

FAQs on the application of the EPR reform to online marketplaces
Application of Article L.541-10-9 of the Environmental Code

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1. What obligations do online marketplaces have under Article L.541-10-9 of the Environmental Code?

This article states that the marketplace is required to provide for or contribute to the prevention and management of waste that it originates, in accordance with the provisions of Environmental Code articles L.541-10 on Extended Producer Responsibility (EPR) and L. 541-10-8 on taking back used products when new ones are sold.

The marketplace is not bound by these obligations when it facilitates the sale or delivery of a third-party seller's products, on condition that the third-party seller has already fulfilled its own EPR obligations and the marketplace has recorded the relevant supporting documents in a register. To simplify matters for marketplaces and third-party sellers, the law states that the third-party's compliance with the EPR obligation is satisfied when a unique EPR identifier for the products has been issued by ADEME.

If the third-party seller has not fulfilled its EPR obligations and the marketplace does not have the relevant supporting documents, the marketplace is required to fulfil the EPR obligation in place of the third-party seller. In particular, this includes the obligation to join and report to an approved producer responsibility organisation (PRO) for the relevant sector, and to pay the eco-contribution.

2. How can the third-party seller prove its EPR compliance to the marketplace?

The third-party seller must provide the unique EPR identifiers issued by ADEME for the product categories offered for sale, including their packaging. If the third-party seller is not the "producer" for EPR purposes, its supplier provides it with this unique identifier at its request (see L.541-10-10 of the Environmental Code).

3. When can a marketplace be designated as an intermediary for EPR purposes?

A marketplace can offer third-party sellers an EPR intermediary service, allowing these sellers to fulfil their EPR obligation.

This solution may be of particular interest to sellers or producers of small quantities of products, for which PROs may offer "simplified" financial contributions associated with reduced data reporting.

The use of simplified reporting and financial contributions by marketplaces for third-party sellers without a unique identifier (IDU) and placing small quantities of products on the market is possible when these contractual provisions have been indicated to the third-party seller, for example through the general terms and conditions of use.

4. What obligations fall on the marketplace as an intermediary for each producer?

In this case, the marketplace takes over the EPR obligations of third-party sellers, in particular the obligations referred to in question 1. It reports the information for each of its third-party sellers to the PROs.

5. When a marketplace acts as intermediary for a third-party seller, does it become responsible for all products sold by the third party and placed on the market through other sales channels of which it is not aware?

The relationship between the marketplace and its third-party seller is governed by the conditions as defined, for example through the general terms and conditions of use.

In any event, a marketplace acting as an EPR intermediary cannot be faulted for not being aware of sales made by its third-party sellers through sales channels other than its own.

6. How will producer responsibility organisations or the authority be able to verify the accuracy of information reported by third-party sellers regarding the quantities of products they place on the market through one or more marketplaces?

The regulatory framework (see R541-168) provides that PROs may require marketplaces to report the quantities of products, by category, sold under the EPR scheme by the third-party seller via the marketplace. In particular, this is to check that the quantities of products placed on the market (i.e. quantities that may pass through several platforms) correspond to the quantities reported to the PRO. The administrative authority also has access to this information.

7. Can the marketplace access the simplified financial contributions for producers of small quantities of products?

The regulatory framework (see R.541-119) provides that producer responsibility organisations may offer a flat-rate contribution (the simplified financial contribution) to producers that place small quantities of products on the market. This simplified financial contribution is combined with reduced reporting of product data (technical characteristics), making it more accessible in terms of administrative formalities.

The use of the simplified reporting and financial contributions for third-party sellers who place small quantities of products on the market, by marketplaces that fulfil EPR obligations on behalf of these third-party sellers, should facilitate the implementation of EPR scheme for marketplaces.

Provided that marketplaces indicate to third-party sellers, through the general terms and conditions of use, the rules to be applied in collecting the simplified financial contributions on their behalf, such marketplaces have access to simplified financial contributions, subject to compliance with the thresholds for small quantities of products.

8. Where the marketplace acts as EPR intermediary for several producers or sellers of small quantities of products, can the marketplace benefit from simplified financial contributions when the total quantity of products thus placed on the market exceeds the eligibility threshold for the simplified financial contribution?

