster and need to be part of the contractual agreements in order to give reference.

› **Contractual agreements between County Governments and PROs:**

**Depending on the extent of operational cooperation between PROs and Counties, contractual agreements between Counties and the EPR compliance schemes for usage of these waste management are required.** Therefore, e.g. for the setup and operation of MRFs, contractual agreements with the Counties need to be made.

These contracts may entail

- › Co-financing for joint setup and operation of waste management facilities with contractual details agreed in between the Counties and the EPR compliance schemes
- › Setup and operation of waste management facilities for fractions in scope of EPR by the EPR compliance schemes in accordance with the Counties (and following their standards)
- › The EPR compliance schemes are being allowed to use the Counties' facilities against a licencing fee to be determined by the involved parties and the Authority.

› **Agreement on County regulations:**

**Counties need to develop and execute County-specific waste management policies in accordance with the provisions of the national EPR regulation** and their county specific EPR regulations. Therefore, Counties are assigned a set of tasks for coordination with the EPR compliance schemes; some being directly named, others indirectly derived from their role within the wider waste management framework. **Upcoming County waste management legislation under the Act must be in accordance with the regulation.** It must allow for the waste fractions subject to EPR to be managed by the EPR schemes and coordinate the Counties' policies and activities accordingly.

› **Aligned reporting:**

**The EPR compliance schemes need to report to all** County Governments they are active in. This information is concerning all relevant parameters of the waste subject to EPR, including the number of served households, amount of collected waste fed into MRFs (facilities specifically named), amount of disposed waste (facilities specifically named) and cross-County transport of waste fractions for recycling, according to sorting specifications. This information is forwarded to the Counties and the Authority. The reported information also explicitly explains the extent to which the set targets have been achieved.

**Note:** Reporting from different sources allows for counter-check of information. The Authority received information from the EPR compliance schemes and the Counties. The Authority matches these reports to create a comprehensive waste mass flow. In case of discrepancies, forensic operations are launched.

Furthermore, only the complete set of data along all steps of waste management allows to effectively set targets that steer the EPR system.

### 3.6 Financing of the PRO

Every producer that puts products subject to EPR on the market pays a fee which is proportional to the amount of products being put on the market, hence equivalent to the amount of waste that is later to be managed as waste. The fee covers the waste management and PRO's operating costs. A PRO is financed by three main types of contributions:

- › **Registration fee** from members (producers) to the PRO to assume responsibility for the post-consumer and end-of-life management in lieu of the producers' products (*per sub-regulation 21(1)*).
- › **Annual subscription fee** (*per sub-regulation 21(2)*).
- › **Extended producer responsibility fee** calculated by parameters based on the specifics of a producer's products by the PRO (*per sub-regulation 21(3)*). This fee is material and fraction specific

**Note:** Fees paid by the producers to the PRO are determined individually by the PROs. Therefore, the fees in between various PROs will most likely differ to a small extent. However, minimum fees on sub-clusters will be introduced by the Authority (*per sub-regulation 26(1f)*) in order to prevent different PROs to step into a price war and prevent a downward price spiral. In this way, the Authority can ensure that for every object managed under the EPR scheme fees are paid and nothing is being taken care of for free. Moreover, the PRO may implement a mechanism for increasing its fees even during a financial and operating year, if the PRO is threatened with insolvency issues.

In the event that a PRO becomes bankrupt or has its license revoked, it is crucial to ensure uninterrupted collection activities. Consequently, either the Authority or the County would be required to take over the collection process, while still receiving funding from the Producers.

**Important:** The PRO receives financial contributions of 0.5% of the total annual EPR fee to monitor and control. This contribution is forwarded to the Authority to compensate its effort in **monitoring the system** (see section 5.2.2).

In addition, donations from other sources can also be used to finance the PRO (*optional, per sub-regulation 22(1)*).

Since fees received by the PRO shall not be used for profit making purposes (*per sub-regulation 22(3)*), the PRO itself is a non-profit entity. It is intended that all proceeds will go back into the scheme and help improve sustainable waste management (*per sub-regulation 22(4)*). **Finances received are to be used for the following purposes** in order to fulfil the PRO's obligations on behalf of the members (producers) as a non-profit entity. This includes in detail (*per sub-regulation 22(2a-k)*) for relating tasks and obligations see section 3.2):

- › (a) Establishing **post-consumer products collection**, logistics, recycling, recovery and safe disposal structures

It is expected that this task will require the largest share of the available finances (see below). These costs are to be covered by the Extended Producer Responsibility fee. The fulfilment of this task will most likely be carried out by third-parties to who these fees will thus be directed to.

- › (b) **Engagement of downstream partners** in the chain of take back, recycle and treat and end-of life product disposal

This essentially refers to waste service providers, who will take on the fulfilment and the improvement of the system.

- › (c) Consumer education and **public awareness** of sustainable waste management practices

For this purpose, suitable communication tools and methods have to be found that are both environmentally informative and provide practical instructions and guidance to the consumers.

**Note:** Since County Governments are also obliged to take over consumer awareness, these two strategies shall most possibly be aligned, i.e. harmonised (see also section 3.5).

- › (d) **Training and capacity building** of those involved in the scheme, including but not limited to waste service providers, transporters and recyclers

In addition to b), platforms and regular communication should be developed and aimed at. The content of such training can include the development of standards, e.g. with regard to quality in collection, transport and recycling, as well as the optimisation of processes when taking over material.

- › (e) **Management** and administrative overheads of the extended producer responsibility system

The administrative costs are essentially based on the personnel requirements and the necessary IT infrastructure including both hardware and software elements. Financially, this cost block of the PRO should be largely covered by the member registration fee and annual subscription fee.

- › (f) Establishment and development of **secondary markets** and uses for products covered by the scheme

Considering one of the PRO's original tasks of increasing recycling and due to assuming that PROs have access to relevant quantities for this purpose, it can be strongly assumed that secondary markets will develop further in any case. In order to support this development, PROs should permanently evaluate sales channels according to environmental benefits and maintain a regular exchange with potential buyers and users of the materials.

- › (g) Provide **incentives for consumption of post-consumer recovered secondary raw material**

In order for recovered secondary material (i.e. recycled material) to return to the value chain again and thus be used in new products/packaging, the PRO shall provide incentives of any kind for this purpose. These incentives shall be elaborated through the finances of the PRO and may take the form of fee-modulation, i.e. the PRO may charge smaller fees for a product under its scope if it contains a certain amount of recycled material. Labelling more eco-friendly packaging materials in these regards may also steer consumer choices towards a more environmentally-friendly consumption.

