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EXTENDED PRODUCER RESPONSIBILITY OPTIONS FOR PACKAGING IN THE PHILIPPINES

Policy Brief

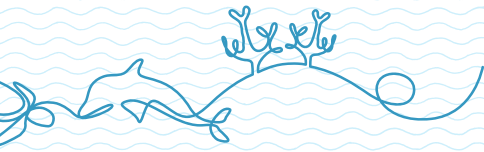
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Introduction

Republic Act 11898, or the EPR Act of 2022, represents a positive step forward in the Philippines' fight against plastic pollution. This amendment to RA 9003 formally institutionalizes a mandatory Extended Producer Responsibility (EPR) system for the country, with specific measures prescribed for plastic packaging waste. It builds on a comprehensive set of national policies and laws on solid waste management and pollution, and an institutional framework from the national and local levels helmed by the Department of Environment and Natural Resources (DENR).

This policy brief provides an initial analysis and assessment of the EPR Act of 2022 and identifies options that plastic producers may adopt for specific packaging types. These proposals are informed by studies and reports on waste management, EPR, and circular economies in the Philippines, and consider available infrastructure, the implementation of relevant solid waste management policies, and the uptake of voluntary actions from plastic producers and consumers. Lastly, recommendations are made towards the full implementation of mandatory EPR in the country, and how this can contribute to improving solid waste management systems as a whole.



Current Philippine Policies related to solid waste management and green economy

The Philippines has a very comprehensive set of national policies on solid waste management and pollution.¹ These provide the basic foundations in place covering, among others, i) solid waste management; ii) hazardous wastes and additives; and iii) “greening” industries. Action plans, strategies, and roadmaps supplement these by focusing on specific sectors and associated issues (see Table 1.1).

Category	Policy and Policy Document
General Solid Waste Management	<i>Republic Act (RA) 9003, or the Ecological Solid Waste Management Act</i>
General Solid Waste Management	National Solid Waste Management Strategy (NSWMS) 2012-2016
General Solid Waste Management	Philippine Development Plan (PDP) 2017-2022
Management of Hazardous Waste	<i>RA 6969, or the Toxic Substances and Hazardous and Nuclear Wastes Control Act</i>
Pollution/Marine Litter Prevention	National Plan of Action on Marine Litter (NPOA-ML) (2021)
Greening the Economy – Green Jobs	<i>RA 10771, or the Green Jobs Act of 2016</i>
Greening the Economy - Sustainable Finance	Sustainable Finance Roadmap (2021)
Greening the Economy - Corporate Reporting and Compliance	<i>The Code of Corporate Governance for Publicly Listed Companies</i> and <i>SEC Memorandum Circular no. 4 series of 2019</i>
Research, Development and Technology	Sustainable Science and Technology for Solid Waste Management Roadmap (2021)
Behavior Change – Sustainable Consumption and Production	Philippine Action Plan for Sustainable Consumption and Production (PAP4SCP) (2020-2040)

Table 1 – National policies and policy documents on solid waste management

The above listed environmental laws and rights are supported by an institutional framework helmed by the DENR, through the National Solid Waste Management Commission (NSWMC). These bodies support local government units who are given the primary mandate for implementing waste management laws.

¹See Coordinating Body on the Seas of East Asia (2021). Legal and Policy Guidance on Addressing Marine Litter in the Philippines: Gap Analysis and Needs Assessment. Bangkok: United Nations Environment Programme.



Taken together, the existing legal framework supports the establishment and operationalization of EPR in the country, by providing a **policy and institutional “backbone” or foundation for an EPR system and a corresponding delineation of responsibilities of government instruments.**

On the other hand, the often-repeated challenge in the Philippines, and one which is a critical weakness for EPR, is the **poor implementation and enforcement of waste management.**

EPR in the Philippines

RA 9003 was recently amended by **RA 11898, or the EPR Act of 2022.** It lapsed into law on 22 July 2022, after no action was taken on the consolidated bill by both the outgoing and newly installed Presidential administrations.² Its official effectivity date is 13 August 2022, after its publication in a newspaper of general circulation. This formally institutionalizes an EPR system for the country, with specific measures prescribed for plastic packaging waste.

The main provisions of the new law are summarized below.

