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Decree of 14 April 2023 containing rules for extended producer responsibility for textile products (EPR for Textiles Decree)

We Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc. etc.

On the recommendation of Our State Secretary for Infrastructure and Water Management of, nr., IenW/BSK No., Administrative and Legal Affairs Department;

Having regard to Article 9.5.2, paragraph 1, of the Environmental Management Act;

Having heard the Advisory Division of the Council of State (advice dated 8 December 2022, no. W17.22.00077/IV);

Having seen the further report of Our State Secretary for Infrastructure and Water Management of, nr., IenW/BSK No., Administrative and Legal Affairs Department;

Have approved and decreed:

Article 1 (definitions and scope)

1. The following definitions apply in this Decree and all provisions made pursuant thereto:

household textiles: bedlinen, table linen, toilet linen and kitchen linen as referred to in Chapter 63, sub-chapter I, heading 6302, of Section XI of Part II of Annex I to Regulation (EEC) No 2658/87;

placing on the market: the first making available of a product on the market in the Netherlands;

clothing: consumer and occupational clothing as referred to in Chapters 61 and 62 of Section XI of Part II of Annex I to Regulation (EEC) No 2658/87;

making available on the market: any supply of a product for distribution, consumption or use in the course of a commercial activity, whether in return for payment or free of charge;

producer: the party which places textile products on the market on a professional basis, irrespective of the selling technique used;

textile products: textile products as referred to in Article 3, paragraph 1(a), in conjunction with Article 2, paragraph 2(a), of Regulation (EU) No 1007/2011;

textile fibre: textile fibre as referred to in Article 3, paragraph 1(b), in conjunction with Article 5 and Annex I to Regulation (EU) No 1007/2011;

Regulation (EU) No 1007/2011: Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of

the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council (OJEU 2011, L 272);

Regulation (EEC) No 2658/87: Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff as it reads in the calendar year when the textile products are placed on the market (OJEU 1987, L 256);

fibre-to-fibre recycling: recycling whereby textile products which have become waste are processed so that the textile fibres are reapplied in materials for clothing or household textiles;

2. This Decree concerns newly manufactured textile products in the categories of clothing and household textiles.

Article 2 (authorised representative)

1. A producer that is not established in the Netherlands must appoint a legal or natural person established in the Netherlands as his authorised representative for the implementation of the producer's obligations in connection with this Decree and the Extended Producer Responsibility Scheme Decree [*Besluit regeling voor uitgebreide producentenverantwoordelijkheid*].

2. The authorised representative is subject to the requirements laid down by ministerial regulation.

Article 3 (preparing for re-use and recycling)

Without prejudice to Articles 4 and 5, the producer ensures that every calendar year at least the following percentage by weight of the total quantity of textiles placed on the market by him in the previous calendar year is prepared for re-use or recycled:

- a. in 2025: 50% by weight;
- b. in 2026: 55% by weight;
- c. in 2027: 60% by weight;
- d. in 2028: 65% by weight;
- e. in 2029: 70% by weight;
- f. from 2030 onwards: 75% by weight.

Article 4 (preparing for re-use)

1. The producer ensures that every calendar year at least the following percentage by weight of the total quantity of textile products placed on the market by him in the previous calendar year is prepared for re-use:

- a. in 2025: 20% by weight;
- b. in 2026: 21% by weight;
- c. in 2027: 22% by weight;
- d. in 2028: 23% by weight;
- e. in 2029: 24% by weight;
- f. from 2030 onwards: 25% by weight.

2. The producer ensures that every calendar year at least the following percentage by weight of the total quantity of textile products placed on the market by him in the previous calendar year is prepared for re-use in the Netherlands:

- a. in 2025: 10% by weight;
- b. in 2026: 11% by weight;
- c. in 2027: 12% by weight;
- d. in 2028: 13% by weight;
- e. in 2029: 14% by weight;
- f. from 2030 onwards: 15% by weight.

Article 5 (fibre-to-fibre recycling)

The producer ensures that every calendar year at least the following percentage by weight of the total quantity of textile products placed on the market by him in the previous calendar year which is recycled is recycled fibre-to-fibre:

- a. in 2025: 25% by weight;
- b. in 2026: 27% by weight;
- c. in 2027: 29% by weight;
- d. in 2028: 31% by weight;
- e. in 2029: 32% by weight;
- f. from 2030 onwards: 33% by weight.

Article 6 (use of recycled textile fibres)

The producer takes measures intended to ensure that as many recycled textile fibres as possible which have been obtained from textile products discarded after use are used in textile products placed on the market by him.

Article 7 (reporting)

1. Every year before 1 August, the report referred to in Article 5 of the Extended Producer Responsibility Scheme Decree is to be submitted for the previous calendar year.

2. By way of derogation from Article 5, paragraph 1, of the Extended Producer Responsibility Scheme Decree, in the reports on the years 2023 and 2024 only the quantities of textile products placed on the market need to be stated.

Article 8 (entry into force)

This Decree enters into force on 1 July 2023.

Article 9 (short title)

This Decree is to be cited to as: EPR for Textiles Decree.

We order and command that this Decree and the explanatory memorandum pertaining to it be published in the Bulletin of Acts and Decrees.

The Hague, 14 April 2023

Willem-Alexander

The State Secretary for Infrastructure and Water Management,
V.L.W.A. Heijnen

Published on the twenty-first of April 2023

The Minister of Justice and Security,
D. Yeşilgöz-Zegerius

EXPLANATORY MEMORANDUM

A. General part

§ 1. Introduction

This Decree provides that producers of clothing and household textiles are responsible for the recycling and preparing for re-use of the textile products which they place on the market in the Netherlands. Upon the entry into force of this Decree pursuant to the Extended Producer Responsibility Scheme Decree (hereinafter: EPR Decree), producers also become responsible for the set-up and funding of a suitable collection system. This Decree sets quantitative targets for recycling and preparing for re-use.

§ 2. Main points of the EPR for textiles

§ 2.1 Background

In the Policy Programme for Circular Textile 2020-2025¹ and in the Progress Report on Circular Textile 2020-2025², it was announced to the House of Representatives that an extended producer responsibility scheme for textiles is to be introduced via an order in council.

§ 2.2 Problem description

The textile industry is one of the most polluting industries in the world, where enormous amounts of raw materials go to waste. This is due to the extensive use of land, water, energy and chemicals. The greenhouse gas emissions generated by the global textile industry as a whole amount to 1.2 billion tons of CO₂ per year.³

Research has shown that in the year 2018, around 305 kilotons of textiles were discarded by households in the Netherlands (17.7 kg per resident). Of this amount, 44.6% was collected separately (136.1 kilotons) in second-hand shops or in clothing collection bins, and 55.4% (169 kilotons) was disposed of in residual household waste. In 2012, the quantity of textiles discarded in the Netherlands was only 255 kilotons. Of this, 43% was collected separately.⁴ The strong increase in production and consumption clearly leads to a growing amount of textile waste.

To ensure that there is more re-use, less wastage and less pollution, this Decree introduces an extended producer responsibility (hereinafter also: EPR) for textiles as of 2023. The promotion of better collection, recycling and re-use may also be realised via measures which are less binding, like the granting of subsidies or the conclusion of voluntary agreements. This has been tried, but it has not resulted in the desired increase in separate collection, recycling and re-use of textile waste. In view of the size of the industry, the scale of the problem and the lack of financial resources, it has been decided – and agreed with the industry – that an EPR for textiles is to be

¹ *Beleidsprogramma circulair textiel 2020–2025* ('Policy Programme for Circular Textile 2020–2025'), Annex to Parliamentary Papers II 2019/20, 32 852, no. 95.

² *Voortgangsrapportage circulair textiel* ('Progress Report on Circular Textile'), Parliamentary Papers II 2020/ 21, 32 852, no. 156.

³ Ellen McArthur Foundation, *A New Textile Economy*, 2017, page 20.

⁴ FFact, *Massabalans textiel 2018. Onderzoek naar de massabalans van het in Nederland ingezamelde afgedankte textiel en de route en resultaten van de verwerking* ('Textile Mass Balance 2018. Investigation into the Mass Balance of the Discarded Textiles Collected in the Netherlands and the Route and Results of Processing') (2020), page 3, Annex to Parliamentary Papers II 2019/20, 32 852, no. 95.

introduced. This is a clear-cut measure that will apply to all producers and that allocates the responsibility for the textile products to the right party: the producer.

Through this EPR for textiles, producers of clothing and household textiles become responsible for the waste stage of the products that they place on the market. This Decree lays down a scheme for extended producer responsibility as referred to in Article 1.1, paragraph 1, of the Environmental Management Act [*Wet milieubeheer*]. The Decree is based on Article 9.5.2 of the Environmental Management Act. The rules of the EPR Decree also apply to the EPR for textiles. The EPR Decree imposes requirements on producers for, among other things, the collection of discarded products that were placed on the market by them and for the organisation and funding thereof.

Because producers also become responsible for the waste stage, the expectation is that they will be encouraged to reduce the costs of collection, sorting and recycling by promoting a longer lifespan, re-use, repair and recycling.

Pursuant to Article 2 of the EPR Decree, producers are responsible for the fulfilment of the obligations laid down in this Decree, including the achievement of the EPR targets stated in this Decree.

§ 2.3 Specific contents of this Decree

Producers

This Decree provides that the party which first places a textile product on the market in the Netherlands on a professional basis is the producer. Because the definition of 'producer' states that it must concern 'placing on the market', the importer also falls within the scope of the term 'producer'. When it comes to 'placing on the market', it does not matter to whom the product is offered; this can be to a business or directly to a consumer. The definition used in this Decree is in line with the definition in Article 1 of the EPR Decree.

Textiles

This Decree concerns newly manufactured clothing and household textiles. In the future, the Decree may be extended to also concern other textile products. For the exact definition of the terms 'clothing' and 'household textiles', the detailed classification of products in Regulation (EEC) No 2658/87 has been followed.