- › (h) Establish **research and development programs** with registered research institutions on emerging technologies to improve material recovery, removal of pollutants, additionality and circularity and effective systems for handling post-consumer products

The PRO forms the linkage between the area of producers and the area of waste management. In this sense, regular meetings, e.g. through the formation of a committee for the respective product categories, should be held to discuss how the negative environmental impact can be further avoided and how existing obstacles in recycling may be overcome. Academia should also be involved in this process.

- › (i) Development of **eco-design and eco-labelling standards** in consultation with the body responsible for standards for products under their scope

*Per sub-regulation 22(2i)*, PROs have to implement an eco-design standard guide which covers all products put on the market under their scope. Even though this task will most likely not be carried out from the beginning on, this guide shall include how waste occurring (especially packaging waste) could be

decreased in the following years, how packaging can be designed in a more environmentally-friendly way (e.g. easy recyclable through using mono-material) and how these efforts might be undertaken in the following years by the producers.

**Note:** The aim is to create product clusters specific to eco-design and under generally applicable standards for Kenya. It is valid to refer to already existing standardisations and norms and to apply them to the local situation in Kenya. Since the development of appropriate standards is very complex and specific to each product cluster or sub-cluster, these standards are to be developed jointly between the PROs operating in one product cluster in consultation with the Authority.

- › (j) Support **purchase and maintenance of machinery and equipment** to support waste collection, processing, recovery and safe end-of-life treatment

As one of the main tasks of the PRO is to collect post-consumer household waste, i.e. contract a third-party for doing so, the PRO shall financially also support the purchase of complementary machinery in this matter. This could cover multiple purposes: either the PRO supports the WSP further, or also provides **equipment** for its agents.

- › (k) **Providing guidance to members on eco-design standards** for their products and recycler-friendly packaging

The PRO shall provide information and guidance to its members on how to optimally design their products in order to be more environmentally-friendly / easier to collect and recycle. These measures eventually lower the EPR costs for all stakeholders. Communicating on these matters can occur in various forms, i.e. carrying out studies via the R&D budget and passing these to the members, short update letters, or on the regular meetings, for example. Figure 4 illustrates the income and expense structure of a non-profit PRO, irrespective of the relating product cluster.

**Important:** As of June 2023, the regulation only includes the points a-k described here. However, it is crucial that in the financial planning of a year, a PRO also incorporates a budget on monitoring activities, to which the PRO is obliged to.

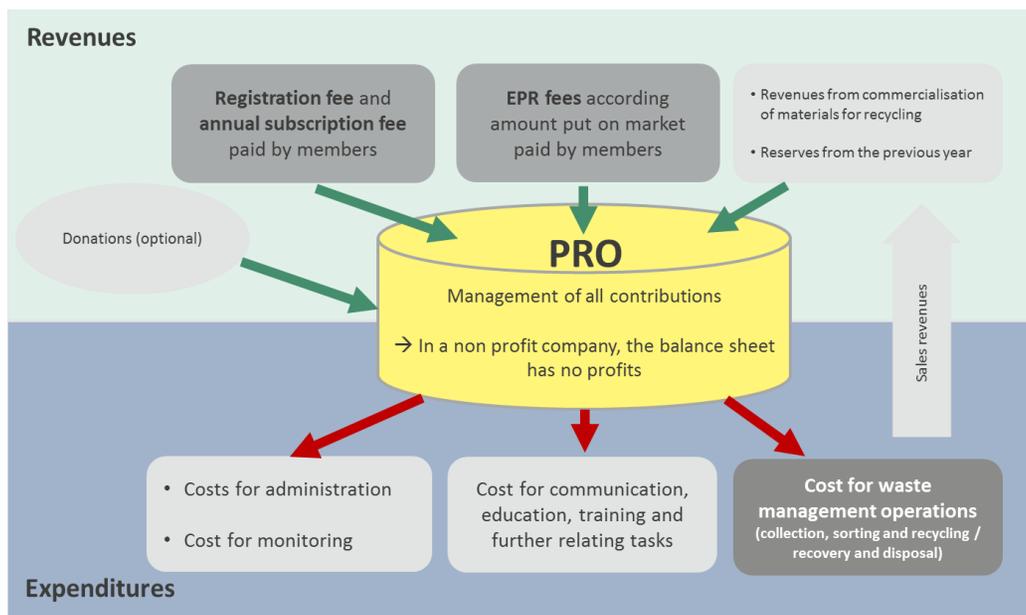


Figure 4: Revenues and expenditures of a non-profit PRO

Since the sum of all financial contributions must cover all costs incurred, the determination of the respective fees is based on the total financial requirements for the operation of the PRO and the operationalisation of the collection and further treatment (e.g. on an annual basis). The following applies:

Financial demand for EPR relating tasks and obligation

= sum of registration fees + sum of annual subscription fee + sum of EPR fees (each of all participating members)

**Note:** In this respect, it is recommended that the costs incurred for administration and awareness as well as relating soft tasks are largely financed by the registration fee and annual subscription fee. It is recommended to connect these fees to parameters such as company size, annual turnover, or equivalent.

**The operationalisation (collection and treatment) will likely incur the major component of costs (accounting to around 60%-70% of all costs), which should be largely covered by the EPR fees.** These EPR fees are to be linked to uniform parameters per product cluster (better sub-cluster) that apply for all participating members (producers) in the same way. Factors that inter alia decide on the fee calculations can be found in 3.2 (d).

The final determination of product-specific EPR fees will therefore have to reflect this:

(Product material / item type and its specific costs in collection and treatment, incl. all relating processes like transport and disposal of residue) \* yearly total amount / number of material / items put on the Kenyan market of each producer.

**Note:** A further differentiation in the relating sub-clusters is suitable as long as relating costs can be clearly distinguished. The following Table 9 gives guidance on the minimum amount of the prioritised sub-clusters to be distinguished at EPR fee determination.

Within the framework of an EPR system, the EPR fees can be scaled in such a way that the fees are lower for packaging that can be recycled well (so-called eco-modulation). These modulated fees can be used to influence recyclability given that the difference in fees is significant. It is to note that all PROs shall apply the same criteria for all waste clusters. The modulation criteria are to be published.

**Important:** As certain products of a product cluster may have a positive market value in further marketing, it is not permissible not to apply any (material or item-specific) EPR fee, as waste management always involves an operational expense in the collection and organisation of this product.

