



## LEGAL UPDATE

### DRAFT DECREE GUIDING EXTENDED PRODUCER RESPONSIBILITY

Extended producer responsibility (EPR) is defined as an *environmental policy approach in which a producer's responsibility for a product is extended to the waste stage of that product's life cycle.*<sup>1</sup> The EPR concept is not new in Vietnamese legislation. It was introduced in the 2005 Law on Environmental Protection and is now adopted under Decision No. 16/2015/QĐ-TTg providing regulations on recall and treatment of discarded products. However, the current legal framework does not set out a mandatory recycling quota for companies. It is, among others, the reason why the EPR has not been implemented by most manufacturers and importers in Vietnam so far.

However, the 2020 Law on Environmental Protection (**2020 LOEP**), which will come into effect on 1 January 2022, and its latest draft guiding decree (**Draft Decree**) provide new approaches to EPR to enforce it in Vietnam. The Draft Decree likely will take effect concurrently with the 2020 LOEP.

EPR requires producers to bear the responsibility for their products after becoming waste, including collection, pre-treatment such as sorting, dismantling or de-pollution, (preparation for) reuse, recovery (including energy recovery) or final disposal.

The Draft Decree distinguishes between recyclable products and packaging and waste treatment. Different criteria and penalties apply to manufacturers and importers of either recyclable products and packaging or products that do not fall in that category.

The EPR mechanism will significantly impact numerous manufacturers and importers operating in Vietnam by imposing various financial and administrative burdens on them.

We would like to give you a heads-up on specific points worth noting in the Draft Decree on EPR regulations through this legal update.

#### 1. Scope

##### 1.1. Recyclable Products and Packaging

Organisations and individuals who manufacture or import recyclable products and packaging to be sold in Vietnam are responsible for recycling certain products and packaging materials, such as:

- electrical or electronic products;
- batteries;
- machine oil;
- tubes and tyres;
- vehicles and construction machines; and
- packages

Under the Draft Decree, EPR does not apply to products and packaging for export or temporary import and re-export, manufacture or import for research, study or testing.

We would like to highlight that if a recyclable product has a recyclable component or packaging, the manufacturers and importers of the final product must assume the recycling responsibility for the whole product and packaging. The manufacturers and importers of the part or the packaging will be discharged of their recycling responsibility.

##### 1.2. Waste Treatment

Organisations and individuals who manufacture or import *unrecyclable* or *hazardous* products and packaging that will be sold in Vietnam are responsible for a financial contribution to the VEPF for supporting the waste treatment process. It applies to certain products such as:

- packaging containing pesticides, insecticides and chemicals;
- diapers, sanitary napkins, and single-use wet towels;
- chewing gum;
- cigarettes;
- products and packaging containing plastic ingredients;

<sup>1</sup> United Nations Basel Convention Guideline, UNEP/CHW.14/5/Add.1, 2019.



- single-use cutlery, cups, containers, and food wrappers;
- balloons, and straws;
- garment products;
- leather products, bags, and shoes;
- toys;
- furniture; and
- plastic products used for construction

EPR does not apply to products and packaging for export or temporary import, re-export or manufacture and import for research, study or testing.

## 2. Minimum Contribution to the VEPF

### 2.1 Recyclable Products and Packaging

The Draft Decree does not set out a minimum amount required to fund the VEPF. Instead, the Vietnam EPR Office will determine the amount based on manufacturers and importers' volume of to-be-recycled products and the recycling expenditures used in the previous year. The contribution is due annually.

### 2.2 Waste Treatment

Contribution to the VEPF is, amongst others, subject to the type of waste and its volume. The amount is due annually, and the effective date for the contribution is 1 January 2023.

## 3. Penalties

Manufacturers and importers who fail to comply with EPR requirements can be subject to very severe administrative sanctions. Hereafter we will set out the applicable ones for recyclable products and packaging and waste treatment, respectively.

Note that some general limitations will apply on top of the penalties. For example, importers who do not observe the EPR will be blocked from performing customs clearance for their consignments.

