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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Lower VAT rate for recyclates / recycled products - a possible economic tool to promote the circular economy
- Information from the Czech delegation

Delegations will find in the Annex an information note from the Czech delegation on the above subject, to be dealt with under "Any other business" at the Council (Environment) meeting on 20 June 2023.

Lower VAT rate for recyclates / recycled products - a possible economic tool to promote the circular economy

- Information from the Czech delegation -

The growing consumption of materials and resources causes negative environmental impacts and pressures. Resource efficiency and circular economy policies are needed in the value chain to reduce the consumption of material resources, balance the resulting environmental pressures and replace linear business models with circular ones. Sustainable and responsible management of resources with primary and secondary raw materials will significantly contribute to achieving environmental goals. Recycling and the transition to a circular economy have the potential to promote sustainable business practices. The circular economy should be a basic principle of European industrial policy and Member States' plans to promote recovery and resilience. There is great potential in the EU for recycling and improving the circulation of secondary raw materials in the value chain. In practice, the circular economy means the minimisation of waste production.

The EU's aim is to shift to a circular economy. This is based mainly on the following reasons:

- 1) **Protection of the environment:** Recycling products will slow down the use of natural resources, reduce landscape disruption and help limit biodiversity loss.
- 2) **Reducing dependence on primary materials:** Supplies of key raw materials are limited and the recycling of materials mitigates supply risks such as price volatility, availability and import dependency.
- 3) **Economic benefits:** The transition to a circular economy creates new jobs, helps increase competitiveness, stimulates innovation and promotes economic growth and resilience.

The 2020 EU Circular Economy Action Plan recommends, for example, a wider use of well-designed economic instruments, such as environmental taxes and the use of the value added tax (VAT) rate, to promote circular economy activities. The 2021 EU Zero Pollution Action Plan also mentions the need to make better use of pricing instruments so that the “polluter pays” principle is taken more into account.

The Waste Framework Directive repeatedly mentions economic, fiscal and tax measures that could lead to improving waste prevention and to better implementation of the waste management hierarchy. See in particular point 9 of Annex Iva ¹: “Use of fiscal measures or other means to promote the uptake of products and materials that are prepared for re-use or recycled”. In this context, it is desirable to discuss which tax measures can be used.

The Czech Republic has made active efforts to shift towards a circular economy, including by adopting the strategic document Circular Czechia 2040 and developing an action plan.

In addition to various measures that can be implemented at national level, we have also identified those that need to be discussed and broadly agreed upon at EU level.

The Czech Republic considers a lower VAT rate to be a suitable economic tool that would stimulate greater use of materials with recycled content.

- **We believe that the introduction of a reduced VAT rate for products with recycled content would stimulate recycling and the use of secondary raw materials and increase the demand for recycled products.**
- **This approach is in line with the recommendations set out in the Waste Framework Directive as well as in the 2020 EU Circular Economy Action Plan. This measure was also recommended to the Czech Republic by the European Commission and the OECD in the study called “Report containing elements of the national strategic framework of the circular economy of the Czech Republic”, which was written for the Czech Republic as part of the preparation of the Circular Czechia 2040.**
- **The problem is that a reduced VAT rate can only be applied to goods and services listed in Annex III of Directive 2006/112/EC, which currently does not include any products with recycled content. This means that, for instance, plastic chairs and paper boxes are always in the basic tax rate (they are not listed in Annex III), regardless of whether they are made from recycled materials or not.**

¹ Examples of economic instruments and other measures to provide incentives for the application of the waste hierarchy referred to in Article 4(3).

- According to the case law of the Court of Justice of the EU (e.g. C-406/20), *“if a Member State decides to selectively apply a reduced VAT rate to some specific services listed in Annex III of the VAT Directive it is obliged to comply with the principle of fiscal neutrality. This principle prevents similar goods or similar services competing with each other from being treated differently for VAT purposes.”* The case law of the CJEU also establishes that the relevant criterion is whether or not two different products serve the same needs of the average consumer. For this reason, it does not matter, for example, whether milk is packaged in a plastic or glass bottle or whether a book is made of recycled paper or not. From the point of view of the average consumer, the decisive factor is the commodity itself, i.e. milk or a book, and the tax rate is determined accordingly. It is not relevant what the product is placed in or what it is made of.

The Czech Republic therefore invites the European Commission and Member States to initiate a discussion on:

- **the possibility to include certain products with recycled content in a lower VAT rate;**
and
- **the percentage of recycled content in these products.**