Section	Summary
Scope and Coverage	<p>Obligated companies - Product producers obliged to implement EPR include large enterprises that generate plastic packaging waste. These are business entities whose total assets exceed Php100 million, per RA 9501 (Sec. 3 p4, Sec. 44b). Micro, small and medium enterprises are however “encouraged” to practice EPR voluntarily, whether as part of a network or through a PRO (Sec. 44b).</p> <p>Product producers include brand owners who sell or supply commodities, product manufacturers and importers (Sec. 3 w2).</p> <p>Plastic packaging to be covered by EPR includes:</p> <ul style="list-style-type: none"> • Sachets, labels, laminates and other flexible packaging products, both single-layer and multi-layered; • Rigid plastic packaging (including containers for food, beverages, cosmetics, and their coverings, necessities and labels); • Plastic bags (including single-use plastic bags); and • Polystyrene (Sec. 44c).

²See relevant provisions in Section 27 (1), Article VI of the 1987 Philippine Constitution

Section	Summary
Producer Responsibility Organisation (PRO)	<p>Obligated companies shall institute their EPR programs individually or collectively, whether with or without a PRO (Sec. 44d). Establishment of a PRO is voluntary (Sec. 44h).</p> <p>The DENR, in consultation with the NSWMC, obliged companies or the PRO, is tasked with establishing standards, rules, and guidelines on the following:</p> <ul style="list-style-type: none"> • Organizational structure and leadership; • Membership requirements; • Duties and responsibilities, including: a) Implementation parameters of the EPR program, b) Financing mechanisms; c) Cooperation mechanisms with other players and stakeholders, including the informal waste sector; and d) Implementation strategies; • Standards on plastic neutrality;³ • Reporting, verification and auditing of waste footprint generation, recovery and diversion; and • Data collection and database maintenance (Sec. 44h).
EPR Mandates	<p>From the law's effectivity, obliged companies have six months to establish their EPR programs for plastic packaging. These may include the following activities or strategies on Reduction of Non-Environmentally Friendly Products and Waste recovery programs.</p>
Compliance	<p>Obligated companies or the PRO/s must register EPR programs with the NSWMC within 6 months from the effectivity of the law (Sec. 44d).</p> <p>Obligated companies that generate rigid or flexible plastic packaging must recover their plastic product footprint generated during the immediately preceding year⁴ according to the following schedule:</p> <ul style="list-style-type: none"> • 20 percent recovery by 31 December 2023; • 40 percent recovery by 31 December 2024; • 50 percent recovery by 31 December 2025; • 60 percent recovery by 31 December 2026; • 70 percent recovery by 31 December 2027; • 80 percent recovery by 31 December 2028, and the succeeding years thereafter (Sec. 44f).
Reporting, Monitoring and Evaluation	<p>To monitor and assess their EPR programs, obliged companies or the PRO/s shall engage independent third-party auditors to certify their reported plastic product footprint generation, recovery and compliance. Standards for this shall be prescribed by the DENR. Certified reports shall, as a general rule, be publicly accessible (Sec. 44g).</p> <p>The functions of the National Ecology Center (NEC) have been expanded to include:</p> <ul style="list-style-type: none"> • Establishment and management of information databases on solid waste management techniques and approaches, processors and recyclers, the prices of recyclable materials, and submitted EPR reports; • Development of a recycling market through a national network; • Maintenance of an EPR registry of the programs submitted by obliged companies and PROs; • Monitoring and evaluation of the compliance of obliged companies and PROs with the registration of EPR programs; • Receipt and assessment of PRO reports and citizens' complaints related to EPR compliance; • Identification of other forms of waste for inclusion in the EPR scheme, one year from the effectivity of the law (Sec. 7).

³The law defines plastic neutrality as "a system or its desired outcome where, for every amount of plastic product footprint created, an equivalent amount thereof is recovered or removed from the environment by the product producers through an efficient waste management system (Sec. 3 v2)."

⁴The law defines product footprint as "a measure of the amount of goods produced, imported, distributed or supplied by a product producer and deemed to cause damage to the environment (Sec. 3 w1)."

Section	Summary
Incentives	EPR expenses of obliged companies, PROs and other businesses are considered necessary expenses that may be deducted from their gross income (Sec. 45b).
Penalties	<p>Failure to register an EPR program or meet the waste recovery targets shall be punishable by a fine of Php5 million to Php20 million (depending on how many infractions have been previously committed). Automatic suspension of their business permit shall be imposed for the third offense.</p> <p>In case of failure to meet the waste recovery targets, the obliged company shall pay the given fine, or an amount twice the cost of the recovery and diversion of the footprint or its shortfall, whichever is higher (Sec. 49).</p>

Table 2 - Key features of the EPR Act of 2022

Additional guidance is expected in form of a National Framework for EPR, to be developed by the DENR in consultation with the NSWMC, within three months from the effectivity of the law,⁵ as well as other issuances from the Department. Per Sec. 44a of the law, this Framework is expected to apply to all types of product waste and should contain the following components: i) activities and strategies for the reduction of non-environmentally friendly products and, ii) activities for product waste recovery programs to prevent waste from leaking into the environment.

