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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	AOB for the meeting of the Council (Environment) on 17 December 2024 On-line marketplaces - non-compliance with EPR obligations and how to address it – Information from Czechia, Denmark, France and Slovakia

Sales through online channels, and especially through online marketplaces, have become a significant source of free-riding, where some companies based outside the EU place electrical and electronic equipment, batteries, packaging or other products on the EU single market that do not comply with the extended producer responsibility (EPR) obligations. This can occur for a variety of reasons, in particular a lack of awareness or even deliberate avoidance of those obligations due to the difficulty of enforcing legal obligations abroad, especially outside the EU.

Free-riding poses a challenge for all EU Member States. It leads to underfunding of waste management and at the same time accords an unacceptable advantage to importers who fail to comply with their legal obligations. Such non-compliance has wide-ranging implications for the fiscal policy of all EU Member States, leading to evasion of EPR payments and VAT. In Czechia alone, this results in a loss of tens of millions of euros in EPR fees and up to hundreds of millions of euros in customs duties each year. The competitiveness of EU businesses is significantly weakened by this failure to ensure a level playing field.

The aforementioned delegations would therefore like to initiate future discussions that will hopefully result in ensuring a level playing field for all entities placing electrical equipment, batteries, packaging and other products covered by the EPR on the EU single market.

Under Regulation (EU) 2023/1542 on batteries, with reference to Regulation (EU) 2022/2065 on digital services (DSA), online platform providers are obliged to enable producers offering goods on their platforms to EU consumers to provide information on their registration in the relevant public EPR registers and, **pursuant to Article 30(2) DSA, to make efforts to verify the information provided**. Similar provisions are also contained in the proposal for a Regulation on packaging and packaging waste and in the proposal for the revision of Directive 2008/98/EC on waste in relation to textile products. However, registration in the register of producers alone does not guarantee compliance by third-country producers.

So what is actually happening, and what needs to be addressed?

- 1. Free-riding of products without registration:** Third-country economic operators place products on the Union market without fulfilling EPR obligations such as registering in EPR schemes or paying recycling fees. These free-riding products enter the market without any responsibility for subsequent take-back and recycling, which increases waste management costs for Member States.
- 2. Unfair advantage for non-EU traders:** While EU producers and distributors have to comply with EPR obligations and pay recycling fees, third-country economic operators often avoid such obligations. This difference creates an uneven playing field, where third-country goods may be cheaper because operators are not burdened with the costs of waste management or any other fees or taxes.
- 3. Limited control and enforcement:** Customs authorities are not always able to effectively check that all EPR obligations are met, especially for small consignments from third countries, which leads to unregistered products easily entering the Union market. This enforcement challenge is being exacerbated by the ever-increasing number of these small consignments.
- 4. Burden on EU waste management:** Non-compliance with EPR obligations by third-country operators means that the costs of collecting, sorting and recycling of these products end up falling on EU producers – municipalities as well as EU citizens. Such a system is unsustainable in the long term and fails to meet its objective of reducing the environmental impact of consumption.

For the above reasons, the aforementioned delegations would welcome a future discussion on **ensuring effective and coherent enforcement of the applicable rules**. At the same time, in view of the EU customs reform currently under discussion, the aforementioned delegations believe that proposals concerning the e-commerce sector should be discussed as a matter of priority. It is more than desirable to use all the proposed instruments to address the problems identified, but we must strive for structural changes and additional measures to ensure compliance with EU rules. The new measures should be discussed and broadly agreed at EU level.
