



Year 2023

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Decree of 14 April 2023 laying down rules on extended producer responsibility for textile products (Extended Producer Responsibility 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 the State Secretary for Infrastructure and Water Management of [date], No. Infrastructure and Water Management/BSK-, Principal Executive and Legal Affairs;

Having regard to Article 9.5.2(1) of the Environmental Management Act;

Having heard the opinion of the Advisory Section of the Council of State (Opinion No W17.22.00077/IV of 8 December 2022);

Having regard to detailed report of the State Secretary for Infrastructure and Water Management No IenW/BSK-[number], Administrative and Legal Affairs Department;

Have approved and hereby decree the following:

Article 1 (Definitions and scope)

1. For the purposes of this Decree and the provisions based thereon, the following definitions shall apply:

household textiles: table linen, bed linen and household linen referred to in Chapter 63, Part I, Heading 6302, of Section XI of Part II of Annex I to Regulation (EEC) No 2658/87;

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

clothing: consumer and occupational clothing 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: in the course of a commercial activity, whether in return for payment or not, supplying a product for distribution, consumption or use;

producer: person or entity that professionally places textile products on the market, irrespective of the sales method used;

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

textile fibres: textile fibres referred to in Article 3(1)(b) in conjunction with Article 5 and Annex I of 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 (OJ 2011 L 272);

Regulation (EEG) 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 in the calendar year in which textile products are placed on the market (OJ 1987 L 256);

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

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

Article 2 (authorised representative)

1. A producer not established in the Netherlands shall designate a legal or natural person established in the Netherlands as authorised representative for the implementation of the obligations of the producer in connection with this Decree and the Extended Producer Responsibility Decree.

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

Article 3 (preparation for re-use and recycling)

Without prejudice to Articles 4 and 5, the producer shall ensure that at least the following % by weight of the total textile products marketed in the preceding calendar year is prepared for reuse or recycled in each calendar year:

- 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 (preparation for re-use)

1. The producer shall ensure that at least the following % by weight of the total textile products placed on the market in the preceding calendar year is prepared for re-use per calendar year:

- 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 shall ensure that at least the following % by weight of the total textile products marketed in the preceding calendar year is prepared for reuse 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 shall ensure that, per calendar year, of the total of textile products they have placed on the market in the preceding

calendar year and recycled, at least the following percentage by weight of 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 (application of recycled textile fibres)

The producer shall take measures aimed at ensuring that recycled textile fibres derived from discarded post-use textile products are used in textile products they place on the market as far as possible.

Article 7 (reporting)

1. Producers shall issue the report referred to in Article 5 of the Extended Producer Responsibility Decree annually before 1 August for the preceding calendar year.

2. By way of derogation from Article 5(1) of the Decree on Extended Producer Responsibility, in the report covering the years 2023 and 2024 it will suffice to state the quantity of the textile products placed on the market.

Article 8 (entry into force)

This Decree shall enter into force on 1 July 2023.

Article 9 (Official Title)

This Decree shall be cited as the: Decree on extended producer responsibility for textiles.

We hereby order and command that this Decree, together with its associated explanatory memorandum, is 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

Issued on the *twenty-first* of April 2023

The Minister of Justice and

Security,
D. Yeşilgöz-Zegerius

Explanatory notes

A. General part

§ 1. Introduction

This Decree provides that producers of clothing and household textiles are responsible for the recycling and preparation for reuse of the textile products they place on the Dutch market. Producers shall also be responsible for an appropriate collection system and its financing upon the entry into force of this Decree under the Extended Producer Responsibility Decree (hereinafter: EPR Decree). This Decree sets quantitative targets for recycling and preparation for re-use.

§ 2. Main elements of the EPR for textiles

§ 2.1 Background

The Circular Textile Policy Programme 2020-2025¹ and the Progress Report on Circular Textiles 2020-2025² announced to the House of Representatives that an extended producer responsibility scheme for textiles will be introduced by order in council.

§ 2.2 Problem description

The textile industry is one of the most polluting industries in the world where many raw materials are wasted. This is due to the extensive use of land, water, energy and chemicals. The total emissions of greenhouse gases from the textile industry worldwide are 1.2 billion tonnes CO₂ per year.³

Research regarding 2018 shows that in that year approximately 305 kilotonnes of textiles in the Netherlands were discarded by households (17.7 kg per inhabitant). Of these, 44.6 % were collected separately (136.1 kilotonnes) in recycling shops or clothing containers and 55.4 % (169 kilotonnes) were disposed of as household waste. In 2012, 255 kilotonnes of textiles were discarded in the Netherlands. Of these, 43 % were collected separately.⁴ The sharp increase in production and consumption is thus leading to a growing amount of textile waste.

In order to ensure more reuse, less waste and less pollution, this Decree introduces extended product responsibility (hereinafter: EPR) for textiles from 2023 onwards. Promoting better collection, recycling and reuse is also possible through more voluntary measures, such as granting subsidies or the conclusion of voluntary agreements. This has been done, but has not led sufficiently to an increase in separate collection, recycling and reuse of textile waste. Given the size of the sector, the scale of the problem and the lack of financial resources, it was decided – and also agreed with the sector – that an EPR for textiles would be introduced. This is a simple measure that will apply

¹ Beleidsprogramma circulair textiel 2020–2025 [Circular Textile Policy Programme 2020-2025], Annex to Parliamentary Papers II 2019/20, 32 852, N° 95.

² Voortgangsrapportage circulair textiel [Progress Report on Circular Textiles], Parliamentary Papers II 2020/21, 32 852, No 156.

³ Ellen McArthur Foundation, A new textile economy, 2017, p. 20

⁴ FFact, *Massabalans textiel 2018* [Mass Balance of Textiles 2018]. *Onderzoek naar de massabalans van het in Nederland ingezamelde afgedankte textiel en de route en resultaten van de verwerking* [Examination of the mass balance of discarded textiles collected in the Netherlands and the route and results of processing] (2020), p. 3, Annex to Parliamentary Papers II 2019/20, 32 852, No 95.

to all producers and lay down responsibility for textile products where it belongs: with the producer.

With this EPR for textiles, manufacturers of clothing and household textiles are responsible for the waste phase of the products they place on the market. This Decree establishes a so-called extended producer responsibility scheme as referred to in Article 1.1(1) of the Environmental Management Act. 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, inter alia, on the collection of discarded products placed on the market by them and their as well as the organisation and financing thereof.

Because this also makes producers responsible for the waste phase, they are expected to be incentivised to reduce costs of collection, sorting and recycling by encouraging longer lifetime, reuse, repair and recycling.

Under Article 2 of the EPR Decree, producers are responsible for fulfilling the obligations set out in this Decree, including the achievement of the targets for EPR set out in this Decree.

§ 2.3 Specific content of this Decree

Producers

This Decree provides that the person or entity who professionally places a textile product on the Netherlands market for the first time is the producer. Since the definition of producer states that there must be a 'placing on the market', the importer is also covered by the term producer. It does not matter to whom the product is offered when 'placing on the market'; this can be to a company 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

The Decree concerns newly manufactured clothing and household textiles. In the future, the Decree may be extended to include other textile products. The precise definition of the concepts of clothing and household textiles is linked to the detailed classification of products in Regulation (EEC) No 2658/87.

Section 9.1.2 of this explanatory memorandum contains a table further explaining which textile producers are and are not covered by this Decree.

Non-Netherlands-based producers and e-commerce

A producer not established in the Netherlands is obliged to appoint an authorised representative for the obligations of the producer established in the Netherlands.⁵ This promotes the monitoring of compliance with the obligations of producers not established in the Netherlands who (usually) place their products on the market in the Netherlands via e-commerce. An authorised representative is established in the Netherlands if they are registered in the commercial register of the Chamber of Commerce.

Reporting of textile products placed on the market

⁵ Article 2 of this Decree.

Producers are obliged to report annually to the Minister of Infrastructure and Water Management on the quantity of textile products they have placed on the market⁶ in the Netherlands and thus intended for sale and use in the Netherlands. Therefore the textile products imported by a company into the Netherlands and subsequently re-exported without being placed on the market in the Netherlands are not covered by the EPR system. In that case, the Netherlands is only a transit country.⁷

Targets

The objectives set out in this Decree correspond to the objectives announced in the progress report of the Circular Textiles Policy Programme 2020-2025.⁸

Targets for 2025:

- 50 % of the textile products placed on the market are prepared for reuse or recycled. Of these, at least two-fifths (i.e. 20 % of the textile products placed on the market) are prepared for reuse; the remaining three-fifths of that target may be achieved with recycling or preparation for reuse.
- 10 % of the textile products placed on the market are intended for reuse in the Netherlands. (This 10 % is therefore part of the aforementioned 20 % that is being prepared for reuse.)
- 25 % of the recycled proportion is recycled fibre-to-fibre.

