Verżjoni Elettronika



**L.N. 151 of 2021**

**ENVIRONMENT PROTECTION ACT**
**(CAP. 549)**

**LOCAL GOVERNMENT ACT**
**(CAP. 363)**

**Extended Producer Responsibility Framework Regulations, 2021**

IN EXERCISE of the powers conferred by articles 54 and 55 of the Environment Protection Act and article 72 of the Local Government Act, the Minister for the Environment, Climate Change and Planning, after consultation with the Environment and Resources Authority and the Minister for the National Heritage, the Arts and Local Government, have made the following regulations:-

**1.** The title of these regulations is Extended Producer Responsibility Framework Regulations, 2021. Citation.

**2.** (1) These regulations bring into effect Articles 8 and 8a of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste. Scope.

(2) These regulations provide a framework for extended producer responsibility schemes and shall also apply to extended producer responsibility schemes established pursuant to other subsidiary legislation under the Environment Protection Act, in particular the Waste Management (End of Life Vehicles) Regulations, the Waste Management (Packaging and Packaging Waste) Regulations, the Waste Management (Waste Batteries and Accumulators) Regulations and the Waste Management (Electrical and Electronic Equipment) Regulations. Cap. 549. S.L. 549.36. S.L. 549.43. S.L. 549.54. S.L. 549.89.

(3) The Environment and Resources Authority shall work in cooperation with the Resource, Recovery and Recycling Agency and the Department for Local Government, and may request advice from the Office for Competition in accordance with the Malta Competition and Consumer Affairs Authority Act, in carrying out its designated responsibilities under these regulations to ensure that the objectives of these regulations are achieved. Cap. 510.

**3.** (1) In these regulations, unless the context otherwise Interpretation.

requires:

Cap. 549.

"the Act" means the Environment Protection Act;

S.L. 595.28

"the Agency" means the Resource, Recovery and Recycling Agency established by the Resource, Recovery and Recycling Agency (Establishment) Order;

"Authority" or "competent authority" means the Authority established in article 6 of the Act;

"extended producer responsibility scheme" means a set of measures, including legislative measures promulgated under the Act, national or European Union legislation, to ensure that producers of products bear financial responsibility or financial and organisational responsibility for the management of the waste stage of a product's life cycle;

"Extended Producer Responsibility Consultative Committee" or "EPR Consultative Committee" means the committee established under regulation 5;

"the Minister" means the Minister as defined in article 2 of the Act;

"producer of a product" or "producers of products" means any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports specific products;

"producer responsibility organisation" or "PRO" means an organisation implementing extended producer responsibility obligations on behalf of the producers who are members of that organisation.

S.L. 549.63

(2) All other terms shall have the same meaning as is assigned to them in the Waste Regulations.

Extended producer responsibility.

**4.** (1) In order to strengthen the re-use and the prevention, recycling and other recovery of waste, the Minister may take either legislative or non-legislative measures to ensure that any producer of a product has extended producer responsibility:

Provided that, when applying extended producer responsibility, the Minister shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market.

(2) The extended producer responsibility shall be applied without prejudice to the responsibility for waste management as provided for in regulation 12(1) of the Waste Regulations and without prejudice to existing waste stream specific and product specific Union or national legislation. S.L. 549.63

(3) In the case of the introduction of the measures referred to in sub-regulation (1), the costs of waste management are to be borne wholly by the producer of the product from which the waste came:

Provided that the distributors of such product may share these costs.

(4) Where the measures referred to in sub-regulation (1) include the establishment of extended producer responsibility schemes, including those established pursuant to other Union or national legislation, the Minister, in consultation with the Authority and the Agency, shall:

(a) define in a clear way the roles and responsibilities of all relevant actors involved, including producers of products placing products on the national market, producer responsibility organisations, private or public waste operators, local authorities and, where appropriate, re-use and preparing for re-use operators and social economy enterprises;

(b) in line with the waste hierarchy, set waste management targets, aiming to attain at least the quantitative targets relevant for the extended producer responsibility scheme as laid down in the Waste Regulations, the Waste Management (End of Life Vehicles) Regulations, the Waste Management (Packaging and Packaging Waste) Regulations, the Waste Management (Waste Batteries and Accumulators) Regulations and the Waste Management (Electrical and Electronic Equipment) Regulations, and set other quantitative targets and, or qualitative objectives that are considered relevant for the extended producer responsibility scheme; S.L. 549.63 S.L. 549.36 S.L. 549.43 S.L. 549.54 S.L. 549.89

(c) ensure that a reporting system is in place to gather data on the products placed on the national market by the producers of products subject to extended producer responsibility and data on the collection and treatment of waste resulting from those products specifying, where appropriate, the waste material flows, as well as other data relevant for the purposes of monitoring the targets referred to in paragraph (b);

(d) ensure equal treatment of producers of products regardless of their origin or size, without placing a

disproportionate regulatory burden on producers, including small and medium-sized enterprises, of small quantities of products:

Provided that the Authority shall ensure that extended producer responsibility schemes that have been established before 4 July 2018, comply with the requirements laid down in these regulations by 5 January 2023.