**Table 9: Price differentiation per item under the EPR scheme (example non-hazardous packaging, EEE/batteries/cables)**

Product stream	Product/packaging type	Cost [KES] for				Specific item costs
		Collection	Further treatment	Communication	Administration	
1: Non-hazardous packaging	Rigid PE/PP	A	A	B	C	D
	Rigid PET bottles	A	A	B	C	D
	Other Plastics <sup>1</sup>	A	A	B	C	D
	Paper, cardboard and carton	A	A	B	C	D
	Aluminium	A	A	B	C	D
	Tinplate	A	A	B	C	D
	Glass	A	A	B	C	D
	Liquid Packaging Board	A	A	B	C	D
	Other composites <sup>2</sup>	A	A	B	C	D
2: EEE / batteries / cables	EEE	A	A	B	C	D
	Batteries and accumulators	A	A	B	C	D
	Cables	A	A	B	C	D

A) as per contract and/or specific evaluation, incl. transport costs in between processes

B) incl. expenses for development, consumables and other costs

C) mainly personnel costs for administration and communication, contractual efforts in regards to the EPR compliance scheme

D) sum of costs divided by number of units placed on the Kenyan market [KES/item].

<sup>1</sup> if not included elsewhere;

<sup>2</sup> Means a composite of at least 2 different materials (e.g. paper/plastic) and any material that makes up at least 5% by weight of the packaging.

A description of the PRO’s general fee structure including the determination of the specific EPR fee calculation needs to be:

- › Agreed among all members and therefore be set out in the terms of reference in the contract between the members (producers) and the PRO.
- › Submitted to the Authority (to be provided in the EPR Plan, see section 3.4).

The EPR plan should also consider various aspects for fee modulation, such as deciding fees based on material type and amount, charging on monthly basis, etc. This fee should also consider the cost of waste management in all parts of Kenya and the EPR plan shall demonstrate collection amounts and recycling by region. The EPR fees should be kept separately for achieving targets and specific KPIs, and should be revised on an annual basis and can be modulated upwards on downwards based on that.

**Note:** Due to unforeseen influences, it is important that PROs have internal mechanisms in place to allow for ongoing discussion and adjustment. This is to prevent that the respective PRO fails due to a lack of finances.

The PRO shall include its financial planning in a budget for its scheme. This planning on an annual basis gives evidence on all related financial streams, as laid out above. This means in particular, received finances (i.e. registration fee, annual subscription fee, and extended producer responsibility fee calculated by parameters based on the specifics of a producer's products) as well as expenses and their use. The PRO shall keep a certified copy of annual audited financial accounts.

### 3.7 Affiliated stakeholders

In an EPR system, many stakeholders interact with each other. The EPR systems are not only shaped based on the individual and collective EPR compliance schemes, but also through these stakeholders such as County Governments, waste service providers, retailers, and citizens. This section outlines the specific roles of these stakeholders in an EPR system.

#### 3.7.1 Roles and tasks of County Governments

A close partnership between County Governments and relating municipalities/local authorities as well as the EPR compliance schemes (both individual and especially collective via PRO) is a precondition for the overall success of any EPR system, and in ensuring that it is economically and environmentally sustainable. County Governments play a relevant role according to the draft regulation. When it comes to waste management practices, comprehensive coordination is required (for more details see section 5.1) to set out their precise operational responsibilities and how they will resolve potential conflicts with the operational systems in collection and waste treatments of the EPR compliance schemes.

According to the regulation, County Governments have the following roles and tasks (*per sub-regulation 26(2a-d)* pursuant section 17 of the Act (see Table 10).

**Table 10: Roles and tasks of County Governments**

	Roles and tasks	Further clarifications
(a)	Work with producer responsibility organisations to ensure proper collection, transportation, sorting and disposal of waste products	In order to avoid overlap in responsibilities and operationalisation with the actions of individual and especially collective EPR compliance schemes, interactions need to be discussed and agreed on in a binding way (for more details see section 3.5 and 3.2).
(b)	Collaborate with EPR schemes to develop and implement county work plans for EPR implementation	It is the county’s task to overview and facilitate that all PROs (and if needed further stakeholders) prepare and publish a Work Plan.
(c)	Collaborate with producer responsibility organisations to establish appropriate mechanisms for the operationalisation of the extended producer responsibility schemes established under these regulations	In addition to (b), this implies that County Governments may, for example, <ul style="list-style-type: none"> <li>› provide and/or give access to the necessary infrastructure (e.g. collection points or waste containers, e.g. placed in households),</li> <li>› provide waste collection, sorting and treatment services (see sections 3.5 and 3.2 for more details).</li> </ul>
(d)	Cooperate and consult with the Authority on the operations of extended producer responsibility schemes within the County jurisdiction	The national Waste Management Consultation established with the Act consults the Ministry on the national targets for reuse, recycling or recovery operations. The council is comprised of ten persons. One of them, the vice-chairperson, is appointed by the Council of Governors, thus representing the Counties. Through the Waste Management Council, the County Governments exercise a certain influence on these national targets.

In addition, counties can undertake public awareness and education on waste separation and management on a voluntary basis, ideally in consultation with the operating PROs.

#### 3.7.2 Roles and tasks of waste service providers

Waste service providers conclude contracts with PROs (see section 3) to operate the relevant collection and treatment processes. The PROs can only engage WSPs licensed by the Authority and the respective County Government (*per sub-regulation 20(6)*). According to the regulation, WSPs must be licensed under

the Act in order to provide the relevant services. For this purpose, the WSPs will be listed as "adequate" WSPs in the respective lists of the government districts.

This is accompanied by a wide range of tasks relating to the measurement and reporting of the waste clusters treated falling under the responsibility of WSP. This means that the implementation of their contractual requirements can be verified with appropriate evidence (e.g. weighing slips).

PROs are responsible for initiating such audits. Additionally, the PRO offers regular training and capacity building in an EPR-specific context.

### 3.7.3 Roles and tasks of retailers

According to the regulation, **all retailers** within the product value chain (retailers) **are allowed to only place products on the market from producers that are registered and published in the Authority's updated register** (see section 5.2.1) (*per sub-regulation 20(8)*). Since many of the products in Kenya are ultimately placed on the Kenyan market through retailers, they must verify compliance with the regulations beforehand.

As a result, retailers are part of a double control mechanism, since they commit an offence under sub-regulation 20(8) if they sell products that are not from registered producers. In order to comply with this obligation, retailers require the above-mentioned public register of registered producers, which is provided electronically by the Authority. If a given producer is not yet registered, the retailer may first contact the producer in order to clarify the matter of registration and has the right to refuse any unregistered producer.

### 3.7.4 Roles and tasks of citizens

Citizens as consumers are obliged to use the separate collection infrastructure provided by the EPR compliance schemes and to dispose of waste subject to EPR accordingly. Ideally, this is being carried out by separating waste at source as established and promoted by County Governments to ensure high quality recycling. Citizens need to be aware of waste reduction strategies and related environmental issues. To this end, they will be targeted with education and awareness campaigns on individual EPR compliance schemes and PROs to provide incentives.

