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Vietnamese Journal of Legal Sciences, Vol. 12, No. 03, 2024, pp. 28-43. DOI: 10.2478/vjls-2024-0018

EXTENDED PRODUCER RESPONSIBILITY – BUILDING THE LEGAL FRAMEWORK IN VIETNAMESE LAW ON ENVIRONMENTAL PROTECTION FROM INTERNATIONAL EXPERIENCE

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Abstract

This paper analyses the extended responsibilities of producers (EPR) in Vietnam from a legal perspective. It uses a normative legal methodology to systemise the existing laws and regulations addressing the EPR system since 2005. The results show that EPR provisions in the new Vietnam Law on Environmental Protection 2020 require producers and importers of particular products and packaging to take responsibility for their products after use. Policy instruments in Vietnamese legislation are popular and applied in other countries worldwide. Therefore, implementing these laws in Vietnam will also face similar legal challenges as those commonly found in other developed and developing countries.

Keywords: *Vietnam, waste management policy, extended producer responsibility, Law on environmental protection, producer, importer*

Received: 01 May 2024 **Revised: 14 June 2024** **Accepted: 20 July 2024**

Over the last two decades, amid the high economic growth, Vietnam has faced vast challenges in waste management. The country has been ranked among the five countries polluting the ocean the most with plastic waste.[1]

Recognising the international efforts to address the global plastic waste crisis, the Vietnamese government has engaged actively in the global fight against plastic pollution.[2] Internationally, Vietnam officially ratified the Ministerial Conference on Marine Litter and Plastic Pollution in 2017, committing to

1 Truong, T., & Vu, H. (2019). The Crisis of plastic waste in Vietnam is real. *European Journal of Engineering and Technology Research, 4*(9), 107–111. https://doi.org/10.24018/ejeng.2019.4.9.1523; Akenji, L. et al. (2020), 'Policy responses to plastic pollution in Asia: summary of a regional gap analysis', in Letcher, T. (Ed.). (2020). *Plastic Waste and Recycling: Environmental Impact, Societal Issues, Prevention, and Solutions*. Elsevier Inc., 531-567. https://doi.org/10.1016/B978-0-12-817880-5.00021-9; Chau, M. Q., et al. (2020). Endless story about the alarming reality of plastic waste in Vietnam. *Energy Sources, Part A: Recovery, Utilisation, and Environmental Effects*, 13275-13283. https://doi.org/10.1080/15567036.2020.1802535

2 Nguyen, M. K. (2023). Suggestions on extended producer responsibility mechanism in Vietnam from international experiences. *VMOST Journal of Social Sciences and Humanities, 65*(2), pp. 57-64.

curbing marine plastic waste.[3] Vietnam also joined the process of forming the Intergovernmental Negotiating Committee (INC) to create a legally binding global agreement by 2024.[4] Within the country, the Prime Minister issued Decision No. 1746/QD-TTg in 2019 to signify the national action plan on ocean plastic waste management until 2030. Subsequently, Directive No. 33/CT-TTg was released in 2020, emphasising the strengthening of plastic waste management, reuse, recycling, disposal, and reduction. Recognising the need to enhance policies and legislation on plastic waste management, the Vietnamese government has included the extended producer responsibility (EPR) in the new 2020 Law on Environmental Protection (LEP) and its guiding regulations.

EPR is an environmental policy grounded in the "polluter pays" principle, obligating manufacturers and importers of certain products to collect and recycle such products after used.[5] As such, the critical feature of EPR is a refocus on sustainable production with the shifting of responsibility for the treatment or disposal of post-consumer products from the government to the producer and eventually shifting towards environmentally friendly product designs.[6] If done well, an EPR system can guarantee a certain quality of waste so that products and packages can become high-value raw materials after use.[7]

In Vietnam, the issuance of the LEP in 2020 has officially provided a legal framework for EPR. However, there remain obstacles to implementing EPR laws for both the government and businesses in the country.[8] Therefore, EPR regulations and their impacts on Vietnam's business activities attract attention from both policymakers and business entities.

A normative legal methodology is adopted to assess the scope and types of existing laws and regulations on the Vietnamese EPR scheme. In addition, we examine existing literature and voluntary case studies to explore policy instruments of EPR applied worldwide. Due to the availability of intensive guidance on EPR for governments from some international organisations, such as the Organisation for Economic Cooperation and Development (OECD)

3 IISD. (2021). Ministerial Conference on Marine Litter and Plastic Pollution. *Earth Negotiations Bulletin*. https://enb.iisd.org/ocean/conference-marine-litter-and-plastic-pollution

4 World Bank Group. (2022). *Towards a National Single Use Plastics Roadmap in Vietnam: Strategies and Options for Reducing Priority Single-Use Plastics*. Washington DC: World Bank Group.

