



Factsheet 02 | How can a PRO be established?

This factsheet outlines the key elements of the process of setting up and developing a PRO (system operator). It describes the roles and responsibilities of a PRO, who the operating body's members should be and how it should be organised (non -profit vs for-profit). It also sets out arguments for and against using a single PRO as opposed to setting up several competing PROs.

All over the world, governments are looking to move towards a circular economy to encourage a more efficient use of resources, mitigate the effects of climate change and prevent pollution. At the same time, private-sector stakeholders increasingly recognise the part they can play in fighting plastic pollution. EPR is increasingly acknowledged as a tool for transitioning to a circular economy, and action has been or is being taken to accelerate this transition in an increasing number of countries. One of the key parts of this process is the need to establish and operationalise an effective Producer Responsibility Organisation (PRO).

The Role of the PRO

In an EPR, companies have to take either individual or collective responsibility for their waste. Since it is more challenging to monitor and enforce systems based on individual responsibility, collective responsibility models are more common. > See Factsheet 01. A collective responsibility system requires a central organisation within the EPR to coordinate activity within the system. This organisation is known as the **PRO or the system operator**, and takes over the responsibilities of the obliged companies in the collective system. This allows obliged companies to take joint responsibility for their products and the packaging waste that they create (see Figure 1).



PREVENT

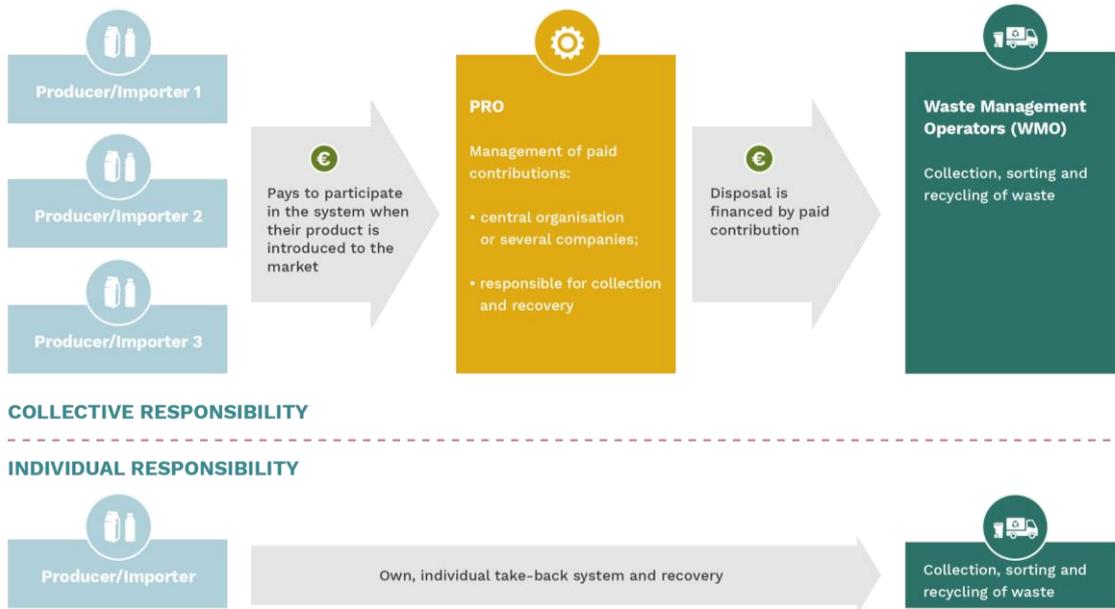


Figure 1: Comparison of collective and individual EPR systems

According to this structure, the PRO becomes the central body for organising all activities associated with the EPR system. Specifically, this means the PRO is:

- The most important stakeholder for operating the system (which it does as an organisation with it).
- Responsible for setting up, developing and maintaining a circular economy system.
- Responsible for fulfilling the take-back obligations of the obliged companies.
- Responsible for communication, providing information and research and development.



