

Project name: **Mitigating marine plastic debris in Viet Nam**

Agreement Number:

TERMS OF REFERENCE

Legal document on EPR drafting: Supporting on drafting of a Decree on Extended Producer Responsibility and waste charge – implementing the respective provisions of the Law on Environmental Protection (revision)

I. Backgrounds

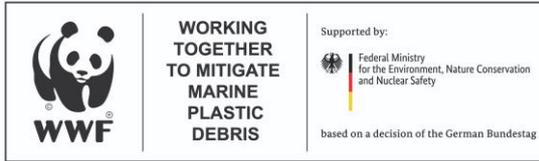
As one of the world's fastest growing economies, with a seventeen (17) time increase in Gross Domestic Product while the population grew by 1.5 to nearly 100 million inhabitants between 1985 and 2018, Viet Nam is facing pressure with regard to waste management. In line with economic growth, consumption has developed strongly, leading to the consequence of waste generation which has doubled in less than 15 years. The local infrastructure and management capacities simply cannot keep up with this increase.

Sustainable financing is the backbone for organising domestic solid waste management, as well as implementing and enforcing related environmental protection regulations in practice. In the case of deficiency, the costs of environmentally sound management of solid waste will be externalized to costs of pollution, social and healthcare costs, etc. Although at least 80% of the domestic waste management costs are currently financed by the Government of Viet Nam, between 15 - 16% of total solid waste in urban areas and between 45 - 60% in the rural areas is not collected. In light of restructuring the solid waste management system, as assigned by the Government¹, Extended Producer Responsibility (EPR) and waste charge system, inter alia, can be seen as a leverage to improve the finance system of solid waste management in Viet Nam. This will accordingly address the current status of the uncollected waste and at the same time improve the system of sorting, transporting, recycling and other treatments. Furthermore, EPR not only contributes to the sustainability of the financial mechanism for waste management, but also is an important tool to help transform the linear economy into a circular economy.

EPR and waste charge instruments aim at making producers responsible for the natural and environmental impacts of their products throughout the products' lifecycle, from design to the waste phase. EPR and waste charge policy seeks to shift the burden of managing certain wastes, from municipalities and taxpayers to producers, in line with the polluter pays principle. Additionally, this internalization of costs to the producers of the products also contributes to significant macroeconomic benefits as the efficient allocation of financial resources is improved. The EPR concept has been first introduced in Viet Nam's Law on Environmental Protection 2005 with take-back requirements of some post-consumer products and detailed by Prime Minister's Decision, but neither the financial tools nor the compulsory rate of the recall had been applied. Unlike the other popular EPR schemes, the Viet Nam's EPR scope excludes packaging from the list of take-back requirements while they account for quite a large portion of total solid waste.

In the context of revising the Law on Environment Protection 2014, to improve the efficiency of management of solid waste and to create a financial mechanism to promote waste

¹ The Government's Resolution, No 09/NQ-CP dated February 3, 2019



collection, pre-treatment, e.g. sorting, dismantling or de-pollution; (preparation for) reuse; recovery (including recycling and energy recovery) or final disposal, MONRE has proposed to put the EPR and waste charge instruments into Article 55 and Article 56 of the Draft Law on Environmental Protection (LEP). Accordingly, the producers will fulfil their responsibility for the post-use products and packaging by either themselves, third parties such as Producer Responsibility Organizations (PROs) or the Viet Nam Environmental Protection Fund (VEPF); as long as they meet the target set by the state. In this revision, the Draft Law would provide a legal framework to fully establish the EPR mechanism and waste charge system in Vietnam. The Draft Law has been discussed and agreed by the National Assembly.

EPR is a technical instrument that requires detailed guidance to organize the implementation. According to the Law on Promulgating Legal Normative Documents, these guidance can be developed in Decrees on guiding respective articles in the Law that takes effect together with the Law. As the tentative plan, the Draft Law will be passed on November 2020 and take effect since 1st July 2021. Therefore, developing the Decree covers the EPR guidance is necessary and urgent.

The project "Mitigating marine plastic debris in Viet Nam" is sponsored by WWF-Viet Nam and led by The Vietnam General Department of Sea and Islands (VASI) on behalf of the Ministry of Natural Resources and Environment (MONRE) and the Department of Legal Affairs (DLA) under the MONRE is one of the project's implementing partners. The project's goal is to "contribute to the reduction of marine plastic pollution in Vietnam by supporting the development of guiding documents to implement priority policies related to plastic waste and activities, communications, capacity building, awareness-raising and behaviour change for plastic waste mitigation, to support the implementation of Vietnam's National Action Plan on Marine Plastic Debris Management through 2030".

Under the project's plan, the sub-activity "legal document on EPR drafting" is implemented within the framework of the project's Component II, "Policy development and implementation to ensure improved solid waste management, including legislation supporting EPR on plastic packaging". The assignment for a group of consultants (hereinafter referred to as the Consultant) is to support DLA in its mandate.

