

SME INFO HU

EXTENDED PRODUCER RESPONSIBILITY (EPR)



The Extended Producer Responsibility (EPR) is a new concept based on an EU directive that re-thinks the waste management duties. The EPR concept has already been included in our Act on Waste Management since March 2021, but the live system will not begin until July 2023. However, there are certain registration requirements already in April and May for those who sell or place on the market circular products at the time the EPR regulation enters into force (1 April 2023).

The current summary is based on the 80/2023 Government Decree on Extended Producer Responsibility (EPR Decree)

which was released on 14 March 2023. Our aim is to provide the information published in this decree in an understandable manner.

We encourage all stakeholders to fully analyse the main processes of their economic activity as soon as possible, to determine the extent to which circular products covered by EPR play a role in it, and accordingly to develop an action plan to implement the necessary processes.

The SME Team

The purpose of SME INFO is to provide general information and to draw the attention to the current changes in law which we believe to be important for the business operation of our clients. It is not a replacement for careful review of the acts and rules, and the consultation with your tax advisor.

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What products are covered by the EPR rules?

Annex 1 of the EPR Decree lists the following products as “circular products”, and they are covered by EPR obligations:

- 1) packaging⁽¹⁾
- 2) single-use (disposable) and other plastic products (e.g. food storage containers, food storage bags, beverage bottles, wet wipes, balloons, etc.)⁽²⁾
- 3) electrical and electronic equipment⁽³⁾
- 4) batteries and accumulators⁽⁴⁾
- 5) vehicles⁽⁵⁾
- 6) tyres
- 7) office papers
- 8) paper for advertising
- 9) cooking oil and fat
- 10) textile products
- 11) wooden furniture

In case of the first 5 items the EPR Decree does not provide a definition but refers to the separate government regulations that apply to those products.

In case of products listed in points 6-11) the EPR Decree makes further clarifications – e.g. what products are to be understood by textiles and wooden furniture – using the nomenclature of tariff heading from 2022.



- § (1) 442/2012 Government Decree (2) 301/2021 Government Decree
- (3) 197/2014 Government Decree (4) 445/2012 Government Decree
- (5) 369/2015 Government Decree



An accessory or component part of a product is also regarded as a circular product under the EPR Decree. (The concept of accessory or component is governed by the Civil Code.)

What obligations are defined as EPR obligations under the Act on Waste?

A detailed explanation of these obligations is beyond the scope of this summary, however certain information may be gained from the Act on Waste's definition of EPR⁽⁶⁾ which is the following: “a set of measures aimed at ensuring that the producer of the product bears the financial responsibility or the financial and organisational responsibility for the management of waste stage of a product's life cycle”.

Who are the companies that primary responsible for and affected by the EPR Decree?

The EPR Decree considers the **producer** of the circular products as the primary responsible.



- As per the Act on Waste⁽⁷⁾, the producer is considered to be
- the manufacturer of a product, furthermore
 - if a product is produced outside of the territory of Hungary, the company who is the first person to place the product on the market in Hungary in the course of his economic activity (as such the taxable person placing the goods on the market is also a producer),
 - The foreign producer⁽⁸⁾ – established outside of Hungary, but placing circular products on the market in Hungary – is a special responsible person. A foreign producer has the possibility to fulfil his EPR responsibility through a Hungarian representative, furthermore if the foreign producer places the product through e-commerce service on the market, he is obliged to appoint such a representative.

- § (6) Act CLXXXV of 2012 on Waste, 2.§ 36b. (7) Act CLXXXV of 2012 on Waste, 2.§ 16.
- (8) 80/2023 Government Decree (EPR Decree), 10.§

When does the obligation under the EPR Decree arise? ⁽⁹⁾

The EPR fee obligation arises when the circular product is **placed on the market** by the producer.



Placing on the market means:

- a) The transfer of the circular product's ownership
 - at first time in Hungary, for consideration or for free (domestic sales),
 - from abroad to Hungary via e-commerce service (the EPR Decree identifies households and other users as purchasers).
- b) Own use of circular products meaning
 - private use by the producer or by its employee,
 - use for basic or applied research, experimental development, investment, renovation, maintenance as defined by the Act on Accounting and
 - any other use that results in the product becoming waste in Hungary after use.
- c) The removal of a circular product from a VAT warehouse or from a product charge warehouse to the territory of Hungary.

The EPR Decree also defines situations for circular products that do not qualify as placing on the market. E.g. if a circular product is stored in a VAT (or product charge) warehouse and sold on the premise of the warehouse. Details of the exceptions are set out in 16.§ (4) of the EPR Decree.

How can the EPR obligations be met?

The EPR Decree provides two possible ways for the producer of the circular products to fulfil the EPR obligations. The first one, the **"collective" fulfilment** is applicable for all circular products. The second one is the **"individual" fulfilment** which is applicable only to certain circular products as defined by the EPR Decree.

Collective fulfilment

Under collective fulfilment a **concession company** ⁽¹⁰⁾ designated by the state performs the waste management tasks instead of the producer. In case of collective fulfilment the EPR Decree prescribes the following obligations for the producer:



(9) 80/2023 Government Decree 16.§



(10) MOHU Mol Hulladékgazdálkodási Zrt.