**Note:** As of July 2023, citizens are not addressed in the regulation. However, natural roles apply to them as written out above. These may be extended during in the next years as the regulation may be revised.

## 4 Individual extended producer responsibility compliance scheme

Individual EPR schemes only apply in two conditions:

1. For verified sole producers (see definition in section 1.2)
2. As fall-back options for producers of a PRO in case the PRO fails to fulfil the obligations (see section 3.2)

In the event that a PRO becomes bankrupt or has its license revoked, it is crucial to ensure uninterrupted collection activities. Consequently, either the Authority or the County would be required to take over the collection process, while still receiving funding from the Producers.

In both cases, producers using an individual compliance scheme have to fulfil the same obligations as PROs, with the exception of PRO-specific obligations (details in section 3.2). In specific, the sub-regulation 12 (2-5) addresses how to apply for an individual EPR compliance scheme while sub-regulation 6 and 7 (1a) provides details on the tasks.

**Note:** The registration of an individual extended producer responsibility compliance scheme shall be approved by the Authority for a maximum period of four years, which shall be renewable, on the condition that the producer demonstrates proof of operational, technical, managerial and financial capacity to meet their extended producer responsibility obligations and the national targets (*per sub-regulation 17(1)*).

## 5 Governmental level

This section describes the roles, responsibilities and tasks associated with the EPR system at Governmental level. The Ministry is responsible for setting policies and national targets while the day-to-day operation and the setting of the minimum EPR fees falls under the role of the Authority. If the regulation has been improved or changed, these modifications always need to be gazetted. From the point of time from gazetting, the new legislative changes apply and are binding by a fixed period of time.

### 5.1 Role of the Ministry

The Ministry is the responsible entity in setting up the rules, regulations, and policies for the EPR scheme along with amending overarching EPR rules as per Authorities' recommendations.

The Ministry shall, upon recommendation by the Authority and *per sub-regulation 26(3a-c)*, fulfil the following responsibilities:

- › (a) Issue, by notice in the Gazette, **collective national objectives, frameworks and targets** for extended producer responsibility compliance schemes

As of July 2023, the regulation does not include minimum targets on these matters to be achieved by the certain PROs. These targets are intended to be based on the assessed status in the initial phase of the EPR system for a certain product cluster. The targets shall be progressively updated / enhanced. The Authority currently elaborates on minimum targets in consultation with the Council. These targets will be product cluster specific and shall include collection, reuse, recycling and recovery targets. As soon as mandatory, the targets must not be under-fulfilled by the PROs.

- › (b) Publish the **national targets** and procedures

National targets are being published as soon as the processes described above in (a) are fully carried out to an end. So far, no mandatory national targets have been published, see also section 5.2.3.

**Note:** Even though targets to be published are national, they may vary across the country due to different inhabitant numbers and occurring waste amounts.

- › (c) Facilitate **stakeholder consultations** on formulation and operation of producer responsibility organisations.

As the Ministry governs the whole EPR system, it shall facilitate stakeholder consultation regularly. These consultations shall comprise of all PROs, relevant WSP and the counties and may take place in-person, online, or in a hybrid manner. These discussions shall take place at least once per year for an intensive exchange, however, in the case of bigger matters to decide on the stakeholders can also come together on a short-notice in order to align.

### 5.2 Role and responsibility of the Authority

The Authority shall monitor the operation of extended producer responsibility schemes and producer responsibility organization (*per sub-regulation 26(1)*). Therefore, the Authority has the task and responsibility of approving the registration, issuing the certificate of operating registration and operating licence, as well as other tasks such as recommending the objectives, frameworks, and targets for the EPR compliance scheme to the Ministry. This includes to develop guidelines on EPR implementation and reporting *per sub-regulation 26(1d)*.

Other than the tasks mentioned in the following sections, the Authority is also responsible to execute the finances generated from the PROs to operationalise the regulation (*per sub-regulation 26(1g)*).

### 5.2.1 Registration and licensing

The Authority is responsible for the registration of (i) all producers as well as (ii) collective EPR compliance schemes and (iii) the PRO operating these collective schemes.

In order to manage all registrations received by producers and PROs and the submitted data, registers are expedient. **Online registration can be recommended for producers and PRO as the information can be directly submitted from the companies into the register.**

**Note:** If online registration is not available, registrations need to be submitted to the Authority and the Authority needs to put the registration information into the register.

**Important:** The Authority has to provide an accessible and public register of registered producers in order to enable PROs in application status to gain members and retailers to only sell products of registered producers. In order to register all producers in one register, the Authority may face a logistical challenge. In order to avoid this problem, the Authority will need to find practical solutions in advance.

**The following information needs to be submitted into the register** (see also section 3.3.1): the company's tax ID, or another unique national identity number, the company's name and address, the company's staff members responsible for the registration, including contact details, the brands or categories of the products the company introduces to the market (e.g. groceries, electronics). The public section of the Register of Registered Producers contains the EPR number of the producer, name/brand, product cluster and location (optional), and the date of registration.

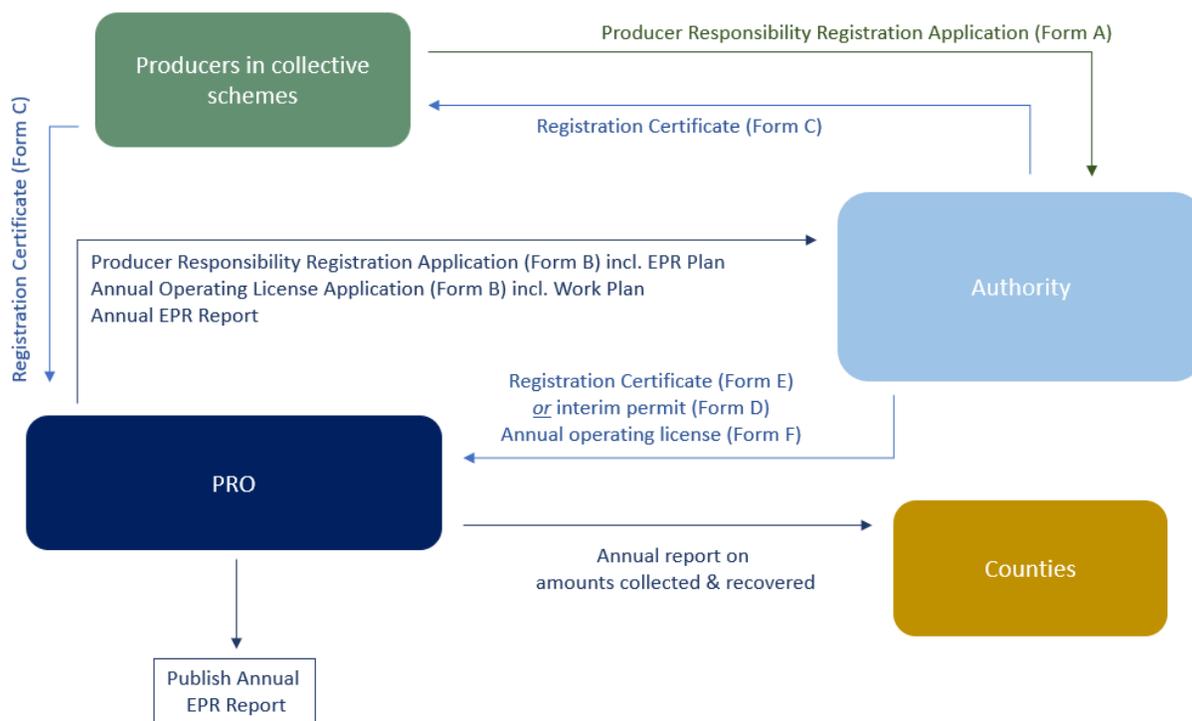
If online registration is to be established, corresponding hardware and software infrastructure is needed.