(5) Producers of products established in another Member State of the European Union and placing products on the national market may appoint a legal or natural person established in Malta as an authorised representative for the purposes of fulfilling their obligations related to any extended producer responsibility schemes established in Malta:

Provided that the authorised representative shall adhere to the Authority's requirements, such as registration, information and reporting requirements.

(6) The Minister may, in consultation with the Authority and the Agency, through publication in the Gazette, require that producers of products that undertake financial or financial and organisational responsibilities for the management of the waste stage of a product's life cycle of their own accord shall apply some or all of the requirements referred to in these regulations.

(7) The Authority shall take the necessary measures to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with sub-regulation (1), are informed about waste prevention measures, centres for re-use and preparing for re-use, take-back and collection systems, and the prevention of littering:

Provided that the Minister shall take measures to create incentives for the waste holders to assume their responsibility to deliver their waste into the separate collection systems in place, notably, where appropriate, through economic incentives or regulations.

(8) The Minister, in consultation with the Authority and the Agency, may take appropriate measures to encourage the design of products and components of products in order to reduce their environmental impact and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with regulations 4A and 4B of the Waste

S.L. 549.63

Regulations.

Such measures may encourage, *inter alia*, the development, production and marketing of products and components of products that are suitable for multiple use, that contain recycled materials, that are technically durable and easily repairable and that are, after having become waste, suitable for preparing for re-use and recycling in order to facilitate proper implementation of the waste hierarchy. The measures shall take into account the impact of products throughout their life cycle, the waste hierarchy and, where appropriate, the potential for multiple recycling.

The Extended Producer Responsibility Consultative Committee.

**5.** (1) The Minister shall set up an Extended Producer Responsibility Consultative Committee to act as an advisor to the Authority.

(2) It shall be the function of the EPR Consultative Committee, *inter alia*, to:

(a) assist the Authority in ensuring a regular dialogue between relevant stakeholders involved in the implementation of extended producer responsibility schemes, including producers and distributors, producer responsibility organisations, private or public waste operators, local authorities, civil society organizations and, where applicable, social economy actors, re-use and repair networks and preparing for re-use operators;

(b) assist the Authority in matters relating to compliance of producers of products and PROs with these regulations, as well as compliance with extended producer responsibility schemes established nationally or at European Union level;

(c) assist the Authority in ensuring that producers of products and PROs fully comply with the general minimum requirements for extended producer responsibility schemes referred to in regulation 6;

(d) aid in investigations led by the Authority in line with regulation 7;

(e) advise the Authority on the distribution or allocation of Local Councils among producers, or, where the obligations of individual producers are to be achieved collectively, between producer responsibility organisations, where extended producer responsibility schemes require that producers or PROs are to make the necessary arrangements with Local Councils for the

collection and management of waste; and

(f) perform any additional functions as may from time to time be assigned to it by the Minister in consultation with the Authority.

(3) The Minister shall appoint representatives to serve as members of the EPR Consultative Committee. The EPR Consultative Committee shall be composed as follows:

(a) two members representing the Environment and Resources Authority;

(b) one member representing the Resource, Recovery and Recycling Agency;

(c) one member representing the Department for Local Government; and

(d) any other member as the Minister may deem fit.

(4) The Minister shall appoint a Chairperson and a Deputy Chairperson from amongst the members of the EPR Consultative Committee provided that the Chairperson shall be one of the members listed in sub-regulation (3)(a).

(5) The Minister shall appoint a Secretary to the EPR Consultative Committee.

(6) The members of the EPR Consultative Committee shall hold office for such period, being not more than three years, as may be specified in the letter appointing them and if no such period is specified, shall remain in office for three years. The members so appointed may be re-appointed for other terms by the Minister on the expiry of their term.

(7) The EPR Consultative Committee shall meet at least ten (10) times every year, either at the request of the Chairperson of the EPR Consultative Committee or at the request of any other two members of the EPR Consultative Committee representing different competent authorities.