Targets for 2030:

- 75 % of the textiles placed on the market are prepared for reuse or recycled. At least one-third of this will be prepared for reuse; the remaining two-thirds of that target may be achieved with recycling or preparation for reuse.
- 15% of the textile products placed on the market are intended for reuse in the Netherlands.
- 33% of the recycled proportion is recycled fibre-to-fibre.

It was chosen to work with annual incremental rates in this Decree. This was done by taking equal steps between 2025 and 2030, reaching the applicable percentages in 2030.

Rationale for the targets

By 2025, a total of 50 % of the textiles placed on the market will be prepared for reuse or recycled and 75 % by 2030.⁹ A combined target allows producers to choose, as they see fit, either to recycle more (for lower quality textile waste) or to prepare more for reuse (for higher quality textile waste). Within this, a minimum percentage for preparation for re-use applies.¹⁰ Within the recycling target, there is a minimum share of fibre-to-fibre recycling (also called closed loop recycling). This means that a share must be reused in materials for clothing or household textiles.¹¹ This was chosen to promote not only recycling, but in particular high-quality fibre-to-fibre recycling.¹² Further

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), p. 20, Annex to Parliamentary Papers II 2020/21, 32 852, No 156.

⁸ Circular Textile Policy Programme 2020-2025, Annex to Parliamentary Papers II 2019/20, 32 852, N° 95

⁹ Article 3 of this Decree.

¹⁰ Article 4 of this Decree.

¹¹ Article 5 of this Decree.

¹² By 2025 (in accordance with Article 3), 50 % must be prepared for reuse or recycled. Of

research is being carried out into the possibility of including targets for fibre-to-fibre recycling.

The targets as formulated in the Decree are based on the 2021 independent research report by the Rebel Group entitled *Naar een UPV voor textiel* [Towards an EPR for textiles] (hereinafter also: the research report). This research examined possible options for the EPR instrument in the textile sector in order to make good decision-making in this area possible. This research report shows that the current recycling rate is about 15 %.¹³ This has been measured in relation to the amount of discarded textiles. For the EPR for textiles, the combined target for preparation for reuse and recycling by 2025 is 50 %, of which up to 30 % will be achieved through recycling. This is a doubling of the current situation. By 2025, a quarter (or 25 %) of all recycled textiles will be recycled fibre-to-fibre.

For 2030, the combined target for preparation for re-use and recycling is 75 %, of which up to 50 % will be achieved through recycling. In 2025, one-third (or 33 %) of the total recycled amount will be recycled fibre-to-fibre.

It follows from the research report that these objectives are achievable, ambitious and realistic.

Quantity of textile products placed on the market

The starting point for extended producer responsibility is the responsibility of individual producers for the waste phase of the products they have placed on the market. Producers may jointly fulfil the responsibility by establishing a producer organisation, but are not obliged to do so. Moreover, they cannot be obliged to join a producer organisation. When introducing extended producer responsibility, it is therefore necessary to keep open the possibility that producers individually fulfil the extended producer responsibility imposed on them.

As with other EPR schemes, the reuse and recycling targets therefore apply primarily to individual producers. These targets are formulated as a percentage by weight of textile products placed on the market by the producer in the previous year. It can be assumed that the producer has these data and will provide them accurately. These data form the basis of the system. In relation to them, the producer must demonstrate achievement of the targets for reuse and recycling.

In the situation where a producer organisation is responsible on behalf of all producers for achieving the reuse and recycling targets, as proposed in the research report underlying this Decree, these could be measured by the (total) quantity of textiles discarded in the Netherlands in a year. Individual producers must then pay a waste management contribution to the producer organisation. In order to achieve the level of the waste management contribution, it is obvious to match the quantity of textile products placed on the market by individual producers. There is also a need for data on this in that situation.¹⁴

this (in accordance with Article 4), at least 20 % must be prepared for reuse. So then (50-20=) 30 % must be recycled, of which (in accordance with Article 5) 25 % (=7.5 %) through fibre-to-fibre recycling. If more is prepared for reuse, for example 30 %, then the target for fibre-to-fibre recycling is thus (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, p. 27.

¹⁴ That could also be a different measure, but this one is obvious.

In short, in order to be in line with the measurement methods used in the other EPR schemes in the Netherlands and to make the targets well suited to both collective and individual implementation, it was therefore decided to relate the targets to the quantity of textile products placed on the market by the producer in the Netherlands in the last calendar year.

§ 3. Legal context

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 were implemented in the Environmental Management Act¹⁵ and in the EPR Decree.

Waste Framework Directive and Environmental Management Act

Many terms in this Decree come from the WFD. They are concepts governed by Union law that cannot be defined or applied differently than intended and determined by the Union legislature. This applies, for example, to the basic concepts of waste law in general, such as *waste*, *preparation for reuse* and *recycling*. These concepts were explicitly defined when implementing the WFD in the Environmental Management Act. In addition to the Environmental Management Act itself, these definitions are also applicable in the provisions based on it, such as this Decree. Therefore, these concepts are not redefined in this Decree. To make this Decree readable separately, the definitions of *waste*, *preparation for reuse*, *reuse* and *recycling* from the Environmental Management Act are shown and explained below.

Waste

Waste is the central concept in waste law. The Environmental Management Act defines waste as all substances, mixtures or objects, which the holder discards, intends to dispose of or is required to dispose of. The definition of the concept of waste is not easy in practice. On the one hand, the question is when a substance or object has become waste and, on the other hand, when it ceases to be waste. Several provisions address the definition of the concept of waste in the Environmental Management Act. For example, Article 1.1(6) of the Environmental Management Act deals with the residues of a production process that are by-products and not waste under certain conditions. Article 1.1(8) of the Environmental Management Act deals with the conditions under which the waste phase should be considered to be terminated. The question of when textile products have become waste and when the waste phase has ended is also important in the context of this Decree. More information on this topic can be found in the Guideline — 1.2 waste or product.¹⁶ It is not uncommon for a judge to be involved in a specific case. For example, the Administrative Jurisdiction Division of the Council of State ruled in a case concerning a living room collection organised by a charitable institution that it did not involve the collection of waste.¹⁷ On the other hand, the textiles collected by the same institution via a container were classified as waste. In both cases, the objectified intention of the discarder is decisive. The facts and circumstances of the case are decisive. Due to this system, it is generally less possible to make statements about the waste status of a material, such as textiles.

¹⁵ Articles 1 and 9.5.2. Environmental Management Act.

¹⁶ Leidraad 1.2 afvalstof of product [Guideline 1.2 waste or product], see: <https://lap3.nl/achtergrond/documenten/beleid/>.

¹⁷ Administrative Jurisdiction Division of the Council of State of 20 February 2019, ECLI:NL:RVS:2019:543.

Preparation for reuse

Preparation for reuse is recovery¹⁸ consisting of checking, cleaning or repairing, whereby products or components of products, which have become waste, are prepared for reuse without the need for further pre-treatment. Preparation for reuse therefore relates to waste.¹⁹

Reuse

Reuse is any operation whereby products or components that are not waste are reused for the same purpose as that for which they were intended. Therefore, reuse does not refer to waste.

End of waste

There is a time when waste ceases to be waste, i.e the recovery process has been completed. Article 1.1(8) of the Environmental Management Act lays down the conditions for this: waste that has undergone recycling or other recovery treatment shall no longer be considered waste if it fulfils the following conditions:

- a. the substances, mixtures or objects are intended to be used for specific purposes;
- b. a market or demand exists for the substances, mixtures or objects;
- c. the substances, mixtures or objects meet the technical specifications for the specific purposes as well as the laws and standards applicable to products; and
- d. the use of the substances, mixtures or objects does not have an overall adverse impact on the environment or on human health.

These conditions should be used to determine whether the targets for preparation for reuse and/or recycling under this Decree are fulfilled. Clothing that has been collected separately and sorted and will be sold as second-hand clothing is likely to meet the conditions for end-of-waste. However, whether that is actually the case in a variety of specific situations will have to be assessed on a case-by-case basis in the light of the conditions laid down in Article 1.1(8) of the Environmental Management Act. The National Waste Management Plan (LAP3), its textile sector plan and the regulatory bodies play an important role in interpreting 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 definition is aligned with as much as possible.²⁰ Fibre-to-fibre recycling is defined in this Decree as recycling where textile waste is fibred, after which textile fibres are reprocessed into clothing or household textiles, or materials or substances for this purpose. This is intended for high-quality recycling. This is linked to the responsibility in Article 6 of this Decree to apply as many recycled textile fibres as

¹⁸ Recovery is itself 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. In any case, the operations include the operations listed in Annex II to the Waste Framework Directive.

¹⁹ In the case of separately collected textile waste, sorting is the most important and often only preparatory action.