Section 9.1.2 of this Explanatory Memorandum includes a table which further explains which textile products are and which are not subject to this Decree.

Producers not established in the Netherlands and e-commerce

A producer who is not established in the Netherlands is obliged to appoint an authorised representative established in the Netherlands for the obligations of the producer.⁵ This facilitates the monitoring of compliance with the obligations of producers not established in the Netherlands who (often) place their products on the market in the Netherlands via e-commerce. An authorised representative is established in the Netherlands

⁵ Article 2 of this Decree.

if he has been entered in the commercial registry of the Chamber of Commerce.

Reporting on textile products placed on the market

The producers are obliged to report to the Minister of Infrastructure and Water Management annually on the quantity of textile products which they have placed on the market in the Netherlands⁶ and which are therefore intended for sale and use in the Netherlands. This means that textile products imported by a business in the Netherlands with the intention of exporting them without placing them on the market in the Netherlands are not governed by the EPR system; in that case the Netherlands is merely a transit country.⁷

Targets

The targets as formulated in this Decree correspond with the targets announced in the Progress Report of the Policy Programme for Circular Textile 2020–2025.⁸

Targets for 2025:

- 50% of the textile products placed on the market must be prepared for re-use or recycled. At least two fifths of this amount (i.e. 20% of the textile products placed on the market) must be prepared for re-use; the other three fifths of that target may be achieved through either recycling or preparing for re-use.
- 10% of the textile products placed on the market must be intended for re-use in the Netherlands. (This 10% is therefore part of the 20% that is prepared for re-use as referred to above.)
- Of the recycled amount, 25% must be recycled fibre-to-fibre.

Targets for 2030:

- 75% of the textiles placed on the market must be prepared for re-use or recycled. At least a third of this amount must be prepared for re-use; the other two thirds of that target may be achieved through either recycling or preparing for re-use.
- 15% of the textile products placed on the market must be intended for re-use in the Netherlands.
- Of the recycled amount, 33% must be recycled fibre-to-fibre.

In this Decree the use of annually increasing percentages has been opted for. Equal steps will be taken between 2025 and 2030 to gradually move towards the percentages which are to apply in 2030.

Justification of the targets

In 2025, a total of 50% of the textiles placed on the market must be prepared for re-use or recycled, and for 2030 this is 75%.⁹ A combined target offers producers the possibility to opt either for more recycling (in case of lower-quality textile waste) or for more preparation for re-use (in case of higher-quality textile waste), at their own discretion. Within this, a minimum percentage for

⁶ Article 7 of this Decree and Article 5 of the EPR Decree.

⁷ Rebel Group, *Naar een UPV voor textiel* ('Towards an EPR for Textiles') (2021), page 20, Annex to Parliamentary Papers II 2020/21, 32 852, no. 156.

⁸ *Beleidsprogramma circulair textiel 2020-2025* ('Policy Programme for Circular Textile 2020-2025'), Annex to Parliamentary Papers II 2019/20, 32 852, no. 95.

⁹ Article 3 of this Decree.

preparing for re-use is applied.¹⁰ Within the recycling target, a minimum percentage applies for fibre-to-fibre recycling (also referred to as 'closed-loop recycling'). This means that a certain percentage must be reapplied in materials for clothing or household textiles.¹¹ This has been opted for to not just promote recycling, but more particularly high-quality fibre-to-fibre recycling.¹² Research is still being conducted into the possibility to include targets for fibre-to-fibre recycling.

The targets as formulated in the Decree are based on the independent study report published in 2021 by Rebel Group, entitled *Towards an EPR for Textiles* (hereinafter also: the study report). In this study, possible elaborations of the EPR instrument in the textile industry were investigated to enable proper decision-making in this regard. This study report shows that the current recycling percentage is about 15%.¹³ This has been measured in relation to the total amount of discarded textiles. For the EPR for textiles, the combined target for preparing for re-use and recycling for 2025 is 50%; up to 30% of this can be realised by means of recycling. This is twice as much as in the current situation. In addition, 25% of the total recycled amount must be recycled fibre-to-fibre in 2025.

For 2030, the combined target for preparing for re-use and recycling is 75%; up to 50% of this can be realised by means of recycling. In addition, 33% of the total recycled amount must be recycled fibre-to-fibre in 2025.

It follows from the study report that these targets are achievable, ambitious and realistic.

Quantity of textile products placed on the market

The point of departure for the extended product responsibility is the responsibility of individual producers for the waste stage of the products which they have placed on the market. Producers may jointly discharge their responsibility by setting up a producer organisation, but they are not obliged to do so. Nor can they be required to join a producer organisation if there is one. This means that after the introduction of the extended producer responsibility, the option for producers to individually fulfil the extended producer responsibility imposed on them must always be kept open.

For this reason, the re-use and recycling targets apply primarily to individual producers, like in in other EPR schemes. These targets have been formulated as percentages by weight of the quantity of textile products which the producer placed on the market in the previous year. It can be assumed that the producer has these data and will provide them accurately. These data form the

¹⁰ Article 4 of this Decree.

¹¹ Article 5 of this Decree.

¹² In 2025, 50% must be prepared for re-use or recycled (in accordance with Article 3). Of this amount, at least 20% must be prepared for re-use (in accordance with Article 4). This means that (50-20=) 30% must be recycled; 25% (=7.5%) of this must be recycled fibre-to-fibre (in accordance with Article 5). If more is prepared for re-use – let's say 30% – the target for fibre-to-fibre recycling will therefore be (50-30=20x25%=) 5%.

¹³ Rebel Group, *Naar een UPV voor textiel* ('Towards an EPR for Textiles') (2021), Annex to Parliamentary Papers II 2020/21, 32 852, no. 156, page 27.

basis for the system. It is in relation to these data that the producer must demonstrate that he has achieved the targets for re-use and recycling.

In the situation where a producer organisation is responsible for the achievement of the re-use and recycling targets on behalf of all producers, these data could be measured – as is proposed in the study report that underlies of this Decree – against the (total) quantity of textiles that is discarded in the Netherlands in a given year. In this case, individual producers must pay a waste management fee to the producer organisation. To determine the level of the waste management fee, it makes sense to link it to the quantity of textile products placed on the market by individual producers. In that situation, relevant data will be needed, too.¹⁴

In short, to link up with the measurement methods used for the other EPR schemes in the Netherlands and to ensure that the targets are suitable for both collective and individual implementation, the decision has been made to relate the targets to the quantity of textile products placed on the market in the Netherlands by the producer in the previous calendar year.

§ 3. Legal framework

Articles 8 and 8a of the European Waste Framework Directive (hereinafter: WFD) form the basis for EPR schemes. In the Netherlands, the provisions on EPR schemes have been implemented in the Environmental Management Act¹⁵ and the EPR Decree.

Waste Framework Directive and Environmental Management Act

Many terms in this Decree originate from the WFD. These are concepts of European Union law which cannot be defined or used differently than they were intended and provided for by the European Union legislature. This applies, for example, to the basic concepts of waste law in general, such as 'waste', 'preparing for re-use' and 'recycling'. These terms were defined explicitly when the WFD was implemented in the Environmental Management Act. Besides in the Environmental Management Act itself, these definitions also apply to provisions based on it, and therefore also to this Decree. This means that these terms are not defined again or differently in this Decree. To render this Decree readable on its own, the definitions of 'waste', 'preparing for re-use', 're-use' and 'recycling' from the Environmental Management Act are shown and explained below.

Waste

Waste is the central concept in waste law. In the Environmental Management Act, waste is defined as any substance, mixture or object which the holder discards or intends or is required to discard. The delimitation of the concept of waste is not straightforward in practice. On the one hand, the question is when a substance or object has become waste, and on the other hand it is when waste stops being waste. In several provisions of the Environmental Management Act, attention is paid to the delimitation of the concept of waste.

Article 1.1, paragraph 6, of the Environmental Management Act, for example, concerns the residues of a production process which under certain conditions are by-products and not waste. Article 1.1, paragraph 8, of the Environmental Management Act

¹⁴ It could also be another measure, but this one is the obvious choice.

¹⁵ Articles 1 and 9.5.2 of the Environmental Management Act.

specifies under what conditions the waste stage should be deemed to have ended. In the context of this Decree, it is also important when textile products have become waste and when the waste stage has ended. More information on this topic can be found in the Guideline – 1.2 Waste or product.¹⁶ Courts regularly have to intervene to make decisions on this in concrete cases. For example, the Administrative Law Division of the Council of State ruled in a case on an informal clothing collection event (*huiskamerinzameling* in Dutch) organised by a charity that this did not concern waste collection.¹⁷ The textiles collected by the same organisation via a collection bin were regarded as waste, on the other hand. In both cases, the objectified intention of the discarding party is decisive. This is determined based on the facts and circumstances of the concrete situation. Due to this system, it is usually more difficult to make statements in general about the waste status of a material, like textile.

Preparing for re-use

Preparing for re-use means checking, cleaning or repairing recovery operations,¹⁸ by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing. So, obviously, preparing for re-use relates to waste.¹⁹

Re-use

Re-use means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived. In other words, re-use does not relate to waste.

End of waste

There is a point in time when waste stops being waste. This concludes the recovery operation. Article 1.1, paragraph 8, of the Environmental Management Act provides the conditions for this: waste which has undergone processing like recycling or another recovery operation is no longer regarded as waste, provided that it meets the following conditions:

- a. the substance, mixture or object is intended to be used for specific purposes;
- b. there is a market or a demand for the substance, mixture or object;
- c. the substance, mixture or object meets the technical requirements for the specific purposes and adheres to the legislation and standards that apply to products; and

¹⁶ *Leidraad 1.2 afvalstof of product* ('Guideline 1.2 Waste or product'), see: <https://lap3.nl/achtergrond/documenten/beleid/>.

¹⁷ ABRvS dated 20 February 2019, ECLI:NL:RVS:2019:543.