Analysis and assessment of the EPR Act of 2022

Additional guidance is critical for the implementation of the EPR Act, as many of the law's provisions require additional information for clarity. In particular, details will be needed on the following items, before EPR programs can be successfully established:

Operationalizing voluntary PROs	The EPR law is explicit that implementation through a PRO will be the prerogative of the obliged companies. No further guidance is given on the standards, procedures, and guidelines for compliance with the EPR Law – a process for crafting these is broadly provided for in Sec. 44h, but a time frame within which these must be decided is noticeably absent.
Defining EPR costs and fees	EPR fees and financial flows are not clearly articulated and explained. Obligated companies appear to be free to determine how they will finance their EPR programs, but whether public funds and government contributions (in particular, through LGUs) will also be available is not yet provided for. Pass on fees to consumers, if applicable or allowed, have also not been indicated.
Accessible and comprehensive data management system and registry	Proper and effective monitoring of the EPR system will require proper data management. Thus, there is a need to ensure comprehensive data on obliged entities, waste management operators (WMOs), program details, and product-related data, among others are accessible to policymakers, enforcement agencies, and the general public.
Clarity on the role of local governments and other government agencies	Under RA 9003, local governments are primarily responsible for waste management functions within their jurisdiction. Since EPR programs should be integrated into the overall waste management system, there needs to be clarity on how local governments will be involved in the EPR schemes and programs. At the national level, the role of other government agencies must likewise be clear, to ensure that EPR aligns with other sectoral plans and strategies.
Clarity on waste recovery targets, and priorities for activities and strategies	The targets in the law's Sec. 44f apply to "the recovery of plastic product footprint generated during the immediately preceding year." However, recovery is only one component of the solid waste management system – and the law as written would seem to indicate that so long as the obliged companies collect the plastic waste, even if these are not recycled, they are deemed compliant with the law. This also presents the issue of the choice of disposal method for the plastics collected.

⁵RA 11898 (2022) Section 44a

Clarity on the participation of the informal waste sector	The EPR Act recognizes the informal waste sector very generally in Sec. 44a, which considers partnerships with this sector as waste recovery activities. Informal waste workers are critical stakeholders in waste collection and recycling, especially in less urban and rural communities that have less access to available infrastructure and waste management facilities. The EPR system must take these contributions into account and provide clarity on how the sector can be formalized or otherwise integrated into programs. More importantly, efforts at recognizing and integrating the informal waste sector will ensure the protection and promotion of their rights as a vulnerable sector.
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Table 3 – Points for clarification in the EPR Act of 2022

Moreover, it is especially critical within the context of the mandatory EPR implementation, to create enabling conditions before rolling-out the proposed schemes. These include:

Enabling conditions	Explanation
Strengthening downstream measures and ensuring a fully functioning waste management system	Even with the EPR Act, any gains from the system will not be realized unless these roadblocks (i.e., waste collection, segregation, and recycling) are addressed. This will entail strategic and long-term efforts that are consistently implemented, ranging from full implementation of RA 9003, participation of all relevant stakeholders, and establishing up-to-date baselines for all components of the waste management system. Moreover, the need for clear guidance and funding support for LGUs cannot be overstated, especially those with limited human resources, infrastructure, and facilities.
Supporting a paradigm shift by institutionalizing and enacting upstream measures	It is highly likely that it will take a long time before benefits of new downstream efforts can be felt. Long-term solutions to the plastic waste crisis will therefore require a paradigm shift that prioritizes upstream measures for solid waste management. These include: i) Product and supply chain redesign; ii) Research and development for the production of alternatives; iii) Improved use of materials; and iv) Shifts in consumer preferences and behavior.
Suitably define stakeholder roles and responsibilities	For this condition, a PRO is especially critical. A PRO is recognized as one of the most important elements of an EPR system. ⁶ Although the EPR Act indicates that the PRO is a voluntary option, this still allows the establishment of a credible, transparent, and efficient coordinating body. It is strongly recommended that a mandatory EPR system for the country should provide a third-party PRO.

