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Subject: Notification 2026/64/BE

Draft Decree of the Flemish Government amending the Decree of the Flemish Government of 17 February 2012 adopting the Flemish Regulation on sustainable management of material cycles and waste and the Decree of the Flemish Government of 23 May 2025 on environmental enforcement

Delivery of a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535 of 9 September 2015

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015

Excellency,

As part of the notification procedure laid down by Directive (EU) 2015/1535 ⁽¹⁾, the Belgian authorities notified to the Commission on 10 February 2026 the “*Draft Decree of the Flemish Government amending the Decree of the Flemish Government of 17 February 2012 adopting the Flemish Regulation on sustainable management of material cycles and waste and the Decree of the Flemish Government of 23 May 2025 on environmental enforcement*” (hereinafter referred to as “the notified draft”).

According to the notification message, the notified draft proposes to align the national legal framework with Regulation (EU) 2023/1542 of 12 July 2023 on batteries and battery waste ⁽²⁾ and Regulation (EU) 2024/1157 on shipments ⁽³⁾. To this end, the notification message explains that the notified draft introduces amendments to the

¹) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, (OJ L 241, 17.9.2015, p. 1).

obligations of online platforms and fulfilment service providers in the context of extended producer responsibility, which are intended to be aligned with Directive 2008/98/EC, as amended by Directive (EU) 2025/1892 (“Waste Framework Directive”)⁽⁴⁾ and Regulation (EU) 2022/2065 (the Digital Services Act, hereinafter referred to as “the DSA”)⁽⁵⁾.

In the context of the notified draft, the Commission services sent to the Belgian authorities a request for supplementary information, on 4 March 2026, in order to obtain clarifications on the measures of the notified draft. The reply sent by the Belgian authorities on 16 March 2026 is taken into account in the following assessment.

Following the examination of the relevant provisions of the notified draft, the Commission issues the following detailed opinion and comments.

1. Introduction

The Commission takes note of the notification message and the Belgian authorities’ reply to the request for supplementary information sent by the Commission services, according to which the notified draft aims at aligning the national legal framework with the Waste Framework Directive. The Commission thus bases its detailed opinion and comments on the information supplied by the Belgian authorities, including their replies to the request for supplementary information sent by the Commission services.

Among others, the Waste Framework Directive aims at specifying, for the purposes of compliance with the DSA, how the obligations on providers of online platforms allowing consumers to conclude distance contracts with traders are to be applied in the case of providers of online platforms allowing consumers to conclude distance contracts with producers offering textile, textile-related or footwear products listed in Annex IVc of that Directive to consumers located in the Union. In particular, Article 22a(13) of the Waste Framework Directive provides that, for the purposes of compliance with Article 30(1), points (d) and (e), DSA, Member States shall ensure that providers of online platforms allowing consumers to conclude distance contracts with producers offering textile, textile-related or footwear products falling within the scope of the extended producer responsibility to consumers located in the Union obtain the following information from those producers prior to allowing them to use their services: (a) information on their registration in the register of producers established in the country where the consumer is located in accordance with Article 22b of the Waste Framework Directive, and the

²() Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, OJ L 191, 28.7.2023.

³() Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006, OJ L 145, 30.4.2024.

⁴() Directive (EU) 2025/1892 of the European Parliament and of the Council of 10 September 2025 amending Directive 2008/98/EC on waste, OJ L, 2025/1892, 26.9.2025.

⁵() Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (DSA), OJ L 277, 27.10.2022, p. 1-102.

registration number or numbers of the producer; and (b) a self-certification regarding compliance with extended producer responsibility requirements.

Since the relevant provisions of the Waste Framework Directive for the purposes of assessing the scope of application of the notified draft explicitly refer to the obligations laid down in Article 30 DSA, the notified draft will be assessed in light of that regulation.

2. Detailed opinion

2.1 Assessment in light of the Digital Services Act

The Commission recalls that the DSA provides an effective Union-wide regulatory solution to some of the objectives pursued by the notified draft. The DSA provides for a common set of Union rules that impose a wide range of obligations on providers of *inter alia* hosting services and online platforms to combat the spread of illegal and harmful content online, while strengthening the internal market.

a) Applicability of the Digital Services Act

Certain provisions of the notified draft, in particular Article 3 thereof, fall within the scope of application of the DSA.