¹⁸ Recovery itself is defined as any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. The recovery operations include at least the operations listed in Annex II to the Waste Framework Directive;

¹⁹ Where it concerns separately collected textile waste, sorting is the main, and often the only, preparation operation.

d. the use of the substance, mixture or object generally will not lead to overall adverse environmental or human health impacts.

Based on these conditions it needs to be determined whether the targets for preparing for re-use and/or recycling in the context of this Decree are being achieved. Clothing which has been collected separately, has been sorted and is to be sold as second-hand clothing will probably meet the conditions for end-of-waste. Whether this is actually true in various specific situations will have to be assessed for each individual case, however, based on the conditions imposed in Article 1.1, paragraph 8, of the Environmental Management Act. The National Waste Management Plan (NWMP3) [*Landelijk Afvalbeheerplan (LAP3)*], the industry plan for textiles included in it and the supervisory authorities play an important role in the explanation of these conditions.

Fibre-to-fibre recycling

The term 'fibre-to-fibre recycling' is not defined in the Environmental Management Act, but the term recycling is, and this is linked up with as much as possible.²⁰ Fibre-to-fibre recycling is defined in this Decree as recycling whereby textile waste is fiberised, after which the textile fibres are reprocessed into clothing or household textiles, or materials or substances for these. This is intended to ensure high-quality recycling. This is linked to the duty of care of Article 6 of this Decree aimed at ensuring that in new textile products as many recycled textile fibres as possible are used which have been obtained from textile products discarded after use. Promotion of fibre-to-fibre recycling is an important objective of this Decree.

EPR Decree

Other concepts of European Union law are not defined in the Environmental Management Act, but rather in the EPR Decree that is also based on this Act, like the terms 'producer' and 'placing on the market'. That Decree should be read in conjunction with this Decree, because the adoption of this EPR for Textiles Decree activates the EPR Decree. Even though the definitions of the terms from the EPR Decree do not directly apply in the EPR for Textiles Decree, the terms should still have the same meaning. A caveat applies here, though: the terms in the EPR for Textiles Decree may be specific to textile products. For instance, in the EPR Decree, the producer is the party which places substances, mixtures or products on the market in the Netherlands on a professional basis, irrespective of the selling technique used, whereas in the EPR for Textiles Decree the producer is the party which places textile products on the market in the Netherlands on a professional basis, irrespective of the selling technique used. This means that the producer within the meaning of the EPR for Textiles Decree is also a producer within the meaning of the EPR Decree.

The EPR Decree applies to any EPR system adopted under Article 9.5.2 of the Environmental Management Act, and therefore also to this Decree. Article 9.5.2, paragraph 3(b), of the Environmental Management Act has been amended and clarified for the purpose of the EPR Decree in the Amended EU Waste Framework Directive (Implementation) Act [*Implementatiewet wijziging EU-kaderrichtlijn afvalstoffen*]. As a result of this

²⁰ Recycling means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations.

implementation act, the Environmental Management Act now also includes a definition of 'extended producer responsibility scheme'.

A suitable system for collection by producers

The EPR Decree requires producers to organise a suitable collection system for the streams to which an EPR applies. On this basis, textile producers must organise a suitable collection system for the clothing and household textiles which they place on the market. Pursuant to Article 2 of the EPR Decree, 'suitable' means that the collection system:

a. is available throughout the year and is not limited to areas where the collection and management of the waste concerned is most cost-effective; and

b. enables the party that intends to discard the substance, mixture or product concerned to deliver it to the collection system free of charge.

Among other things, this means that the collection cannot be terminated as soon as the collection targets have been met.

Connection with the municipal duty of care for household waste

With regard to the obligations for producers, particularly the obligation to set up a suitable collection system and bear the associated costs, no distinction is made between household waste and commercial waste. After all, the extended producer responsibility relates to all textile products placed on the market. If the producer works together with municipal waste collectors, the producer is still the party to which the standard applies.

Municipal authorities can lay down in the municipal waste by-law that producers to whom the EPR applies are allowed to collect household waste. A provision to this end has been included in Article 4, paragraph 1(c), of the model waste by-law of the Association of Netherlands Municipalities (VNG), which is used by many municipal authorities. In this case producers have the option of collecting discarded textile products themselves.

In addition to this responsibility for producers, the duty of care of municipal authorities for the collection of household waste continues to apply in full.²¹ As of 1 January 2025, municipal authorities must also collect textiles separately. This is regulated in the Household Waste (Separate Collection) Decree [*Besluit gescheiden inzameling huishoudelijke afvalstoffen*]. Collaboration between producers and municipal authorities may result from arrangements made between them in this regard. If so, the producer responsibility still remains his own responsibility, which the producer must discharge.

Connection with the declaration that an agreement is universally binding (AVV)

Producers may jointly fulfil the obligations arising from the EPR for textiles.²² The obligations imposed on the individual producers are then transferred to the producer organisation, which implements the EPR and fulfils the obligations arising from it on behalf of these producers, like providing notifications to the Minister of Infrastructure and Water Management.²³

²¹ Environmental Management Act, Article 10.22.

²² Article 6, paragraph 1, of the EPR Decree.

²³ Article 6, paragraph 2, of the EPR Decree.

A significant majority of producers may also ask the Minister of Infrastructure and Water Management to declare a mutual agreement on a waste management fee, as referred to in Article 15.36 of the Environmental Management Act, to be universally binding. If the waste management agreement is declared universally binding, all producers of the products concerned will be bound by it. This declaration that the agreement is universally generally binding will also bind the producers who were not party to the waste management agreement and require them to pay a waste management fee as well.

Connection with competition law

Businesses cannot act contrary to competition law, and this also applies in the fulfilment of EPR obligations. Particularly in case of the collective fulfilment of EPR obligations by a producer organisation, it is important that attention is paid to the frameworks of competition law. After all, this involves risks relating to the conclusion of anticompetitive agreements and the abuse of a position of economic power – both of which are prohibited under the Competition Act [*Mededingingswet*].²⁴ Market parties themselves are responsible for their compliance with competition law. The Authority for Consumers and Markets (hereinafter: ACM) monitors compliance with these rules. In case of a suspected breach of competition law, anyone can file a report with the ACM, after which the ACM will investigate it and act appropriately. With regard to sustainability initiatives, like the set-up of a producer organisation in the context of sustainability, a request may be submitted to the ACM for the performance of a risk assessment based on the documents to be provided by the parties, like mutual agreements and a self-assessment of the possible risks relating to competition law.²⁵ Insofar as the parties act in good faith here and always endeavour to resolve any competition issues in consultation with the ACM, the ACM may opt not to use its authority to impose penalties even if competition objections are raised after the risk assessment by the ACM.

Connection with the free movement of goods

Some provisions from this Decree may be regarded as possible barriers to the free movement of goods, as laid down in Articles 34 to 36 inclusive of the Treaty on the Functioning of the European Union (TFEU). However, possible barriers to the free movement of goods may be justified by overriding requirements relating to the public interest, including the protection of the environment. The measures taken in this Decree serve the interest of environmental protection, including, among other things, reduction of the use of primary raw materials and prevention of the disposal of waste. The measures encourage producers to place good-quality textile products on the market. Good-quality textile products have a longer lifespan, so that fewer new textile products are needed and the consumption of primary raw materials can be reduced. The re-use of products may result in fewer new products being needed.

²⁴ Prohibition on restrictive agreements in Article 6 and prohibition on abuse of a position of economic power in Article 24 of the Competition Act.

²⁵ More information on ACM's procedure with regard to sustainability agreements can be found on their website: <https://www.acm.nl/nl/onderwerpen/concurrentie-en-marktwerking/concurrentie-en-afspraken-tussen-bedrijven/duurzaamheid-en-concurrentie/afspraken-tussen-bedrijven-over-duurzaamheid> (only in Dutch).

Finally, promotion of re-use in the Netherlands prevents or at least postpones disposal of these products in third countries in landfill or by incineration, which benefits the environment in those countries.

The contents of this Decree are in line with the intended tightening of the EPR requirements relating to waste prevention, preparing for re-use and high-quality recycling in the Waste Framework Directive.²⁶ All in all, these measures are appropriate in light of the interest of environmental protection and do not go beyond what is necessary in order to achieve this objective.

§ 4. Consequences (except financial consequences)

With the EPR for textiles, producers of clothing and household textiles become responsible for the waste stage of the products that they place on the market. Lawful and enforceable targets are imposed on producers with regard to preparation for re-use and recycling. Textile producers are responsible for, and therefore also bear the costs of, waste management. This means that producers must collect textile products discarded after use and must ensure that these are processed as well as possible (at least in accordance with the targets).

§ 4.1 Consequences for the environment

Even though the environmental benefits of the EPR for textiles still need to be further examined, sufficient literature exists on the significant negative impact on the environment of the textiles industry and on the urgent need to reduce this impact. It is estimated, for example, that between 2% and 10% of the total European environmental pressure is caused by the textile industry.²⁷ This environmental impact mainly occurs in the production countries. Re-use and recycling are necessary in order to reduce the environmental pressure. A study by CE Delft from 2018 indicates that the impact of recycled textiles is 4 to 50 times lower than that of new (or 'virgin') fibres, depending on the type of fibre used.²⁸ In addition, re-use evidently results in a significantly lower impact on the environment, since the lifespan of a textile product is extended and the production of a new textile product is avoided.

§ 4.2 Consequences for the administrative burden

Producers of textiles, including importers, are obliged to annually state the quantity of textiles (in kilograms) which they have placed on the market in the Netherlands. In the current situation, producers are already recording these data. This results in a minimal administrative burden.

The exact administrative burden will be set out in the ministerial regulation covering the reporting obligation.

²⁶ European Commission, Call for Evidence, January 2022 (Ref. Ares(2022)577247).

²⁷ European Parliament, Briefing: Environmental Impact of the Textile And Clothes Industry, PE 633.143 – January 2019

²⁸ CE Delft, report: *Milieu-informatie textiel* ('Environmental Information on Textiles'), May 2018.