²⁰

Recycling where waste is reprocessed into products, materials or substances, either for the original purpose or a different purpose, including reprocessing of organic waste but not including energy recovery and reprocessing into materials intended for use as a fuel or filler.

possible from discarded post-use textile products in new textile products. It is an important aim of this Decree to stimulate fibre-to-fibre recycling.

Extended Producer Responsibility Decree (EPR Decree)

Other Union law terms are not defined in the Environmental Management Act, but in the EPR Decree also based on that Act, such as the terms *producer* and *placing on the market*. That Decree should be read in conjunction with this Decree, since the adoption of this Decree on EPR for textiles activates the EPR Decree. Although the definitions of the terms in the EPR Decree do not apply directly in the Decree on EPR for textiles, the terms must have the same meaning. There is a nuance here: the terms within the Decree on EPR for textiles may focus specifically on textile products. For example, in the EPR Decree, the producer is the person or entity who places on the market in the Netherlands professionally, regardless of the sales method used, substances, mixtures or products, whereas in the Decree on EPR for Textiles the producer is the person or entity who places textile products on the market in the Netherlands irrespective of the sales method used. The producer within the meaning of the Textile EPR Decree is therefore also a producer within the meaning of the EPR Decree.

The EPR Decree applies to any EPR system adopted pursuant to Article 9.5.2 of the Environmental Management Act, and thus to this Decree. Article 9.5.2(3)(b) of the Environmental Management Act has been amended and clarified for the purposes of the EPR Decree by the Implementation Act amending the EU Waste Framework Directive. With this implementation law, a definition for extended producer responsibility has also been included in the Environmental Management Act.

An appropriate collection system by producers

The EPR Decree obliges producers to organise an appropriate collection system for the product flows for which the EPR applies. On this basis, textile producers must therefore organise an appropriate collection system for the clothing and household textiles they place on the market. Under Article 2 of the EPR Decree, a collection system is considered appropriate if it:

- a. is available throughout the year and is not limited to areas where the collection and management of the waste in question is most cost-efficient; and
- b. enables the person who intends to dispose of the substances, mixtures or products concerned to submit them free of charge to the collection system.

This means, *inter alia*, that the collection should not be discontinued once the collection targets have been met.

Relation to the municipal responsibility for household waste

Obligations on producers, in particular the obligation to set up an appropriate collection system and bear the associated costs, do not distinguish between household waste and commercial waste. The extended producer responsibility relates to all textile products placed on the market. In the case of cooperation between the producer and municipal waste collectors, the producer is also a standard addressee.

Municipalities can allow producers subject to EPR to collect household waste under the municipal waste regulation. A provision to

this effect is included in Article 4(1)(c) of the Model Waste Ordinance of the Dutch Municipalities Association, which is applied by many municipalities.

Producers then have the opportunity to collect discarded textile products themselves.

In addition to this responsibility for producers, the responsibility of municipalities for household waste collection remains in full force.²¹ As of 1 January 2025, municipalities must collect textiles separately. This is regulated in the Decree on separate collection of household waste. Cooperation between producers and municipalities may result from agreements made between them on this. In the end, producer responsibility remains an individual responsibility which producers must follow.

Relationship to the General binding declaration (AVV)

Producers may jointly implement the obligations arising from the EPR for textiles.²² The obligations imposed on individual producers shall then be transferred to the producer organisation implementing the EPR and obligations on their behalf, such as reporting to the Minister of Infrastructure and Water Management.²³

A significant majority of producers may also request that the Minister of Infrastructure and Water Management declares a mutually binding agreement on a waste management contribution, as referred to in Article 15.36 of the Environmental Management Act. If the waste management agreement is declared generally binding then all producers of the products in question are bound by it. This generally binding declaration also binds producers who were not parties to the waste management agreement and also obliges them to pay a waste management contribution.

Relationship with competition law

Companies are not allowed to act in breach of competition law, including in the implementation of EPR obligations. In particular, in the case of collective implementation of EPR obligations by a producer organisation, it is important that consideration is given to competition law frameworks. Indeed, there are certain risks with regard to the establishment of anti-competitive agreements and the abuse of a position of economic strength, both of which are prohibited by the Competition Act.²⁴ Market participants are themselves responsible for acting in accordance with competition law. The Authority for Consumers and Markets (hereinafter: ACM) monitors compliance with these rules. In the event of a suspected infringement of competition law, any person may submit a report to the ACM, on which the ACM will investigate and act appropriately. In the case of sustainability initiatives, such as the establishment of a producer organisation in the context of sustainability, a request can be made to the ACM to have a risk analysis carried out on the basis of the documents to be supplied by the parties, such as mutual agreements and a self-assessment on the possible risks related to competition law.²⁵ Insofar as the parties act in good faith in doing so and always

²¹ Environmental Management Act, Article 10.22.

²² Article 6(1) of the EPR Decree.

²³ Article 6(2) of the EPR Decree.

²⁴ Prohibition of cartels in Article 6 and prohibition of abuse of a position of economic strength in Article 24 of the Competition Act.

²⁵ More information about the ACM's procedure with regard to sustainability agreements can be found on their website: <https://www.acm.nl/nl/onderwerpen/concurrentie-en->

try to resolve any competition problems in consultation with the ACM, the ACM may choose not to apply its power to fine even if, after the risk analysis by the ACM, competition concerns still arise.

Relation to the free movement of goods

Some of the provisions of this Decree could be considered as possible obstacles to the free movement of goods, as laid down in Articles 34 to 36 of the Treaty on the Functioning of the European Union (TFEU). However, possible obstacles to free movement may be justified by overriding requirements in the public interest, including the protection of the environment. The measures taken in this Decree serve the importance of protecting the environment, including limiting the use of primary raw materials and preventing waste disposal. The measures encourage producers to place good quality textile products on the market. Good quality textile products have a longer lifespan, which reduces the need for new textile products and limits the use of primary raw materials. The reuse of products may result in fewer new products being needed.

Finally, by encouraging reuse in the Netherlands, the disposal of these products in third countries by landfilling or incineration is prevented or at least postponed, which benefits the environment in these countries.

The content of this Decree is in line with the envisaged strengthening of EPR requirements in relation to waste prevention, preparation for reuse and high-quality recycling in the Waste Framework Directive.²⁶ All in all, these measures are appropriate in the light of the importance of environmental protection and do not go beyond what is necessary.

§ 4. Consequences (excluding financial consequences)

With the EPR for textiles, manufacturers of clothing and household textiles are responsible for the waste phase of the products they place on the market. Legal and enforceable targets are imposed on producers with regard to preparation for re-use and recycling. Textile producers bear the responsibility and therefore also the costs of waste management. Therefore, producers must collect discarded textile products after use and ensure that they are processed as in as high quality a manner as possible (at least according to the targets).

§ 4.1 Impact on the environment

While the environmental benefits expected from the extended producer responsibility for textiles require further study, there is sufficient literature on the significant negative environmental impact of the textile industry and the urgency to counter this. For example, there are estimates that between 2 % and 10 % of the total European environmental impact is due to textile consumption.²⁷ This environmental impact mainly takes place in production countries in particular. Reuse and recycling are necessary to reduce the environmental impact. A 2018 CE-Delft study indicates that recycled textiles, depending on type of fibre, produce a 4 to 50 times lower environmental impact than new ('virgin') fibres.²⁸ Reuse also

[marktwerking/ concurrentie-en-afspraken-tussen-bedrijven/duurzaamheid-en-concurrentie/afspraken-tussen-bedrijven-over-duurzaamheid](#)

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 textie [Environmental information on textiles], May

evidently leads to significant reductions in environmental impact, as it prevents the life span of a textile product and production of a new textile.

§ 4.2 Impact on administrative burdens

Manufacturers of textiles, including importers, are obliged to indicate annually how many textiles (in kilograms) they have placed on the market in the Netherlands. These data are already maintained by producers. This results in minimal administrative burden.

The precise administrative burden is reflected in the ministerial regulation which regulates the reporting obligation.

§ 5. Implementation

The implementation of extended producer responsibility for textiles is the responsibility of the producers in this sector. However, many other parties are involved who are now also engaged in the collection of textiles. In order to clarify the relationship between the different parties, this section of the explanatory memorandum will set out the collection practice before and after the introduction of extended producer responsibility for textiles. It will then focus on the implementation practice in the different scenarios of individual implementation and collective implementation.

§ 5.1 Collection practice for textiles before introduction of the EPR for textiles

Under Article 10.21 of the Environmental Management Act, municipalities have a responsibility for the collection of household waste. As of 1 January 2025, municipalities are legally obliged to collect textiles separately on the basis of the Decree on separate collection of household waste. Textiles are one of the waste streams that almost all municipalities collect separately. They have freedom of choice in the way they collect and to that end they have each set up their own infrastructure. Textile collection is usually done via under- or above-ground containers (bring-in system) and, to a lesser extent, via bags at home (pick-up system). Some municipalities only collect textiles from recycling centres. Under Article 3.115 of the Environmental Management Activities Regulation, textiles must be stored separately. After the entry into force of the Environment and Planning Act, this obligation will continue to exist on the basis of Article 4.623 of the Environmental Activities Decree. If textiles are not stored separately at the municipal recycling centre, the same level of waste separation must be achieved via post-separation or by any other means as in the case of source separation.

