



Deutsche Umwelthilfe



15 July 2021

## Open letter to the Parliament of the European Union

### Stop illegal imports via online marketplaces

Dear Sir or Madam,

the boom of online marketplaces in the wake of the corona crisis did increase unfair competition between retailers and online marketplaces at the expense of consumers and the environment drastically.<sup>1</sup> Virtual marketplaces such as Amazon, AliExpress or Wish sell massive amounts of products within the EU member states that do not comply with current environmental and consumer protection regulations.<sup>2</sup> At the same time, it is not possible to take effective action against this infringement 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.

Additionally, 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 safety risk and are 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> In addition, 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 in light of increasing 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 in the EU, as they merely take a 'notice & action' approach. Hereby, online marketplaces and fulfilment service providers only have to act on request, but not on their own

initiative, in order to stop products that do not comply with European law from entering the EU. Compared to the huge volume of products offered on online marketplaces and through 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. 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 largely and is not sufficient in most cases. A best-practice example is the French Anti-Waste-Law, as it dictates that whenever seller or producer are not fulfilling their legal obligations, it is the marketplace that 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> 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.

In order to prevent the import of unauthorised and potentially harmful products into the EU as well as implement an 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 importer.
- **Online marketplaces and fulfilment service providers must be subject to comprehensive due diligence obligations for the products of 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. It would be great, if you could keep us informed about your next steps on this topic. 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“