To increase the EPR system's transparency, **a publicly disclosed register will be in place. This public register provides binary (yes/no) information on whether a company is registered as producer or not.** No confidential information is published in the public register, which is open for anyone to check.

**Note:** The regulation has accorded the role for monitoring the register to the Authority (*per sub-regulation 26(1b)*). Each PRO will have to register its members and volumes of products introduced. The same data will be submitted to the Authority for compilation and national reporting.

The licenses and reports to be submitted differ between individual and collective compliance schemes as shown in Figure 5. It should be noted that sufficient and qualified staffing is needed to fulfil all tasks of the Authority in order to check and evaluate all submitted reports and information.

Additionally, to manage the information submitted by the producers, the Authority needs to have IT infrastructure including both hardware and software elements in place. The structure and organisation of the database and data transfer need to guarantee the confidentiality of the data. Only highly aggregated data are required for publication, such as the data used to calculate collection and recycling rates.



**Figure 5: Overview of submitted licenses and reports in collective compliance schemes**

In detail, the following roles and responsibilities are carried out by the Authority in regards to registration and licensing (*per sub-regulation 11, 12, 25, 26, and 30*)

› **Registration of producers bearing extended producer responsibility obligations**

Producers need to submit Form A of the First Schedule of the regulation (see annex A1 – First schedule: Form A) detailing the requested information as well as an evidence of the payment of the fee set out in the Third Schedule of the regulation (see annex A7 – Third schedule: Fees). This shall occur within six months after the commencement of these Regulations (*per sub-regulation 12 and 30*).

Full details of application to be submitted by the producers for producer responsibility registration at the Authority are shown in section 2.3 and for PROs in section 3.3.1. Figure 5 illustrates this, including the foreseen reporting procedures.

› **Issuance of certificate of registration of extended producer responsibility for individual and collective schemes**

**The Authority issues the producer or PRO respectively with a Registration Certificate in Form C and E set out in the First and Second Schedule, respectively** (*per sub-regulation 11*) (see A3 – First schedule: Form C and A5 – Second schedule: Form E).

› **Renewal of registration and issuance of annual operating licenses**

**The Authority also issues initial annual operating licenses** (*per sub-regulation 11*) in Form F set out in the Second Schedule (see annex A6 – Second schedule: Form F), for which individual compliance schemes and PROs have to apply upon registration (see annex A2 – First schedule: Form B). Details on the provided information on these annual operating licenses can be found in section in 3.3.3.

The Authority shall issue an annual operating licence in Form F set out in the Second Schedule (see annex A6 – Second schedule: Form F) to individual producers' EPR compliance schemes and PROs that fulfil their performance standards as set out in the Work Plan and are assessed to be of good standing by the Authority.

- › **Determining and reviewing the terms of reference for registration and certification from time to time**

The Authority has the right to determine and review its requirements on producer responsibility registration (see section 2.3 and the registration of EPR compliance schemes (see section 3 and 4) on a regular basis, e.g. in course of the evaluation of the regulation.

- › Establish a **reporting mechanism** for all EPR schemes

As per sub-regulation 25(6), the Authority shall establish a reporting mechanism which shall be followed by individual and collective EPR compliance schemes. This includes the receipt of annual reports of all EPR compliance schemes (*as per sub-regulation 25(4)*). More information can be found in section 5.2.2.

- › Maintaining a **publicly accessible register** of all registered and licensed individual and collective extended producer responsibility schemes (*per sub-regulation 26(1b)*).

**Note:** Only highly aggregated, non-confidential data are published in this register.

- › **Updating register** of producers compliant with this regulation based on data provided by PROs

**Note:** This is an annual updating after receiving documents for renewal and annual operating licenses.

Other than the roles and tasks mentioned in section 5.2.1, the Authority is also liable for monitoring tasks as following *per sub-regulation 26*.

### 5.2.2 Monitoring

The Authority is responsible for monitoring the EPR system for all clusters subject to EPR, which requires multiple monitoring mechanisms. All EPR compliance schemes shall be monitored and audited annually by the Authority to ascertain the attainment of the scheme's objectives and to determine Kenya's position in relation to the objectives set for waste management (*per sub-regulation 26(1)*), including setting operational procedures and targets.

**Important:** 0.5 % of the total annual EPR fee paid to all PROs by the producer shall be used by the Authority for monitoring and validation purposes (A7 – Third schedule: Fees). Each PRO is assigned to pay this share to the Authority on a yearly basis. The financial amount per PRO is one result of the financial audit to be provided by the PRO.

The data gathered through the audit carried out under the sub-regulation 26(1c) shall be used to improve the performance and regulatory process of the schemes.

Other than the roles and tasks mentioned in section 5.2.1, the Authority is also liable for monitoring tasks as following *per sub-regulation 26(1a-g)*.

- › (a) Undertaking a **periodic review of extended producer responsibility targets**

The EPR targets set by the EPR schemes and by the Government through the regulation shall be reviewed and documented by the Authority on a regular basis. Each PRO shall evaluate its targets on the basis of the following:

Re-use target [%]

= Amount in re-use [tons] / Baseline for the products and packaging handled (*per 18(1a)*) [tons]

Recycling target [%]

= Amount in recycling [tons] / Baseline for the products and packaging handled (*per 18(1a)*) [tons]

(Energetic) Recovery target [%]

= Amount in energetic recovery [tons] / Baseline for the products and packaging handled (*per 18(1a)*) [tons]

When reporting to the Ministry, the Authority will aggregate all needed information on rates from all producers to report to the Ministry.