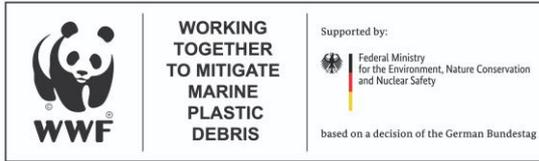
II. Objectives

1. Support on drafting of a Decree on Extended Producer Responsibility and waste charge, in frame of implementing the respective provisions of the new Law on Environmental Protection (hereinafter referred as the Draft Decree on EPR);
2. Support on drafting of a comprehensive justification and explanation of the proposed Decree. The justification should aim on explaining and convincing government officials the concept of EPR and waste charge and its specific configuration in the proposed draft.

III. Scope of work

The Consultant will be hired by WWF-Viet Nam and shall be technically supervised and managed by the DLA/MONRE together with the WWF-Viet Nam. It is planned that a tripartite Agreement between WWF- Viet Nam, DLA, and the Consultant shall be developed.

DLA shall retain overall responsibility for supervising, receiving, and adopting the expected outcomes, and will assign one DLA's staff member to coordinate the Consultant's activities.



The total work period for this assignment is estimated of 7 months from November 2020 to June 2021.

Budget for this consulting service includes consultant fees and costs for implementation of supporting tasks (tax and fees are included) and does not exceed EUR 30,000. Payment shall be arranged via WWF-VN through bank transfer.

The main tasks include, but are not limited to:

Task 1: Review, recommend and justify potential regulations for EPR and waste charge implementation in Viet Nam

a) Review and assess Viet Nam's national legal documents, existing regulations, policies, and build upon results of previous relevant legal reviews and studies to ensure a thorough consideration of regulations on EPR and waste charge; and on this basis, identify gaps in regulations, suggest improvements, and justify potential regulations for EPR and waste charge implementation in Viet Nam;

b) Review of regulations of other countries, especially those with successful models and similar cultural and socioeconomic conditions to Viet Nam's, on the implementation of EPR and waste charge, to ensure a thorough consideration of international experience in regulating these policy instruments;

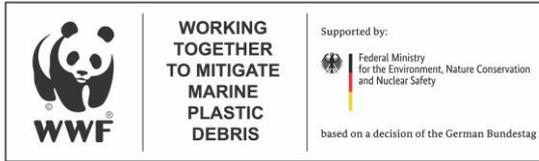
c) Review and evaluate pilot projects implementing EPR and waste charge in Viet Nam to refer as the basis for issuing EPR regulations in line with Vietnamese practice;

Output of this Task 1 is an initial Report of explanations on legal grounds and the practical experience of the Draft Decree on EPR (this report also includes detailing review results as well as providing recommendations and justifications for regulations on implementing EPR and waste charge in Viet Nam).

Task 2: Support the authorised governmental agency (DLA) to develop the 1st draft of regulations on implementation of EPR and waste charge in Viet Nam

Refer to the Task 1's outputs and in order to support the authorised agency and provide technical inputs to develop a Draft of Decree on EPR, including particularly (but not limited to) the following contents:

- a) Propose the list of products and packaging in the EPR and Waste Charge systems;
- b) Define the obligated businesses in EPR and Waste charge system;
- c) Define the function, responsibility and authority of relevant actors in the system, in administration and supervision (probably including inspection) over the fulfilment of the obligation of the producers/importers of products and materials obliged by EPR and waste charge instruments.
- d) Determine:
 - o formulation of fees and targets for the products and packaging in EPR and Waste charge systems;
 - o the method for recycling of products and packing materials which can be considered as fulfil the responsibility as targets. The technical standards for each waste stream will be detailed by other regulations such as Circular or QCVN standards.
- e) Propose the operation and monitoring mechanisms of EPR and Waste charge implementation such as (1) data collection of products and packaging in the list of EPR and Waste charge systems, (2) implementation plan of collection and recycling obligation fulfilment, (3) result report of collection and recycling obligations, etc.



Output of this Task 2 is the 1st Draft Decree on that detailed the respectively regulations in the draft LEP to submit to the MONRE for record and reference, and a supporting document detailing the justifications for this 1st draft.

Task 3: Support the revision of the Draft Decree on EPR upon further feedback from legal markers, experts, key stakeholders and public consultations.

Based on relevant technical and legislative inputs, support the authorised agency to upgrade the 1st Draft of Decree accordingly:

- a) Consider all of the received feedbacks for the 1st draft to justify for the incorporating in the updated version;
- b) Propose the 2nd draft of the Decree based on the analysis of feedbacks.
- c) Revise and update a comprehensive justification and explanation (in Task 1) according to the new updated Draft Decree on EPR.
- d) Participate in the meetings with relevant authorized agencies in the legislation process to explain/defense the Draft Decree on EPR when required by DLA.

Task 4: Facilitate consultation with experts and relevant stakeholders on the Decree drafts; directly report through regular meetings or written notes to WWF-Viet Nam and DLA

Ensure the drafts of the Decree on implementing EPR and waste charge are well consulted with experts and relevant stakeholders through formal meetings and workshops that are to be organized by DLA and WWF (maximum three technical/consulting meetings/workshops as assigned for addressing the comments, proposing necessary and reasonable changes to the draft, reaching the consensus of stakeholders), and that feedback is documented and taken into account.