Figure 2: The PRO organises all activity within the system

The PRO has to fulfil all its responsibilities, which means it has to be supervised. This role is usually performed by the local Ministry of the Environment or by a third party appointed by the Ministry. However, in order to ensure fair competition, it is also important that companies paying fees into the system are represented on the monitoring committees.

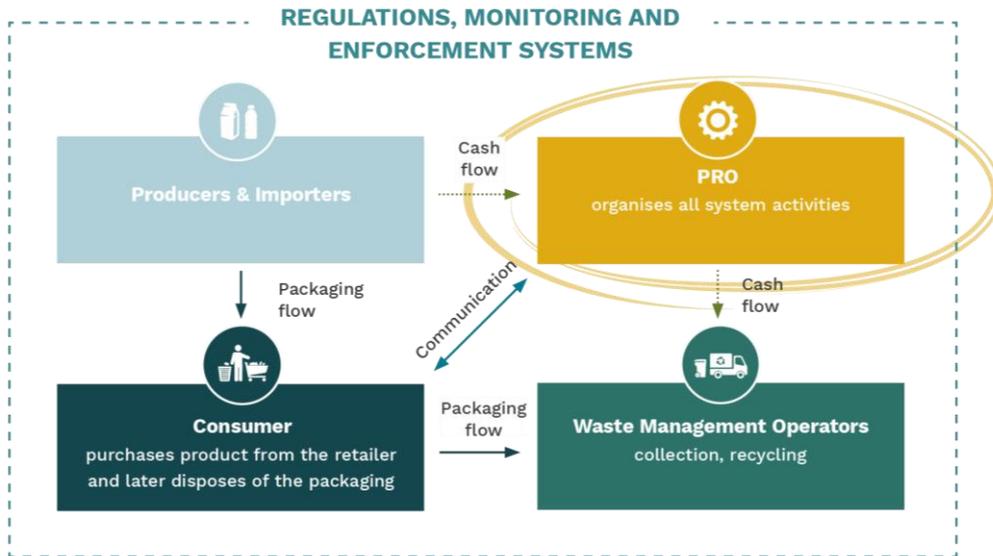


Figure 3: The PRO within a collective EPR system

EPR systems, and, by extension, the PRO, can be organised on a voluntary or a mandatory basis. However, voluntary EPR systems are by definition limited in scope, as there is no legal framework in place to ensure compliance and secure reliable sources of funding. Generally speaking, only a small number of companies participate in such voluntary systems, which in turn limits the size and number of the projects they can implement. Voluntary systems can also distort competition because they do not ensure a level playing field.

For all these reasons, setting up a comprehensive collection system on a voluntary basis is not usually feasible, as the costs would be borne entirely by a small number of companies. Participation in voluntary schemes is often tied to companies' Corporate Social Responsibility budgets, or dependent on specific business cases that only apply to high-value materials. Long-term coverage of operational costs is not guaranteed and there is no official monitoring system.

A mandatory system enables a level playing field between all the companies obliged to participate and secures reliable sources of funding. It also allows an integrated collection system to be set up for all packaging materials – including those that have little to no market value. A PRO is crucial to the success of such systems.

Tasks of the PRO

The PRO's overall task is substantially the same in all EPR systems, regardless of the specific conditions to which it is subject. The **PRO's tasks** generally include:

- **Registering all obliged companies** (in cooperation with the supervisory authorities). To maintain the level playing field and stop free-riding, all obliged companies need to be registered. 'Obliged companies' for registration purposes are defined as the companies that introduce packaged goods into the market for sale and consumption in the country



concerned, meaning that their waste packaging also needs to be managed in that country.

> See Factsheet 04

- **Collecting and managing all funding** received from the obliged companies, and ensuring that the fees charged are fair and do not harm the competitiveness of any participating company. > See Factsheet 03
- **Managing tenders and contracts** for all activities conducted as part of the EPR system (e.g. the collection, sorting, and recycling of packaging waste).
- **Documenting** the collection, sorting and recycling of packaging waste.
- **Informing and educating** all waste producers and consumers about the importance of an environmentally sound waste management system, including on issues like separate collections. > See Factsheet 09
- **Monitoring** all the services that have been assigned to service providers, and specifically all services relating to the fulfilment of collection and recycling responsibilities by waste management companies.
- **Funding all activities** using funds provided by the obliged companies. > See Factsheet 03
- **Providing documentary evidence and verification to the supervisory authorities.** The PRO has to prove that it has fulfilled all its responsibilities in full, and has used the fees paid by the obliged companies in accordance with the agreements made.