Municipalities organise the collection themselves or outsource it to collectors. This could be municipal or regional public waste companies or specialised textile collectors; often charities. Municipalities sometimes also grant sports clubs, churches and schools a permit to collect textiles. In addition, there are thrift shops that take (rewearable) clothing and shoes. Some retailers and clothing chains have set up a collection system in their own stores where customers can hand in clothes. Permission from the municipality is also required for this.

Municipalities communicate directly with their residents about textile collection via their channels. In their communication with residents,

2018.

many municipalities use the textile separation rule (from the Green Deal textile collection) and the pictogram (developed by Rijkswaterstaat) for clothing and textiles, for example at collection points for textiles. The VANG Household Waste programme supports municipalities in improving the quality of collection by Rijkswaterstaat and the Royal Association for Waste and Cleaning Management (NVRD).

For the year 2018, Rijkswaterstaat had a mass balance for textiles from households made²⁹. This shows that households discarded a total of 305.1 ktonnes of textiles (including footwear) in that year. Of these, 169 ktonnes disappeared into residual waste and were incinerated. The percentage of textiles in residual waste varies between 4 and 6 %.³⁰ In 2018, 136.1 ktonnes of textiles were collected separately, most of which could be reused or recycled. Out of these 136.1 ktonnes, (public) waste companies collected 30.3 ktonnes, (charitable) textile collection companies 62.9 ktonnes and thrift shops 42.9 ktonnes.

Textile collectors sell the separately collected textiles to sorting companies. These companies based in and outside the Netherlands sort the collected textiles into various quality classes for reuse and recycling. In the Netherlands, in accordance with Sector Plan 5 of the National Waste Management Plan 2017–2019, recycling or other recovery is the minimum standard for separately collected textiles and separately delivered textiles by both private individuals and businesses. If the textile is suitable for reuse or recycling, recycling is the minimum standard. If the textile is not suitable for reuse or recycling, another recovery is the minimum standard. Recycling is then either not possible or so expensive that the costs of delivery to the processor by the discarder exceed EUR 205 per tonne.³¹

After sorting, sorters trade the textiles; sales of most of the textiles collected in the Netherlands (84 %) take place abroad. The Mass Balance of Textiles 2018 shows that of the textiles and footwear collected in 2018, 53 % were suitable for reusing, 33 % were recycled and 14 % consisted of a partly textile and partly non-textile residual stream.³²

The municipal responsibility does not extend to textiles that are discarded by companies. For the management of their waste,

²⁹ FFact (2020), Massabalans textiel 2018 - Onderzoek naar de massabalans van het in Nederland ingezamelde afgedankte textiel en de route en resultaten van de verwerking, [Mass Balance of Textiles 2018 - Examination of the mass balance of 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

³⁰ Rijkswaterstaat (2022), Samenstelling van het huishoudelijk restafval, sorteeranalyses 2021 [Composition of household residual waste, sorting analyses 2021], see: www.afvalcirculair.nl/onderwerpen/monitoring-cijfers/afvalcijfers/afvalcijfers-land/samenstelling

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 footwear)], see: <https://lap3.nl/sectorplannen/sectorplannen-1-85>. The minimum standard indicates the minimum high quality of the treatment of a given waste or category of waste. Setting a minimum standard prevents waste from being treated at a lower quality 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, [Mass Balance of Textiles 2018 - Examination of the mass balance of 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

companies usually conclude a contract with a collector. Separate collection of textiles is an option there. Since 2021, companies that discard textiles on a weekly basis or discard one-time textiles of at least

1 m³ are obliged to separate them. Moreover, for commercial textiles there are already many examples of circular business models in which textile care companies make clothing or linen available to users, thus achieving optimal use and processing the textile at the end of its lifespan.

Rijkswaterstaat also had a mass balance for commercial textiles made in 2020.³³ It is estimated that companies discarded 13.2 ktonnes of textiles in that year. Of these, 3.8 ktonnes were collected separately. 2.8 ktonnes of this separated fraction could be recycled and 0.2 ktonnes reused. The vast majority of discarded commercial textiles are incinerated.

§ 5.2 Collection practice after introduction of EPR for textiles

Municipalities also have a statutory responsibility for the collection of textiles in household waste even after the introduction of extended producer responsibility. The introduction of extended producer responsibility allows producers to collect textiles themselves. The extent of collection by producers and retailers is expected to be limited. In addition to websites where consumers trade clothing among themselves, there are more and more initiatives by retailers working with new circular business models. For example, they collect themselves for the purposes of (preparation for) reuse or recycling, including by giving a discount on new clothes in exchange for old clothes, or they sell second-hand clothes in addition to new clothes. In relation to traditional collection via municipalities, this is currently a potentially growing niche market.

It is expected that one or more organisations will organise collection and processing on behalf of producers, initially using the existing collection structure of the municipalities. A producer organisation will have to make agreements with the municipalities and textile collectors on the collection infrastructure and collection fees. In order to achieve the targets for preparation for reuse and recycling, an effective and efficient organisation of collection is a prerequisite. More reuse and recycling means that more and better collection is needed. In doing so, a significantly smaller proportion of textiles will have to end up in residual waste and incineration. In order to do this practically and effectively, the producer organisation must cooperate with the existing parties that organise and carry out collection, sorting and processing. As in most other EPR systems, there is a certain interdependence between municipalities and producers, despite the fact that the producer remains legally responsible. In addition, the producer organisation will be responsible for communicating to consumers about practical aspects of collection, such as where and how textiles can be handed in. The producer organisation will also have to make agreements with municipalities on this so that they can inform their citizens in an adequate manner.

In order to separately collect and recycle more commercial textiles, the producer organisation will be able to make agreements with corporate waste collectors about separation or with suppliers of

³³ FFact (2022), Massabalans Bedrijfsmatig textiel 2020 - Onderzoek naar afdanking en verwerking van bedrijfsmatig textiel - nulmeting 2020, [Mass Balance of Commercial Textiles 2020 - Research on waste and processing of commercial textiles - baseline measurement 2020], see: www.rijksoverheid.nl/documenten/rapporten/2022/10/06/bijlage-bij-kamerbrief-rapport-massabalans-bedrijfsmatig-textiel-2020-ffact

occupational clothing, for example on setting up return logistics.

In the event that producers fail to create a producer organisation, this means that each producer must individually meet the EPR targets, set up a collection structure, communicate it and reach agreements with other parties, such as municipalities and textile collectors.

§ 5.3 Individual and collective implementation

The manufacturers of textile products are responsible for implementing the regulations. This includes importers. The implementation costs concern the collection of waste textile products and preparation for re-use and recycling in accordance with the targets set out in this Decree. The targets will apply by 2025, so the producer will have enough time to prepare for implementation. Producers are obliged under the EPR Decree to report annually on the fulfilment of the obligations under this Decree. This report will be required by ministerial regulation under Article 9.5.2(7) of the Environmental Management Act.

This Decree gives producers formal individual responsibility, however they may, in view of the EPR Decree, choose to jointly implement their obligations. 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 EPR (see section 6 of this explanatory memorandum). Collective implementation is also expected by the EPR for textiles. In 2022, the industry associations Modint and INretail jointly set up a producer organisation called Stichting UPV Textiel [EPR for Textiles Foundation] (hereinafter: the foundation), where 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 to collectively organise the collection, preparation for reuse and recycling of textile waste.

Given the importance of a producer organisation for the feasibility and enforceability of the EPR, the Ministry of Infrastructure and Water Management facilitates, where necessary and appropriate, the launch of initiatives. Through the so-called periodic network consultation on circular textiles, there is contact between the industry organisations and the Ministry about the establishment of the EPR scheme for textiles. The presence of legal obligations, such as minimum targets, contributes to the organisation of the sector. In the light of this, the State Secretary expressed willingness to support the sector in the collective implementation of extended producer responsibility by guaranteeing a loan from a financial institution.³⁴

The willingness of the Ministry to cooperate with collective initiatives is without prejudice to the obligation of the producer. The responsibility for the establishment of the EPR system lies entirely with the producers. Scenarios are also possible where no or several producer collectives are created. In all cases, the obligations will have to be implemented and non-compliance will be adequately enforced.