### 3.1 Recyclable Products and Packaging

The administrative sanctions include, amongst others, monetary fines, supplemental payment of recycling expenses, plus an additional penalty of 30% of the recycling expenses and 10% of this amount if payment is not made in the next period.

### 3.2 Waste Treatment

The penalties consist of administrative sanctions and retrospective collection of the overdue amount, plus an additional penalty of 50% of the to-be-collected amount and 10% of this amount if payment is not made in the next period.

## 4. Procedure for Recyclable Products and Packaging

The Draft Decree requires manufacturers and importers to meet a particular recycling quota for each type of product and packaging they manufacture and import. The quota is subject to certain conditions, such as the national recycling target, environmental protection requirements, and Vietnam's socio-economic conditions. Manufacturers and importers are entitled to opt-in to one of the following methods for recycling products and packaging.

### 4.1 Method 1: Recyclable Products and Packaging

*Manufacturers* can choose to carry out the recycling of products and packaging via one of the following routes:

- a. Recycling by the manufacturer in compliance with the recycling protocol;
- b. Engaging a qualified recycling service provider to carry out the recycling; or
- c. Authorising a qualified third party to carry out the recycling.

For option a., the manufacturer must obtain the license before the recycling takes place. For option c., the qualified third party must follow the model of a Producer Responsibility Organisation (**PRO**). Many countries use this model. In Vietnam, the Packaging Recycling Organisation Vietnam (**PRO Vietnam**), founded on 21 June 2019, is a typical example of this model under the Draft Decree. Note that option (a) is not available to *importers*.

### 4.2 Method 2: Vietnam Environment Protection Fund

In this case, the manufacturer or importer need to fund the Vietnam Environment Protection Fund (VEPF) to support recycling products and packages.

## 5. Other Obligation: Labels and Manuals

The Draft Decree also provides that manufacturers and importers must place information on labels or in the product manual. The label should contain information about ingredients and materials, instructions on



classification, collection, reuse, recycling, post-use treatment, and risk warnings in the process of recycling, reuse, and handling of products and packages. The national recycling symbol registered and announced by Ministry of Natural Resources and Environment (**MONRE**) needs to be shown on the product's packaging or label. This seems to be conflicting with Decree 43/2017/ND-CP and is contrary to international practice.

#### **6. EPR Reporting Regime**

Under the Draft Decree, manufacturers and importers subject to EPR requirements are responsible for reporting to the Vietnam EPR Office annually before 31 March on the quantity, volume, and classification of the yearly manufactured or imported products and packaging. In addition, manufacturers and importers (or a third party authorised by them) must register the recycling plans (where applicable under the Draft Decree) and report the implementation results of the previous year to the Vietnam EPR Office before 31 March every year. A qualified audit firm must audit such reports before submission to the Vietnam EPR Office.

#### **7. National EPR Council and Vietnam EPR Office**

According to the Draft Decree, a National EPR Council will be established under the auspice of MONRE. It is composed of, amongst others, representatives from MONRE and manufacturers and importers. This council will function as the supervisory authority which oversees the EPR-related activities in Vietnam. The Vietnam EPR Office will be a unit of the National EPR Council designated by MONRE.

#### **8. Conclusion**

The Decree is being finalised but will likely take effect on 1 January 2022 with a grace period until 1 January 2023. EPR will then apply to manufacturers and importers. Therefore local and foreign-invested companies should develop an action plan as soon as possible to address new requirements imposed by the Draft, e.g. preparing recycling plans and budgeting for EPR. It might require the involvement and collaboration of different departments in a company such as Legal and Compliance, Finance and Production. Manufacturers and importers operating in

Vietnam should keep the developments of the Draft on their radar in the coming months.

#### **Contact Information**

For more information, please contact.

Mark Oakley / Managing Partner  
[mark.oakley@acsvlegal.com](mailto:mark.oakley@acsvlegal.com)

Minh Nguyen / Senior Associate  
[minh.nguyen@acsvlegal.com](mailto:minh.nguyen@acsvlegal.com)

Huong Vo / Associate  
[huong.vo@acsvlegal.com](mailto:huong.vo@acsvlegal.com)