Aside from these activities, which are related to fulfilling the PRO's responsibilities in an EPR system, there are also a number of additional, more general tasks the PRO must carry out. These include managing the members of the EPR system, interacting with relevant authorities, billing and invoicing, operating IT systems and ensuring they meet the needs of the members, business planning, book-keeping, cash flow management, setting targets, monitoring performance, carrying out audits and complying with reporting requirements. The precise way in which the PRO is organised will depend on the structure of the PRO (e.g. whether it is set up as an association, a foundation, a joint stock company, etc.) and the context applicable in the country concerned.

Options for setting up a PRO

The way the PRO fulfils its various tasks can be influenced by the way it is set up. As far as the structure is concerned, the major differences usually have to do with:

- Whether the PRO is state-led or industry-led (see Table 1).
- Whether the PRO is non-profit or for-profit (see Table 2).
- Whether the PRO is a single PRO or if there are multiple PROs within the same EPR system.
- Whether the PRO covers all packaging or specific packaging types only (see table 3).

Experience gained in a number of European countries has demonstrated that there is no one structure that will guarantee success. Rather, the success of a PRO depends on an effective and efficient organisational structure, sufficient funding, effective administration, and monitoring and enforcement of the EPR system.

Industry-led PROs vs state-led PROs

In line with the basic principles of the EPR, the PRO is usually established by private industry. Nevertheless, it is possible to make the PRO part of a public authority.

- **Industry-led PROs:** Industry-led PROs are established by companies, associations or other organisations from the private sector. These PROs are supervised by public authorities to ensure they fulfil their roles and responsibilities. However, the day-to-day operation of the

EPR system is not directly connected to any public authority. Most PROs are industry-led and organised by producers, while other PROs are organised by private investors or waste management companies.

- **State-led PROs:** State-led PROs are run by a public authority, for example where the PRO becomes a department within a government ministry. Examples of such state-led PROs include the Eco-Lef system in Tunisia and Taiwan’s Waste Recycling Management Fund.

Table 1: Industry-led vs state-led PROs

| Criteria | Industry-led PRO | State-led PRO |
|---|--|--|
| Financial aspects | EPR fees are not connected to public funds and reflect the costs incurred by the PRO in carrying out its duties. Funding must be transparent and traceable (both internally and externally for monitoring purposes). | Systems must be in place to ensure that PRO funds are only used for the EPR system, and not diverted for other purposes or the general budget (i.e. that the funds are not treated like taxes). |
| Organisational aspects & practicalities | Significant effort required in relation to interactions with private stakeholders and public authorities. Companies have to take the lead in establishing the PRO. | There must be sufficient capability, expertise and resources within the public administration in order to set up the required structures and collect funds from obliged companies. There is no scope for industry initiatives run by highly-motivated private companies wishing to contribute. |
| Free rider issue | It is in the PRO’s interest to avoid free-riding and maintain a level playing field. | Prone to corruption (particularly in countries with high rates of corruption). |
| Monitoring | Monitored by an outside party, such as a public agency. | Difficult. No independent, external party to supervise and enforce any sanctions. |

Single non-profit PROs vs competing for-profit PROs

The key distinction between **industry-led PROs** is whether the PRO is set up as a for-profit or a non-profit organisation.

- **Non-profit PROs:** Non-profit PROs are owned by the obliged producers and by industry representatives (examples include those in Belgium, Norway and Spain). The obliged industry creates a joint non-profit entity that collects the necessary funds.
- **PROs as for-profit corporations:** In some cases, the law requires direct competition between several PROs rather than allowing a single PRO to exercise a monopoly. This is the model used in in Germany and Austria, for example, where competition rulings have forced the system to evolve from a single PRO to one in which multiple PROs competing with each other.