§ 6. Supervision and enforcement

Under the Environmental Management Act, both administrative and criminal law can be enforced. The Minister of Infrastructure and Water Management is authorised to impose an order for coercive administrative action pursuant to Article 18.1(1) of the Environmental Management Act or an order for periodic penalty payments pursuant

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Parliamentary Papers II, 2022–23, 35 267, No 31.

to Article 5:32 of the General Administrative Law Act. Under Article 1a(2^e) of the Economic Offences Act, infringements of this Decree based on Article 9.5.2 of the Environmental Management Act are economic offences. Under Article 2, these economic offences are crimes insofar as they have been committed intentionally, and otherwise they are offences. Article 6 then lays down the penalty for this. Pursuant to that Act, fines may be imposed for instance, or companies may be shut down.

Monitoring compliance with this Decree and administrative enforcement are responsibilities of the Minister for Infrastructure and Water Management. The implementation has been mandated to the Environment and Transport Inspectorate (ILT). The criminal prosecution shall be carried out by the Public Prosecutor's Office.

The Environment and Transport Inspectorate (ILT) has carried out an enforceability, feasibility and fraud resistance test (HUF test) for this Decree. The ILT was invited to determine the necessary capacity for two scenarios: one based on implementation by individual producers, the other on implementation by a collective of producers.

The ILT has deemed enforceability to be insufficient in the absence of a collective of producers. However, it is noted that complete assessment for enforceability is difficult due to the further elaboration of some points under ministerial regulation. It is estimated that the implementation of the Decree will cost 16.8 FTE at the level of individual producers, compared to an expected 5.8 FTE in the presence of a producer organisation. Finally, the ILT considers that the general measure is subject to moderate fraud-proofing. Measures to prevent fraud should be further elaborated on in the corresponding rules. Specifically, the ILT refers to possible manipulation of the figures, validation of product application abroad and the effective application of reused textiles after the stage of preparation.

ILT's main concern is related to the implementation of monitoring in the absence of a producer collective. According to the ILT, an individual producer is not sufficiently able to implement and report on this.

As a result, as long as no producer organisation has yet been established, individual producers are responsible for fulfilling their obligations. Whilst this costs more capacity than enforcement at collective level, the estimate indicates that enforcement is possible. Monitoring and reporting obligations will be elaborated on by ministerial regulation. Consideration will be given to the fraud risks identified by the ILT and, in addition, on the basis of further investigations, a lower limit can be set for largely exempting small businesses from the reporting obligation.

Finally, a number of specific points mentioned by the ILT are discussed. The explanatory memorandum clarifies what should be understood in the context of this Decree as preparation for re-use. It remains to be seen will show whether this concept is sufficiently manageable or whether it needs further explanation.

Free movement of goods applies within the European Union. Customs only keep track of what is imported into the European Union and exported from the European Union. Therefore, complete data on textile products placed on the market in the Netherlands cannot be traced through this route.

In the case of e-commerce, the obligation to appoint an authorised representative is the best possible measure to enable producers established outside the Netherlands to address their (remaining) obligations arising from this Decree. How to act effectively against foreign producers who do not appoint an authorised representative is a broader issue that cannot be resolved within the framework of this Decree.

§ 7. Financial impact

§ 7.1 Financial impact on producers

If a producer organisation is set up to implement the obligations of producers, the costs of EPR will be borne jointly by producers. These costs depend to a large extent upon which choices producers make and how the textile flows and associated market develop, and thus still have a significant degree of uncertainty. This concerns both fixed costs, such as organisation, setting up a monitoring system and whether or not to set up an innovation fund, as well as variable costs per kilogram of textiles, which are determined inter alia by the costs of collection, sorting, reuse, recycling, etc. The aforementioned research report provides the following estimate for the range of total costs of the EPR for textiles system: between EUR 82 and EUR 196 million.³⁵

The costs for an individual producer depend on the quantity of kilograms of textiles that the producer has placed on the market. Every year, a total of 343 million kilograms of new textiles enter the Dutch market.³⁶

The costs for a producer can also be determined by a system of rate differentiation. Under Article 6(4) of the EPR Decree, a producer organisation is also obliged to apply differentiated rates where possible, taking into account the whole life cycle, durability, repairability, reusability and recyclability of the substances, mixtures or products and the presence of hazardous substances therein. The evaluation of this Decree will focus on whether rate differentiation is sufficiently applied.

§ 7.2 Financial impact on small producers

As everyone who markets clothing professionally in the Netherlands falls within the scope of this Decree, the group of possible producers is large. CBS estimates that approximately 25,630 companies could be included.³⁷ Of these companies, 5 % (1 360) account for 75 % of the production value (approximately EUR 8 billion) and 70 % of employment, representing around 66 300 full-time jobs. Therefore, the remaining 24 270 companies account for 25 % of the total production value (approximately EUR 2.6 billion) and 27 800 full-time jobs.

§ 7.3 Financial consequences for municipalities

³⁵ Rebel Group, *Naar een UPV voor textiel* [Towards an EPR for textiles] (2021), p 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 the Circular Textile Policy Programme – Zero measurement baseline year 2018].

³⁷ CBS has provided a dataset on behalf of the Ministry for Infrastructure and Water Management with figures from the companies that may fall under the EPR.

Currently, municipalities are responsible for the collection of household waste, including textile waste. This Decree will make producers responsible for the collection, recycling and reuse of their textiles. Given the role of municipalities in the separate collection of textiles and the current collection structure, it is likely that producers will make agreements with the municipalities on the collection of textiles. It is possible that they are paid by the producers for the services they already carry out. As a result, the financial consequences for municipalities depend on the agreements made with textile producers but are in all likelihood positive.

§ 8. Evaluation

No later than five years after the entry into force of this Decree, an evaluation of its effects shall be carried out

§ 9. Opinions and consultation

In the process prior to this Decree, relevant stakeholders in the textile sector, such as the Textile Recovery Association, the Dutch Association of Cleaning Services, the Dutch Association of Thrift Stores, the Dutch Municipalities Association, Corporate Social Responsibility NL and Nature & Environment were consulted.

The proposal for an extended producer responsibility for textiles from the industry organisations³⁸ and the results of the independent research carried out by the Minister of Infrastructure and Water Management (see section 2) also served as important contributions to the adoption of this Decree.

In the paragraphs below, the internet consultation that took place, as well as the advice issued by the Advisory Board on Regulatory Burden (ATR), are discussed in more detail.

§ 9.1 Online consultation

The Internet consultation took place from November 2021 to January 2022. This consultation resulted in 34 responses — from individuals, but also from textile collectors, textile processors, recycling companies, thrift shops, municipalities, industry associations of producers and non-profit organisations. Among the respondents there is broad support for the introduction of extended producer responsibility for textiles. The EPR is seen as an important step towards a circular economy. However, several points of attention have been raised. These points are discussed below and, for each point, it is indicated whether this has led to an amendment to the Decree and/or to the explanatory memorandum.

§ 9.1.1 Definitions

In the internet consultation, several questions have been received about the definition and application of certain concepts, such as preparation for reuse and fiber-to-fibre recycling.

As a result, the description of the legal framework in paragraph 3 of this Explanatory Note addresses these concepts in more detail.

It has also been pointed out that it is not clear whether ‘producer’ includes importers, and that it would be better to mention importers explicitly. This seems to be a useful clarification, but the proposal is

³⁸ Dutch clothing and textiles sector plan, see: <https://modint.nl/thema/milieu-circulariteit/documenten/26-sectorplan-nederlandse-kleding-en-textielsector>

not accepted for the following reason. In the explanatory memorandum of the EPR Decree, 'producer' and 'importer' are not used side-by-side, but it is explained as follows that the term 'producer' includes 'importers':

"The provisions of this Decree shall apply to anyone who places substances, mixtures or products on the market in the Netherlands for the first time. This could be a domestic producer. Where products are produced outside the Netherlands, the provisions apply to the importer of the product, which is the person who first places a product on the market in the Netherlands. If there is a distance sale, where a supplier from outside the Netherlands offers products on the Dutch market through online sales, they are also subject to the provisions of this Decree. The individual producer or importer is thus the standard addressee for the obligations set out in this Decree."

Another question raised is whether a retailer selling second-hand clothing should be considered a producer. A distinction should be made between continued use and preparation for re-use. In the case of continued use, there wasn't a waste phase prior to the sale. The store does not then offer the clothing for the first time on the market and the retailer is therefore not a producer within the meaning of this Decree. When it comes to preparing for re-use, a waste phase has preceded the sale and it can be argued that the clothing is placed on the market. A retailer who sells second-hand clothing would therefore be a producer within the meaning of this Decree. However, that is not the intention of the Decree, since the sale of these second-hand clothing contributes precisely to the promotion of re-use envisaged by that decision. This Decree therefore applies to producers of *newly manufactured* textile products and not to shops offering second-hand textile products prepared for re-use. In order to make this clear, Article 1(2) of this Decree provides that this Decree concerns newly manufactured textile products of the categories of clothing and household textiles.