Firstly, as regards the personal scope of the notified draft, its Article 3 imposes obligations on “*online platforms falling within the scope of Section 4 of Chapter 3 of [DSA]*”. It follows that online platforms covered by the notified draft fall within the definition of “online platforms” pursuant to Article 3(i) of the DSA.

Secondly, as regards the material scope of the notified draft, according to the notification message, the notified draft is to align the national legal framework with, *inter alia*, the Waste Framework Directive. Specifically, as stated by the Belgian authorities in their reply to the request for supplementary information sent by the Commission services, Article 3 of the notified draft is intended to implement Article 22a(13) of the Waste Framework Directive which, in turn, aims at specifying how providers of online platforms concerned must comply with the obligations provided for in Article 30(1), points (d) and (e), DSA.

Therefore, the Commission observes that, in as much as Article 3 of the notified draft includes objectives pursued by the DSA (i.e. addressing the obligations imposed on providers of online marketplaces under Article 30 of the DSA) and as the notified draft lays down rules for the provision of intermediary services (in particular, the provision of online marketplaces) in the Union, it falls within the material scope of application of the DSA.

b) Full harmonisation effect of the DSA

At the outset, the Commission stresses that the DSA aims to contribute to the proper functioning of the internal market for intermediary services by establishing fully harmonised rules for a safe, predictable and reliable online environment. In particular, the

DSA is a horizontal legislative instrument that fully harmonises the rules for the provision of intermediary services in the Union ⁽⁶⁾. It establishes a fully harmonised regulatory framework concerning the accountability and responsibilities of intermediary service providers, including providers of online marketplaces.

Being a regulation, the DSA does not allow for additional national requirements unless otherwise expressly provided ⁽⁷⁾. This is because, pursuant to Article 288 TFEU, regulations are directly applicable throughout the Union. Unlike in the case of directives, national implementing measures are therefore not permitted in relation to regulations, unless the regulation itself leaves it to the Member States to adopt the necessary legislative, regulatory, administrative and financial measures to ensure the effective application of the provisions of that regulation ⁽⁸⁾. It is thus essential for the Member States to avoid enacting national legislation that may potentially overlap with the provisions of the DSA. Any such overlap would lead to fragmentation of the internal market, which is precisely what the harmonised rules of the DSA are meant to avoid, and lead to substantial legal uncertainty.

However, as stated in Recital 10 of the DSA, other acts of Union law may specify and complement the harmonised rules set out in the DSA. If such other Union acts require national transposition measures, they do not disregard the full harmonisation effect of the DSA when they are limited to transposing the specification of the harmonised rules set out in the DSA established by other Union acts. Moreover, to the extent that such Union acts pursue the same objectives as the DSA, the DSA applies in respect of issues that are not addressed or not fully addressed by those other legal acts as well as to issues on which those acts leave Member States the possibility of adopting certain measures at national level.

Section 4 of Chapter III of the DSA provides for obligations on providers of online marketplaces, referred to under the DSA as “online platforms allowing consumers to conclude distance contracts with traders”. Pursuant to Article 30(1) DSA, those providers shall ensure that traders can only use their service if they have obtained from those traders certain pieces of information. In particular, points (d) and (e) require those providers to obtain, respectively, the register of traders where they are registered as well as their registration number, where the trader is registered in a trade register or similar public register, and a self-certification committing to comply with the applicable Union law. Article 30(2) and (3) DSA also require the providers of online platforms to make best efforts to assess whether the information supplied by traders and listed in Article 30(1), points (a) to (e) DSA, is reliable and complete, to request that the information be corrected or completed (if necessary) and, if such request is not fully complied with, to suspend the provision of its service.

⁶ () DSA, recital 9.

⁷() Judgment of 18 February 1970, *Bollmann*, Case 40/69, EU:C:1970:12, paragraph 4; Judgment of 18 June 1970, *Krohn*, Case 74/69, EU:C:1970:58, paragraphs 4 and 6; and Judgment of 15 November 2012, *Stichting Al-Aqsa*, Joined Cases C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 87 (on the risk of divergent definitions under EU and national law).

⁸() Judgment of 14 June 2012, *ANAFE*, Case C-606/10, EU:C:2012:348, paragraph 72.