5 OECD. (2016). *Extended Producer Responsibility: Update Guidance for Efficient Waste Management*. OECD Publishing. https://doi.org/10.1787/9789264256385-en; OECD. (2019). *Extended Producer Responsibility (EPR) and The Impact of Online Sales*. OECD Publishing. https://doi.org/10.1787/cde28569-en

6 Agamuthu, P., & Victor, D. (2011). Policy trends of extended producer responsibility in Malaysia. *Waste Management & Research: The Journal for a Sustainable Circular Economy, 29*(9), 1-10. https://doi.org/10.1177/0734242X11413, pp. 945 - 953.

7 Arci, O., & Cao, L. (2021, June 3). Challenges remain in implementation of EPR. *Viet Nam News*. https://vietnamnews.vn/economy/1076612/challenges-remain-in-implementation-of-epr.html

8 *Ibid*.

and the World Wide Fund (WWF), the majority of literature review for this paper has been based on publications from these organisations.

This research is structured into four parts. Part 1 examines the international literature on EPR to identify the most common policy instruments applied to regulate EPR worldwide. In part 2, the author reviews a range of relevant Vietnamese legislation covering general policies, principal laws, and their guiding documents. The review assesses the prevalence of different legal measures used in Vietnam. From the analysis in parts 1 and 2, some legal challenges of establishing a customised EPR in Vietnam shall be presented in part 3.

This research is among a few aiming at providing a comprehensive overview of the scope and types of EPR regulations in Vietnam. It does not, however, assess the effectiveness of implementing or enforcing these measures at either the national or subnational level. This paper should enable future research on completing the regulations for the Vietnam EPR programmes in the future.

1. Policy instruments for an extended producer responsibility system

EPR generally has two key objectives: the first is to increase collection and recycling rates of the products and materials targeted; the second is to shift financial responsibility from municipalities to producers and thereby incentivise design-for-environment activities and innovation.[9] Therefore, EPR includes an upstream and a downstream stage to ensure that product manufacturers are made financially responsible for various parts of the life cycle of their products.[10] EPR upstream means that the products meet the strict eco-standards in design and production, while EPR downstream enhances producers' responsibilities in recycling and final disposal of their products' end of useful life.[11]

EPR upstream is normally about eco-design legislation. Eco-design plays an important role in determining the environmental impacts of products and packaging. Design decisions directly influence the end-of-life management of products, including their durability and level of recyclability, reusability, and reparability.[12] Eco-design legislation can place greater responsibility on producers in reducing certain materials such as single-use plastics or increasing

9 OECD. (2014). *The State of Play on Extended Producer Responsibility (EPR): Opportunities and Challenges*. OECD Publishing.

10 OECD. (2013). *What have we learned about extended producer responsibility in the past decades? – A survey of the recent EPR economic literature*. OECD Publishing. https://doi.org/10.13140/RG.2.2.13918.31046

11 WWF. (2021). *Executive Policy Brief: Assessment of EPR for Plastic Packaging Waste in Vietnam*. World Wide Fund for Nature. https://wwfint.awsassets.panda.org/downloads/20210318_policy_brief_epr_vietnam_eng.pdf

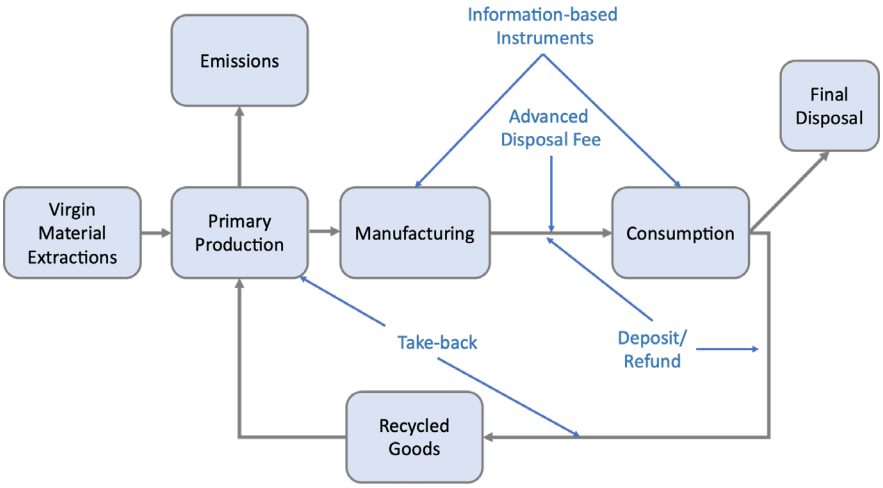
12 Watkins, E., Gionfra, S., Schweitzer, J-P., Pantzar, M., Janssens, C., & Brink, P. T. (2017). *EPR in the EU Plastics Strategy and the Circular Economy: A focus on plastic packaging*. Institute for European Environmental Policy. https://ieep.eu/publications/epr-in-the-eu-plastics-strategy-and-the-circular-economy

the choice and availability of more sustainable alternatives.[13] For example, mandatory requirements can be set for lightweighting or for percentage of recycled content of plastic packaging such as in the 1991 Rigid Plastic Packaging Container Programme of the US state of California. The law requires product manufacturers to use 25 per cent post-consumer recycled content in rigid plastic containers, unless the containers are reused or refilled at least five times, or they are "lightweighted" by 10 per cent.