§ 9.1.2 Scope of the EPR

In several responses, suggestions were put forward to adjust the scope of the EPR for textiles. For example, the suggestion was made to add home textiles, shoes and bags. In the internet consultation version of this Decree, advice was followed from the research report to have the EPR for textiles relate to the categories of textile products identified there by the terms clothing and household textiles.³⁹ The suggestion to expand the EPR for textiles with home textiles, shoes and bags was not followed, as it would make the EPR more complex. This involves more and other producers and other recycling processes. The advice from the research report to start as simple as possible and possibly extend the scope at a later stage has been followed.

Furthermore, the suggestion was made that curtains and small product groups such as blankets, sleeping bags and mops should not fall under the scope of the EPR for textiles. This suggestion is accepted, also taking into account the above reasoning. The EPR for textiles is thus limited to clothing, including occupational clothing, and household textiles, which means table linen, bed linen and household linen.

³⁹ Household textiles included: blankets, table, bed and household linen, curtains and net curtains, other upholstery, mops and cleaning cloths. These are the product groups referred to in Chapter 63, Part I, headings 6301, 6303, 6304 and 6307 of Section XI of Part II of Annex I to Regulation (EEC) No 2568/87.

Products that are and are not covered by the EPR for textiles are shown within the table below. The list of cases covered by the EPR for textiles is exhaustive. The list of cases not covered by the EPR for textiles is not exhaustive. The codes given in brackets are so-called customs codes and are listed in Section XI of Part II of Annex I to Regulation (EEC) No 2658/87.

Covered by the EPR	Not covered by the EPR
Consumer clothing (61 and 62)	Shoes (64), bags, belts (42) (not textile products)
Corporate clothing (61 and 62)	Headgear (65)
Bed linen (6302)	Blankets (6301), Bedspreads (6304)
Table linen (6302)	Curtains, net curtains and blinds (6303)
Household linen (6302), e.g. towels and tea towels	Bags (6305), blankets, sails, tents (6306), mops, dishcloths, cleaning cloths, dusters (6307)
Returned products (which have placed on the market)	Unsold stock (which has not been placed on the market)

§ 9.1.3 Textile service companies, online platforms and thrift shops
The question has been raised as to whether textile service companies can be excluded from the EPR for textiles because they already make a major contribution to circularity. Textile service companies are considered to be producers within the meaning of this Decree if they are the ones placing textile products on the market in the Netherlands, i.e. making them available on the market in the Netherlands for the first time. They then fall within the scope of the EPR for textiles. If they are not the ones placing the products on the market in the Netherlands, for example because they bought the products from a Dutch producer, they are not producers within the meaning of this Decree. The contribution of textile service companies to a circular textile chain isn't a criterion for this.

Another respondent asks whether online buying and selling platforms can be included in the objective of preparing for re-use. Preparation for reuse is aimed at re-use of a product for the initial purpose after a waste phase. This should be distinguished from continued use. In the case of continued use, the product remains in the use phase without becoming waste at any given time. Assuming online platforms are a marketplace for second-hand clothing sold per piece, not commercially and for a market-compliant amount, by one consumer to another consumer to be reworn, this is an indication that this represents continued use and not preparation for re-use. Therefore, to the extent that sales of used clothing via online platforms are such sales, they will generally not count towards the preparation for re-use target.

For thrift shops, this may be different. The clothing sold there will, as a rule, come from the separate collection of textile waste followed by its sorting (preparation for reuse). If the sorted clothing is then sold in the thrift store, it may count towards the objective of preparing for re-use.

§ 9.1.4 Unsold stock from producers

The question has been raised as to whether unsold stocks of textile products count towards the preparation for re-use targets. This is not the case. This Decree concerns textile products placed on the market

by a producer. Unsold stock which a producer has discarded have not been placed on the market and should therefore not count towards the preparation for re-use target.

For returns from consumers to producers, although these textile products have been placed on the market, they have not become waste as a result of returning them. They therefore count towards the quantity of textile products placed on the market by the producer. However, if the producer subsequently resells these textile products, they do not count towards the target of preparation for reuse. Indeed, preparation for reuse refers to waste and these textile products are not waste. Producers will have to take this into account when setting up their records for the purposes of reporting under this Decree.

§ 9.1.5 High targets and environmental objectives

A number of respondents indicated that the targets were not sufficiently ambitious. On the other hand, a number of respondents consider the targets to be too ambitious. As regards the level of the targets, the opinion of the research report has also been followed, setting out targets that the researchers consider to be achievable, ambitious and realistic. The reuse target is based on a previous proposal from the parties in the textile chain. The proposal has not been adapted in this respect. Based on evaluation carried out no later than five years after the entry into force of this Decree, the 2030 targets can be adjusted (up or down). Furthermore, a suggestion was made to quantify the targets in absolute numbers. This suggestion has not been adopted, as absolute numbers cannot take account of any growth or contraction of the textile market.

A number of respondents stressed the importance of setting environmental targets, as current targets would not focus on environmental impacts such as CO₂ emissions and water use. Clarification was also requested on how the legislative proposal helps to reduce the environmental impact of the industry. Specifically, this refers to the environmental benefits of fibre-to-fibre recycling compared to other forms of recycling. The research report notes that the textile sector is a sector with high environmental impact and high levels of waste. This depends on the predominant use of *virgin* materials, the environmental impact of the production process, the limited fibre-to-fibre recycling and the purchase and disposal by consumers. By recycling more and using recycled materials instead of primary raw materials in production, environmental impact can be reduced at the start of the chain. Therefore, based on the research report, a distinction was made between a total recycling rate and the share of high-quality recycling (also called fibre-to-fibre recycling). The targets do indeed lead to a reduction of environmental impact, however this is expressed in percentages of recycling and reuse and not in CO₂ use or litres of water consumption.

It was also asked how the use of recyclate in new textiles is to be stimulated. Article 6 obliges producers to take measures aimed at ensuring that recycled textile fibres derived from discarded post-use textile products are used in textile products placed on the market as far as possible. It is still being examined whether targets can be set for this purpose. In addition, the Netherlands is committed to a European legal obligation to apply recyclates of textile origin in new textiles.

§ 9.1.6 Setting product requirements

A large number of suggestions have been made to set

requirements in this Decree that contribute to a more sustainable and circular textile chain. Examples of this include: requirements for the number of times a garment needs to be able to 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, banning the destruction of unsold goods, handling of micro-plastics and fiscal greening.

As also laid down in the EPR Decree, an EPR contains rules or government measures that ensure that a producer bears financial responsibility or financial and organisational responsibility for the waste phase of the products, substances or mixtures that it has placed on the market. The EPR system explicitly focuses on the waste phase of products. This means that the effect of the EPR is focused on the collection, recycling and reuse of textiles and on the application of recycled textiles in new textiles. It is not possible to set quality requirements for products in an EPR regulation. The Decree has therefore not been adapted to include this. However, the suggestions put forward are valuable for the government's wider textile policy. Such product requirements can be set at European level; the Netherlands has also been committed to this and will continue to be so.

§ 9.1.7 Consistency with European legislation and policies

A number of responses call for attention to the harmonisation of European legislation. For example, reference is made to the EU Sustainable Products Initiative and the associated EU Textile Strategy, and possible requirements on blending for recycled textile fibres that could be developed under the European Commission's proposed regulation setting ecodesign requirements for sustainable products.⁴⁰⁴⁰ For this purpose, the EPR for textiles complies with current European laws and regulations, such as the WFD, and new relevant legislation shall amend this Decree if necessary.

§ 9.1.8 Ministerial order on reporting

Further requirements will be laid down for producer reporting by ministerial order. A number of concerns have been raised by respondents, including traceability and transparency. Attention is also drawn to the regulatory burden and the measurability of targets for individual producers. These points will be taken into account and will be elaborated on in the ministerial order. A respondent asks for more ambitious objectives in the ministerial regulation than in Article 5 of the Decree. This is not possible — the ministerial regulation cannot lay down requirements that go beyond what is laid down in the decree. Another issue concerns the setting of further rules on collection fees, rate differentiation, criteria of composition and quality of collected textiles. However, in view of Article 6(4) of the EPR Decree, rate differentiation falls under the responsibility of the producer organisation(s). Further explanation is also requested on the possibility of exempting small producers from the reporting obligation. The latter is indeed possible: an exemption may be introduced by order in council for producers producing up to a certain size. It has not yet been decided whether an exemption will be applied to textile producers and where the limit would be placed.

