

Authorised Representative for EPR – The challenge for Online Marketplaces

Context

European EPR legislation presents a tension between regulatory objectives and marketplace operations and span of control. To ensure EPR obligations are met and to limit free riding, national authorities require accountable entities - either the producer themselves or Authorised Representatives (AR) to be responsible for all producer sales in each category in a Member State (MS). In other words, AR role demands comprehensive control and visibility across all sales channels, which fundamentally cannot be met by online marketplaces (OMPs) that have visibility and operational control only over activities on their respective platforms.

Having said this, OMPs can play a crucial role in helping producers meet EPR compliance obligations. In countries like France, Italy, Spain, Belgium, and the UK, Amazon has been successfully helping sellers report and pay eco-fees to PROs for their sales on Amazon through innovative digital solutions like Pay on Behalf (POB), without becoming the AR.

With Single Producer Registration (SPR) requirements under the EU Battery Regulation (EUBR) and Packaging and Packaging Waste Regulation (PPWR), producers must register and obtain EPR registration numbers (ERNs) for batteries and packaging in every MS they operate in. Online marketplaces must verify sellers' registration status by validating these numbers against public registries before allowing sales. Registration across multiple countries and categories is a complex, data-intensive, costly, and time-consuming process - creating potentially barriers to market entry, particularly for small and medium enterprises and foreign businesses selling in multiple countries. Amazon already has the information required for producer registration through internal databases like Know Your Customer and can facilitate simple, cost-effective pathways to help sellers register, however, current processes restrict registration to producers or their ARs.

Fragmentation of AR for EPR

An AR is a natural or legal person established in the EU, formally appointed by a producer to act on its behalf in fulfilling specific regulatory obligations. Within the EU EPR legal framework, the AR is responsible for (i) registration and reporting on behalf of producer (e.g. sales volumes, product data, material composition); (ii) payment of eco-fee contributions including eco-modulation; (iii) cooperation with competent authorities on non-compliance measures and enforcement actions.

However, the AR for EPR is not governed by a single harmonised EU regime. Across the EU EPR legal framework, spanning across the WEEE Directive, EUBR, PPWR, and related category specific legislation, Member states (MS) retain significant discretion in defining AR responsibilities, appointment formalities and scope of mandate. This has resulted in a fragmented landscape in which an AR appointed under one regulation, or in one MS, cannot be assumed to satisfy the requirements of another. Fragmentation is seen at two levels:

- 1) **Fragmentation in EU EPR legal framework:** Across the EU EPR framework the scope and obligations of the AR differ and variations are seen in:
 - a) **Who needs an AR:** By way of exemplification, EUBR mandates AR for all distance sellers (EU and third-country producers) with no MS discretion. PPWR mandates AR only for EU distance sellers, while for third-country sellers, AR requirement is at MS discretion.
 - b) **Scope of core EPR obligations:** In EUBR, the AR for EPR is responsible for operational collection and takeback, establishing networks, managing logistics, and ensuring physical collection of waste batteries. Whereas, under PPWR, the AR for EPR has an administrative and verification role, ensuring producers financially contribute to collection systems that MS establish and operate.
 - c) **Documentation Requirements:** PPWR requires ARs to maintain EU declarations of conformity and technical documentation for 5-10 years depending on packaging type; while EUBR applies a uniform 10-year retention period for all battery types and requires due diligence documentation for market surveillance authorities.
 - d) **Administrative Duties:** Variations are also seen across regulations in administrative duties like data accuracy confirmations, authority notifications, support for PRO audits.
- 2) **Member State AR requirement fragmentation:** Even within a Regulation, MS exercise their transposition discretion in ways that could potentially create differences in AR obligations at national level, such as appointment formalities, administrative duties, and scope. For example, in terms of scope France is currently considering a proposal which requires full "subrogation" by AR covering all EPR obligations (takeback, waste collection, waste reduction plans, specific labelling obligations), while in Italy and Spain, the AR's role includes only registration, reporting, payment of eco-contribution and cooperation with competent authorities. Country-specific appointment mandates make appointment of AR for EPR purposes operationally difficult in some countries like Italy, where the AR appointment must be made with a formal mandate. This also adds to the cost of compliance and makes such appointment expensive and bureaucratic for small and medium-sized producers based outside IT (and outside the EU).

The cumulative effect of fragmentation is that a non-resident producer seeking to appoint ARs across multiple MS and EPR categories faces a patchwork of requirements. The system is complex to navigate, especially for small and medium enterprises

without dedicated compliance or legal teams. Producers must appoint ARs in each country and category they operate in, significantly multiplying costs. With each AR handling different obligations depending on country and category, producers have to track varying requirements and ensure they meet their EPR obligations. The appointment process varies and is complex and time-consuming in some countries. Once appointed, producers face operational inefficiencies from managing different reporting formats and documentation requirements across jurisdictions. Annex 1 provides a breakdown of specific AR for EPR responsibilities across EUBR, PPWR, and national transpositions in France, Italy, and Spain.

Annex 1: AR Responsibilities Breakdown Table

Who needs to have an AR

Key Difference: EUBR mandates AR for all distance sellers (EU and third country) with no MS discretion. PPWR mandates AR only for EU distance sellers; third-country AR requirement is at MS discretion.

Producer Type	EUBR	PPWR
In-Country Producers (Established in MS where selling)	Not required, Article 56(3) applies only to distance sellers	Not required
Out-of-Country EU Producers (Established in different EU MS)	Mandatory if distance selling	Mandatory if distance selling
Out-of-Country EU Producers (Not distance selling)	Not required	Not required
Third-Country Producers (Distance selling directly to EU end users)	Mandatory, as per Article 56(3)	Mandatory
Third-Country Producers (Using EU importer)	Not required. Importer becomes producer	Not required

Obligations of an AR for EPR

The following table identifies specific responsibilities of Authorised Representatives for EPR under EUBR, PPWR, and national-level transpositions in France (FR), Italy (IT), and Spain (ES).

#	Specific Responsibility of AR for EPR	EUBR	PPWR	FR	IT	ES
1	AR to register non-resident producer	✓	✓	✓	✓	✓
2	AR to report on behalf of non-resident producer	✓	✓	✓	✓	✓
3	AR to pay eco-fee contribution on behalf of non-resident producer, including eco-modulation criteria applicability	✓	✓	✓	✓	✓
4	AR to undertake takeback / waste collection obligations on behalf of non-resident producer	✓	Only financial contribution	—	—	—
5	AR will need to provide statement that the information provided during registration on behalf of the producer is true (data accuracy confirmation)	✓	✓	✓	✓	✓
6	AR will notify the competent authority in each Member State of any changes to the information contained in the registration of a producer, and information relating to permanent cessation by the producer as regards the making available on the market within the territory of the Member State	✓	✓	✓	✓	✓
7	AR to maintain EU declarations of conformity and technical documentation	10 years across all types	5 years (single-use) or 10 years	—	—	—

#	Specific Responsibility of AR for EPR	EUBR	PPWR	FR	IT	ES
			(reusable packaging)			
8	AR to provide necessary information and documentation to competent authorities and cooperate with national authorities on non-compliance measures	✓	✓	—	—	—
9	AR to make available due diligence documents to market surveillance authorities	✓	—	—	—	—
10	AR to support PRO audits	✓	✓	✓	✓	✓