

ANNEX 1 - TERMS OF REFERENCE FOR CONSULTANCY ON DEVELOPMENT OF EXTENDED PRODUCER RESPONSIBILITY IMPLEMENTATION GUIDELINES.

1. Background

Extended Producer Responsibility (EPR) is an environmental approach in which producers' responsibility of the products they supply throughout a product life cycle, including products management at post-consumer, is regulated. EPR is anchored on the principles of the Polluter Pays Principle.

This approach brings on board all parties who introduce products, both goods and packaging, to the Kenyan market through importation, manufacture, and distribution (as a whole called "Producers"), and obligates them with the management cost of the post-consumer phase of their products. This approach has been implemented in the Country through a voluntary scheme for management of PET bottles and for plastic primary packaging used for bakery products.

The implementation of this approach has numerous benefits, as it enhances waste collection rates and, as such, ensures reductions of volumes of waste being dumped in landfills, reduces environmental pollution and enhances resource recovery and creates employment opportunities. To obtain the numerous benefits, there is a need for the approach to be implemented on a wider range of product categories and in mandatory schemes, hence the rationale for a legal framework.

The need for a legal framework to guide on the subject resulted into a rigorous process, which involved the Ministry of Environment and Forestry, National Environment Management Authority, the private sector alliance and the association of manufacturers who spearheaded the formation of a set of draft Environmental Management and Coordination EPR Regulations, 2021. See annex 1 for the text of the EPR regulations.

The EPR-regulations aim at regulating entities that manufacture, import or sell specified products to the Kenyan market, by implementing "a mechanism of controlling the specified products from polluting the environment even post consumption of the product." The regulations require companies to either independently or jointly create an EPR compliance scheme that also covers minimum targets for reuse, recycling or recovery, as well as logistics for collection and product design guidelines. Companies would need to register their EPR scheme with the National Environmental Management Authority of Kenya (NEMA).

It is expected that the draft EPR-regulation will be gazetted in Q3 of 2022 after the Kenyan elections. After official gazetting, the regulations will enter into force after 6 months, where after it will be obligatory for private enterprises to be in compliance with the requirements of the regulation.

As EPR is a complex issue in terms of compliance and implementation of the regulations, there is a need to develop guidelines on the EPR-regulations and the inherent new legal requirements.

The Kenyan Ministry of Environment and Forestry and the Danish Ministry of Environment has agreed on a Strategic Sector Cooperation on Environment (SSC ENV). The second phase of this cooperation runs from 2021 to 2024 and includes a task to develop a draft guideline document on the implementation of and compliance with the EPR regulations requirements.

To implement the EPR task in the SSC ENV work programme, an SSC EPR working group has been set up.

The working group is chaired by the Kenyan Ministry of Environment and Forestry and consist of the relevant stakeholders and authorities, including the National Environmental Management Authority of Kenya, the Danish Environmental Protection Agency and various other official authorities and private sector organisations. For a full list of participants, see annex 2.

The working group is assisted by a Project Committee, which will be responsible for the day-to-day contact with the consultant and will consist of the National Environmental Management Authority of Kenya

(NEMA), the Kenyan Ministry of Environment and Forestry (MoEF), the Danish Environmental Protection Agency (DEPA) and the Royal Danish Embassy to Kenya (RDE).

The legal project owner is DEPA, as the task is formally financed by the Danish State through DEPA.

The working group will set up a wider Stakeholder Consultation Group, which the consultant will practically involve in the drafting of the SSC EPR Guideline Document.

After the final draft SSC EPR Guideline Document has been delivered by the consultant to the project owner and Project Committee, it will be handed over by the SSC EPR Working Group to NEMA for further consideration. Eventually NEMA may adopt and publish an official NEMA EPR guideline..

2. Objectives

The Objective of this assignment is to support the development of Extended Producer Responsibility guidelines to facilitate the operationalization of the Environmental Management and Coordination (Extended Producer Responsibility) Regulations, 2021.