(8) At any meeting referred to in sub-regulation (7), the EPR Consultative Committee may act notwithstanding any absence or vacancy amongst its members provided there is a quorum consisting of the Chairperson or the Deputy Chairperson, and at least three other members.

(9) The meetings of the EPR Consultative Committee shall be chaired by the Chairperson or in his absence by the Deputy Chairperson.

(10) It shall be the joint duty of the members constituting the EPR Consultative Committee to ensure that the overall functions of the Consultative Committee are carried out in close collaboration and as efficiently as possible in accordance to their designated responsibilities.

(11) The EPR Consultative Committee shall regulate its own procedures and the Authority shall lead in coordinating the administrative procedures of the EPR Consultative Committee.

General minimum requirements for extended producer responsibility schemes.

**6.** (1) Any producer of a product or producer responsibility organisation shall:

(a) have a clearly defined geographical, product and material coverage without limiting those areas to those where the collection and management of waste are the most profitable;

(b) provide an appropriate availability of waste collection systems within the areas referred to in paragraph (a);

(c) have the necessary financial means or financial and organisational means to meet its extended producer responsibility obligations;

(d) put in place an adequate self-control mechanism, supported, where relevant, by regular independent audits, to appraise:

(i) its financial management, including compliance with the requirements laid down in sub-regulation (3)(a) and (b); and

(ii) the quality of data collected and reported in accordance with regulation 4(4)(c) and with the requirements of Regulation (EC) No 1013/2006;

(e) make publicly available information about the attainment of the waste management targets referred to in regulation 4(4)(b); and

(f) in the case of a producer responsibility organisation, make also publicly available information about:

(i) its ownership and membership;

(ii) the financial contributions paid by producers of products, members of the producer responsibility organisation, per unit sold or per tonne of product placed on the market; and

(iii) the selection procedure for waste management operators.

(2) The provision of information to the public referred to in sub-regulation (1) shall be without prejudice to preserving the confidentiality of commercially sensitive information in conformity with the relevant European Union and national legislation.

(3) The financial contributions paid by the producer of a product to comply with its extended producer responsibility obligations shall:

(a) cover the following costs for the products that the producer puts on the national market:

(i) costs of separate collection of waste and its subsequent transport and treatment, including treatment necessary to meet the waste management targets, and costs necessary to meet other targets and objectives as referred to in regulation 4(4)(b), taking into account the revenues from re-use, from sales of secondary raw material from its products and from unclaimed deposit fees;

(ii) costs of providing adequate information to waste holders in accordance with regulation 4(7);

(iii) costs of data gathering and reporting in accordance with regulation 4(4)(c).

(b) in the case of a producer responsibility organisation, be modulated, where possible, for individual products or groups of similar products, notably by taking into account their durability, repairability, re-usability and recyclability and the presence of hazardous substances, thereby taking a life-cycle approach and aligned with the requirements set by relevant European Union legislation, and where available, based on harmonised criteria in order to ensure a smooth functioning of the internal market; and

(c) not exceed the costs that are necessary to provide waste management services in a cost-efficient way. Such costs shall be established in a transparent way between all the actors

concerned.

(4) The provisions of sub-regulation (3)(a) shall not apply to extended producer responsibility schemes established pursuant to the Waste Management (End of Life Vehicles) Regulations, the Waste Management (Waste Batteries and Accumulators) Regulations and the Waste Management (Electrical and Electronic Equipment) Regulations. S.L. 549.36 S.L. 549.54 S.L. 549.89

**7.** (1) The Authority, in collaboration with the EPR Consultative Committee, may conduct an investigation into a particular producer or PRO, including investigations into particular type of agreements. In the course of investigations, the Authority may request any information, including financial information, held by other competent authorities, producers and PROs, in relation to producers of products and PROs, to ensure that the objective of these regulations are achieved. The Authority may carry out any inspections necessary for that purpose. Investigations.

(2) The Authority shall have the power to carry out investigations of its own motion or at the request of the Minister or upon a reasonable allegation in writing of a breach of the provisions of these regulations, by a complainant or any producer of a product or a PRO.

(3) During the course of any investigation, the Authority may request any producer of a product or a producer responsibility organisation to furnish it with any information or document in its possession which the Authority has reason to believe is relevant to the matter under investigation, within such time as in the circumstances of the investigation the Authority may consider reasonable:

Provided that nothing in this sub-regulation may be construed as authorising the Authority to order the production of any document or the disclosure of any information which may be subject to the duty of professional secrecy.