§ 5. Implementation

The producers in this sector are responsible for the implementation of the extended producer responsibility for textiles. However, many other parties are involved which also engage in the collection of textiles. To offer more clarity as to how these various parties relate to each other, this part of the Explanatory Memorandum will set out the collection practice before and after the introduction of the EPR for textiles. Subsequently, attention will be paid to the implementation practice in the different scenarios of individual implementation and collective implementation.

§ 5.1 Textile collection in practice before the introduction of the EPR for textiles.

Based on Article 10.21 of the Environmental Management Act, municipal authorities have a duty of care for the collection of household waste. As of 1 January 2025, municipal authorities will be required by law to separately collect textiles under the Household Waste (Separate Collection) Decree. Textile waste is one of the waste streams which are collected separately by nearly all municipal authorities. They are free to choose how they collect this waste and for this they have each set up their own infrastructure. Textile collection generally occurs via underground or street-level collection bins (bring-it-yourself system) or, to a lesser degree, via door-to-door bag collection. A very limited number of municipal authorities only collect textile waste at the municipal waste disposal point (*milieustraat* in Dutch). At those locations, textiles must be stored separately under Article 3.115 of the Environmental Management (General Rules for Establishments) Order [*Activiteitenregeling milieubeheer*]. After the entry into force of the Environment and Planning Act [*Omgevingswet*], this obligation will continue to apply under Article 4.623 of the Living Environment (Activities) Decree [*Besluit activiteiten leefomgeving*]. If textiles are not stored separately at the municipal waste disposal point, the same level of waste separation that is achieved in case of source separation must be achieved via subsequent separation or in another manner.

Municipal authorities organise the collection themselves or outsource it to collectors. These can be municipal or regional public waste companies or specialist textile collectors, which are often charities. Sometimes, municipal authorities grant sports clubs, churches and schools a permit to collect textiles as well. In addition, there are second-hand shops that collect clothing and shoes (in rewearable condition). Some shopkeepers and clothing chains have set up a collection system in their own shops where customers can hand in discarded items. Permission from the municipal authority is required for this as well.

Municipal authorities communicate directly with their residents on textile collection via their channels. Many municipal authorities use the textile separation rule (from the Green Deal on Textile Collection) and the icon for clothing and textiles (developed by Rijkswaterstaat), for instance at the textile collection points. Via the VANG programme for household waste, municipal authorities are supported in their efforts to improve the collection quality by Rijkswaterstaat and the Royal Dutch Association for Waste Management and Cleaning (NVRD).

For the year 2018, Rijkswaterstaat had a Mass Balance drawn up for textiles from households.²⁹ This shows that in that year, households discarded a total of 305.1 ktons of textiles (including shoes).

²⁹ FFact (2020), Textile Mass Balance 2018 – Investigation into the Mass Balance of the Discarded Textiles Collected in the Netherlands and the Route and Results of Processing, see: www.rijksoverheid.nl/documenten/rapporten/2020/04/14/rapport-massabalans-textiel-2018-2020 (only in Dutch)

Of this amount, 169 ktons ended up in residual waste and was incinerated. The percentage of textiles in residual waste fluctuates between 4 and 6%.³⁰ In 2018, 136.1 ktons of textiles were collected separately, the majority of which could be re-used or recycled. Of these 136.1 ktons, 30.3 ktons were collected by public and private collection companies, 62.9 ktons by textile collectors (often charities), and 42.9 ktons by second-hand shops.

Textile collectors sell the separately collected textiles to sorting businesses. These businesses, which can be established both within and outside the Netherlands, sort the collected textiles into various quality classes for re-use and recycling. In the Netherlands, recycling or another recovery operation is the minimum standard for separately collected textiles and for textiles delivered separately by private individuals and businesses, in accordance with Sector Plan 5 of the National Waste Management Plan 2017–2019. If the textiles are suitable for re-use or recycling, recycling is the minimum standard. If the textiles are not suitable for re-use or recycling, a different type of recovery is the minimum standard. In that case, recycling is either not possible or so expensive that the costs of delivery by the discarder to the processor exceed EUR 205 per ton.³¹

After sorting, the sorters trade the textiles; most of the textiles collected in the Netherlands (84%) are sold abroad. It appears from the Textile Mass Balance for 2018 that 53% of the textiles and shoes collected in 2018 was suitable for rewear, that 33% was recycled, and that 14% ended up as part textile and part non-textile residual waste.³²

The municipal duty of care does not extend to textiles discarded by businesses. For the management of their waste, businesses generally conclude a contract with a collector. Separate collection of textile waste is a possibility here. Since 2021, businesses that discard textiles on a weekly basis or that discard at least 1 m³ of textiles on a single occasion are obliged to separate them. There are actually many examples of circular business models for business textiles already. For example, textile care businesses make clothing or linen available to users and in this way realise optimum use, and they process the textiles at the end of their lifespan.

For the year 2020, Rijkswaterstaat also had a Mass Balance drawn up for business textiles.³³ It is estimated that in that year, businesses discarded 13.2 ktons of textiles. Of this amount, 3.8 ktons were collected separately. Of this separated percentage, 2.8 ktons could be recycled and 0.2 ktons could be re-used. The vast majority of the discarded business textiles is incinerated.

³⁰ Rijkswaterstaat (2022), *Samenstelling van het huishoudelijk restafval, sorteeranalyses 2021* ('Composition of Residual Household Waste, Sorting Analyses 2021'), see: www.afvalcirculair.nl/onderwerpen/monitoring-cijfers/afvalcijfers/afvalcijfers-land/samenstelling (only in Dutch).

³¹ Rijkswaterstaat, *Landelijk Afvalbeheerplan 3, sectorplan 05 Gescheiden ingezameld/afgegeven textiel (inclusief schoeisel)* ('National Waste Management Plan 3, Sector Plan 05 Separately Collected/Delivered Textiles (Including Shoes)'), see: <https://lap3.nl/sectorplannen/sectorplannen-1-85> (only in Dutch). The minimum standard indicates the minimum quality of processing of a certain waste substance or category of waste. If a minimum standard is set, this prevents waste from being processed at a lower level than is desirable.

³² FFact (2020), *Massabalans textiel 2018 – Onderzoek naar de massabalans van het in Nederland ingezamelde afgedankte textiel en de route en resultaten van de verwerking* ('Textile Mass Balance 2018 – Investigation into the Mass Balance of the Discarded Textiles Collected in the Netherlands and the Route and Results of Processing'), see: www.rijksoverheid.nl/documenten/rapporten/2020/04/14/rapport-massabalans-textiel-2018-2020 (only in Dutch).

³³ FFact (2022), *Massabalans Bedrijfsmatig textiel 2020 – Onderzoek naar afdanking en verwerking van bedrijfsmatig textiel – nulmeting 2020* ('Business Textile Mass Balance 2020 – Investigation into the Discarding and Processing of Business Textiles – Baseline Measurement 2020'), see: www.rijksoverheid.nl/documenten/rapporten/2022/10/06/bijlage-bij-kamerbrief-rapport-massabalans-bedrijfsmatig-textiel-2020-ffact (only in Dutch).

§ 5.2 Collection in practice after the introduction of the EPR for textiles

Even after the introduction of the extended producer responsibility, municipal authorities will still have a statutory duty of care for the collection of textiles in household waste. The introduction of the extended producer responsibility offers producers the possibility to collect textiles themselves. The scale of the collection by producers and shopkeepers is expected to be limited. Besides websites where consumers trade in clothing among themselves, there is a growing number of initiatives taken by retailers that work with new circular business models. For example, they collect textiles themselves for re-use (or preparation for it) or recycling, among other things by offering discounts on new items of clothing in exchange for old ones, or they sell second-hand clothes in addition to new ones. Compared to traditional collection via municipal authorities, this is currently merely a niche market with potential for growth.

It can be expected that one or more organisations will organise collection and processing on behalf of the producers, initially by making use of the existing collection infrastructure of the municipal authorities. A producer organisation will need to reach agreement with the municipal authorities and textile collectors on the collection infrastructure and collection fees. To achieve the targets for preparing for re-use and recycling, effective and efficient organisation of the collection efforts is a prerequisite. If we want to increase re-use and recycling, more and better collection is needed. A considerably smaller share of the textiles should end up in residual waste and incinerators. To be able to implement this in a practical and effective way, the producer organisation needs to work together with the existing parties that organise and execute collection, sorting and processing. As with most other EPR systems, there is a certain mutual dependence between municipal authorities and producers, despite the fact that the producer remains legally responsible. Moreover, the producer organisation becomes responsible for communication with consumers on practical matters relating to the collection, such as where and how the textiles can be delivered. For this, too, the producer organisation needs to make arrangements with the municipal authorities, so that they can inform their citizens adequately.

To collect and recycle more business textiles, the producer organisation can make arrangements with collectors of commercial waste for separation, or with suppliers of occupational clothing for the set-up of return logistics, for example.

If the producers do not succeed in setting up a producer organisation, this means that every producer will need to individually achieve the targets of the EPR, set up a collection infrastructure, communicate on it and make arrangements with other parties, like municipal authorities and textile collectors.

§ 5.3 Individual and collective implementation

The parties implementing the regulations are the producers of textile products. This also includes importers. The implementation costs concern the collection of discarded textile products and the realisation of preparation for re-use and recycling in accordance with the targets laid down in this Decree. The targets will apply as of the year 2025, so that producers still have plenty of time to prepare for implementation. Under the EPR Decree, producers are obliged to report annually on the fulfilment of their obligations laid down in

this Decree. Pursuant to Article 9.5.2, paragraph 7, of the Environmental Management Act, requirements will be imposed on this reporting by ministerial regulation.