Table 4 – Enabling conditions for effective EPR implementation in the Philippines

Proposed EPR options for packaging

Based on the study and analysis of existing research on EPR and a survey around EPR legislation in other countries, several elements can be identified that need to be considered for a successful EPR scheme. Those especially relevant and important to the Philippines include:

Options	Relevance and importance to EPR for the Philippines
Taxes, Municipal Fees, and EPR System Fees	Ensures funding for government regulators and oversight, for overall waste management operations, and funds for EPR system operationalization
Incentives	Encourages the needed investments and funds especially for waste management and recycling infrastructure; promotes and rewards compliance by both obliged companies and consumers
Product Redesign	Helps to make products more recyclable and suitable for EPR facilities and infrastructure; reduces the amount of new and virgin material used for plastic products

⁶ World Bank. The Role of Extended Producer Responsibility Scheme for Packaging towards Circular Economies in APEC (Washington DC: World Bank) 2022, 15

Options	Relevance and importance to EPR for the Philippines
Bans and Phase Outs	Helps reduce the amount of plastic products and packaging that leaks into the open environment; measures target problematic products which are hard to collect and are highly polluting; drives innovation and research and development.
Collection, Reduction and Recycling Targets	Ensure clear and unambiguous standards and targets; allows for better auditing, monitoring, and enforcement
Processing and Disposal Facilities and Technology	Ensure that EPR covered products are properly handled, either through the appropriate recycling technology or final disposal
Voluntary Mechanisms	Allows for some room for flexibility in compliance with EPR provisions, especially at early stages of implementation

Table 5 – Elements of successful EPR schemes

To identify EPR options for packaging in the Philippine context, each of these elements were applied to plastic products and waste types, which

- have been identified as those of concern in the Philippines, whether by government, the academe, or by NGOs and civil society organizations (CSOs);
- are generally covered in EPR schemes of other countries, considering the availability of appropriate technologies;
- have been covered in recent EPR laws and policies, studies, and reports on waste management, EPR, and circular economy in the Philippines.

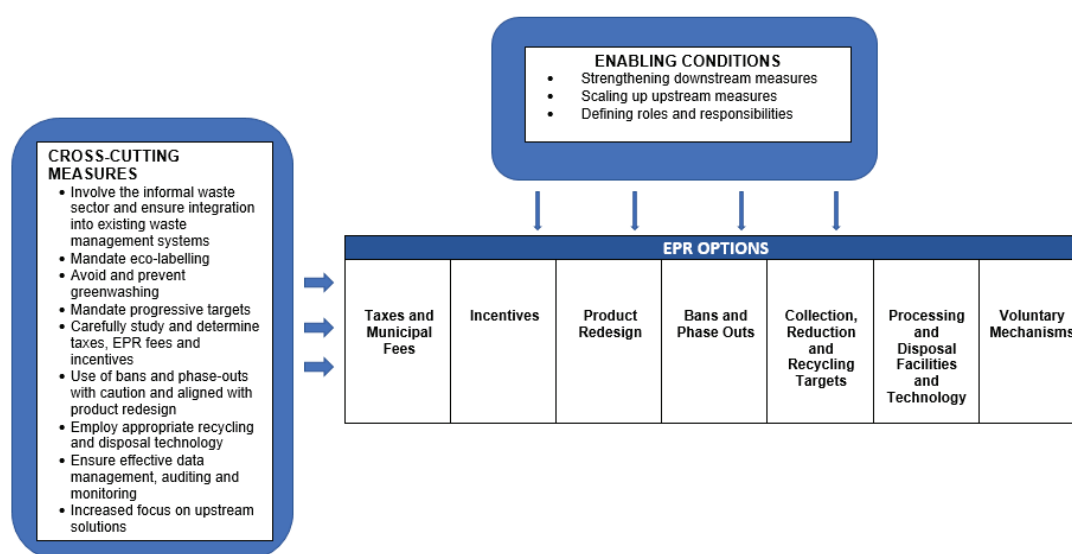


Figure 1 – Diagram of recommendations

At the start of any EPR implementation, several enabling conditions need to be met and complied with to ensure the system’s success. Once these enabling conditions are met, the different EPR options for specific types of packaging need to consider the different elements, which make up a successful EPR scheme. For example, efficient waste management involving collection and segregation are essential to determine appropriate recycling and recovery targets. Each plastic packaging type covered must comply with specific requirements (e.g., who covers taxes and fees, or the appropriate recycling and disposal process). Finally, several cross-cutting measures need to be taken into account in the implementation of each EPR option. These need to be accounted for to avoid issues and complications once the system is operationalized.