- preliminary data provision towards the concession company before the registration (it is possible starting from 1 April 2023),
- EPR fee payment,
- regular data reporting,
- cooperation with the concession company,
- provide information in the event of a breach of the law.

Individual fulfilment

In case of individual fulfilment the producer signs a concession contract with the concession company and fulfil – on its own – its waste management tasks accordingly. The contracting has to be initiated by the producer until 15 April 2023 and the contract has to be conclude by 20 May 2023.

The producer may carry out Individual fulfilment for the following products:

- electrical and electronic equipment
- vehicles
- industrial and vehicle batteries and accumulators.

Individual fulfilment is optional, it has to be declared in advance and there is no possibility to change it within a year.

What fees are linked to the EPR and how are they determined?

The EPR obligations are accompanied by a fee payment that provides a financial guarantee for the proper management of the circular products' waste.

1) Fee payable in case of collective fulfilment ⁽¹¹⁾ is calculated as

- the quantity of the circular products placed on the market during the quarter and reported by the producer
- multiplied by the rate which is determined according to the rate definition of the EPR Decree.

The actual payment of the EPR fee is based on the quarterly invoice issued by the concession company to the producer.

2) Fee payable in case of individual fulfilment ⁽¹²⁾ is calculated as

- the quantity of the circular products placed on the market during the quarter and reported by the producer
- multiplied by the rate which is determined according to the rate definition of the EPR Decree,



(11) 80/2023 Government Decree 20.§ (1)



(12) 80/2023 Government Decree, 20.§ (2)

- less the costs of the producer incurred during the individual fulfilment and accepted by the competent authority.

Please note that at the time this newsletter was closed, the Energy Ministerial Decree that is necessary to define the rate as prescribed in the EPR Decree was still pending.

Is it possible to take into account the EPR fee paid in the product charge?

There are several overlaps between the products subject to product charge as defined in the Act on Environmental Protection Product Charge (EPPC Act)⁽¹³⁾ and the circular products as defined in the EPR Decree. Due to this, the amendments to the EPPC Act, effective from 1 July 2023, provide for the possibility of deducting the EPR fee when calculating the product charge liability.

What other producer responsibilities arise in connection with EPR?

Registration

It consists of two steps:

1. **Pre-registration** with the concession company, through its electronic interface which means the followings:
 - in case of collective fulfilment: providing the data specified in the EPR Decree⁽¹⁴⁾, it can be done starting from 1 April 2023,
 - in case of individual fulfilment: initiation of the concession contract starting from 15 April 2023 (and to be concluded until 20 May 2023).
2. **Registration** with the National Waste Management Authority (NWMA, also see ^(X)) by providing the following information:
 - providing the data specified in the EPR Decree⁽¹⁴⁾
 - declaration of whether the producer fulfils the EPR obligations by collective or individual fulfilment.

^(X) According to the information available so far, this body is the National Department for Environmental Protection, Nature Conservation and Waste Management of the Pest County Government Office.

§ (13) Act LXXXV of 2011 on Environmental Protection Product Charge

§ (14) 80/2023 Government Decree, Annex 3

Registration at NWMA is possible from 1 May 2023 and to be carried out by the producer or its representative (in the case of foreign producers).

For producers who sell or place on the market circular products at the time the EPR regulation enters into force, the deadline for registration is 31 May 2023.

The obligation to register also applies to a number of other cases (e.g. reporting of a contract of responsibility transfer, reporting of changes in data within 15 days, etc.), which are not explained in details in this summary.

Record-keeping requirements

Of course, as with all similar types of administrative obligations, there is a detailed record-keeping requirement on the producer. Please note that the EPR Decree introduces a new identifier, the **circular product code** ('CP code'), both for record keeping and for other data reporting obligations. The creation and definition of the CP code is the responsibility of the producer. Detailed guidance on the CP code is provided in the EPR Decree, however, it is not clear so far whether a direct correspondence can be ensured between the product charge code known from the EPPC Act and the CP code. At this moment, there is no clear position on the compatibility between the CP code and the codes already defined previously in similar legislation.

Data reporting obligation

The EPR Decree requires the producer (and also other participants in the EPR procedure) to provide detailed information⁽¹⁵⁾ by the 20th day of the month following the quarter in which the circular products were placed on the market. The data must be submitted to the NWMA using the form provided by it⁽¹⁶⁾. The data will be forwarded by the NWMA to the concession company invoicing the fee by the 25th day of the month following the quarter.

Other useful information about EPR

Due to scope limitation and regulatory uncertainties, the following information is provided briefly and for information purposes only.

Exemption cases

The EPR Decree allows for more cases of exemption from the EPR fee. For example, where a circular product

- is proved to leave the territory of Hungary or
- is incorporated into a product that is also subject to an EPR fee.

§ (15) 80/2023 Government Decree 27.§ (1) § (16) 80/2023 Government Decree 27.§ (2)

Rules for transfer of responsibility

The EPR Decree allows for the transfer of responsibility from the primary EPR responsible party. Its rules are similar to the structure established previously by the EPPC Act.

Mandatory indication of invoice clause

Just as under the ECCP Act, producers who become liable under EPR scheme are required to indicate the wording specified in the EPR Decree on the sales invoice for a circular product.