**Note:** In addition, collection targets are seen as beneficial in order to incentivize higher collected amounts via formal treatment paths. The Authority foresees this target being implemented, however, as of June 2023, it is not yet existing in the regulation.

- › (b) Maintaining a publicly accessible register of all registered and licensed individual and collective extended producer responsibility schemes

**Note:** It needs to be specified which data exactly shall be maintained and updated. Appropriate hard- and software must be in place to ensure data security.

- › (c) **Undertake control audits on** implementation of the extended producer responsibility schemes

In order to ensure the implementation of the EPR schemes, the Authority shall establish requirements of the Environmental Assessment experts for carrying out these tasks.

- › (e) Publishing **annual status reports** of extended producer responsibility compliance schemes

These status reports shall clearly state how many individual and collective EPR schemes currently operate and name all existent schemes. These shall be categorized into the product streams they cover and state in which Counties they operated in the current year.

- › (f) Determine **minimum EPR fees** in consultation with PROs

Minimum fees on product clusters and/or sub-clusters will be introduced by the Authority in order to prevent different PROs to step into a price war and prevent a downward price spiral. In this way, the Authority should provide for no objects to be taken care of free of charge.

**Note:** This fee determination will be made consulted on with existing applying PROs. It has to be guaranteed that the EPR fee setting structure is in line with the minimum fees set by the authority.

Potential criteria to use for determining the EPR fees could be:

1) global benchmarks

2) regional benchmarks

3) *in case one PRO is already operative:* Prices already established by the existing PRO

4) *In the absence of an already established PRO:* workflow to guide on how to establish a price

- › (g) Commit all finances generated from PROs to operationalize the regulation.

The Authority should evaluate that all the revenues generated from the PROs are being used in operationalising the EPR compliance schemes and monitoring. This is carried out through PROs providing financial audits and checking these.

Details on sanctioning can be found in section 5.2.4.

### 5.2.3 Further regulatory development

Based on the evaluation of the monitoring mechanisms, the Authority recommends changes and amendments to the Ministry for amending the legal framework.

**A key aspect in the legal framework are targets to measure and verify the success of the EPR system.**

The Authority needs to clearly define how the targets used by producers need to be calculated to ensure that all targets are calculated in the same manner and enable comparability between schemes. The calculation of these targets follows the method described in section 3.4.

As the EPR system in Kenya is currently built up, not all tasks can be carried out from the beginning on. Here, sequencing is crucial. Firstly, the PROs shall be formed and the first collection carried out through them before the Ministry can decide on more complex (possibly for sub-clusters) targets. These targets, nevertheless, are a very crucial part of any EPR system and should be stated within the context of the built-up in Kenya. Within this framework, the sub-regulation may also be changed.

### 5.2.4 Sanctioning

Any data gathered through the audits carried out shall be used to sanction those schemes that act in a non-compliant way. In the case of non-compliance of any involved stakeholder detected by the Authority, the regulation sets out that the respective stakeholder might face sanctions if needed, which is enacted by the Authority.

Any person aggrieved by any decision of the Authority under these Regulations may file an appeal at the Tribunal (*per sub-regulation 27(1)*).

*Per sub-regulation 27(2a-d)*, Any person who is aggrieved by

- › (a) the grant of a licence or certificate or a refusal to grant a licence or certificate under these regulations;
- › (b) the imposition of any condition, limitation or restriction on a licence or certificate issued under these regulations;
- › (c) the revocation, suspension or variation of a licence or certificate of registration issued under these regulations;
- › (d) the imposition of an environmental restoration order or environmental improvement order by the Authority under these Regulations,

may within sixty days after the decision, make an appeal to the Tribunal.

- › An individual EPR compliance scheme or a PRO commits an offence by wilfully failing to undertake any obligation under this regulation and shall be liable upon conviction (*per sub-regulation 28(1)*) to the penalty set out in Table 11 *per sub-regulation 28(2-5) and 29*.

**Table 11: Offenses as laid out in the regulation**

No.	Offense	Further clarifications
(2)	Upon conviction by a court of law for the individual and collective extended producer responsibility compliance schemes, the court shall order the offender to bear the cost of management of the said obligation;	In principle, this sanction is adequate, however, can lead to the penalised individual EPR compliance scheme being unable to pay it. This should also apply to collective EPR compliance schemes/PROs.
(3)	Anybody who places in the market a product on behalf of a producer who is not listed in the register published by the Authority commits an offence and shall be liable upon conviction to a fine not exceeding Kshs 500,000 per product or to one-year imprisonment or to both	This sanction is aimed at retailers who are otherwise mostly not addressed by the regulation. Enforcement can take place on-site through test purchases, but requires a legally sound interpretation of the scope (product clusters). <b>Note:</b> Especially in the early stages of EPR implementation, retailers may be unaware of the arising regulations scheme. Therefore, enforcement will be prioritised (large retailers rather sought before small).
(4)	A producer or producer responsibility organization commits an offence when the producer or producer responsibility organization gives misleading or false information on quantities held or managed under the extended producer responsibility scheme	This sanction is aimed at producers and PRO providing false information. <b>Note:</b> This sanction should be accompanied by a distribution ban for the producer and a withdrawal of the licenses of the PRO. Appropriate replacements (guarantees, insurances) should be provided for.
(5)	A producer who is not a member of a related producer responsibility organization, a free rider and does not fulfil their individual obligations commits an offence	This sanction is aimed at producers non-participating in the EPR system in Kenya although they are obliged to partake.
(29)	A person who contravenes a provision of these Regulations for which a penalty has not been provided shall, on conviction, be liable to the penalty provided under section 32 of the Act (General Penalty)	This is an open clause to include anyone not covered by the previous sub-regulations and found liable for committing any kind of fraud under the Kenyan EPR regulation

### 5.2.5 Other tasks

This could be achieved through various means, including multi-stakeholder dialogue platforms at national level to ensure dialogue between stakeholders, involving representatives of PROs, producers, public authorities, waste management industries, NGOs and others, in order to improve the transparency of the system and the precise allocation of responsibilities.

## Bibliography

National Council for Law Reporting Library. Kenya Gazette Supplement No. 121 (Acts No. 31). Sustainable Waste Management Act 2022, 12 July 2022.

The Sustainable Waste Management Act (No. 31 of 2022). The Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2022 (draft regulation)

## Annex

### A1 – First schedule: Form A

**FIRST-SCHEDULE: FORMS**

**FORM A**      *(r. 10(2), 11(1))*

**APPLICATION FOR PRODUCER RESPONSIBILITY REGISTRATION**

**PART A: DETAILS OF APPLICANT**

A1: Name of applicant (Individual or Firm).....