The tables below summarize the options within an EPR system for i) **Plastic bags, including polymer bags and single-use plastic bags** (Table 6), ii) **Food packaging, including PET bottles and single-use items such as polystyrene containers, plastic utensils, and other rigid plastic packaging** (Table 7), and iii) **Flexible plastic packaging, including sachets, single-layer and multi-layer packaging** (Table 8).



Plastic bags, including Polymer bags and SUP bags	
Taxes, Municipal Fees, and EPR System Fees	<i>Paid by obliged companies^b</i>
Incentives	<p>For producers and manufacturers:</p> <ul style="list-style-type: none"> • <i>Product re-design^c</i> • <i>Take-back and/or return and collection scheme</i> <p>For distributors, retailers, and sellers</p> <ul style="list-style-type: none"> • <i>Product re-design</i> • <i>Non-use of plastic bags</i> • <i>Take-back and/or return and collection schemes</i> <p>For consumers:</p> <ul style="list-style-type: none"> • <i>Use of personal bags</i>
Product Redesign	<p><i>For producers and manufacturers but will need clear standards and guidelines promulgated to ensure consistent implementation</i></p> <p><i>Recommended expansion of voluntary eco-labeling program^d</i></p>
Bans and Phase Outs	<i>For phase-out with clear timeframe and targets^e</i>
Collection, Reduction and Recycling Targets	<i>Independent progressive targets for collection/diversion and recycling recommended (with a view to phase-out)^f</i>
Processing and Disposal Facilities and Technology	<i>Final disposal in sanitary landfills or for co-processing under strict standards and conditions</i>
Voluntary Mechanisms	<i>Allowed for obliged companies, subject to compliance with minimum standards set under the EPR system</i>

Table 6 – Options for plastic bags

^a *Taxes and municipal fees are EPR fees paid to the national government (i.e., to the Solid Waste Management Fund under RA 9003) or to specific local government units (via local ordinances which specify the same). These should go directly to EPR-related activities and actions. Under current law, some local governments charge its residents waste management fees which can be used for EPR collection. Under the EPR Act of 2022, there is not clear guidance on EPR fees and costs.*

^b *Obliged companies include producers, manufacturers, importers, distributors, retailers, and sellers (as defined under the EPR Act of 2022).*

^c *Product re-design can include but is not limited to better recyclability or use of natural or biodegradable materials.*

^d *Recommend transition to mandatory labelling requirements.*

^e *Parallel effort underway through the declaration of Non-Environmentally Acceptable Products (NEAPs) under RA 9003*

^f *Under current proposed measures, targets only relate to recovery, and not recycling targets.*



Food packaging, including PET bottles and single-use items such as polystyrene containers, plastic utensils, and other rigid plastic packaging	
Taxes, Municipal Fees, and EPR System Fees	<i>Paid for by obliged companies and/or the consumer</i>
Incentives	<p>For obliged companies</p> <ul style="list-style-type: none"> • <i>For product re-design</i> • <i>Non-use of SUPs and plastics in food packaging</i> • <i>Take-back and/or return and collection scheme</i> <p>For consumers:</p> <ul style="list-style-type: none"> • <i>Use of personal containers, bags, utensils, etc.</i>
Product Redesign	<p><i>For producers and manufacturers but will need clear standards and guidelines promulgated to ensure consistent implementation</i></p> <p><i>Recommended expansion of voluntary eco-labeling program</i></p>
Bans and Phase Outs	<p><i>For phase-out with clear timeframe and targets of certain type such as:</i></p> <ul style="list-style-type: none"> • <i>Polystyrene</i> • <i>Plastic utensils and cutlery</i> • <i>Plastic wrapping (cling wraps)</i> <p><i>Other plastic items for reduction of use (where applicable)</i></p>
Collection, Reduction and Recycling Targets	<i>Independent progressive targets for collection/diversion and recycling recommended (with a view to phase-out)</i>
Processing and Disposal Facilities and Technology	<p><i>Strict recycling for high value and recyclable items such as PET bottles and rigid plastic packaging.</i></p> <p><i>Obliged companies and/or the PRO required to establish recycling facilities with appropriate technologies</i></p>
Voluntary Mechanisms	<i>Allowed for obliged companies, subject to compliance with minimum standards set under the EPR system</i>