On the other hand, EPR downstream means that the producers are responsible for all waste management related tasks such as collection, sorting and recycling of the waste. A well-designed EPR system can therefore influence these packaging choices and have upstream effects on the packaging supply chain.[14]

In order to realise the objectives of both EPR upstream and downstream, policymakers have a range of policy instruments at hand that could encourage or require manufacturers to bear the financial or organisational responsibility for their products throughout their life cycle. In that sense, EPR can be described as a framework or a mix of instruments rather than a single policy[15]. Four broad categories of EPR instruments exist (as shown in Figure 1), even though they are sometimes used in combinations.[16]

Figure 1: EPR policy instruments in the product cycle[17]



13 *Ibid*.
14 OECD (2016), *supra* note 5.
15 OECD (2014), *supra* note 9.
16 OECD (2016), *supra* note 5; Renaud, P., & Quertamp, F. (2020). *Extended producer responsibility (EPR) for packaging waste in Vietnam* (Policy brief). Department of Legal Affairs, Ministry of Natural Resources and Environment & Rethinking Plastics – Circular Economy Solutions to Marine Litter.
17 OECD (2013), *supra* note 10.

Firstly, the most common form of EPR initiative is the product take-back measure, which mandates the producer to take back its product or packaging after use for recycling, reuse, or incineration.[18] EPR is applied to specific products or waste streams that are to be taken back or returned. This type of programme is often associated with targets for collection, recycling and reuse.[19]

In most cases, the producer is given the responsibility (or as under voluntary systems, takes on the responsibility) of meeting the targets for reuse, recycling and collection via a law unless other conditions, such as participation in a Producer Responsibility Organisation (PRO) or in the initiation an individual take-back scheme, have been met.[20] PROs are industry-wide schemes that are set up to implement voluntary and regulatory EPR approaches. PROs fulfil producers' EPR by organising inter alia the necessary collection, sorting and treatment of the specified waste. A PRO may be a monopoly, or it may compete against other PROs. Producers may also organise the fulfilment of their own EPR, but this is uncommon in practice.[21]

The German Ordinance on Avoidance of Packaging Waste has served as the primary model for all the followed take-back programmes. In simple terms, the Ordinance's most crucial provision gave consumers the right to return product packaging to the point of sale. It also required retailers to provide facilities for and accept the consumers' product packaging free of charge.[22] Retailers are exempted from the take-back requirement if their product suppliers create an industry-wide system for collecting and recovering packaging. The system must collect the packaging and meet material-specific quotas for collection and recycling. The collection system is entirely private. To comply with the Ordinance, German retailers immediately embraced this exemption, informing suppliers that if their product packaging were not covered by an industry-wide collection system, the products would not be given shelf space in the store.[23]

In essence, this is all the law requires. There are no mandates on how the system must operate, who pays for it, or who operates it. There are no incentives or requirements for end markets of the collected waste. The Ordinance simply requires retailers to accept product packaging, provides an exemption for a collection system with specific goals to meet, and everything

18 Salzman, J. (1997). Sustainable consumption and the law. *Environmental Law, 27*(2), 187-213, pp. 1243-1293; OECD. (2001). *Extended Producer Responsibility – A Guidance Manual for Governments*. OECD Publishing. https://www.oecd.org/env/waste/extendedproducerresponsibility.htm.

19 OECD (2014), *supra* note 9.

20 OECD (2001), *supra* note 18.

21 OECD (2016), *supra* note 5.

22 Salzman (1997), *supra* note 18; OECD (2001), *supra* note 18.

23 *Ibid*.

else follows.[24] The difficulty in the German case is to get consumers to return the after-use packaging to the collection points. Consumers require financial incentives (such as a deposit-refund scheme) or very high environmental awareness and enough pre-sorting facilities to be involved in the system.

Secondly, economic instruments can be used to effectuate EPR policy. These instruments provide a direct financial incentive for actors to implement EPR. Examples of economic instruments that can be targeted to meet EPR objectives include deposit-refund schemes, advance disposal fees, and taxes and/or subsidies.[25]

A deposit/refund scheme is a system in which a payment is made when the product is purchased and is fully or partially refunded when the product is returned to a dealer or facility.[26] For example, when consumers buy a bottle, they pay a deposit on it at the point of sale in addition to the normal product price. Once consumers return the empty bottle to the shop, they receive the deposit money back. Therefore, consumers have a financial incentive to return discarded products and packaging. Large-scale deposit-refund systems exist for reusable and single-use beverage containers of plastics and glass, e.g., in Germany and Denmark.[27] The deposit-refund scheme is often introduced to encourage reuse and the reduction of material inputs or to ascertain a reliable flow of materials for recycling and recovery options. Studies in OECD countries indicate that the return percentage for plastic bottles is over 60%. Beer and soft drink return percentages range from 90-100%.[28]