A2: Nationality.....

A3: PIN No.....

A4: Business Registration No. *(where applicable)* ..... Date .....

A5: Postal Address.....

A6: Telephone No.....

A7: Physical Location.....

A8: Email: .....

A9: Contact Person.....

Designation.....

Email..... Mobile No.....

A10: Indicate the category(s) of producer you belong (tick appropriately)

i. Manufacturer,	<input type="checkbox"/>
ii. Importer,	<input type="checkbox"/>
iii. Refiller,	<input type="checkbox"/>
iv. Repackager,	<input type="checkbox"/>
v. Rebrander,	<input type="checkbox"/>
vi. Brand owner,	<input type="checkbox"/>
vii. Converter,	<input type="checkbox"/>
viii. Others...	<input type="checkbox"/>

(please specify)

A11: List of Products and packaging (attach another page if necessary)

.....

**PART B: DECLARATION BY APPLICANT**

I hereby certify that the particulars given above are correct and true to the best of my knowledge and belief .....

Signature of applicant                      Full name in block letters                      Position

On behalf of..... Date.....

*Firm Name and seal*

**PART C: REQUIREMENTS**

Please submit the following attachments:

(a) Application Form;

(b) Certificate of Registration for the Company.

(c) Documents indicating the type of products and packaging introduced to the Kenyan Market

(b) The prescribed fee: Payable to:

Account Name: NEMA Revenue Account

Account No. 1102298158

Bank: KCB, KICC Branch

**Director-General,**

**The National Environment Management Authority (NEMA),**

**Popo Road, South C,**

P.O. Box 67839 – 00200,

NAIROBI, KENYA.

Tel. 254 020-2101370 / 0202183718

E-mail: [dgnema@nema.go.ke](mailto:dgnema@nema.go.ke)

## A2 – First schedule: Form B

<b>FIRST SCHEDULE</b>	
<b>FORM B</b>	<i>(r.13(1))</i>
<b>APPLICATION FOR LICENCE TO OPERATE INDIVIDUAL /COLLECTIVE EXTENDED PRODUCER RESPONSIBILITY SCHEME</b>	
1.Applicant's details	
Full Name of Applicant or contact person.....	
Name of company on behalf of which the application is being made (if applicable) .....	
Producer responsibility registration number/Producer Responsibility Organization registration number (in case of renewal).....	
Registered address of Applicant/Company .....	
<i>(Address and postcode)</i>	
<i>Physical Locality : (location, building)</i> .....	
<i>County</i> .....	
<i>Phone/Mobile number</i> .....	
<i>E-mail Address</i> .....	
<i>PIN Number</i> .....	
Company Registration Number .....	
<i>(If applicable)</i>	
List of products (you can include an attachment): ..... .....	
2.What is the estimated annual volume/quantity of product(s) introduced into the market? .....	
3.State the estimated annual amount of your product/product components at post- consumer stage. .....	
4. State mechanisms put in place for identification and tracking (in case of renewal) of your product(s)? ..... .....	

**A3 – First schedule: Form C**

**Form C**



Sustainable Waste Management (Extended Producer Responsibility) Regulations 2023

**Producer Extended Responsibility**  
No.....

**EXTENDED PRODUCER RESPONSIBILITY**  
**CERTIFICATE OF REGISTRATION AS A PRODUCER**

This is to certify that ..... (Name of company/producer) of Postal address..... has been registered as a producer in accordance with the Sustainable Waste Management (Extended Producer Responsibility) Regulations 2023.

The products covered are ..... (list of products as per the first schedule of the Regulations.

Date of issue: .....

Signature .....

**Director General**  
**National Environment Management Authority**

**A4 – First schedule: Form D****FORM D** (r.11(1))

Sustainable Waste Management (Extended Producer Responsibility) Regulations 2023

**INTERIM PERMIT FOR PRODUCER RESPONSIBILITY ORGANIZATION**

Permit Number: .....

This is to authorize : ..... (Name of Producer Responsibility Organization)

to undertake extended producer responsibility obligations for name of product(s).

This permit is valid for a period of three (3) months from .....(Date of issue) to ..... (Date of expiry).

**NOTE:** This permit is not a guarantee for registration certificate.

Signature.....

**DIRECTOR GENERAL  
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY**

**A5 – Second schedule: Form E****SECOND SCHEDULE****FORM E***(r. 10(4), 10(5))*

Sustainable Waste Management (Extended Producer Responsibility) Regulations 2023

**EXTENDED PRODUCER RESPONSIBILITY SCHEME****CERTIFICATE OF REGISTRATION****Certificate No.....**

This certificate has been issued to .....  
(Extended Producer Responsibility Scheme's name) in fulfilment of the extended producer  
responsibility registration requirements in compliance with these Regulations.

Date of issue: .....

Expiry Date: .....

Signature .....

**Director General****National Environment Management Authority**

**A6 – Second schedule: Form F****SECOND SCHEDULE  
FORM F (r.13(3))**

Sustainable Waste Management (Extended Producer Responsibility) Regulations 2023

**ANNUAL LICENCE TO OPERATE AN EXTENDED PRODUCER  
RESPONSIBILITY SCHEME**

License number: .....

Application Reference: .....

Name.....

Postal Address: .....

You are hereby licensed to undertake Extended Producer Responsibility Obligations for  
..... (Products)

This License is valid from..... (date of issue) to..... (date of expiry)

This license is subject to the following conditions (see over leaf).

Date issued: .....

Signature .....

Director General

National Environment Management Authority

**A7 – Third schedule: Fees****THIRD SCHEDULE: FEES** (r.10(2), 11(1), 13(1))**Director General****National Environment Management Authority****Application fees****Registration**

1. Collective Extended Producer Responsibility Schemes – Ksh. 10,000
2. Individual Extended Producer Responsibility Schemes - Ksh. 5,000

**Renewal of Registration**

1. Collective Extended Producer Responsibility Schemes – Ksh. 10,000
2. Individual Extended Producer Responsibility Schemes - Ksh. 10,000

**Annual License**

1. Collective Extended Producer Responsibility Scheme – Ksh. 10,000
2. Individual Extended Producer Responsibility Scheme – Ksh. 10,000

**Individual producer registration (one off) – Ksh. 5000**

Monitoring, inspection and Control Audit

0.5 % of the total annual extended producer responsibility fee that producer responsibility organisation is managing as provided in regulation 19 (3)

Made on the..... 2023.

## A8 – Outline of an EPR Plan

### Extended Producer Responsibility Plan

#### For extended producer responsibility compliance scheme registration

[Submission date for this document]

PRO Details:

1. Name of the PRO: .....
2. Address: .....
3. Contact person: .....
4. Contact number: .....
5. Email address: .....
6. Cluster and product description: .....