§ 9.1.9 Tax rate differentiation

A large number of comments have been made on rate

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differentiation. Respondents advocate, among other things, a financial incentive for circular products (eco-modulation), a more advantageous price for mono materials compared to the mixed flow, a fixed rate for small businesses and differentiation for baby and children's clothing. This Decree makes producers financially responsible for their products in the waste phase. How this is paid is up to the producers themselves. If a producer organisation is established, producers shall contribute to the producer organisation. The total contributions must be cost-covered. This is governed by Article 6(3) of the EPR Decree. Paragraph 4 of that Article requires the producer organisation to differentiate, where possible, the contribution of producers, in particular by taking into account the entire life cycle of products and durability, reusability, recyclability and presence of hazardous substances. Therefore, it is for the producer organisation, and not the government, to apply rate differentiation. For example, rate differentiation could mean that producers who place products on the market that last longer, are reusable or recyclable, and thus ensure lower costs for the waste management of these products, also pay a lower contribution. Progressive rate differentiation makes an important contribution to the circularity of textiles. The evaluation of this Decree will focus on whether rate differentiation is sufficiently applied.

It is also suggested that revenues from the levies should be used to improve working conditions in global clothing and textile production chains. However, these issues fall outside the scope of a regulation for EPR as currently defined in the WFD and the Environmental Management Act.

§ 9.1.10 Authorised representative

Foreign e-commerce platforms placing textile products on the Dutch market are obliged to appoint an authorised representative in the Netherlands pursuant to Article 2 of this Decree. One respondent asks how this can be made effective and enforceable. There are currently limited enforcement options for the ILT. However, large platforms can be contacted and encouraged to appoint an authorised representative. This is part of a broader issue surrounding parts of e-commerce that cannot be solved with this Decree. The Netherlands will discuss this issue with the European Commission. This point may also be explicitly taken into account in the evaluation of this Decree.

§ 9.1.11 Cooperation between producers and other parties in the textile chain and direction from national government

An important proportion of the responses in the internet consultation comes from affected parties. They play a role in the current situation — such as textile collectors, sorters, processors or thrift shops, municipalities or regional associations. These parties offer to play an active role in the new situation (after the entry into force of the EPR) and to cooperate with producers. The trade associations Modint and INretail are working on the establishment of a producer organisation. A foundation has been set up to consult with interested parties in order to develop cooperation. It is up to producers to shape this cooperation. The interested parties are also calling for participation in the design of the EPR system. In this respect, the national government deals with the legal frameworks and it is up to the producers to shape the practical, organisational and financial implementation.

§ 9.1.12 Role of municipalities

In the current situation, municipalities are responsible for the

collection of household waste, including textile waste. A large proportion of household textile waste is collected separately by or on behalf of municipalities, although the obligation to do so will take effect only on 1 January 2025.⁴¹ A number of responses ask that to the role of the municipality as director of the separate collection of textile waste is consolidated, existing agreements are respected and the compensation system is guaranteed. It also calls for closer examination of the financial and material consequences for municipalities. This explanatory note examines the relationship between the EPR and the municipal responsibility for household waste. Following the comments from the internet consultation, this paragraph has been clarified. This Decree will make producers responsible for the collection, recycling and preparation for reuse of their textiles. However, given the responsibility of municipalities for the separate collection of textiles (as of 2025) and the current collection structure, it is obvious that producers make agreements with the municipalities and/or textile collectors about the collection of textiles. The financial and material consequences for municipalities depend on the agreements that are made

It was also asked whether the collection of textiles under the separation rules of the National Waste Management Plan (LAP3) continues to take place. In the implementation of the municipal responsibility, the LAP3 and the associated separation guide (which includes more products than the EPR applies to) must be respected, now and in the future. The scope of EPR is limited to clothing, corporate clothing, and table, bed and household linen. It is not inconceivable that a separate collection system should be set up for this purpose. However, this does not relieve the municipality of its responsibility for the separate collection of household textile waste, which must take place in accordance with the applicable frameworks. Here too, good agreements must be made between producers, municipalities and collectors.

§ 9.1.13 Consumer perspectives

It has been asked how consumers will know where to hand in their clothes. It is important that it is clear to consumers where they can dispose of their textiles. This depends on the organisation of the collection. With the introduction of EPR, producers will become responsible for this, at least for the textile products covered by EPR. It follows from Article 2(3) of the EPR Decree that a producer of the substances, mixtures or products which it places on the market and are covered by the extended producer responsibility scheme shall inform waste holders about waste prevention measures, collection systems, reuse or recovery facilities and the prevention of litter. Producers, or a producer organisation that will assume responsibility on behalf of the producers, will therefore have to inform consumers where they can hand in their clothing and household textiles. The Ministry of Infrastructure and Water Management ensures, through Rijkswaterstaat and Milieu Centraal, that the information provided to consumers from the government is in line with this.

§ 9.1.14 Planning and entry into force and evaluation

Some respondents indicate that having this Decree enter into force on 1 January 2023 is (too) ambitious. In the meantime, the date of entry into force has been set for 1 July 2023. It is worth underlining that entry into force in 2023 effectively means that in 2024,

⁴¹ According to Article 3.115(2)(q) of the Environmental Management Activities Regulation, there must already be facilities for separately disposing of textiles at recycling centres.

producers have to provide data on the textiles they placed on the market in 2023 for the first time. The first targets will apply as of 2025. The entry into force thus leaves room for preparation, also with a view to a producer organisation being set up.

One respondent suggests that the 2030 targets should be revised upwards. The evaluation is foreseen within five years of the entry into force of this Decree. On the basis of this evaluation, the 2030 targets can be adjusted, if necessary, up or down.

§ 9.1.15 Other

Finally, suggestions have been made to introduce a sustainability label and use it as an incentive to reduce the production of short-life textiles. This cannot be regulated through the extended producer responsibility system, but in a European context, the Netherlands is committed to a mandatory sustainability label for textiles. However, the EPR for textiles does aim to give producers an incentive to produce textiles with a longer lifespan and better recyclability, as this may reduce their EPR contribution.

§ 9.2 *Advice from the Advisory Board on regulatory burden (ATR)*

The Advisory Board of Regulatory Pressure Review (ATR) assessed the impact on the regulatory burden of the extended producer responsibility of this Decree and issued a number of opinions on that basis.

Regarding the usefulness and necessity of the EPR, the ATR provides two opinions. First of all, the ATR considers that the effectiveness of the proposal cannot be properly assessed, partly because data on the current situation are incomplete. Specifically, the ATR refers to the lack of data on the quantity of textiles placed on the market and reused and recycled annually. The College therefore recommends that the production, reuse and recycling of textiles be fully quantified in order to determine the social impact of the proposal. Secondly, there is no mid-term monitoring or evaluation provision in the proposal. The research report advises to include this. The college shares this vision to monitor the effects of the EPR in the interim. Finally, the College will contribute to further map the environmental impacts and pay attention to the effects of second-hand textile sales on the functioning of the EPR.

Since 2020, progress towards the objectives of the circular textile policy programme has been monitored annually. This shows the quantity of textiles placed on the market as well as the share of reuse and recycling. In the further development of the monitoring, this shall be in line with the EPR, so that no cases are double-monitored. In order to implement the adopted motion of member Hagen (D66)⁴², the Mass Balance of Textiles carried out in 2012 and 2018 will be repeated in 2023/2024. The mass balance provides insight into the amount of textiles being discarded, collected separately, being prepared for reuse and being recycled, and the destination of these flows. This mass balance can serve as a baseline measurement for the EPR. With the introduction of producer responsibility and the corresponding annual reporting obligation, there is also more insight into the current situation and the effects of the EPR.

An earlier evaluation does not make sense, because the effects are visible and measurable only after a few years. A responsibility for

⁴² Parliamentary Papers II, 2021/22, 35 935 XII, No 32.

producers also takes a number of years to implement. Specifically for the quantitative targets, progress is monitored annually by producers from their EPR reporting. In practice, this means that the effects of the EPR for textiles are monitored and an interim evaluation report is published before 2030. On the basis of this report, it is possible to determine whether the 2030 targets need to be adjusted.

From the assessment framework for the presence of less burdensome alternatives, the College recommends clarifying which alternatives to the EPR are possible, including the substantive reasons why they were not opted for. On the one hand, the ATR refers to alternatives to EPR as an instrument, such as measures aimed at placement of textiles on the market. On the other hand, it calls for an explanation of alternative options in the implementation of the EPR and current choices for formulating the current targets. The College also suggests clarifying the definition of producer so that the parties know whether they should comply with the EPR's obligations.

In response to the ATR advice to clarify which alternatives to EPR are possible and to substantively justify why those alternatives were not chosen, it is noted that in order to reduce and recover textile waste, an EPR scheme is currently considered to be the most effective at national level. The reason and the need for the introduction of a EPR scheme for textiles are described in sections 2.1 and 2.2. It is explained why more voluntary measures do not have the same effect. Why the wording of the EPR targets did not take into account the amount of discarded textiles is explained in section 2.3. The EPR scheme should be seen in a broader framework of policy measures aimed at reducing textile waste and resource use and promoting a circular textile chain. The ATR refers specifically to banning certain textile products and the promotion of the supply of more sustainable textiles. The Netherlands is advocating for such measures at European level, as well as a mandatory percentage of recyclates.