Another frequently used economic instrument is the Advanced Disposal/Recycling Fee (ADF or ARF). ADF is a tax assessed on product sales, revenues from which are often used to cover recycling costs.[29] ADFs may be similar to sales tax or can be assessed upstream by producers and later incorporated into the product price.[30] The incentives provided by an ADF depend mainly on what is done with the revenues. [31] For example, as with PRO fees, revenues from ADFs can be used to fund financial incentives to consumers, collectors, or processors per unit or on a weight basis of material returned, collected or recycled, thus increasing the quantity supplied. This combined ADF/incentive system is essentially a type of deposit-refund

24 *Ibid*.
25 *Ibid*.
26 *Ibid*.
27 Renaud and Quertamp (2020), *supra* note 16.
28 OECD (2001), *supra* note 18.
29 Walls, M. (2006). Extended producer responsibility and product design: Economic theory and selected case studies. *SSRN Electronic Journal*. http://dx.doi.org/10.2139/ssrn.901661; Nnorom, I., & Osibanjo, O. (2008). Electronic waste (e-waste): Material flows and management practices in Nigeria. *Waste Management, 28*(8), 1472-1479. https://doi.org/10.1016/j.wasman.2007.06.012
30 Walls (2006), *supra* note 29.
31 *Ibid*.

scheme, where the ADF acts as a "deposit" at the point of sale, while the refund is paid upon the return of the used product for recycling. A dedicated non-profit organisation can handle the collection of fees and payment of incentives,[32] essentially a PRO.

Thirdly, a performance standard can be set as a target of a minimum amount of recycled content per product. The standard will encourage taking back of materials for recycling or re-use of the product. The producers and intermediaries generally take on the physical responsibility. Progressive standards can induce the potential for innovation. The policy of mix of a standard and a levy, or tax, can enhance the potential for innovation. Minimum recycled content requirements are often used with paper products, glass containers and plastic beverage containers.[33]

Fourthly, another important policy instrument is information-based instruments that support EPR programmes by raising public awareness. Citizens need to know how they should separate their waste and where they can put it so that it gets collected and recycled or treated in an environmentally sound manner.[34] Measures can include reporting requirements, labelling products and components, communicating to consumers about producer responsibility and waste separation, and informing recyclers about the materials used in products.[35]

2. Current legal framework of extended producer responsibility in Vietnam

Vietnam's policymakers, companies, and consumers are interested in transitioning from linear consumption patterns towards a more circular economy.[36] EPR schemes have proven to effectively measure this pathway.[37]

Regarding upstream EPR, in the Prime Minister's Decision No. 889-QD/TTg dated June 2020 on National Action Plan on Sustainable Production and Consumption in 2021-2030, the Ministry of Industry and Trade (MOIT) has been assigned to develop and complete policies, regulations, and standards on eco-label, sustainable design, eco-design, design for recycling and reuse. However, until the MOIT's conference in July 2022, little information has

32 *Ibid*.

33 OECD (2001), *supra* note 18.

34 Renaud & Quertamp (2020), *supra* note 16.

35 WWF. (2020). *How to Implement Extended Producer Responsibility (EPR) – A Briefing for Governments and Businesses*. World Wide Fund for Nature. https://wwfint.awsassets.panda.org/downloads/how_to_implement_epr___briefing_for_government_and_business.pdf

36 WWF (2021), *supra* note 11.

37 Pouikli, K. (2020). Concretising the role of extended producer responsibility in European Union waste law and policy through the lens of the circular economy. *ERA Forum, 20*(4), 491–508. https://doi.org/10.1007/s12027-020-00596-9; Campbell-Johnston, K., et al. (2021). Future perspectives on the role of extended producer responsibility within a circular economy: A Delphi study using the case of the Netherlands. *Business Strategy and the Environment, 30*(8), 420-433. https://doi.org/10.1002/bse.2856, pp. 4054-4067.

been published regarding the development of regulations on design-for-recycling standards.[38]

The new 2020 LEP has taken the first vital step to outline a mandatory EPR system. It contains specifications for separate collections and approaches for a downstream EPR architecture. The 2020 LEP stipulates a recycling responsibility of producers and importers in Article 54. Accordingly, producers and importers are responsible for recycling specified products and packages[39] according to compulsory recycling ratios.[40] They can either self-organise the recycling activities, authorise an intermediary to organise the recycling on their behalf or make financial contributions to the Vietnam Environment Protection Fund (VEPF)[41] to support the recycling of products and packaging (Article 54.2 and Article 79 of the Decree 08).

It is critical to note that the scheme outlined in the 2020 LEP envisions an EPR downstream architecture as an umbrella framework in Vietnam. Further regulations can be set in place to govern the waste management of specific products and packaging.[42] Accordingly, Decree 08 fixed the primary responsibility of recycling on producers and importers of certain types of products and packaging[43] (Articles 64.2 and Article 77.4). The starting time for recycling is provided for three groups of products and packages in Article 77 of Decree 08. Packages and products of batteries, lubricants, and tyres constitute the first group to comply with EPR regulations from 01 January 2024, followed by electrical and electronic products from 01 January 2025 and transport vehicles from 01 January 2027.