Article 22a(13) of the Waste Framework Directive specifies, while ensuring compliance with Article 30(1) points (d) and (e) DSA, by requiring that providers of online platforms should obtain specific information from producers offering textile, textile-related or footwear products listed in Annex IVc of that directive to consumers located in the Union. It lays down how those obligations are to be complied with in the specific case of providers allowing consumers to conclude distance contracts with producers offering textile, textile-related or footwear products listed in Annex IVc of that Directive and falling within the scope of extended producer responsibility obligation set out in article 22a, 22b, and 22c of the same Directive.

Against this background, the Commission considers that certain provisions of the notified draft go beyond the specification envisaged by Article 22a(13) of the Waste Framework Directive, in as much as they further specify the obligations on intermediary service providers, in particular online platforms, contrary to the full harmonisation effect of the DSA.

Article 3 of the notified draft specifies the obligations in Article 30(1), points (d) and (e), DSA for “*providers of online platforms falling within the scope of Section 4 of Chapter 3 of that Regulation that allow consumers and end-users in the territory to conclude distance contracts with producers offering products subject to the acceptance obligation*”. It is, however, not clear from the notified draft what categories of products are covered by the notion of “products subject to the acceptance obligation”. Based on the wording of the notified draft in the version notified to it and read in conjunction with the underlying legal framework ⁽⁹⁾, the Commission cannot see how the provision is to be interpreted as covering only those products referred to in Article 22a(13) of the Waste Framework Directive, i.e. textiles, textile-related and footwear products as listed in Annex IVc of that Directive, and therefore concludes that the obligations under Article 3 of the notified draft must be interpreted as applying with respect to all products subject to extended producer responsibility within the meaning of the Waste Framework Directive. Thereby, the notified draft details obligations of platforms in an area in which the Waste Framework Directive did not intend to specify the obligations under Article 30 DSA. Thus, the notified draft does not respect the limits for national legislation set by the harmonising effect of the DSA.

In addition, the notified draft applies to providers of online platforms that allow “*consumers and end-users in the territory*” to conclude distance contracts. It should be noted that Article 22a(13) of the Waste Framework Directive applies to providers of online platforms that allow consumers to conclude distance contracts, hence not end-users. In this regard, in accordance with Article 3, point 4g of the Waste Framework Directive, consumer is defined as “*any natural person acting for purposes which are outside their trade, business, craft or profession*”, while in accordance with Article 3, point 4h of the same directive, end-user means end user as defined in Article 3, point

⁹ (9) Besluit van de Vlaamse Regering van 17 februari 2012 tot vaststelling van het Vlaams reglement betreffende het duurzaam beheer van materiaalcringlopen en afvalstoffen (“Decree of the Flemish Government of 17 February 2012 adopting the Flemish Regulation on sustainable management of material cycles and waste”) and Decreet van 23 december 2011 betreffende het duurzaam beheer van materiaalcringlopen en afvalstoffen (“Materials Decree”).

(21), of Regulation (EU) 2019/1020, i.e. *“any natural or legal person residing or established in the Union, to whom a product has been made available either as a consumer outside of any trade, business, craft or profession or as a professional end user in the course of its industrial or professional activities”*. By contrast, Article 3 of the notified draft targets platforms that allow consumers and end-users to conclude distance contracts. The Commission understands this to mean that the notified draft does not apply to platforms that only cater to consumers. Thereby, the notified draft significantly limits the scope of the obligations under Art. 30 DSA as specified in Article 22a(13) of the Waste Framework Directive in violation of the harmonisation effect of the DSA.

The Commission considers that, to the extent that Article 3 of the notified draft applies to providers of online platforms allowing consumers to conclude distance contracts with producers offering products subject to the acceptance obligation, and is not limited to textile, textile-related or footwear products listed in Annex IVc of the Waste Framework Directive, to consumers and end-users, it appears to further specify the obligations laid down in Article 30 of the DSA in situations not covered by that Directive. Considering that Article 22a(13) of the Waste Framework Directive pursues the same objective as the provisions of the DSA, this would be contrary to the full harmonisation effect of the DSA.