In response to the ATR's advice on clarifying the definition of producer, it is explicitly stated in the explanatory memorandum that the definition of producer corresponds to that in the Decree. If the implementation of the Decree makes it necessary to further develop the concept of producer in this sector, the Decree will be adapted accordingly.

The ATR notes that the early involvement, through an SME test, of parties that have to comply with the legal obligations contributes to workable legislation, but that the SME test did not take place as a result of a limited number of applications from SMEs. Therefore, the ATR advises to organise the SME test anyway or to look into the workability and feasibility of the obligations for (SME) companies in another way.

Working with the textile industry organisations, consultations were held with SMEs on the feasibility and workability of the Decree. This did not give rise to any notions leading to the amendment of the Decree. However, useful insights were gained from these discussions, and will be taken into account when drawing up the ministerial regulation.

Finally, the ATR recommends that effects on the regulatory burden be fully mapped in accordance with the government-wide methodology and the following points be followed up on: costs for industrially collected or discarded textiles, costs of reporting obligations on the quantity of textiles placed on the market, refining the estimation of the number of sole proprietorships covered by the

EPR scheme, and setting a lower limit for the EPR obligations to exclude producers with a small market share.

Section 7 already provides an initial indication of the financial impact of this Decree. The reporting obligation is to be further elaborated on by ministerial regulation.

§ 9.3 Preliminary scrutiny

The draft EPR for Textiles Decree was submitted to the two Chambers of the States General. The discussion that took place on 11 May 2022 in the Committee on Infrastructure and Water Management⁴³ of the House of Representatives gave no reason to amend the draft Decree.

§ 9.4 Pre-publication

The draft EPR for Textiles Decree was published in the Government Gazette.⁴⁴ Two points of view were put forward. No new insights were provided in relation to the internet consultation, and therefore these views did not give rise to any amendment of the Decree.

§ 10. Notification

Pursuant to the Notification Directive, a draft of this Decree was notified to the European Commission on 9 May 2022 (Notification number: 2022/334/NL⁴⁵). The standstill period ended on 10 August 2022. Sweden submitted comments. Furthermore, views were also put forward by Policy Hub and the Federation of the European Sporting Goods Industry. The comments and views do not give rise to any amendment of the Decree.

Several submitters highlighted the importance of harmonised legislation. While this is endorsed, it is without prejudice to the fact that Member States have the power to adopt national extended producer responsibility schemes in anticipation of this. As regards a national extended producer responsibility scheme for textile products, for reasons explained in detail above, this policy foresees a start in 2023.

Sweden welcomes the notification and finds it positive that the Netherlands wants to promote a circular economy. A proposal for extended producer responsibility is also being drawn up in Sweden, and measures to create a circular economy are a prerequisite for sustainable development and for the transition to be made to a circular economy.

In general, Sweden calls for more harmonised legislation in this area for a well-functioning internal market. Harmonised extended producer responsibility schemes facilitate trade and reduce the burden on businesses.

As far as the proposal is concerned, Sweden points out that it is important to ensure that recycled material from other Member States is not excluded. The proposal should also be clarified to specify where producers' responsibilities start and end. Small and medium-sized enterprises should be given a reasonable opportunity to meet the targets for the collection of textiles.

⁴³ Parliamentary Papers II, 2021/22, 32 852 & 30 872, No 191.

⁴⁴ Stc. 2022, 10785.

⁴⁵ TRIS Notification, No 2022/334/NL.

As regards Sweden's claim that it is important to ensure that recycled material from other Member States is not excluded, it should be noted that this proposal does not impede imports of recycled material and of textile products incorporating recycled material.

As regards the call for clarification of the proposal to specify where producers' responsibilities start and end, it should be noted that further rules will be laid down by ministerial regulation on the issues that require further elaboration, such as notification and reporting. It should also be noted that in 2023 the obligations for producers start with a notification and then gradually build up towards achieving targets for reuse and recycling from 2025.

Finally, Sweden rightly draws attention to the position of small and medium-sized enterprises that need a reasonable chance to achieve the targets. In this regard, it should be noted that the legislation allows for the joint fulfilment of these targets by establishing a producer organisation which, on behalf of all producers, fulfils the obligations to achieve the prescribed targets.

B. Article by article

Article 1 (definitions and scope)

The first paragraph defines a number of concepts.

The terms 'placing on the market' and 'producer' have more or less the same definitions as in the EPR Decree, except that the term 'producer' is focused on textile products and the term 'placing on the market' refers to the Dutch market only.

The concepts of textile products and textile fibres shall be consistent 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 of Regulation (EEC) No 2658/87 has been introduced in order to clearly define the scope of application of this Decree in terms of the textile products to which it relates.

Finally, the concept of fibre-to-fibre recycling in this paragraph refers to a form of high-quality recycling of textile fibres.

Paragraph 2 defines the scope of application of the Decree in terms of the textile products to which it relates. This Decree covers the categories of textile products identified by the terms clothing and household textiles. It should be noted, as explained in section 9.1.2, that clothing includes occupational clothing and that household textiles do not refer, for example, to home textiles. This scope of application is motivated by the report underlying this Decree.

The concepts of clothing and household textiles have been further defined in line with so-called CN codes. Those product codes result from Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. The textile products covered by this Decree are listed in Chapters 61 and 62 relating to clothing and clothing accessories, referred to here by the term apparel, as well as section 6302 of Chapter 63, which concerns table linen, bed linen and household linen, here referred to as household textiles. As this Regulation is amended each calendar year by Commission Implementing Regulations pursuant to Article 12, the definition of Regulation (EEC)

No 2658/87 contains a dynamic reference, so that the obligations set out in the Decree always apply in the light of the Regulation as it stands in that calendar year.

Article 2 (authorised representative)

Producers established outside the Netherlands are subject to an obligation to appoint a legal / natural person established in the Netherlands as an authorised representative. In particular, it responds to the concerns that online suppliers located outside the Netherlands who sell textile products directly to Dutch consumers will not be able to comply with the obligations arising from this Decree.

Article 3 (preparation for re-use and recycling)

The basis for imposing combined targets for preparation for re-use and recycling is the amount by weight of textile products placed on the market in the Netherlands by the producer in question in the previous year. From 2025 onwards, the article imposes a target for preparation for re-use and recycling on producers. The second half of 2023 and all of 2024 can be used by producers to prepare for this. An initial rate of 50 % in 2025 was chosen as this is the level already achieved now through the separate collection of textiles by municipalities and their processing by textile recycling companies. Each year after 2025, preparation for reuse and recycling targets will be increased by 5 % until they reach 75 % by 2030.

Article 4 (preparation for re-use)

The first paragraph lays down the producer's preparation for reuse targets. Preparation for reuse is higher on the waste hierarchy than recycling. It is for this reason that in addition to the combined targets for preparation for re-use and recycling of Article 3, specific preparation for re-use targets have been included. The second paragraph specifies that a proportion of this re-use should take place in the Netherlands. Good quality discarded textile products are particularly in demand in the Netherlands. This target is therefore an incentive for producers to place good quality products on the market. In addition, the inclusion of this target aims at limiting the export of reusable products to third countries in order to prevent them from being eventually disposed of there without being reused or recycled. This measure thus constitutes a justified obstacle to the free movement of goods, and is appropriate and proportionate with regard to the protection of the environment as explained in section 3 of the explanatory memorandum.

Article 5 (fibre-to-fibre recycling)

In order to ensure that recycled material can be used in a high-quality manner, fibre-to-fibre recycling targets have also been included. These targets are set as a percentage of what is actually recycled by the producer in order not to interfere with the incentive to prepare for reuse over recycling.

Article 6 (application of recycled textile fibres)

In order to ensure that the collected and recycled textiles are used in new textile products, the textile producer should take measures to promote the use of recycled textile fibres in their own textile products.

Article 7 (reporting)

With the entry into force of this Decree, the reporting obligation under Article 5(1) of the EPR Decree applies, albeit that, in accordance with Article 7(1) of this Decree, this report is only for the quantity of textile products placed on the market during the first 18 months.

Article 8 (entry into force)

Between the date of entry into force on 1 July 2023 and the date by which the targets for preparation for reuse and recycling targets set out in Articles 3 to 6 are to be achieved, there is a period of 18 months during which producers can prepare for achieving these targets.

However, pursuant to Article 4(1) of the EPR Decree, producers are obliged to report to the Minister of Infrastructure and Water Management within six weeks of the entry into force of this Decree, to submit the data specified in paragraph 2 of that Article.

The State Secretary For Infrastructure And Water Management,
V.L.W.A. Heijnen