From these provisions, it can be seen that Vietnam has employed the take-back programme in its regulations. Accordingly, the obliged companies (producers and importers) in Vietnam can choose to self-recycle their products after use or authorise recycling to an intermediary, regarded as their industry-led PRO, or make financial contributions to the Vietnam Environment Protection Fund (VEPF), which is a state-led PRO.

38 Ministry of Trade and Industry. (2022). *Promoting sustainable production and consumption activities from central to local levels*. Ministry of Industry and Trade (MOIT) electronic information portal. https://moit.gov.vn/tin-tuc/hoat-dong/day-manh-cac-hoat-dong-ve-san-xuat-va-tieu-dung-ben-vung-tu-trung-uong-den-dia-phuong.html

39 Column 3 of Appendix XXII issued with Decree 08/2022/ND-CP detailing the LEP 2020.

40 Exemptions apply to (a) products and packages exported or temporarily imported for re-export or produced for research, study, or testing (Article 54 of the LEP 2020), and (b) small packaging manufacturers and importers whose revenue is less than 30 billion and 20 billion VND, respectively (Article 77 of the Decree 08/2022/CD-CP).

41 VEPF is the National Environment Protection Fund, a state financial institution under the Ministry of Natural Resources and Environment, established in 2002. The VEPF provides preferential interest rates and grants to programmes, projects, and activities of environmental protection and climate change response.

42 WWF (2021), *supra* note 11.

43 Column 3 of Appendix XXII issued with Decree 08/2022/ND-CP detailing the LEP 2020.

Firstly, Vietnamese law allows producers to set up their own waste recycling projects or to set up industry-self-managed PROs responsible for the member-producer's waste management obligations. The industry-led PROs collectively organise and finance all the treatment of waste on behalf of the obliged businesses following the stipulated compulsory recycling ratios (Article 79 of the Decree 08). Compulsory recycling ratios are the minimum volume of products and packages that must be recycled to the total volume of manufactured and imported products and packages for one year (Article 78 of the Decree 08). Column 4, Appendix XXII (Decree 08) specifies this ratio for each type of product and packaging in the first 03 years, adjusted to increase every 03 years. The highest recycling rate will apply to aluminium packaging and PET packages/bottles at 22%, and the lowest for vehicles at 0.5%.

Decree 08 states that the intermediary organisation (PRO) is a private entity that does not recycle directly and has no ownership of any recycling unit. It must have at least 03 manufacturers and importers who agree to authorise recycling. In addition, there will be a list of recycling units and PROs published by the Ministry of Natural Resources and Environment (MONRE) for the obliged businesses to select. Until the writing of this paper, MONRE has published Notification No. 86/TB-BTNMT dated 20 February 2024. Accordingly, 24 product and packaging recycling units across Vietnam have been announced. These units have obtained environmental licences from competent state agencies following the current LEP in Vietnam. There are 21 recycling units for packaging, 07 for batteries, 04 for electronic products, and 03 for lubricants. The list of PROs has been announced prior to the recycling units in Notification No. 782/TB-BTNMT dated 18 December 2023. Accordingly, MONRE has authorised 01 PRO in the North of Vietnam to organise the recycling of batteries, tyres, tubes, lubricants, and vehicles; and 01 in the South to organise the recycling of packaging.

Similar to the German Ordinance on the take-back requirement, there are no mandates by the Vietnamese law on how the system must operate or how much the obliged companies must pay. The Decree simply requires obliged companies to authorise a listed intermediary organisation to organise the recycling with compulsory recycling ratios and time goals to meet (Article 79 of the Decree 08). The main difference between the German and Vietnamese programmes is that the Germans imposed the take-back responsibility on retailers instead of producers and importers, as in Vietnam.

On the other hand, producers can contribute financially to the VEPF following this formula as provided in Article 81 of the Decree 08:

$F = R \times V \times Fs$

In which:

F: the amount of financial contribution; R: the compulsory recycling ratio of each type of product and packaging specified in Article 78 of the Decree 08; V: the total volume of manufactured or imported products and packaging; and Fs: a reasonable rate of recycling costs for a volume unit of product or packaging. Fs for each type of product and packaging will be promulgated and adjusted by the MONRE and the Prime Minister every 03 years.

The payment method is that the obliged manufacturers and importers send the form of declaration of financial contributions to the VEPF, then pay a one-time financial contribution or two instalments to the fund. If there is a difference in the volume of products/packages between the declared and actual quantity, the manufacturer or importer must pay a difference or deduct the difference in the following year.

The financial contribution to the VEPF will support the countries' recycling businesses. Recycling units have to apply for funding from the VEPF as follows (Article 83.2 of the Decree 08):

(i) Every year, the MONRE publicly announces criteria, priorities, and the levels of financial support for recycling activities and products of the following year as proposed by the National EPR Council (the Council);[44]

(ii) The Council evaluates, votes to approve financial support proposals of agencies and organisations and submits them to MONRE;

(iii) The MONRE then approves the appraisal results and financial support proposals;

(iv) Organisations assigned by MONRE to notify and sign support contracts with agencies and organisations receiving financial support; and

(v) The VEPF shall pay the support amount to agencies and organisations under the signed contracts specified above.