3. Scope

The guidelines shall serve as an overall guidance document for all products covered by the EPR-regulations. The guidelines shall serve as the manual for the transition from the present approach of terminating the producers' responsibility at introduction of products to the market to including the responsibility of managing products at the end-of-life phase. If an EPR-scheme related to a specific product category is so unique, that it cannot be encompassed in the general guidelines, the specific issues related to this product category must be described in an annex to the general guidelines.

4. Task description

Work Package 1 - Supporting document for the drafting of the SSC EPR Guideline document

In this work package the consultant must deliver the following **supporting documents** for the drafting of the SSC EPR Guideline document:

- a. Project management documents including timeline, activity plan with assigned consultants, quality assurance procedure, budget and an outline for the SSC EPR Guideline.
- b. Roster of stakeholders to be invited for workshops or interviewed as part of the making of the 0- draft SSC EPR Guideline Document.
- c. Collection and analysis of lessons learned from the implementation of EPR schemes in between 3 and 5 countries with a functioning EPR-scheme and description of a work breakdown structure for the Producer Responsibility Organisation (PRO) with emphasis on formation process and operationalization. This document will also describe the PRO working modality in terms of responsibilities (financial or organisational), modulation of fees, external coordination with relevant stakeholders and authorities, dispute resolution mechanisms, PRO administration and communication, data collection and management (digital and non-digital) and other relevant issues that will appear in the dialogue with the stakeholders. Furthermore, the document shall also deliver clear references to-, and justification for, the recommendations in the abovementioned outline for what to include in the SSC EPR Guideline Document.

Work Package 2 – Development of draft SSC EPR Guideline Document

The consultant must, on the basis of work package 1, develop a SSC EPR Guideline Document through a consultative process that must involve a wide range of Kenyan stakeholders.

The minimum requirements for the SSC EPR Guideline Document are:

- a. Specification of producers' roles, as well as new obligations for enterprises in Kenya, as stipulated in the draft EPR regulation and explanation of the aims of the EPR regulation.

- b. A description of Life Cycle Assessment as an instrument for EPR implementation to showcase enhancement of sustainability throughout a product's life and guide manufacturers to redesign their products. The description must include examples of Life Cycle Assessment on specific products as well as a description of the methodological limitations of the Life Cycle Assessment approach.
- c. Examination of the different EPR instruments and the applicability for management of the different product categories.
- d. A template of the EPR plan cf. the requirements in the draft regulation in Annex 1, to use by the PRO and the minimum requirements to a reporting system that the PRO will be assessed and audited against by the Authority, including the reporting modalities, data collection, calculation and validation (Annex to the guideline document).

5. Expected deliverables/Outputs

The consultant is to deliver:

- I. Nine preparatory meetings (online or physical) with the Project Committee during the implementation of the contract. Preparation, facilitation, minutes and follow-up.
- II. Participation in two SSC Working Group meetings (physical or online).
- III. Ad Hoc contacts with the Project Committee during the project period to advance the work
- IV. Project management documents including timeline, activity plan with assigned consultants, quality assurance procedure, budget and an outline for the SSC EPR Guideline Document.
- V. A roster of key stakeholders to be involved in the development of the SSC EPR Guideline Document based on inputs from the Working Group. The roster will include:
 - a. Section A with names and contact details of organisations to be interviewed by the consultant as a preparation for a 0-draft SSC EPR Guideline Document to the Project Committee for commenting.
 - b. Section B with names and contact details of stakeholder organisations to be consulted during the development of the SSC EPR Guideline Document.
- VI. Supporting document with analysis of lessons learned on EPR implementation in 3-5 countries.
- VII. Interviews with relevant stakeholders to prepare the 0-draft SSC EPR Guideline Document to the project Committee for commenting.
- VIII. Two facilitated workshops in Kenya (Nairobi or place outside the city) with stakeholders. Preparation, facilitation and follow-up, including incorporation of comments from stakeholders and project committee.
- IX. 0-draft SSC EPR Guideline Document (to the project Committee for commenting)
- X. First draft SSC EPR Guideline Document (after commenting by the Project Committee and for stakeholders before the first workshop).
- XI. Second draft SSC EPR Guideline Document (after the first workshop and after incorporation of comments by stakeholders).
- XII. Third draft SSC EPR Guideline Document (after second workshop and after incorporation of comments by stakeholders)
- XIII. Final SSC EPR Guideline Document (after final comments by the Project Committee. NEMA DG will be consulted by the Project Committee as part of the project Committee commenting).