Table 7 – Options for food packaging



Flexible plastic packaging, including sachets, single-layer and multi-layer packaging	
Taxes, Municipal Fees, and EPR System Fees	<i>Paid for by obliged companies</i>
Incentives	<i>For product re-design and non-use of (single-use) plastics in food packaging</i>
Product Redesign	<p><i>Recommended for producers and manufacturers, in addition to current downstream efforts</i></p> <p><i>Recommended expansion of voluntary eco-labeling program</i></p>
Bans and Phase Outs	<i>For phase-out of unnecessary packaging with clear timeframe and targets^a</i>
Collection, Reduction and Recycling Targets	<i>Independent progressive targets for collection/diversion and recycling recommended (with a view to reduction use and eventual phase-out)</i>
Processing and Disposal Facilities and Technology	<i>Final disposal in sanitary landfills or for co-processing under strict standards and conditions</i>
Voluntary Mechanisms	<i>Allowed for obliged companies, subject to compliance with minimum standards set under the EPR system</i>

Table 8 – Options for flexible plastic packaging

^a *Unnecessary packaging to be determined on a case-to-case basis depending on product type and other needs, after further research and study.*

Each set of options carries **advantages and disadvantages**, considering available infrastructure, the implementation of relevant solid waste management policies, and the uptake of voluntary actions from plastic producers and consumers. These are summarized in Table 9 below.

Advantages	Disadvantages
<i>Plastic bags, including polymer bags and single-use plastic bags</i>	
<p>Infrastructure and facilities available in some areas for diversion and recycling initiatives.</p> <p>Local government ordinances already regulate use and provide incentives.</p> <p>Alternatives for some single-use plastics (i.e., shopping bags) already widely available and in use.</p>	<p>No cost-efficient alternatives for single-use plastics widely in use yet in wet markets and the informal economy.</p>
<i>Food packaging, including PET bottles and single-use items such as polystyrene containers, plastic utensils, and other rigid plastic packaging</i>	
<p>High value waste already being collected and recycled by the informal waste sector.</p> <p>Includes Non-Environmentally Acceptable Products, which are scheduled for phase out.</p> <p>Alternatives available for some single-use products, and use of reusables is incentivized and encouraged by local governments and private establishments.</p>	<p>Widely used by manufacturers, commercial establishments, and the general public.</p> <p>Alternatives need to be produced and manufactured to scale to meet demand.</p> <p>Change in consumption habits widely needed.</p>
<i>Flexible plastic packaging, including sachets, single-layer and multi-layer packaging</i>	
<p>Infrastructure and facilities available in some areas for diversion and recycling initiatives.</p>	<p>Bans are unlikely, given cost considerations.</p> <p>Alternatives not yet widely available.</p>

Table 9 – Advantages and disadvantages of proposed options

Recommendations

The Report and the findings of this study present the following recommendations:

- The enabling conditions and priorities for the whole solid waste management system must be met to ensure the effective implementation of mandatory EPR schemes. Experiences from other countries have shown that basic waste management laws need to be complied with before EPR targets can be achieved.
- The implementing rules for the EPR Act and the forthcoming National EPR Framework must be able to immediately provide clarity on several key elements that are necessary for compliance.
 - There needs to be specific recovery or offset targets for specific types of plastic waste.
 - The government must also consider imposing mandatory recycling targets which are regularly reviewed through a progressive approach.
 - Clarity on the roles and functions, and support actions, that will gradually include and capacitate a wide range of stakeholders is needed.
 - The involvement of the informal waste sector and ensuring their integration into existing waste management systems should be a priority.
- There needs to be an equal focus on upstream measures for the long term.
- Voluntary EPR schemes for small and medium scale enterprises, and other stakeholders should also be encouraged and incentivized.

Careful consideration of the recommended EPR options for plastic packaging should likewise take into account several cross-cutting actions and measures. These include:

- Mandatory eco-labeling to increase the use of recycled plastic material in production. Preliminary work has already been undertaken by the Department of Trade and Industry and can be scaled up in the context of the EPR Act.
- Careful study to determine taxes, EPR fees, and incentives.
- Ensure effective data management, auditing and monitoring to ensure proper government enforcement and that databases are comprehensive, user-friendly, and accessible by EPR system stakeholders and the general public.
- Appropriate use of bans and phase-outs must be used with caution and aligned with product redesign, as part of increased efforts on upstream solutions.
- Appropriate recycling and disposal technology should be identified to ensure compliance with existing policies and regulations, and may entail that additional social and environmental safeguards are put in place to avoid creating new risks for communities and ecosystems.

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