Based on the above elements, the Commission considers that Article 3 of the notified draft goes beyond a mere transposition of the specification of Article 30 DSA contained in the Waste Framework Directive, contrary to the full harmonisation effect of the DSA. In particular, the notified draft extends the application of the obligations laid down in Article 30(1), points (d) and (e), DSA beyond the specific situations covered by Article 22a(13) of the Waste Framework Directive, by applying them to a broader category of products, namely all products subject to an extended producer responsibility scheme. Under the Commission’s reading, the notified draft furthermore only imposes obligations on platforms on which both consumers and end-users are present, while the obligations pursuant to the DSA and the Waste Framework Directive apply to all platforms catering to consumers. For the reasons set above, Article 3 of the notified draft is deemed incompatible with the full harmonisation achieved in the DSA.

For the reasons stated above, the Commission delivers a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535 to the effect that it considers the provisions of the notified draft, as indicated in the paragraphs above to be in breach of the DSA, were they to be adopted without giving due consideration to the above remarks.

The Commission would remind the Belgian authorities that under the terms of Article 6(2) of Directive (EU) 2015/1535, the delivery of a detailed opinion obliges the Member State that has drawn up the draft technical regulation concerned, to postpone its adoption for six months from the date of its notification.

This standstill period therefore comes to an end on 11 August 2026 .

The Commission further draws the attention of the Belgian authorities to the fact that under the above-mentioned provision, the Member State that is the addressee of a

detailed opinion is obliged to inform the Commission of the action that it intends to take as a result of the opinion.

Should your Government not comply with the obligations provided in Directive (EU) 2015/1535 or should the text of the draft technical regulation under consideration be adopted without account being taken of the above-mentioned objections, or be otherwise in breach of EU law, the Commission may commence proceedings pursuant to Article 258 TFEU.

3. Comments

The Commission would like to recall that, in order to ensure that the DSA is fully effective, it is essential to preserve the harmonising effect of the DSA.

The Commission notes that Article 3 of the notified draft requires providers of online platforms to obtain from producers “*the registration number or numbers of the producer with the relevant management bodies or producer organisations, or proof of an approved individual acceptance plan*”.

In this respect, the Commission would welcome further clarification as regards the notion of “*approved individual acceptance plan*”, and how it relates to the notion of registration in a “register of producers” under Article 22b of the Waste Framework Directive.

To the extent that Article 3 of the notified draft specifies the obligations laid down in Article 30(1), points (d) and (e) DSA by introducing additional requirements on the type of information to be obtained by providers of online platforms, this may contradict the full harmonisation effect of the DSA.

Furthermore, in accordance with Chapter IV of the DSA, the supervision and enforcement of the DSA shall be undertaken by Member States and the Commission working in close cooperation. For this purpose, Article 49 DSA requires Member States to designate one or more competent authorities to be responsible for the supervision and enforcement of that regulation, one of which shall be designated as their Digital Services Coordinator (hereinafter, “DSC”). The designated competent authorities shall carry out their tasks in full compliance with the supervision and enforcement system laid down under the DSA and, as stated in Articles 56 and 57 of the DSA, through close cooperation and mutual assistance, on the one hand, between the appointed national DSCs (and other competent authorities) and, on the other hand, between these national authorities and the Commission.

In this respect, based on the information available to the Commission, it is not clear which authority would be responsible for supervising and enforcing Article 3 of the notified draft. The Commission notes that the Belgian Cooperation Agreement designated and empowered the Belgian Institute for Postal Services and Telecommunications (“BIPT”) as the DSC, in accordance with Article 49 DSA. The BIPT therefore is the competent authority responsible for supervision of that DSA,

including with the imposition of fines in accordance with Article 51 DSA, as regards the intermediary services whose main establishment in the Union is located in Belgium.

Inasmuch as the supervision and enforcement of Article 3 of the notified draft coincides with the supervisory functions of national authorities under the DSA and therefore falls within the fields of law fully harmonised by the DSA, it is necessary to ensure that the supervision and enforcement of Article 3 of the notified draft are carried out in accordance with the system laid down in Chapter IV of the DSA. The Commission therefore calls on the Belgian authorities to ensure that the final text of the law is aligned with the supervision and enforcement architecture of the DSA.

The Commission services are open to close cooperation and discussions with the Belgian authorities on possible solutions to the problems identified, in full compliance with EU law.

The Commission invites the Belgian authorities to take the above-mentioned comments into account.

The Commission furthermore reminds the Belgian authorities that once the definitive text has been adopted, they are required to communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Henna Virkkunen
Executive Vice-President