Through this Decree, producers formally become responsible individually, but may decide to fulfil their obligations jointly – having regard to the EPR Decree. For existing EPR systems of other product groups, producers have opted for collective implementation. The presence of a producer organisation improves the feasibility and enforceability of the EPR (see Section 6 of this Explanatory Memorandum). Collective implementation is also expected to be opted for under the EPR for textiles. In 2022, the industry organisations Modint and INretail jointly set up a producer organisation – a foundation called Stichting UPV Textiel (hereinafter: the foundation) – which producers of clothing and household textiles can join. The foundation intends to take care of the notification and reporting obligations on behalf of the participating producers and of the joint organisation of the collection, preparing for re-use and recycling of the textile waste.

In view of the importance of a producer organisation for the feasibility and enforceability of the EPR, the Ministry of Infrastructure and Water Management facilitates initiatives for this purpose where necessary and appropriate. Via the so-called regular network consultations on circular textile, industry organisations are discussing the set-up of the EPR scheme for textiles with the Ministry. The presence of statutory obligations, like the minimum targets, increases the chance of the industry organising itself. In light of this, the State Secretary has declared her willingness to support the industry in the collective implementation of the extended producer responsibility by providing security for a loan from a financial institution.³⁴

The Ministry's willingness to help come up with collective initiatives does not affect the producers' obligation. The responsibility for the realisation of the EPR system lies solely with the producers. There are also possible scenarios where no or several producer collectives are set up. In all cases, the obligations will need to be implemented and compliance will be enforced in a suitable manner.

§ 6. Monitoring and enforcement

Under the Environmental Management Act, enforcement may occur both under administrative and under criminal law. The Ministry of Infrastructure and Water Management is authorised to impose an order for coercive administrative action under Article 18.1, paragraph 1, of the Environmental Management Act or an order for periodic penalty payments under Article 5:32 of the General Administrative Law Act [*Algemene wet bestuursrecht*]. Pursuant to Article 1a, under 2^e, of the Economic Offences Act [*Wet op de economische delicten*], violations of this Decree which is based on Article 9.5.2 of the Environmental Management Act are deemed to be economic offences. Pursuant to Article 2, these economic offences are serious offences, insofar as they have been committed intentionally; if not, it concerns minor offences. Article 6 determines the punishment for these offences. Under said Act, fines may be imposed or a business may be shut down, for example.

Monitoring of compliance with this Decree and enforcement under administrative law are responsibilities of the Minister of Infrastructure and Water Management. The implementation of these responsibilities has been delegated to the Human Environment and Transport Inspectorate (ILT). Criminal prosecution is taken care of by the Public Prosecution Service.

³⁴ Parliamentary Papers II, 2022–23, 35 267, no. 31.

The Human Environment and Transport Inspectorate (ILT) has conducted an enforceability, feasibility and fraud resistance assessment (*HUF-test* in Dutch) for this Decree. For this purpose, the ILT was asked to identify the necessary capacity for two scenarios: one with implementation by individual producers and the other with implementation by producers collectively.

The ILT has assessed the enforceability as being insufficient if no producer organisation is set up, noting, however, that a complete assessment of the enforceability is difficult to realise because some points still need to be further elaborated in a ministerial regulation. It is estimated that the implementation of the Decree requires 16.8 FTEs in case of fulfilment at the level of individual producers, compared to an expected 5.8 FTEs if a producer organisation exists. Finally, the ILT concludes (with reservations) that the scheme is moderately fraud resistant. Measures to prevent fraud still need to be further elaborated in the associated regulation. The ILT specifically refers to possible manipulation of the figures, the validation of product application abroad and the actual application of re-used textiles after the preparation stage.

The ILT's main concern relates to the realisation of monitoring if a producer organisation is not set up. According to the ILT, individual producers will not be sufficiently able to implement this and report on it.

As a result of this Decree, individual producers are responsible for fulfilling the obligations imposed on them – as long as no producer organisation has been set up. Even though this requires more capacity than enforcement on a collective level, the estimation indicates that enforcement is still possible. Monitoring and reporting obligations are being elaborated in a ministerial regulation. Attention will be paid here to the fraud risks identified by the ILT. In addition, a lower limit may be set based on further research to largely exempt small businesses from the reporting obligation.

Finally, a number of specific points mentioned by the ILT will be addressed. It has been clarified in the Explanatory Memorandum what the term 'preparing for re-use' refers to in the context of this Decree. It will have to become apparent in practice whether this term is sufficiently practicable or whether it needs to be further specified.

Within the European Union we have free movement of goods. The Customs Administration only records what is imported into the European Union and exported from the European Union. Full data on textile products placed on the market in the Netherlands can therefore not be obtained via this route.

For e-commerce, the obligation to appoint an authorised representative is the best possible measure to ensure that producers established outside of the Netherlands can be called to account for their (other) obligations arising from this Decree. How to act effectively against foreign producers that fail to appoint an authorised representative is a broader issue that cannot be resolved within the framework of this Decree.

§ 7. Financial consequences

§ 7.1 Financial consequences for producers

If a producer organisation is set up which fulfils the obligations of producers, the costs of EPR will be borne jointly by producers. These costs largely depend on the choices made by producers and on how the textile streams and the associated market develop, and there is still a significant degree of uncertainty here. This concerns both fixed costs, like those incurred for the organisation, the set-up of a monitoring system and the possible establishment of an innovation fund, as well as the variable costs per kilogram of textile, which depend, among other things, on the costs of collection, sorting, re-use, recycling, etc. The study report mentioned previously offered the following scope for the total costs of the EPR system for textiles: between EUR 82 and EUR 196 million.³⁵

The costs for an individual producer depend on how many kilograms of textiles this producer has placed on the market. Every year, a total of 343 million kilograms of new textiles are put on the Dutch market.³⁶

The costs for a producer can also be determined by means of a rate differentiation system. Under Article 6, paragraph 4, of the EPR Decree, a producer organisation is also required to use differentiated rates where possible, taking into account the entire lifespan, sustainability, reparability, re-usability and recyclability of the substances, mixtures or products, as well as the presence of any harmful substances in them. When this Decree is evaluated, it will be expressly examined whether rate differentiation is being used to a sufficient degree.

§ 7.2 Financial consequences for small producers

Because anyone who places clothing on the market in the Netherlands on a professional basis falls within the scope of this Decree, the group of potential producers is large. Statistics Netherlands (CBS) estimates that around 25,630 businesses may be subject to the Decree.³⁷ Of these businesses, 5% (1360) is responsible for 75% of the production value (about EUR 8 billion) and for 70% of jobs, which total about 66,300 FTEs. This means that the other 24,270 businesses are responsible for 25% of the total production value (about EUR 2.6 billion) and for 27,800 FTEs.

§ 7.3 Financial consequences for municipal authorities

At the moment, municipal authorities are responsible for the collection of household waste, including textile waste. With this Decree, producers become responsible for the collection, recycling and re-use of their textiles. In view of the role played by municipal authorities in the separate collection of textiles and the current collection infrastructure, it is likely that producers will make arrangements with the municipal authorities for the

³⁵ Rebel Group, *Naar een UPV voor textiel* ('Towards an EPR for Textiles') (2021), page 27, Annex to Parliamentary Papers II 2020/21, 32 852, no. 156.

³⁶ Royal Haskoning DHV/KplusV, 2021, *Monitoring beleidsprogramma circulair textiel – Nulmeting peiljaar 2018* ('Monitoring Policy Programme for Circular Textile – Baseline Measurement of Reference Year 2018').

³⁷ At the request of the Ministry of Infrastructure and Water Management, CBS has provided a data set with figures from businesses that may be subject to the EPR.

collection of textiles. It is quite possible that they will be paid by the producers for the services which they are already performing at present. This means that the financial consequences for municipal authorities depend on the arrangements made with textile producers, but it is highly likely that these consequences will be positive.

§ 8. Evaluation

An evaluation of the effects of this Decree will be conducted no later than five years after its entry into force.

§ 9. Advice and consultation

In the process that preceded this Decree, relevant stakeholders from the textiles industry, like VHT (the Dutch textile recycling association), NVRD (the association of Dutch cleaning services), BKN (the Dutch industry organisation of second-hand shops), VNG (the Association of Netherlands Municipalities), MVO Nederland (the Dutch 'movement for entrepreneurs in the New Economy') and the environmental organisation Natuur & Milieu were consulted on several occasions.

The proposal for an extended producer responsibility for textiles from the industry organisations³⁸ and the results of the independent study initiated by the Minister of Infrastructure and Water Management (see Section 2) also served as important input for the development of this Decree.

In the sections below we will further discuss the internet consultation that took place, as well as the advice issued by the Dutch Advisory Board on Regulatory Burden (ATR).

§ 9.1 Internet consultation

The internet consultation round took place from November 2021 to January 2022. This consultation resulted in 34 responses – from private individuals but also from textile collectors, textile processors, recycling businesses, second-hand shops, municipal authorities, industry organisations representing producers, and non-profit organisations. Among the respondents there is broad support for the introduction of the extended producer responsibility for textiles. The EPR is seen as an important step towards a circular economy. Several points for attention were put forward, however. Below we will address these points and indicate for each whether it has resulted in a change to the Decree and/or the Explanatory Memorandum.

§ 9.1.1 Definitions

In the internet consultation, several questions were posed on the definition and application of certain terms and concepts, such as 'preparing for re-use' and 'fibre-to-fibre recycling'. In connection with these questions, these terms and concepts are now addressed in more detail in the description of the legal framework in Section 3 of this Explanatory Memorandum.

In addition, respondents commented that it is not clear whether the term 'producer' also covers importers and that it would be better to explicitly mention importers. This may seem to be clearer, but this suggestion has not been adopted, for the reason set out below. In the Explanatory Memorandum on the EPR Decree, the terms 'producer' and 'importer' are not used alongside each other either,

³⁸ *Sectorplan Nederlandse kleding- en textielsector* ('Sector Plan for the Dutch Clothing and Textile Industry'), see: <https://modint.nl/thema/milieu-circulariteit/documenten/26-sectorplan-nederlandse-kleding-en-textielsector> (only in Dutch)

rather, it is explained as follows that the term 'producer' also refers to importers:

"The provisions in this Decree relate to the party which first places substances, mixtures or products on the market in the Netherlands. This may be a domestic producer. If products are produced outside of the Netherlands, the provisions apply to the importer of the product, being the party which first places a product on the market in the Netherlands. If it concerns distance selling, whereby a supplier from outside the Netherlands offers products on the Dutch market via online sale, this supplier is also subject to the provisions in this Decree. This means that for the obligations in this Decree, the individual producer or importer is the party to which the standard applies."

