

## Press release

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### Close gap in the law to improve environmental standards in online shopping

Some sellers of electronic equipment from non-EU countries such as China who market their products on the Internet do not contribute to the costs incurred in Germany for the collection and disposal of packaging and what will later be end-of-life devices and old batteries. These “free-riders” benefit from a gap in the law, because electronic marketplaces are not required to ensure that the sellers who make use of them comply with the legal provisions. There is also no effective means of taking action against free-riders based outside the EU.

In a project funded by the German Environment Agency designed to address this gap in the law, researchers at the Oeko-Institut and Leuphana University in Lüneburg having been working on the concept of compulsory verification by electronic marketplaces and fulfilment service providers. A preliminary summary of the almost completed study has now been published.

#### The gap in the law on “offering goods for sale”

“Product responsibility for electric and electronic goods lies with the seller – not with the electronic marketplace or the fulfilment service provider,” says the lawyer Andreas Hermann of the Oeko-Institut. “Our proposed solution will not change that. But introducing a specific verification requirement for electronic marketplaces and fulfilment service providers will mean that they can no longer condone evasion of obligations under environmental law.”

When platforms such as Amazon and eBay operate as electronic marketplaces, they are not involved in the purchase contract between the sellers on their marketplace and customers in Germany and they are not offering the goods for sale themselves. The same applies to fulfilment service providers who store the goods and despatch them to customers on behalf of the sellers (especially sellers outside the EU).

#### Three solutions considered

The researchers examined various possible means of closing the gap in the law through legislation. They shortlisted three ways of clamping down on free-riders from non-EU countries who put electronic devices or batteries and packaging into circulation – items to whose disposal costs legally compliant manufacturers in Germany currently contribute.

The options included the “simplified producer responsibility model” – a proposal put forward by the marketplace giant Amazon, which wanted convenience for its own seller customers and proposed assuming responsibility for producers from non-EU countries on its marketplace EU-wide in exchange for a lump-sum fee. “However, this would have required a

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complete reorientation of the model and a community-wide EU solution, because the model as proposed is not compatible with existing primary and secondary European law,” says Professor Schomerus of Leuphana University Lüneburg. “In addition, the proposal is based solely on voluntary action by producers and electronic marketplaces.”

### **No EU-wide solution currently in sight**

Because no EU-wide regulation is currently planned, individual member states are working towards their own solutions. Germany is one of those leading the way. So far France is the only country to have already decided on a solution – in this case “deeming to be a producer”. Under this legal fiction, any seller or downstream electronic marketplace is deemed to be a producer if the seller or marketplace offers or makes available electrical or electronic equipment from producers who are not properly registered. The researchers are of the opinion that deeming to be a producer represents greater interference with the rights of those involved than compulsory verification and is therefore not to be recommended.

### **A plea for compulsory verification**

If a compulsory verification requirement is introduced in Germany, operators of electronic marketplaces and fulfilment service providers will have to check that their sellers have complied with the registration and notification requirements of waste management law. This must be done before they can offer goods on the marketplace and deliver them to customers. An electronic interface, perhaps managed by the national register for waste electrical equipment (*Stiftung ear*) would make it easy for operators to conduct an automated check of whether the sellers are registered in Germany. Failure to comply with the compulsory verification requirements would be classed as a regulatory offence and would be punishable with a fine.

### **The input paper from the Oeko-Institut and Professor Schomerus in German and English.**

[“Produktverantwortung im Onlinehandel – Regelungsoptionen zur Verhinderung von Drittland-Trittbrettfahrern und Retourenvernichtung” - Inputpapier zur Vermeidung von Drittland-Trittbrettfahrern](#)

[“Product responsibility in e-commerce – regulatory options for the prevention of third country free-riders and of the destruction of returned goods” - Input paper on the prevention of third country free-riders](#)

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The Oeko-Institut is one of Europe's leading independent research and consultancy institutions working for a sustainable future. Founded in 1977, it develops principles and strategies for realising the vision of sustainable development at global, national and local level. The institute has offices in three cities in Germany: Freiburg, Darmstadt and Berlin.

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