The number of PROs in an EPR system (whether there is a single PRO with a monopoly or several PROs in competition) tends to be determined by whether the PRO is non-profit or for-profit. Practical

experience has shown that **non-profit PROs operate most fairly when there is only one PRO** (operational monopoly). On the other hand, **PROs set-up as for-profit corporations operate most fairly when they compete** with other PROs.

Table 2: Non-profit PROs vs for-profit PROs

| Criteria | Non-profit PRO | For-profit PRO |
|---|---|---|
| Financial aspects | The fees collected reflect the costs incurred in implementing and operating the system. They are regularly reviewed based on spending and revenues collected. | Competition leads to high price pressure. This means that while PROs can make profits, they can also make losses and, in some cases, become insolvent. |
| Organisational aspects & practicalities | The PRO has no economic interest of its own, allowing higher levels of transparency. | Less transparency as a lot of information is not disclosed. Each PRO is responsible for organising itself. |
| Free rider issue | As there is only one PRO, it is easier to identify free riders when obliged companies pay EPR fees to the PRO. | More difficult to make sure that every obliged company pays its EPR fees to the PRO. A separate register is needed. Competing PROs have a vested interest in acquiring companies as participants in their systems, whereas monopolies can survive by increasing prices. |
| Monitoring | The effort associated with monitoring is lower than for a for-profit PRO. | A high level of monitoring is necessary as there are multiple, competing PROs and a lower level of transparency. |

PROs for all packaging materials vs PROs for specific packaging materials

The last decision that has to be made is whether the PRO will be responsible for packaging materials of all types, or whether it should only cover selected material fractions.

- **PROs for all packaging:** Here the PRO is responsible for setting up and operationalising the system for all kinds of packaging materials (plastics, paperboard and card materials, metals, glass, and all composites and beverage cartons). In the Netherlands, for example, it is a legal requirement that the PRO must cover all types of packaging and materials.
- **PROs for specific packaging:** If it is possible to separate specific, clearly identifiable packaging streams (e.g. glass, paper and cards, industrial and transport packaging) and collect them separately, a PRO can be set up solely for these specific packaging streams. For instance, in Spain there are two PROs – Ecodrio for glass, and EcoEmbes for other packaging materials. In Belgium, Valipac is the PRO for industrial and transport packaging, while FostPlus is the PRO for household packaging.

Table 3: PROs for all packaging materials vs PROs for specific types of packaging

| Criteria | PRO for all packaging | PRO for specific packaging |
|---|--|---|
| Financial aspects | Less dependent on external events due to the variety of materials. Internal cross-subsidies can compensate for fluctuations in the prices of individual materials. | Highly dependent on external developments affecting the price of the material. |
| Organisational aspects & practicalities | Obligated companies can register for all packaging materials with one PRO. | Obligated companies that handle multiple packaging materials need to register with more than one PRO, increasing their administrative burden. The fees for the different materials need to be balanced out to avoid any unwanted shifts in the materials used for packaging. |
| Free rider issue | There is no difference between the two models. | |
| Monitoring and enforcement | Less specific and in-depth monitoring at company level. | Monitoring is more difficult, but supervisors can exercise a deeper level of control. |

Structure and members of the PRO

Initiating an EPR scheme, and especially a PRO, is a complex process in which multiple stakeholders need to be included. This process is highly dependent on the individual circumstances surrounding the scheme. Any existing legal requirements and voluntary initiatives should generally be taken into account when setting up an EPR and/or PRO.

In principle, a PRO can be structured differently depending on the specific circumstances, legal framework and general political context in the country concerned. For example, a PRO can be constituted as an association, a foundation, a limited liability company or a corporation. The choice of structure then determines who the PROs members should be.

The members of a PRO often fall into three distinct categories:

1. **Executive board members** are responsible for managing operational activity, spending and monitoring. The management structure may consist of one or more people, and its members can be elected by the members or externally appointed. If the PRO is organised as an association, management responsibilities are usually split between an elected management board and a group of professional managers (sometimes known as a secretariat).
2. **Partners or members** (see below).
3. **Advisers/advisory board** advise the PRO on its work. Therefore, it is very important that they are kept informed of recent developments, innovations, news, and any other relevant details.