Another question that was posed was whether a shopkeeper that sells second-hand clothing should be regarded as a producer. A distinction needs to be made here between continued use and preparing for re-use. If it concerns continued use, the sale was not preceded by a waste stage. In this case the shop does not make the clothing available on the market for the first time, and the shopkeeper is therefore not a producer within the meaning of this Decree. If it concerns preparing for re-use, the sale was preceded by a waste stage and it can be argued that the clothing is being placed on the market. The shopkeeper who sells second-hand clothing would then be the producer within the meaning of this Decree. However, this is not the intention of this Decree, because the sale of this second-hand clothing actually contributes to the promotion of re-use which this Decree is aimed at. Therefore, the Decree concerns producers of newly manufactured textile products and not shops offering second-hand textile products which have been prepared for re-use. To clarify this, Article 1, paragraph 2, of this Decree provides that this Decree relates to newly manufactured textile products in the categories of clothing and household textiles.

§ 9.1.2 Scope of the EPR

Several respondents brought forward suggestions to adjust the scope of the EPR for textiles. For example, a suggestion was made to add home textiles, shoes and bags. In the internet consultation version for this Decree, the advice from the study report to have the EPR for textiles relate to the categories of textile products that were referred to in the report as 'clothing' and 'household textiles' was followed.³⁹ The suggestion to extend the EPR for textiles to include home textiles, shoes and bags has not been adopted, because it would make the EPR more complex. In case of the inclusion of those categories, the Decree would concern more and other producers and other recycling processes. The advice from the study report to start as simply as possible and maybe extend the scope later on has been followed.

Furthermore, the suggestion was made to leave curtains and small product groups like blankets, sleeping bags and floorcloths outside of the scope of the EPR for textiles. This suggestion has been adopted – also in view of the above line of reasoning. Therefore, the EPR for textiles is limited to clothing, including occupational clothing, and household textiles, comprising of table linen, bedlinen, toilet linen and kitchen linen.

³⁹ Household textiles referred to: blankets, table, bed, toilet and kitchen linen, curtains (including drapes) and interior blinds, other furnishing articles, floorcloths and cleaning cloths. These are the product groups as referred to in Chapter 63, sub-chapter I, headings 6301, 6303, 6304 and 6307, of Section XI of Part II of Annex I to Regulation (EEC) No 2568/87.

The table below sets out which products do and which products do not fall under the EPR for textiles. The list of items which are subject to the EPR for textiles is exhaustive. The list of items which are not subject to the EPR for textiles is indicative. The codes listed between brackets are so-called customs codes and can be found in Section XI of Part II of Annex I to Regulation (EEC) No 2568/87.

Subject to EPR	Not subject to EPR
Consumer clothing (61 and 62)	Shoes (64), bags, belts (42) (no textile products)
Occupational clothing (61 en 62)	Headgear (65)
Bedlinen (6302)	Blankets (6301), bedspreads (6304)
Table linen (6302)	Curtains (including drapes) and interior blinds (6303)
Toilet linen and kitchen linen (6302), such as towels and tea towels	Sacks and bags (6305), tarpaulins, sails and tents (6306), floorcloths and dishcloths, cleaning cloths, dusters (6307)
Returned products (which have been placed on the market)	Unsold stock (which has not been placed on the market)

§ 9.1.3 Textile service businesses, online platforms and second-hand shops

The question was posed whether textile service businesses can be exempted from the EPR for textiles, because they already contribute significantly to circularity. Textile service businesses are deemed to be producers within the meaning of this Decree if they are the party which places the textile products on the market in the Netherlands, meaning that they make them available on the market in the Netherlands for the first time. In this case they fall within the scope of the EPR for textiles. If they are not the party placing the products on the market in the Netherlands, for example because they have bought the products from a Dutch producer, they are not a producer within the meaning of this Decree. The contribution made by textile service businesses to the realisation of a circular textile chain is not a criterion for this.

Another respondent asked whether online purchase and selling platforms can be included in the targets for preparing for re-use. Preparing for re-use is aimed at using a product again and for the same purpose after the waste stage. This must be distinguished from continued use. In the case of continued use, the product remains in the usage stage without it becoming waste at any point in time. Assuming that online platforms are a market place for second-hand clothing that is sold per item, not in an occupational context, and at a market rate, by one consumer to another, in order for it to be worn again, this is an indication that it concerns continued use and not preparing for re-use of waste. To the extent that the sale of used clothing via online platforms is sale of this kind, it can generally not be counted towards the target for preparing for re-use, therefore.

This may be different for second-hand shops. The clothing that is sold there generally originates from separate collection of textile waste followed by its sorting (preparing for re-use). If the sorted clothes are then sold in a second-hand shop, they may be eligible to be counted towards the target for preparing for re-use.

§ 9.1.4 Unsold stock held by producers

Respondents also asked whether unsold stock of textile products can be counted towards the targets for preparing for re-use. This is not the case. This Decree concerns textile products which have been placed on the market by a producer. Unsold stock that is discarded by the producer has not been placed on the market and can therefore not be counted towards the target for preparing for re-use.

To items returned by consumers to producers, the following applies: although these textile products have been placed on the market, as a result of their return they have not become waste. This means that they do count as textile products placed on the market by the producer. Yet if the producer subsequently sells these textile products again, they do not count towards the target for preparing for re-use. After all, preparing for re-use relates to waste, and these textile products are not deemed to be waste. Producers need to take this into account when setting up their administrative systems for the purpose of reporting in the context of this Decree.

§ 9.1.5 Target levels and environmental objectives

A number of respondents indicated that according to them the targets were not ambitious enough. On the other hand, a number of other respondents indicated that they thought the targets were too ambitious. For the determination of the target levels, the advice from the study report has also been followed, in which targets have been formulated which in the opinion of the investigators are achievable, ambitious and realistic. The re-use target is based on a previous proposal by the parties in the textile chain. The proposal has not been amended in this regard. Based on the evaluation – which will be conducted up to five years after the entry into force of this Decree – the targets for 2030 can still be adjusted (upwards or downwards). Moreover, the suggestion was made to quantify the targets in absolute numbers. This suggestion has not been adopted, because in case of absolute numbers growth or shrinkage of the textile market cannot be taken into account.

A number of respondents emphasised the importance of the formulation of environmental targets, because according to them the current targets were not focused on environmental impact, like CO₂ emissions and water usage. Respondents also requested clarification of how the proposed legislation will help reduce the environmental impact of the industry. They specifically mentioned the environmental benefits of fibre-to-fibre recycling compared to other types of recycling. It is noted in the study report that the textile industry is an industry which causes significant environmental pressure and produces a lot of waste. This is closely linked to the predominant use of virgin materials, the environmental impact of the production process, the limited fibre-to-fibre recycling and the purchase-and-discard behaviour of consumers. By recycling more and making use of recycled materials rather than primary raw materials in production, the environmental pressure at the start of the chain can be reduced. Therefore, the decision has been made based on the study report to make a distinction between a total percentage for recycling and the share of high-quality recycling (also referred to as fibre-to-fibre recycling). This means that the targets do actually aim to reduce the environmental impact, but expressed in recycling and re-use percentages rather than CO₂ emissions or litres of water consumed.

The question was also asked how the use of recycled textiles in new textiles will be promoted. Article 6 requires producers to take measures intended to maximise the use of recycled textile fibres from textile products discarded after use in textile products placed on the market. It is still being investigated whether targets can be set for this. In addition, the Netherlands is striving for an obligation under European law to use recycled materials of textile origin in new textiles.

§ 9.1.6 Imposing product requirements

A considerable number of suggestions were made to impose requirements in this Decree that contribute to the development of a more sustainable and circular textile chain. Examples of these suggestions are: requirements for the number of times an item of clothing can be washed and worn, requirements for working conditions in production countries, 'design for recycling' and 'design for sustainability', quality requirements for production, a prevention target, a prohibition on the destruction of unsold items, a microplastics approach, and a greener tax system.

As has also been laid down in the EPR Decree, an extended producer responsibility scheme contains rules or government measures that ensure that a producer retains financial responsibility or financial and organisational responsibility for the waste stage of products, substances or mixtures which this producer has placed on the market. The EPR system expressly focuses on the waste stage of products. This means that the effectiveness of the EPR relates to the collection, recycling and re-use of textiles and to the use of recycled textiles in new textiles. It is not possible to impose quality requirements on products in an EPR scheme. Therefore, the Decree has not been amended in this regard. The suggestions put forward were nevertheless valuable for the government's broader textile policy. Such product requirements can be imposed on a European level; the Netherlands has been advocating for this and remains committed to it.

§ 9.1.7 Connection with European law and European policy

A number of respondents drew attention to the harmonisation of European law. For instance, reference was made to the EU Sustainable Products Initiative and the associated EU Textiles Strategy, and to a possible obligation to use recycled textile fibres that may be implemented under the new Ecodesign for Sustainable Products Regulation as proposed by the European Commission.⁴⁰ The EPR for textiles is in accordance with the applicable European legislation, like the WFD, and this Decree will be amended where necessary in case of new relevant legislation.

