



15<sup>th</sup> July 2021

## Open letter to the Parliament of the European Union

### Stop sale and imports of illegal products via online marketplaces

Dear Ms. Cavazzini,  
Dear Mr. Lange,  
Dear Mr. Canfin,  
Dear Mr. Buşoi,

The boom of online marketplaces in the wake of the corona crisis drastically increased unfair competition between retailers and online marketplaces at the expense of consumers and the environment.<sup>1</sup> Virtual marketplaces such as Amazon, AliExpress or Wish sell massive amounts of products within the EU that often do not comply with the existing environmental and consumer protection regulations.<sup>2</sup> At the same time, it is not possible to take effective action against this infringement that originates from outside of the European Union, as platform operators are not legally responsible for the products they offer. This legal loophole threatens the existence of many retailers and endangers the environment as well as consumers.

In addition, counterfeits sold via online marketplaces and fulfilment service providers, as well as products that do not comply with EU legislation, such as electronic goods, children's toys, cosmetics or car parts, pose a major risk to health and safety and are often potentially life-threatening. Moreover, batteries, electrical appliances and packaging regularly fail to comply with legal requirements for take-back, registration or environmentally sound disposal. This way, suppliers avoid paying for disposal fees, jeopardize the financing of existing disposal schemes, and increase costs for companies regularly complying with EU obligations. The OECD estimates that up to 920,000 tons of electrical appliances are placed on the EU market illegally every year by so-called 'free riders'.<sup>3</sup> Furthermore, it is difficult for consumers to enforce their rights in the event of damage, such as a fire resulting from a short circuit, when dealing with sellers outside the EU. A particular problem here is that online marketplaces often sell products of low quality, with safety flaws or high levels of harmful substances.<sup>4</sup> All this becomes even more relevant when considering the increase of obligations for producers under upcoming initiatives on sustainable products the EU foresees at this stage.

The EU Market Surveillance Regulation as well as the proposals of the European Commission for the Digital Services Act, the Digital Markets Act and the Regulation on General Product Safety are expected to improve consumer protection, transparency as well as fair competition. However, these

fall short with the specific issue of online marketplaces and fulfilment service providers facilitating illegal imports into the EU, as they merely take a 'notice & action' approach. Therefore, online marketplaces and fulfilment service providers are only obliged to act upon request, but not on their own initiative, to prevent products that do not comply with European law from landing on EU markets. In comparison to the huge volume of products offered through online marketplaces and fulfilment service providers, this surveillance concept is clearly not sufficient, as national market surveillance authorities are limited in terms of their options for action, technical equipment and staff. In addition, these regulations only foresee cooperation with market surveillance authorities, but they do not guarantee that defrauded consumers and injured competitors can direct their claims for damages at a responsible actor in the EU in all cases and configurations. Moreover, these proposals do not include an obligation for online marketplaces and fulfilment service providers to verify the proper registration of manufacturers subject to extended producer responsibility, the offer of return options by distributors subject to take-back obligations or the proper identification of a responsible person on the packaging of cosmetic products according to Regulation (EC) No 1223/2009.

Among EU member states, legislation on this subject varies widely and, in most cases, is not sufficient. The French Anti-Waste-Law is a good example of best practices at work, as it prescribes that whenever a seller or producer does not fulfil its legal obligation, the marketplace must fulfil those instead.<sup>5</sup> Just a step in the right direction are the new German laws on electronics and packaging, requiring online marketplaces and fulfilment service providers to check the correct registration of producers.<sup>6</sup> Yet, this concept does not solve the issue, as it only covers the registration of manufacturers, but not the retailer responsibilities, such as information and take-back obligations. Moreover, it does not safeguard the conformity of goods with EU product safety regulations and in the event of damage there is still no tangible actor to compensate consumers.

To prevent the importation of unauthorised and potentially harmful products into the EU and to spur on the effective enforcement of European law for products offered on online marketplaces, we call for the following measures:

- **If no other actor located in the EU is liable to consumers, online marketplaces and fulfilment service providers must take full responsibility for the products of which they enable the sale.** To this end, online marketplaces and fulfilment service providers must be actors in the supply chain by legal definition - for example as an importer.
- **Online marketplaces and fulfilment service providers must be subject to comprehensive due diligence obligations for the products for which they enable the sale.** This includes, for example, checking that manufacturer, distributor and collector obligations are met.
- **Online marketplaces must show the full contact information of the EU actor, which is liable to consumers, and in the case of products subject to extended producer responsibility the manufacturer's registration number for the products of which they enable the sale.**

We hope that the European Parliament will act quickly and decisively on this matter. Given the urgency and importance of the issue, we would appreciate the opportunity to discuss this with you at the earliest opportunity. Please do not hesitate to contact us if you have any questions.

Yours sincerely,



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<sup>1</sup> Comparison:

OECD 2020: "E-commerce in the time of COVID-19", 7<sup>th</sup> October 2020 and  
EPRS 2021: "Digital services act", March 2021

<sup>2</sup> Comparison:

BEUC/ANEC 2020: "BEUC and ANEC views for a modern regulatory framework on product safety", 26<sup>th</sup> August 2020 and  
Bundesnetzagentur, 2020: Annual Report 2019, pp. 74-75.

<sup>3</sup> OECD 2018: "Extended Producer Responsibility (EPR) and the Impact of Online Sales", 6<sup>th</sup> of June 2018

<sup>4</sup> Comparison:

Which? 2019: "Online Marketplaces and product safety", November 2019 and  
TEI 2020: "EU Toy Safety: the problem of un reputable sellers on online marketplaces", June 2020 and  
EU Safety Gate 2020: "EU Rapid Alert System factsheets 2020", March 2021

<sup>5</sup> Art.L541-10-9 of the Anti-Waste Law

<sup>6</sup> Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit (BMU), 2020: „Referentenentwurf für ein Erstes Gesetz zur Änderung des Elektro- und Elektronikgerätegesetzes“ sowie „Referentenentwurf für ein Gesetz zur Umsetzung von Vorgaben der Einwegkunststoffrichtlinie und der Abfallrahmenrichtlinie im Verpackungsgesetz und in anderen Gesetzen“.