These provisions in Decree 08 require to be elaborated. For example, it is not clear which specific organisation will be assigned by MONRE to notify and sign support contracts with recycling businesses in this situation. Furthermore, the duration of the contracts and the approach for evaluating the proposals for recycling units are unclear.

There is also a lack of a public supervision mechanism for the use of the

44 The National EPR Council (Article 88 of the Decree 08) advises and assists the MONRE in managing, supervising, and supporting the implementation of manufacturers' and importers' responsibilities. The Council members include the Minister of MONRE, and representatives from other ministries like the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Health, Ministry of Agriculture and Rural Development. The Council proposes criteria and priorities, implementation form, and level of financial support for waste recycling, collection, and treatment activities. Annually, the Council will evaluate and vote on financial support proposals sent to the Council Office and approve national EPR implementation plans and reports.

fund. The Decree only provides general guidance:

The receipt and use of financial contributions to the VEPF to support recycling must be public, transparent, and for the proper purposes. The VEPF is responsible for reporting to MONRE and the National EPR Council and publicising the receipt and use of annual financial contributions to support recycling by the end of March of the following year.

The Council approves and submits to the MONRE to promulgate the Regulation on management and use of financial contributions to the VEPF to support recycling activities.

From this provision, it seems that the operation of VEPF is totally under the authority of MONRE, with consultancy from the National EPR Council. These government agencies shall draft and issue the Regulation on the management and use of financial contributions to the VEPF, which might provide more details on some approaches for public supervision of this fund.

The VEPF also sponsors the activities of waste collection and treatment for products and packages containing toxic substances or hard to recycle (Article 55.1-3 of the LEP 2020). The financial contributions are determined based on the volume or unit of products and packages. Appendix XXII of Decree 08 specifies the level of the financial contribution for each type of product and packaging. The procedures for making financial contributions and financial support for waste treatment activities are the same as financial support for recycling activities in Article 83.2 of the Decree 08.

According to the 2020 LEP and its guiding regulations, the role of MONRE is to set recycling rates, fees, and standards; to inspect producers in terms of reported amounts put onto the market; to inspect reported recycling amounts from individual and collective systems; to check and supervise VEPF. The role of the industry-led PRO is to contract recycling companies and report results of recycling to the authority. There is no connection or interaction between the VEPF and the PRO.[45]

3. Legal challenges in developing a customised extended responsibilities of producers in Vietnam

Reviewing the EPR framework within Vietnamese law shows that the take-back programmes are dominant. Therefore, the remainder of this paper will focus primarily on legal issues that could potentially be associated with the EPR option above, including the responsibility and competition problems.

Firstly, the core intent of EPR is to extend the responsibility for products at the post-consumer stage away from the taxpayers and municipalities and toward the producers. Governments need to select the responsibility model

45 WWF (2021), *supra* note 11.

and assign precise responsibilities to key players within the programmes.[46] Two of which are the VEPF, a state-led PRO, and other industry-led PROs. Currently, the 2020 LEP of Vietnam provides that VEPF shall collect financial contributions from obliged businesses and pay the support amount to recycling units and PROs under the signed contracts. The industry-led PROs do similar things, collectively organising and financing all waste treatment on behalf of the obliged businesses through contracting recycling units. However, as mentioned above, there is no specific connection between VEPF and PROs in Vietnamese law. No precise responsibility mechanism has been provided. Given the LEP being an umbrella legal framework for EPR in Vietnam, waste stream specific regulations, such as EPR for packaging, will need to set further regulations to define the specific scope of responsibility, as well as the coordination mechanism for industry-led PROs and the VEPF.

Additionally, given the production context within one country, the close coordination with all actors in the product chain is an inherent part of EPR.[47] Local governments and consumers always have a crucial role to play in the success of an EPR system. Under some take-back schemes, the local authority retains responsibility for collecting and sorting waste. Also, the relationship between the PROs and local authorities must be precisely defined.[48] Similarly, for take-back programmes, it is imperative to inform the consumer on their role and help them understand the importance of their participation. Therefore, a communication plan, developed together with stakeholders, will help to strategically inform consumers of their roles and responsibilities under the programme.[49]

Responsibility of local authorities and consumers is currently provided in Article 79.8 of Decree 08 guiding the Vietnam's 2020 LEP. Accordingly, Vietnam's People's Committees at all levels and consumers are responsible for facilitating and supporting manufacturers, importers, recycling units, and PROs in classifying and collecting products and packaging after used within their areas. As can be seen, roles and responsibilities for local government and consumers under the take-back programme are not precisely defined, which is an important drawback.