§ 9.1.8 Ministerial regulation on reporting

Further requirements for reporting by producers will be laid down by ministerial regulation. The respondents provided a number of points for attention in this regard, including the importance of traceability and transparency. Attention was also drawn to the regulatory burden and the measurability of the targets at individual producers. These points are being addressed and will be further elaborated in the ministerial regulation. One respondent asked for the inclusion of more ambitious targets in the ministerial regulation than in Article 5 of the Decree. This is not possible – the requirements imposed in the ministerial regulation cannot go beyond

⁴⁰ COM (2022) 142.

those laid down in this Decree. Another point raised concerns the introduction of further rules regarding collection fees, rate differentiation, and criteria for the composition and quality of the collected textiles. In view of Article 6, paragraph 4, of the EPR Decree, however, rate differentiation falls under the responsibility of the producer organisation (or organisations). A request was also made for further clarification of the possibility to exempt small producers from the reporting obligation. The latter is indeed possible: by order in council, an exemption may be included for producers producing no more than a certain maximum. As yet, no decision has been made as to whether an exemption will be introduced for textile producers and, if so, what the limit should be.

§ 9.1.9 Rate differentiation

A significant number of comments were made on rate differentiation. Among other things, respondents argued for a financial incentive for circular products (eco-modulation), a lower rate for mono materials compared to mixed streams, a fixed rate for small businesses, and differentiation for baby and children's clothes. With this Decree, producers are made financially responsible for their products in the waste stage. How this is paid for is up to the producers themselves. If a producer organisation is set up, producers will pay a fee to the producer organisation. Altogether, the fees paid must cover the costs. This is provided for in Article 6, paragraph 3, of the EPR Decree. Paragraph 4 of said article requires that the producer organisation differentiate the producer fee if possible, particularly by taking account of the entire lifespan of products, the sustainability, re-usability and recyclability, and the presence of hazardous substances. In other words, it is up to the producer organisation, and not the central government, to apply rate differentiation. Rate differentiation may mean, for example, that producers that place products on the market that last for a long time, are re-usable or are recyclable, and thus ensure lower costs of management of the waste resulting from these products, also pay a lower fee. Progressive rate differentiation makes a major contribution to the circularity of textiles. When this Decree is evaluated, it will be expressly examined whether rate differentiation is being used to a sufficient degree.

The suggestion has also been made to partly use the proceeds of the fees to improve the working conditions in international production chains for clothing and textiles. However, those topics fall beyond the scope of an EPR scheme as it is currently defined in the WFD and the Environmental Management Act.

§ 9.1.10 Authorised representative

Under Article 2 of this Decree, foreign e-commerce platforms which place textile products on the market in the Netherlands are required to appoint an authorised representative in the Netherlands. One respondent wondered how this can be effected and made enforceable. The ILT currently has limited enforcement options. Big platforms can be contacted in writing and urged to appoint an authorised representative. This forms part of the wider problem with regard to elements of e-commerce that cannot be solved through this Decree. The Netherlands will discuss this topic with the European Commission. When this Decree is evaluated, this aspect can be considered explicitly as well.

§ 9.1.11 Collaboration between producers and other parties in the textile chain, and regulatory role of the central government

A significant share of the responses in the internet consultation round came from stakeholders. These parties – like textile collectors, sorters, processors or second-hand shops, municipal authorities or regional collaborative alliances – play a role in the current situation. They have offered to play a more active role in the new situation (after the introduction of the EPR) and work together with producers. The industry organisations Modint and INretail are working on the set-up of a producer organisation. A foundation has been established, which will consult with the stakeholders to organise collaboration. It is up to the producers to give shape to this collaboration. The interested parties are requesting a say in the set-up of the EPR system. The central government is responsible for the legal frameworks here, and it is up to the producers to give shape to the practical, organisational and financial realisation.

§ 9.1.12 Role of municipal authorities

In the current situation, municipal authorities are responsible for the collection of household waste, including textile waste. A large share of the household textile waste is collected separately by or on behalf of municipal authorities, even though the obligation to do this will only apply as of 1 January 2025.⁴¹ A number of respondents asked for continuation of the role of municipal authorities as the parties directing the separate collection of textile waste, for the maintenance of existing agreements, and for assurance of the compensation system. They also asked for a further investigation into the financial and material consequences for municipal authorities. This Explanatory Memorandum addresses the relation between the EPR and the municipal duty of care for household waste. In connection with the comments raised during the internet consultation, this section has been clarified. With this Decree, producers become responsible for the collection, recycling and preparing for re-use of their textiles. In view of the duty of care of the municipal authorities for the separate collection of textiles (as of 2025) and the current collection infrastructure, it seems obvious that producers will make arrangements with the municipal authorities and/or textile collectors for the collection of textiles. The financial and material consequences for municipal authorities depend on the arrangements made.

Respondents also asked whether the collection of textiles will continue to take place in accordance with the separation rules of the National Waste Management Plan (NWMP3). In the fulfilment of the municipal duty of care, the NWMP3 and the associated separation guide (which covers more products than those to which the EPR applies) do indeed need to be adhered to – both now and in the future. The scope of the EPR is limited to clothing, occupational clothing, and table, bed, toilet and kitchen linen. It is conceivable that a separate collection system will be set up for this. However, this does not release the municipal authorities from their duty of care for the separate collection of household textile waste, which must occur in accordance with the applicable frameworks. Here, too, proper arrangements need to be made between producers, municipal authorities and collectors.

⁴¹ Under Article 3.115, paragraph 2(q), of the Environmental Management (General Rules for Establishments) Order, municipal waste disposal points must already have facilities where people can bring their separated textile waste.

§ 9.1.13 Consumer perspective

The question was asked how consumers will know where to bring their clothing. It is indeed important that it is clear for consumers where they can bring their textiles. This depends on how the collection is organised. With the introduction of the EPR, producers become responsible for this, at least for the textile products falling under the EPR. It follows from Article 2, paragraph 3, of the EPR Decree that a producer that has placed substances, mixtures or products on the market must inform holders of waste from those substances, mixtures or products which are subject to the extended producer responsibility scheme about waste prevention measures, collection systems, facilities for re-use or recovery, and the prevention of litter. Producers, or a producer organisation that will bear the responsibility on behalf of the producers, therefore needs to inform consumers about where they can bring their clothing and household textiles. Via Rijkswaterstaat and the public information organisation Milieu Centraal, the Ministry of Infrastructure and Water Management ensures that the provision of information to consumers by the central government is in line with this.

§ 9.1.14 Planning, entry into force and evaluation

Some respondents indicated that they thought the entry into force of this Decree on 1 January 2023 was rather ambitious, or even too ambitious. The date of entry into force has since been moved to 1 July 2023. It should be stressed here that the entry into force in 2023 effectively means that it is only in 2024 that producers first need to provide data on the textiles they placed on the market in 2023. The first targets will apply as of 2025. In other words, the entry into force leaves room for a period of adaptation, also with a view to the set-up of a producer organisation which has yet to occur.

One respondent suggested considering increasing the targets for 2030. The evaluation is expected to occur within five years after the entry into force of this Decree. Based on this evaluation, the targets for 2030 can still be adjusted – upwards or downwards – if necessary.

§ 9.1.15 Other responses

Finally, suggestions were made to introduce a sustainability label and to use this label as an incentive for reducing the production of textiles with a short lifespan. This cannot be taken care of via the system of extended producer responsibility, but in a European context the Netherlands continues to aim for the development of a mandatory sustainability label for textiles. The EPR for textiles is intended to provide producers with an incentive for producing textiles with a longer lifespan and better recyclability, though, because this can reduce their EPR fee.

§ 9.2 *Advice from the Dutch Advisory Board on Regulatory Burden (ATR)*

The Dutch Advisory Board on Regulatory Burden (ATR) has assessed the consequences of the extended producer responsibility in this Decree for the regulatory burden, and on this basis has offered a number of recommendations.

As regards the assessment framework for the usefulness and necessity of the EPR, the ATR offers two recommendations. Firstly, the ATR concludes that the effectiveness of the proposal cannot be assessed properly, partly because data on the current situation are incomplete. The ATR specifically points to the lack of data on the quantity of textiles that is placed on the market per year and the amount that is re-used and recycled per year. Therefore, the

Board recommends identifying the production, re-use and recycling of textiles in full (in a quantitative way), so that the social effect of the proposal can be determined. Secondly, the proposal does not include any provisions on interim monitoring or evaluation. The study report does recommend doing this, however. The Advisory Board shares the view that the effects of the EPR should be monitored in the interim. Finally, the Board concludes that it might be worth considering to further identify the environmental effects and pay attention to the effects of the second-hand sale of textiles on the operation of the EPR.

Since 2020, progress on the targets from the Policy Programme for Circular Textile has been monitored annually, by determining the quantity of textiles placed on the market as well as the re-use and recycling percentages. When the monitoring is further developed, the EPR will be linked up with, so that no double monitoring will occur. In order to implement the adopted motion as tabled by the MP Hagen (D66),⁴² the Textile Mass Balance which was previously performed for 2012 and 2018 will be repeated in 2023/2024 as well. The Mass Balance offers insight into the amount of textiles that is discarded, collected separately, prepared for re-use and recycled, and the destinations of these streams. This Mass Balance can serve as a baseline measurement for the EPR. With the introduction of the producer responsibility and the associated annual reporting obligation, we are also gaining a better picture of the current situation and the effects of the EPR.

Evaluating sooner will not be useful, because the effects will only be visible and measurable after several years. In addition, a responsibility for producers also needs a number of years to develop properly. For the quantitative targets in particular, progress will be monitored annually by producers based on their EPR report. This means in practice that the effects of the EPR for textiles will be monitored and that an interim evaluation report will be published before 2030. Based on this report, it can be determined whether the targets for 2030 need to be adjusted.

Based on the assessment framework for the existence of less burdensome alternatives, the Board recommends clarifying which are the possible alternatives to the EPR and substantiating why these have not been opted for. The ATR on the one hand refers to alternatives to the EPR as an instrument, like measures aimed at the placement of textiles on the market. On the other hand the ATR requests an explanation on alternative elaborations of the details of the EPR, including the choices made for the formulation of the current targets. The Board also suggests clarifying the definition of 'producer', so that parties know whether or not they are subject to the obligations of the EPR.