6. Requirements for quality assurance

Material delivered to the Project Committee must be quality assured by the consultant before delivery.

It is a requirement that all deliveries in connection with this project go through qualified internal quality assurance by the consultant.

7. Duration and timeframe

The third draft SSC EPR Guideline Document is to be completed by 7 June 2023, after which a month for commenting by the Project Committee and finalisation is expected. The incorporation of the comments of the Project Committee to the third draft will produce the Final SSC EPR Guideline Document.

The contract will expire, when this Final SSC EPR Guideline Document has been delivered and approved by the contractor.

8. Involvement of stakeholders

The assignment must be carried out in close collaboration with relevant stakeholders. Minimum requirements for involvement of stakeholders in the process of developing the SSC EPR Guideline Document are:

- Facilitation of 2 physical and/or online workshops to seek input from the stakeholders as well as to create awareness on the guidelines among enterprises in Kenya.
- Facilitation of a series of physical and/or online meetings with both the project committee and the working group during the project as part of the project management.

9. Organisational framework

The Danish Environmental Protection Agency is the legal project owner and thus makes the formal decisions on prioritization regarding quality, resources, time and any changes in the content of the task. However, the formal decisions by the Danish Environmental Protection Agency will be based on a consensus in the Project Committee. This committee consists of the National Environmental Management Authority of Kenya (NEMA), the Kenyan Ministry of Environment and Forestry (MoEF), the Danish Environmental Protection Agency (DEPA) and the Royal Danish Embassy to Kenya (RDE).

As the Kenyan regulation on extended producer responsibility is formally managed by NEMA, it is necessary that the Final SSC EPR Guideline Document is satisfactory to the NEMA Director General.

The consultant is the project manager and shows ownership and commitment. The project can be carried out using subcontractors. All decisions in connection with the project's set-up must be approved by the Danish Environmental Protection Agency. The Danish Environmental Protection Agency has the direct dialogue with the consultant and the Project Committee, while the consultant has the direct contact with any sub-suppliers, stakeholders and others relevant to the project.

As the assignment requires both in-depth knowledge of Kenyan legislation, stakeholders and authorities as well as knowledge of EPR implementation in other countries and knowledge of Danish project management requirements, it is believed that the assignment would be best solved by including a wide range of expertise from both Kenyan, Danish and/or international consultants.

10. Reporting and communication

9 status meetings are held between the consultant and the Project Committee and the consultant will participate in 2 working Group meetings and run 2 workshops.

Besides the status meetings with the project Committee, a series of ad hoc contacts with the Project Committee is to be expected. The dates of the status meetings are agreed between the parties at the start of the contract period but can be changed if needed. The consultant takes minutes at the status meetings.

In Addition, it is expected that the expert will engage at frequent intervals and collaborate with all relevant key stakeholders including Project Committee members, other private and civil society organisation in Kenya and Kenyan County governments to ensure the ownership and success of the stipulated objectives.

11. Economy and payment plan

A budget of a maximum DKK 600.000 excl. VAT has been set aside for the task in total. The remuneration covers all costs regarding the execution of the project. This also includes transport costs, hotel accommodation, office staff and all other costs associated with the project solution.

In case the consultant is not based in Kenya it is expected that the consultant will participate physically in at least the two physical workshop meetings in Kenya.

The supplier is payed when the delivery has been approved by the Danish Environmental Protection Agency.

Annex A - Environmental Management and Coordination (Extended Producer Responsibility) Regulations, Draft November 2021

Annex B – List of participants in the Project Committee as well as the SSC Working Group A1 on development of an SSC EPR guideline document.