Yes, if the marketplace acts as EPR intermediary for each of these producers.

The marketplace ensures that the quantities sold on its own platform, reported by its third-party sellers, comply with the eligibility thresholds for the simplified financial contribution scale. However, a marketplace acting on behalf of third-party sellers is not required to verify that the quantities sold, as reported by the seller, are representative of its overall market (i.e. beyond its own platform).

9. Do all producer responsibility organisations offer simplified financial contributions?

The legal framework allows PROs to decide if it is appropriate to offer simplified financial contributions. Given that the law imposes a scenario in which the marketplace may be liable as producer, it is desirable that it should have access to simplified financial contributions.

The State has thus invited PROs to develop simplified financial contribution scales, with rates adapted to the online sales and marketplace model. In addition, the financial contribution is not payable until a simplified scale has been put into operation.

However, for certain EPR sectors, for example where the reporting system in place is accessible, or where there are no producers of small quantities of products, this is not necessary.

10. Are marketplaces acting as intermediaries for producers eligible for simplified financial contributions liable for financial contributions while waiting for PROs to offer a simplified financial contribution scale?

The EPR obligation for marketplaces under Article L.541-10-9 came into force on 1 January 2022. However, a grace period was granted for the first half of 2022, considered as a transitional period during which producer responsibility organisations would develop simplified financial contributions

The Ministry asked PROs to ensure that demands for simplified financial contributions should be made once the simplified scales and resulting procedures were in place. These simplified scales cannot be applied retroactively.

A grace period was also granted in relation to compliance of the reported quantities of products placed on the market for the first half of 2022, considered as a transitional period during which PROs would develop simplified financial contribution

In the event that simplified financial contributions were not operational by 30 June 2022, the transition period was to run until the simplified scales were developed and the PROs in the sector had set up the resulting reporting procedures.

11. Can simplified financial contributions be demanded retroactively?

The price (the financial contribution) is an essential component of a PRO membership contract. It is not possible for a PRO to require its retroactive application. This rule applies to any seller's membership of a PRO, regardless of the simplified scale.

12. Is the marketplace liable if a producer with a unique identifier does not pay all or part of the financial contribution it owes to its producer responsibility organisation?

The marketplace is not liable for the producer's failure to comply with the terms of its membership contract with the PRO. However, the PRO may terminate the contract and take legal action against the producer to obtain redress. Once the PRO terminates the contract, it notifies ADEME of withdrawal of the unique identifier, which will therefore no longer be valid.

13. Should the register referred to in articles L. 541-10-9 and R. 541-167 be set up if the marketplace takes on the EPR obligation?

Once the marketplace directly takes on the EPR obligation as producer (and not through an EPR intermediary service), it is not required to set up the aforementioned register.

14. When an entity is both a marketplace and a seller under its own brand ("distributor") does this require separate EPR contracts with the same PRO for each activity?

The setting up of two separate contracts is not required under the EPR regulatory framework.

15. Can a marketplace be held liable for a fake or obsolete unique identifier?

The obligation relating to unique identifiers arising from Article L. 541-10-9 of the Environmental Code concerns the collection by the marketplace of the unique identifier of the third-party seller.

In some cases, the marketplace could be held liable if it were found that it had not acted with due diligence, in particular to ensure that the unique identifier had a consistent format or that it corresponded to the type of product sold, in order to prevent obsolete reports from sellers.

To make checks possible, ADEME shall systematically provide marketplaces with a complete list of producers and their unique identifiers. The marketplace can thus perform spot checks on the consistency of the unique identifiers provided to it, pending the implementation of an automated tool for searching and checking unique identifiers as part of a future service.

16. How often should a marketplace check the validity of a seller's unique identifier?

There is no rule. However, it may be advisable to check the format and consistency of unique identifiers on a *quarterly* basis. On each request, ADEME will provide a complete and up-to-date list of unique identifiers, including withdrawn unique identifiers.

17. What are the penalties for failure to meet EPR obligations?

A producer that does not meet its EPR obligations is liable to the penalty provided for in Article L. 541-9-5 of the Environmental Code.