(4) When sending a request for information to any producer of a product or a producer responsibility organisation, the Authority shall specify what information is required and fix a time-limit within which the information is to be provided:

Provided that failure to adhere to such request may entail liability to a daily penalty in accordance with the Daily Penalties (Environment) Regulations. S.L. 549.72

(5) Where any producer of a product or a producer responsibility organisation submits information, which contains

business secrets or other confidential information, the provisions of regulation 8 shall apply.

Identification and protection of confidential information.

**8.** (1) Any producer of a product or a producer responsibility organisation who submits information or comments to the Authority in the course of an investigation, shall clearly identify any material which it considers to be confidential, giving reasons therefor, and shall provide a separate non-confidential version, where applicable by the date set by the Authority for making its submissions known.

(2) Without prejudice to sub-regulation (1), the Authority may require persons or producers of a product or producer responsibility organisations to submit documents pursuant to these regulations, to identify the documents or parts of documents which they consider to contain business secrets or other confidential information belonging to them and to identify the persons, producers of a product or a producer responsibility organisations to which such documents are to be considered confidential.

(3) The Authority may set a time-limit within which persons, producers of a product or a producer responsibility organisation or any other bodies are to:

(a) substantiate their claim for confidentiality with regard to each individual document or part of such document, statement or part of such statement;

(b) provide the Authority with a non-confidential version of the documents or statements, in which the confidential passages are deleted; and

(c) provide a concise description of each part of the deleted information.

(4) In the event that persons, producers of a product or producer responsibility organisations or any other bodies fail to comply with sub-regulations (1) and (2), the Authority may deem that the documents or statements concerned do not contain confidential information and may consequently assume that the persons, producers of a product or producer responsibility organisations or other bodies have no objections to the disclosure of the documents or statements concerned in their entirety.

(5) Where persons, producers of a product or producer responsibility organisations or any other bodies meet the conditions set out in sub-regulations (1) and (2), the Authority shall:

(a) either provisionally accept the claims which appear justified; or

(b) inform the person, producer of a product or a producer responsibility organisation or any other bodies that it does not agree with the confidentiality claim in whole or in part, where it is apparent that the claim is unjustified.

(6) The Authority may reverse its provisional acceptance of the confidentiality claim in whole or in part at a later stage.

(7) Where the Authority does not agree with the confidentiality claim from the outset or where it takes the view that the provisional acceptance of the confidentiality claim should be reversed, and thus intends to disclose information, the Authority shall inform such person, producer of a product or a producer responsibility organisation or any other body, in writing, of its intention to disclose such information, give its reasons and set a time-limit within which such person, producer of a product or a producer responsibility organisation or any other body may inform the Authority in writing of its views. If, following submission of those views, a disagreement on the confidentiality claim persists, the Authority shall take a decision thereon.

Right of appeal.

**9.** Any person who feels aggrieved by a decision taken by the Authority under these regulations may appeal against that decision before the Environment and Planning Review Tribunal within thirty (30) days of the notification of the decision.

Offences.

**10.** (1) Any person who -

(a) fails to comply with any provision of these regulations, or with any order lawfully given in terms of any provision of these regulations;

(b) contravenes any restriction, prohibition, order or requirement arising from these regulations, or imposed by the Authority in accordance with these regulations;

(c) acts in contravention of any provision of these regulations;

(d) conspires with, aids, abets, counsels, instigates, procures or knowingly allows any other person to contravene or fail to comply with the provisions of these regulations or of any restriction, order, prohibition or requirement imposed by or under these regulations; or

(e) attempts to commit any of breaches indicated in paragraphs (a) to (d),

shall be guilty of an offence against these regulations.

(2) Any person who commits or attempts to commit an offence against these regulations shall, on conviction, be liable:

(a) on a first conviction to a fine (*multa*) of not less than one thousand one hundred and sixty-five euro (€1,165) but not exceeding two thousand and three hundred and thirty euro (€2,330);

(b) on a second or subsequent convictions, to a fine (*multa*) of not less than two thousand and three hundred and thirty euro (€2,330), but not exceeding four thousand and six hundred and sixty-six euro (€4,666) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment:

Provided that the court shall order any person who has been found guilty of committing an offence against these regulations to pay for the expenses incurred by any of the competent authorities as a result of the said offence, the revocation of the permit issued by the Authority and the confiscation of the *corpus delicti*, if applicable.

Cap. 9.

(3) The provisions of articles 23 and 30(1) of the Criminal Code shall, *mutatis mutandis*, apply to proceedings in respect of offences against these regulations.

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**Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta***
**Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — *Printed at the Government Printing Press on FSC certified paper***

**Prezz/*Price***
**€1.08**