Closely working with the international policy advisor of DLA, international experts (if any) that already developed proposals for EPR in Vietnam.

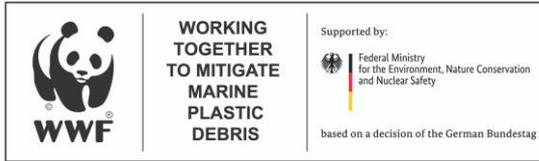
Report frequently to WWF-Viet Nam and DLA in writing and through regular meetings, ensuring progress and work plan is well documented and consulted with these managing partners.

IV – Reporting and outputs

The following deliverables are expected to reach DLA and WWF-VN in the original versions in Vietnamese and the English for the final versions (soft copies and two hard copies each language) at the times indicated:

1. (Initial) Report of explanations on legal grounds and the practical experience of the Draft Decree on EPR (output from Task 1): 2 months from the commencement date of Agreement. The final report should be summited at the end of the Agreement in accompany with the updated Draft of the Decree;
2. The 1st version of the Draft Decree on EPR: 3 months from the commencement date of Agreement. The 2nd and Final Draft of Decree on EPR: 5 and 7 months, respectively, from the commencement date of the Agreement (in Vietnamese).

The final outputs should be summited at the end of Agreement (both in Vietnamese and in English). The presentations of the key findings which used for technical meetings and consultative workshops are in both Vietnamese and English.



VI. Ownership of outputs; right to use

The full and unconditional copyrights of the results of the work and the outputs that the consultancy will be handed over to WWF-Viet Nam and DLA/MONRE.

VII. Expert qualifications

It is recommended that the group of individual consultants accomplishes following experiences and qualifications:

a) Consultant 1 (team leader):

- At least seven years of working experiences with background in legal and environmental science (especially experience in waste management);
- Experiences of working with central organizations (such as MONRE, MOIT, MARD, etc.), local authorities, international organizations, and relevant business in Vietnam;

b) Consultants 2 & 3

- At least five years of working experiences with background in industry management, environmental management, and waste treatment technologies, including recycling technologies.

c) All consultants should additionally fulfil the following requirements:

- Good understanding of regulations and institutions on waste management in Viet Nam; EPR concept, ecological, social and cultural context of Viet Nam;
- Experiences in development, consultation toward legal/regulation documents;
- Eligibility to provide consulting activities for WWF-Viet Nam and MONRE/DLA; and have experience working with international organizations;
- Excellent in English and Vietnamese language.

VIII. How to apply

Please submit your Proposals to using the subject line “Bidding for Legal document on EPR drafting”, includes:

- 1) Letter of interest.
- 2) Technical proposal:
 - a) Methodology and Approach to the service;
 - b) Curriculum vitae (CVs) of experts;
 - c) Work plan and staffing plan.
- 3) Financial proposal:
 - a) Remuneration for experts;
 - b) Reimbursements;
 - c) Total prices with taxes

Only shortlisted Consultants will be contacted. Deadline for application is 28th Oct. 2020.



ANNEX 1. AVAILABLE REFERENCE RESOURCES

Directive No. 33/CT-TTg in 2020 on Strengthening Management, Reuse, Recycling, Treatment and Reduction of Plastic Waste.

Decision No. 16/2015/QĐ-TTg on providing Regulations on Recall and Treatment of Discarded Products.

Draft Law on Environmental Protection (to be promulgated)

European Commission - DG Environment, 2014, Development of Guidance on Extended Producer Responsibility (EPR);

GA Circular – Towards Circularity of Post-Consumer Flexible Packaging in Asia;

GIZ/AIT/WWF – Managing Packaging in SEA;

MONRE, Báo cáo hiện trạng môi trường quốc gia 2019, Chuyên đề quản lý chất thải rắn sinh hoạt;

OECD, 2016, Extended Producer Responsibility – updated guidance for efficient waste management;

“Rethinking Plastics - Circular Economy Solutions to Marine Litter” Project, 2020, Extended Producer Responsibility (EPR) for Packaging Waste in Vietnam: Policy Brief;

WWF/Cyclos, 2019, Legal Framework Study of Extended Producer Responsibility (includes valuable information on Indonesia, Myanmar, Philippines, Thailand, Vietnam, etc.);

WWF - IEEP, EPR in the EU Plastics Strategy and the Circular Economy: A focus on plastic packaging - a briefing for governments and businesses;

“WWF - Mitigating marine plastic debris in Viet Nam” project, 2020, assessing the Implementation of an Extended Producer Responsibility System for Packaging Waste in Viet Nam (to be published).

WWF - Plastic Smart Cities Project, 2019, Review of National Governance on Solid Waste and Plastic Waste;

WWF - Position Paper on EPR;

WWF - VASI, 2020, Hồ sơ rác thải nhựa biển;

WWF - EPR website.