Further regulations for each specific waste stream will need to define the responsibilities for local government and their relationship to producers and PROs. Additionally, policymakers should pay attention to consumer convenience when designing specific waste stream EPR programmes. Measures such as placement of product and packaging returns in easy-to-access locations

46 OECD (2001), *supra* note 18.
47 *Ibid*.
48 *Ibid*.
49 *Ibid*.

and internet sites listing the location of product return depots should be deployed. In this regard, active information campaigns will need to be planned in future regulations to ensure public participation in these programmes.

Secondly, an additional challenge becomes apparent regarding the transparency responsibility of the VEPF. The Vietnam system appears to emphasise the role of VEPF. The Decree 08 repeatedly provides that producers and importers who select to make financial contributions to VEPF will be released from the recycling responsibility (Article 79.7, 80.4 of the Decree 08). Articles 81 and 82 provide the financial contribution mechanism to the VEPF in much more detail than those provisions for the operation of industry-led PROs. The VEPF is a state financial institution under the Ministry of Natural Resources and Environment, established in 2008 through the Decision No. 35/2008/QD-TTg on the organisation and operation of the Vietnam Environmental Protection Fund. Accordingly, the VEPF provides preferential interest rates and grants to programmes, projects, and activities related to environmental protection and climate change response. The objectives and functions of the fund is broad. Thus, the VEPF could also direct EPR fees for purposes other than managing the product and packaging waste, which will potentially adversely affect the implementation of a packaging waste management system and undermine public trust in a transparent, accurate and traceable EPR system.

Furthermore, there are some examples of misusing fees paid to the public budget which have led to ineffective EPR schemes in Tunisia and Ghana. As such, experts have been concerned with the potential misuse of the Vietnam fund as there is a lack of regulations regarding the management and use of the financial contribution to the VEPF. It seems that the operation of VEPF is totally under the authority of MONRE, with consultancy from the National EPR Council. These government agencies have been assigned to draft and issue a Circular providing the regulation on the management and use of financial contributions to the VEPF.[50] The Circular is expected to provide detailed guidance for operating and supervising the financial contribution for recycling to this fund. Yet, little information has been published regarding the time of this Circular's issuance.

Tunisia set up a public system, called ECO-Lef, for collecting and recycling plastic packaging waste according to the conditions set by the National Agency for Waste Management.[51] The system was financed through an EPR labelled eco-tax in which 5% of the net added value must

50 Decision No 526/QD-BTNMT dated 18 March 2022 establishing a drafting team for the Circular issuing Regulations on management and use of financial contributions of manufacturers and importers to the VEPF to support recycling and waste treatment.

51 WWF (2021), *supra* note 11.

be paid for imported plastics. The ECO-Lef funds also cover part of the operational fees of the municipal and hazardous waste infrastructure, and part of the functional costs of the National Agency for Waste Management. After an initial success with collection of packaging peaked at 15,700 metric tons in 2008, the volume significantly decreased to 5,400 metric tons in 2017. There is a mismatch between funds generated from the eco-taxes (5%) and the actual volume of collected and recycled packaging waste. The fee, therefore, lacked an adequate steering function for the actual collection and recycling infrastructure, as it rather resembled a general eco-tax. Similarly, in Ghana, a fee has to be paid on imported plastic resins since 2017. These funds are managed by the government to finance waste management measures. However, until now, this money has been spent on other purposes, such as substituting general public budgets rather than actually improving waste management.[52]

The above countries fail to effectively manage the financial contribution for packaging waste management. Therefore, these two examples should be considered by Vietnamese policymakers when drafting the Circular regulating the management and use of the financial contribution to the VEPF in Vietnam.

Thirdly, competition effects can arise in product markets from take-back requirements.

The most important competition concern is the issue of concentrated market power in the hands of a PRO who buys and sells collected materials. The current EPR framework of Vietnam is relatively vulnerable to this competition issue. As provided in part 3.1 above, the MONRE has announced Notice No. 782/TB-BTNMT dated 18 December 2023 to authorise 01 PRO in the North of Vietnam to organise the recycling of batteries, tyres, tubes, lubricants, and vehicles and 01 in the South to organise the recycling of packaging. Then, these two PROs would potentially be monopsonist buyers of these materials and could be monopolistic sellers for the same materials in the North and South of Vietnam. They could pay less than the competitive market price for materials from collectors and could charge more than competitive prices for selling these materials to recyclers or other users of secondary materials. Alternatively, the monopsonist buyer could pass on its low-priced materials to certain businesses, in effect subsidising them through the use/abuse of its market power.[53]

There are arguments regarding whether and when a monopoly PRO is the most efficient way to organise the fulfilment of EPR. For example,

52 *Ibid*.
53 *Ibid*.

the cost of handling waste packaging in Germany fell significantly with the introduction of several changes, including competitive bidding for collection and sorting and competition among PROs. Some argue that the quality fell as well. However, it is unfortunate that the question of under what conditions monopoly PROs are more efficient than competitive ones cannot be answered empirically. Therefore, the main argument against monopolies is that they are often economically inefficient.[54]

As such, competition authorities need to ensure that there will be no barriers to entry for PROs so that the market for PRO services is contestable. Also, EPR policymakers in Vietnam need to be careful not to create monopoly or monopsony powers through regulatory barriers to entry for new PROs. Allowing for competition between PROs and individually organised arrangements is critical.[55]

Conclusion

This research has examined the EPR framework within the Vietnamese law and the practice of voluntary EPR programmes in the country. It compares the Vietnam framework with various EPR policy instruments commonly used worldwide, especially those in the OECD countries. The comparative discussion has highlighted some challenges for the Vietnamese government in developing the legal framework to extend the responsibility of producers and importers to their products after use.