#### EPR Plan Details

Provide a comprehensive four-year EPR plan addressing the following points (for more guidance see section 3.4 of the EPR Guideline):

**(a) Baseline for the products and packaging handled:**

[Insert detailed description of the baseline for the products and packaging the PRO handles.]

**(b) Plan for safe handling, processing, and disposal of 100% equivalent volume of products declared by the producer:**

[Outline the PRO's plan for ensuring safe handling, processing, and disposal of the declared volume of products.]

**(c) Plan to meet national targets for reuse, recycling, or recovery operations and end-of-life management:**

[Describe the PRO's plan to meet the national targets for reuse, recycling, or recovery operations, as well as end-of-life management.]

**(d) Plan for continuous additionality in material recovery and recycling, including circularity:**

[Explain the PRO's plan for achieving continuous additionality in material recovery and recycling, emphasizing circularity.]

**(e) Collection, logistics, recycling, and composting system, and end-of-life disposal mechanism:**

[Provide details about the PRO's collection, logistics, recycling, composting system, and end-of-life disposal mechanism.]

**(f) Modulation of extended producer responsibility membership fees and parameters based on environmental sustainability criteria:**

[Describe how the PRO plans to modulate membership fees and parameters based on environmental sustainability criteria.]

**(g) Program on public awareness and consumer education:**

[Outline the PRO's program for public awareness, consumer education, and information on waste segregation and proper handling of post-consumer products.]

**(h) Verifiable paid-up membership list:**

[Provide a verifiable list of paid-up members associated with the PRO (provide as additional attachment).]

**(i) List of waste service providers and actors in the scheme:**

[List the waste service providers and actors involved in the PRO's scheme (provide as additional attachment).]

**(j) Eco-design standard operating procedure for the products handled by the scheme:**

[Describe the eco-design standard operating procedure the PRO follows for the products it handles.]

**(k) Mechanism for controlling banned or dangerous substances in products handled by the scheme:**

[Explain the mechanism the PRO has in place to control banned or dangerous substances in the products it handles.]

**(l) Annual reporting mechanism:**

[Detail the annual reporting mechanism the PRO employs.]

**(m) Plan or projection on training and capacity building of members and actors in the scheme:**

[Provide a plan or projection regarding the training and capacity building of members and actors associated with the PRO's scheme.]

**(n) Schedule for monitoring of members, product traceability system, inspections, and compliance with regulations:**

[Describe the schedule for monitoring members, product traceability system, inspections, and compliance with the regulations including audit frequency.]

**(o) Model of financing the scheme integrating financial flows to the entire value chain actors:**

[Explain the model the PRO uses for financing the scheme and integrating financial flows to all actors in the value chain.]

**(p) Other actions necessary for the execution of responsibility as requested by the Authority:**

[Include any additional actions necessary for fulfilling the PRO's responsibility as requested by the Authority.]

By signing below, I confirm that the information provided in this plan and the attached additional documents are accurate and complete to the best of my knowledge.

Signature, stamp: \_\_\_\_\_

Date: \_\_\_\_\_

**List of additional attachments to be provided along with this EPR Plan:**

- Membership List [Name, contact, product cluster and/or sub-category]
- List of WSPs and other actors [Name, contact, service]

## A9 – Outline of a Work Plan

### Work Plan

**(Coordination plan between County Government and Collective EPR Compliance Scheme)**

County and Department Details:

1. County Name: .....
2. Department responsible for waste management in the county: .....
3. Address: .....
4. Contact Person: .....
5. Contact Number: .....
6. Email Address: .....

PRO Details:

1. Name of the PRO: .....
2. Address: .....
3. Contact person: .....
4. Contact number: .....
5. Email address: .....
6. Cluster and product description: .....

Additional Information:

1. Region or area for the cooperation between a PRO and the county government:  
.....
2. Time frame/ period: .....

## Work Plan Details

Provide a comprehensive Work plan (including a timeframe) addressing the following points (for more guidance see section 3.5 of the EPR Guideline):

- **Agreement on Collection and Takeover of Material:**

[Please provide details of the agreement between the County Government and the PRO regarding the collection and takeover of material in the scope of EPR. Include information on access to waste fractions, coordination of collection from households and central collection points, and cooperation with PROs.]

- **Agreement on Flow/Steering of Collected Waste:**

[Outline the agreement on the flow/steering of collected waste from the responsibility of the County Government to the PROs. Describe the transfer locations, the role of MRFs, and the requirements for licensed MRFs. Specify the responsibilities of PROs in the treatment and disposal of non-recyclable waste. Include agreements on the quality of waste fractions and the handling of residues.]

- **Agreement on MRF Implementation and Processing:**

[Provide details on the implementation and processing of MRFs as per the Act. Describe the responsibility of the County Government in setting up MRFs and the coordination with the EPR compliance scheme. Specify the ownership, responsibility, and funding arrangements for MRFs. Address the possibility of multiple MRFs in a county and clustering MRFs to multiple Counties if applicable.]

- **Agreement on Communications and Awareness Campaigns:**

[Explain the coordination required between the County Government and the PRO for communications and awareness campaigns. Describe the information sharing between PROs and County Governments, data provision obligations, and consumer education efforts. Address the coordination of collection modes and disposal methods specific to each county.]

- **Agreement on Further Services:**

[Specify the additional services to be provided by the County Government or relating municipalities, if applicable. Describe the tasks and responsibilities that exceed the original responsibilities according to the Act. Include details on reimbursement and contractual agreements for these services.]

- **Contractual Agreements between County Governments and PROs:**

[Outline the contractual agreements between County Governments and the PRO. Include details on co-financing, setup and operation of waste management facilities, and usage of County facilities. Address licensing fees, contractual terms, and operational cooperation.]

- **Agreement on County Regulations:**

[Explain how County Governments will develop and execute County-specific waste management policies in accordance with national and county-specific EPR regulations. Describe the coordination between County Governments and PRO. Address the alignment of County waste management legislation with the EPR regulation.]

- **Aligned Reporting:**

[Describe the reporting requirements of the PRO to the County Governments. Specify the parameters to be reported, such as the number of served households, amount of collected waste, disposal information, and cross-County transport of waste fractions. Address the reporting to the Authority and the achievement of set targets]

[Additionally, provide information on waste picker integration in the waste management system and informal waste treatment]

By signing below, I confirm that the information provided in this coordination form accurately represents the agreements and understanding between the County Government and the PRO.

County Government Representative (signature, stamp): \_\_\_\_\_

Date: \_\_\_\_\_

Producer Responsibility Organization (signature, stamp): \_\_\_\_\_

Date: \_\_\_\_\_