Generally speaking, all relevant stakeholders involved in the supply chain should participate in the PRO. However, the precise composition of the PRO and exactly how individual members contribute to it are highly dependent on the specific context in which it operates. PRO members usually fall into one of **four different categories**:

- **Obligated companies:** Producers and importers that introduce their packaged goods and products into the specific market concerned, for which they pay fees to the EPR.



- **Other companies in the supply chain** (*prior to the consumption of the goods*): These are companies forming part of the packaging supply chain (raw material suppliers, plastic packaging and product converters, designers, manufacturers, retailers and traders). Being involved in the PRO means they are kept informed of the developments relevant to the EPR scheme (where they affect their businesses) and can actively participate in these developments. As they are not obliged companies, they do not pay EPR fees.
- **Other partners in the supply chain** (*after the consumption stage*): These partners are often involved in waste management, collection and recovery, especially recycling. Being involved in the PRO ensures that waste management operators are kept informed of developments that may affect their operations, such as changes to packaging designs. Often it is not possible to make these companies members of the PRO, because doing so can create conflicts of interest.
- **Additional affiliate members**: Affiliate members may include NGOs, universities as well as municipal and other authorities. Depending on the structure of the PRO, affiliate members may also sit on the advisory board.

Steps for developing a PRO in a mandatory EPR system

Experience from a number of countries shows that developing a PRO is a multi-step approach that takes time and requires a long-term outlook. With this in mind, we recommend that a group should begin the process by working on a voluntary basis to establish a legal framework. The main phases of the process of setting up a PRO are as follows:

- **Phase I – Preparation**: This phase is divided into actions taken by the private sector (I a) and by public sector authorities (I b).
 - **I a – Establishing a preparatory organisation on a voluntary basis**: At the beginning of the process, a voluntary PRO should be set up as a forerunner for a mandatory PRO/system operator, to be set up when the relevant legal framework comes into force. Although voluntary systems are limited in their scope and effectiveness, they can be very useful for establishing the organisational and regulatory foundation and monitoring mechanisms that will go on to underpin the mandatory PRO. This preparatory organisation still has to meet the targets it sets for itself (e.g. to recycle a certain amount of plastic per year), and it will also carry out a number of essential projects and initiatives that will allow it to gain experience and find out the best way of applying certain measures in the country concerned (e.g. how best to organise collection and recycling, how to create registers and monitoring mechanisms, and how to set fees).
 - **I b – Establishing a legal basis for a mandatory EPR system**: A mandatory EPR system requires a suitable legal framework in order to function. Drafting this framework requires various agreements and discussions between state authorities and the private sector. The forerunner organisation should represent the obliged private-sector companies in discussions with the relevant state authorities.
- **Phase II – Roll out of the mandatory EPR system**: Once the legal framework for the EPR comes into force, the voluntary PRO can be turned into a formal, mandatory PRO and be put under a legal obligation to carry out its responsibilities and achieve the targets set for it. The exact form the roll out takes depends on the structure of the EPR, as well as the political, socio-economic and geographical context.
- **Phase III – Improving and optimising mechanisms once the mandatory EPR system is in force**: After a legal framework has been established, and once a mandatory EPR system is



in place, steps should be taken to ensure that the EPR system and the PRO are continuously improving, and that they evolve to reflect the latest developments in the design and use of packaging, as well as any changes in legal requirements.

- **Phase IV – Evaluation and development:** The EPR system needs to be continuously adapted on the basis of evaluation and experience gained, as well to reflect changes in the external operating environment (technology, financial flows, prices, etc.). The PRO's regulations should be kept under review and updated as necessary.

Further reading

An overview of different PROs for packaging, covering more than 30 countries, can be found at **EXPRA** (<http://www.expra.eu/>) as well as **PROsPA** (<https://prospalliance.org/>).

Korea Resource Circulation Service Agency.

<http://www.kora.or.kr/eng/coreBusiness/eprImplementation.do>

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