Overall, the Vietnam 2020 LEP and its guiding document officially outline a mandatory EPR system, with specifications for separate collection and approaches for EPR. Though the regulations are new and yet to be tested, some challenges are already there for the country to overcome. The government will have to provide further guidance to 2020 LEP and its Decree 08 to (i) define precisely the roles and responsibilities of all key actors within the EPR programme, including the PROs, VEPF, local authorities, and consumers, (ii) provide mechanism to supervise the use of financial contribution to the VEPF, and design the specific cooperative responsibility of the fund, and (iii) address some competition issues regarding the PRO market. Therefore, it is worth looking forward to the next step the Vietnamese government and businesses will take to develop the EPR regulations sustainably. ●

References

[1] Agamuthu, P., & Victor, D. (2011). Policy trends of extended producer responsibility in Malaysia. *Waste Management & Research: The Journal for a Sustainable Circular Economy, 29*(9), 1-10. https://doi.org/10.1177/0734242X11413

54 OECD (2016), *supra* note 5.

55 OECD (2001), *supra* note 18.

[2] Akenji, L. et al. (2020), 'Policy responses to plastic pollution in Asia: summary of a regional gap analysis', in Letcher, T. (Ed.). (2020). *Plastic Waste and Recycling: Environmental Impact, Societal Issues, Prevention, and Solutions*. Elsevier Inc., 531-567. https://doi.org/10.1016/B978-0-12-817880-5.00021-9

[3] Campbell-Johnston, K., et al. (2021). Future perspectives on the role of extended producer responsibility within a circular economy: A Delphi study using the case of the Netherlands. *Business Strategy and the Environment, 30*(8), 420-433. https://doi.org/10.1002/bse.2856

[4] Chau, M. Q., et al. (2020). Endless story about the alarming reality of plastic waste in Vietnam. *Energy Sources, Part A: Recovery, Utilisation, and Environmental Effects*, 13275-13283. https://doi.org/10.1080/15567036.2020.1802535

[5] Letcher, T. (Ed.). (2020). *Plastic Waste and Recycling: Environmental Impact, Societal Issues, Prevention, and Solutions*. Elsevier Inc. https://doi.org/10.1016/B978-0-12-817880-5.00021-9

[6] Nguyen, M. K. (2023). Suggestions on extended producer responsibility mechanism in Vietnam from international experiences. *VMOST Journal of Social Sciences and Humanities, 65*(2), 10-20.

[7] Nnorom, I., & Osibanjo, O. (2008). Electronic waste (e-waste): Material flows and management practices in Nigeria. *Waste Management, 28*(8), 1472-1479. https://doi.org/10.1016/j.wasman.2007.06.012

[8] OECD. (2019). *Extended Producer Responsibility (EPR) and The Impact of Online Sales*. OECD Publishing. https://doi.org/10.1787/cde28569-en

[9] OECD. (2016). *Extended Producer Responsibility: Update Guidance for Efficient Waste Management*. OECD Publishing. https://doi.org/10.1787/9789264256385-en

[10] OECD. (2014). *The State of Play on Extended Producer Responsibility (EPR): Opportunities and Challenges*. OECD Publishing.

[11] OECD. (2013). *What have we learned about extended producer responsibility in the past decades? – A survey of the recent EPR economic literature*. OECD Publishing. https://doi.org/10.13140/RG.2.2.13918.31046

[12] Pouikli, K. (2020). Concretising the role of extended producer responsibility in European Union waste law and policy through the lens of the circular economy. *ERA Forum, 20*(4), 491–508. https://doi.org/10.1007/s12027-020-00596-9

[13] Salzman, J. (1997). Sustainable consumption and the law. *Environmental Law, 27*(2), 187-213

[14] Truong, T., & Vu, H. (2019). The Crisis of plastic waste in Vietnam is real. *European Journal of Engineering and Technology Research, 4*(9), 107–111. https://doi.org/10.24018/ejeng.2019.4.9.1523

[15] Walls, M. (2006). Extended producer responsibility and product design: Economic theory and selected case studies. *SSRN Electronic Journal*. http://dx.doi.org/10.2139/ssrn.901661

[16] World Bank Group. (2022). *Towards a National Single Use Plastics Roadmap in Vietnam: Strategies and Options for Reducing Priority Single-Use Plastics*. Washington DC: World Bank Group

Author Contribution

All authors contributed to the study conception and design. All authors read and approved the final manuscript.

Declarations

Conflict of Interest: The authors declare no competing interests.

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