

To: European Commission, GROW Unit H2 and JUST  
Unit A2  
From: Danish Chamber of Commerce

26<sup>th</sup> of July 2021

## **Civil liability - adapting liability rules to the digital age and artificial intelligence**

We thank the Commission for the opportunity to reply to this important Inception Impact Assessment.

The regulation on product safety and product liability is one of the key stones in protecting the European Consumers and creating and uphold a level playing field for operators in EU. The regulation secures the access for European consumers to choose products from all over the world while still having the possibility to be compensated (for potential damages from the product being defect) by an operator in EU who resumes the liability as producer if the product is produced outside Europe.

This has been the situation until the rise of the business model “online marketplaces”. As the Commission seems to be very much aware, this new business model has jeopardized the safety of consumers, cf. 1.a),ii) of the impact assessment, and we welcome and agree on the identification of the problem:

“Under the Directive, importers are treated as producers for product liability purposes. However, the digital age has brought changes to value chains too. The rise of online marketplaces has enabled consumers to buy products from outside the EU without there being an importer, leaving consumers with no liable person from whom to seek compensation under the Directive in the event of damage.”

Online marketplaces are specialized in connecting products and manufactures in 3<sup>rd</sup> countries with European consumers. Just the way physical importers are specialized in connecting European Consumers with products and manufactures from 3<sup>rd</sup> countries. The two types of economic operators should therefore also bear the same risk in course of their business. This will encourage the prevention of damage and ensure that European Consumers are protected the same way, no matter if the consumer (or her/his neighbor, sister, brother, parent etc.) chose to buy a product from a third country through a physical import or a “digital import”. In both cases the operator is the essential reason that the European consumer gets access to the product from a 3<sup>rd</sup> country.

On this basis we welcome the option described by the Commission under 1.a. (iii) to “extend strict liability to online marketplaces where they fail to identify the producer”. In this regard it is, however, very important that the current definition of “producer” in the product liability directive is left untouched and that the only way the online marketplace can avoid strict liability is to point at another strict liable operator in EU, cf. the definitions and hierarchy of “producers” in the current directive.

It would be damaging and undermining for the European economy, the internal market and the consumer safety if, by organizing ones business as an online marketplace with “digital import” instead of physical import with traditional retail, one would be able to avoid liability by directing the consumers to get compensation in a 3<sup>rd</sup> country even if the product is bought by the consumer in Europe and the sale and delivery is directed and made to Europe.

As it appears from the impact assessment, the Commission is with good reason considering how to tackle the rising of new technologies (AI) in relation to product safety requirements and liability for damages in this regard. However, while doing so it is of most importance that the level playing field is not undermined by only obligating a part of the businesses in the value chains to bear the economic burden of being responsible and liable. Failing to protect the level playing field for the market of products from 3<sup>rd</sup> countries to European consumers will risk to encourage companies to choose the type of business model that provides them with the lowest costs and risks.

Kind regards,

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