In response to the ATR's advice to clarify which are the possible alternatives to the EPR and substantiate why these alternatives have not been opted for, we would like to note that to reduce textile waste and to promote recovery, an EPR scheme is deemed to be the most effective measure on a national level at present. The background and necessity of the introduction of the EPR scheme for textiles are described in Sections 2.1 and 2.2. It has been explained here why less binding measures will not have the same effect. Why the formulation of the EPR targets has not been based on the amount of discarded textiles is explained in Section 2.3. The

⁴² Parliamentary Papers II, 2021–22, 35 935, no. 32.

EPR scheme must be viewed in a broader context of policy measures aimed at reducing textile waste and use of raw materials and to promote a circular textile chain. In this regard, the ATR specifically refers to a prohibition on certain textile products and promotion of the production of more sustainable textiles. The Netherlands is arguing for such measures, as well as for a compulsory minimum percentage of recycled materials, on a European level.

In response to the ATR's advice on clarification of the definition of 'producer', it is indicated explicitly in the Explanatory Memorandum that the definition of 'producer' is in line with the one in the EPR Decree. If it turns out after the entry into force of the Decree that further specification of the term 'producer' for this industry is necessary, the Decree will be amended accordingly.

The ATR notes, moreover, that involving parties subject to statutory obligations at an early stage through an assessment for small and medium-sized businesses helps develop practicable legislation, but that such an assessment did not take place because only a limited number of businesses registered for it. For this reason, the ATR recommends organising the assessment after all, or paying attention in a different way to the practicability and feasibility of the obligations for small and medium-sized businesses.

In consultation with the industry organisations for textiles, talks have been held with small and medium-sized businesses on the feasibility and practicability of the Decree. This has not resulted in any ideas that led to amendment of the Decree. Nevertheless, useful insights were gained during these talks, which will be taken into account when the ministerial regulation is drawn up.

Finally, the ATR advises fully identifying the regulatory burden effects in accordance with the general method of the Dutch central government, and at least address the following points: the costs of textiles collected or discarded in a business context, the costs associated with the obligation to report on the quantity of textiles placed on the market, perfecting of the estimation of the number of sole traders subject to the EPR scheme, and the establishment of a lower limit for the EPR obligations in order to exempt producers with a small market share.

Section 7 already provided an initial indication of the financial consequences of this Decree. The reporting obligation will be further elaborated in a ministerial regulation.

§ 9.3 Preliminary scrutiny procedure

The draft EPR for Textiles Decree has been presented to both houses of the States General. Its discussion which took place on 11 May 2022 in the Infrastructure and Water Management Committee⁴³ of the House of Representatives did not give rise to any amendments to the draft Decree.

§ 9.4 Pre-publication

The draft EPR for Textiles Decree has been announced in the Government Gazette.⁴⁴ Two points of view were put forward. These did not provide any new insights compared to the internet consultation responses, however, and have therefore not led to any amendments to the Decree.

⁴³ Parliamentary Papers II, 2021/22, 32 852 & 32 852, no. 191.

⁴⁴ Government Gazette 2022, 10785.

§ 10. Notification

Pursuant to the Notification Directive, a draft version of this scheme was notified to the European Commission on 9 May 2022 (2022/334/NL⁴⁵). The standstill period ended on 10 August 2022. Sweden submitted comments. Moreover, points of view were submitted by Policy Hub and the Federation of the European Sporting Goods Industry. The comments and points of view did not give rise to any amendments to the Decree.

Several respondents pointed to the importance of harmonised legislation. This importance is not disputed, but it does not alter the fact that Member States have the authority to adopt national extended producer responsibility schemes in anticipation thereof. As regards a national extended producer responsibility scheme for textile products, existing policy ensures that a start is made on this in 2023, for the reasons set out extensively above.

Sweden welcomes the notification and is positive about the fact that the Netherlands wants to promote a circular economy. In Sweden, too, a proposal for extended producer responsibility is being drawn up, and measures to achieve a circular economy are a precondition for sustainable development and for the transition to be made towards a circular economy.

In general, Sweden argues for more harmonised legislation in this area to ensure a properly functioning market. Harmonised schemes for extended producer responsibility facilitate trade and reduce expenses for businesses.

As for the proposal, Sweden points out that it is important to ensure that recycled materials from other Member States are not excluded. The proposal also needs to be clarified to specify where the responsibilities of the producers begin and end. Small and medium-sized businesses must have a reasonable opportunity to achieve the targets for the collection of textiles.

As regards the statement by Sweden that it is important to ensure that recycled materials from other Member States are not excluded, it should be noted that this proposal does not impede the import of recycled materials and of textile products in which recycled materials have been used.

As for the request to clarify the proposal to specify where the responsibilities of the producers begin and end, it should be noted that further rules will be imposed by ministerial regulation with regard to the topics that require further elaboration, like notification and reporting. Moreover, we would like to point out that the obligations for producers start in 2023 with a notification obligation and then gradually increase towards the achievement of the targets for re-use and recycling from 2025.

Finally, Sweden is right in drawing attention to the position of small and medium-sized businesses, which need to have a reasonable opportunity to achieve the targets. It should be noted in this regard that the scheme offers the possibility to jointly meet these targets

⁴⁵ TRIS Notification, No. 2022/334/NL.

by setting up a producer organisation that fulfils the obligations for the achievement of the imposed targets on behalf of all producers.

B. Article-by-article part

Article 1 (definitions and scope)

In paragraph 1, a number of terms are defined.

The terms 'placing on the market' and 'producer' have virtually the same definitions as in the EPR Decree, albeit that the term 'producer' now specifically focuses on textile products and the term 'placing on the market' only concerns the market in the Netherlands.

For the terms 'textile products' and 'textile fibre', we are linking up with the definitions in Regulation (EU) No 1007/2011 on textile fibre names and related labelling and marking of the fibre composition of textile products. In addition, a definition from Regulation (EEC) No 2658/87 has been included to be able to unambiguously demarcate the scope of this Decree in terms of the textile products to which it relates.

Finally, this paragraph defines the term 'fibre-to-fibre recycling', which refers to a form of high-quality recycling of textile fibres.

In paragraph 2, the scope of the Decree is defined in terms of the textile products to which it relates. This Decree concerns the categories of textile products which are designated as clothing and household textiles. It should be noted here that, as is explained in Section 9.1.2, clothing also includes occupational clothing and that household textiles do not include home textiles, for example. This scope has been determined based on the study report that underlies this Decree.

The terms 'clothing' and 'household textiles' have been further defined in line with so-called GN codes. Those product codes have been derived from Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. The textile products which are subject to this Decree are included in Chapters 61 and 62 that relate to articles of apparel and clothing accessories, referred to here with the term 'clothing', as well as heading 6302 of Chapter 63, which relates to table, bed, toilet and kitchen linen, referred to here with the term 'household textiles'. Because this Regulation is amended annually pursuant to Article 12 by means of implementing regulations of the Commission, the definition of Regulation (EEC) No 2658/87 includes a dynamic reference, so that the obligations included in the Decree always apply in light of the Regulation as it reads in the calendar year in question.

Article 2 (authorised representative)

Producers established in the Netherlands are obliged to appoint a legal or natural person established in the Netherlands as their authorised representative. This has been decided on particularly in response to concerns that online providers established outside of the Netherlands that sell textile products directly to Dutch consumers cannot be bound to the obligations arising from this Decree.

Article 3 (preparing for re-use and recycling)

The basis for the imposition of combined targets for preparing for re-use and recycling is the weight percentage of textile products placed on the market in the Netherlands by the producer concerned during the previous year. The article imposes a target for preparing for re-use and recycling on producers as of 2025. The second half of 2023 and the year 2024 can be used by producers to prepare for this. A starting percentage of 50% has been opted for 2025 because this is the level that is already being achieved via separate collection of textiles by municipal authorities and their processing by textile recycling businesses. From 2025, the targets for preparing for re-use and recycling will be increased by 5% every year, until the level of 75% is reached in 2030.

Article 4 (preparing for re-use)

Paragraph 1 imposes targets for preparing for re-use on the producer. Preparing for re-use holds a higher place in the waste hierarchy than recycling. It is for that reason that, besides the combined targets for preparing for re-use and recycling of Article 3, specific targets for preparing for re-use have been included. Paragraph 2 specifies that part of this re-use must take place in the Netherlands. Discarded textile products of good quality in particular can be sold in the Netherlands. This target therefore implicitly offers an incentive for producers to place good-quality products on the market. In addition, the inclusion of this target is aimed at reducing the export of re-usable products to third countries, to prevent these from being disposed of in those countries without being re-used or recycled. In this way this measure forms a justifiable barrier to the free movement of goods, and is suitable and proportional as regards environmental protection as explained in Section 3 of the Explanatory Memorandum.

Article 5 (fibre-to-fibre recycling)

In order to ensure that recycled materials can be used in a high-quality manner, fibre-to-fibre recycling targets have also been included. These targets come in the form of a percentage of the amount that is actually recycled by the producer, to avoid a negative effect on the incentive for choosing preparing for re-use over recycling.

Article 6 (use of recycled textile fibres)

To ensure that the collected and recycled textiles find their way back into new textile products, the textile producer needs to take measures to promote the use of recycled textile fibres in their own textile products.

Article 7 (reporting)

When this Decree enters into force, the reporting obligation of Article 5, paragraph 1, of the EPR Decree applies, subject to the proviso that in the first 18 months, under Article 7, paragraph 1, of this Decree, the report only relates to the quantity of textile products placed on the market.

Article 8 (entry into force)

Between the entry into force on 1 July 2023 and the date when the achievement of the targets for preparing for re-use and recycling set out in Articles 3 to 6 inclusive becomes mandatory, producers have a period of 18 months in which they can prepare for the achievement of these targets.

However, under Article 4, paragraph 1, of the EPR Decree, they are obliged to register with the Minister of Infrastructure and Water Management within six weeks after the entry into force of this Decree, submitting the data specified in paragraph 2 of that Article.

The State Secretary for Infrastructure and Water Management,
V.L.W.A. Heijnen