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E-COMMERCE FROM 3rd COUNTRIES

The role of online market places



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1. Key Takeaways

In recent decades e-commerce has grown explosively. Initially, a tradition emerged where individual brands, stores, and retail chains operated their own webshop, typically reflecting the product range found in their physical stores.

Later online marketplaces as a business aimed and became a tool for businesses to reach consumers without having their own webshop.

1.1 What is an online marketplace?

An online marketplace is a platform where a business can sell their goods with the sales agreement made directly between the business-seller and the consumer. The online marketplace (the platform) is essentially a meeting place connecting businesses and consumers¹. Sellers pay the online marketplace for access to the consumers.

1.2 A tool to efficient competition

When it comes to selling goods and reaching out to consumers, online marketplaces are excellent tools to promote businesses and make competition more efficient by giving consumers a wide range of choices on one platform. Smaller companies can reach many consumers without opening their own webshop or establishing a wider outreach in combination with their own webshop.

Products sold by EU businesses to EU consumers are already due to existing single market rules subject to either importer or manufacturer responsibility before the products are listed for sale on an online marketplace. These responsibilities can be enforced by national enforcement authorities in EU member states, because the operators are established in EU and under EU jurisdiction.

Zalando is an example of an online marketplace that only facilitates products manufactured in or already imported into the EU.

1.3 The legal loophole

Online marketplaces, such as Amazon Marketplace, Allegro, Temu, Wish, LightInTheBox, etc. facilitate the sale of goods to EU consumers on behalf of sellers based in 3rd countries, such as China, India, Bangladesh etc. These online marketplaces are currently not obligated to ensure compliance of the products and packaging they facilitate from traders in 3rd countries before these products are offered for sale on their platforms.

There is a legislative loophole regarding the due diligence obligations and the accountability of these online platforms as the EU has failed to update the definitions of proactive obligated operators to reflect the digital age. Terms such as “placed on the market”, “making available”, “economic operators”, “importer” etc. have remained unchanged for decades.

Due to the lack of recognition of online marketplaces as proactive obligated economic operators; products sold by 3rd country sellers to EU consumers through these platforms are not considered company imported into the EU. In this case it is the consumer who is the importer. As a result, neither the products nor their packaging is connected to a proactive obligated EU operator that is under EU jurisdiction.

¹ ‘Online marketplace’ is defined in the Digital Services Act (regulation 2022/2065) as “a provider of online platform allowing consumers to conclude distance contracts with traders”

1.4 Consequences for consumers and competition

The large volume of non-compliant products facilitated by online marketplaces, such as Temu, Amazon Marketplace etc. on behalf of sellers in 3rd countries poses a problem and a risk to consumers². For example, toys, cosmetics, and electronics can be directly dangerous to consumers due to hazardous substances or poor construction.

All EU retail and wholesale companies are – in contrary to online marketplaces – categorized as proactive obligated economic operators and are therefore subject to several due diligence obligations under product and environmental regulations.

It constitutes a distortion of competition, as well as a risk to consumers and the environment that a product from e.g. China must be checked by an EU company if bought through a wholesale or retail business, but not if bought from the seller in China via an online marketplace.

A study from Svensk Handel indicates that approximately 40 percent of the price on a consumer product from a 3rd country when sold in an EU retail store is related to compliance costs³. Online marketplaces, however are not subject to these costs, as they are not categorized as economic operators and therefore have no proactive compliance obligations.

Moreover, the green transition and the effect of the Green Deal are at risk of being undermined, as such a large portion of the products and packaging entering the EU are not compliant, and no EU-based economic operator can be held accountable as the online marketplaces are not regarded as proactively obligated part of the supply chain.

1.5 Challenges

Overall, the main challenges that causes the flood of non-compliant products and packaging to EU consumers are:

- **The legal loophole** (see 2. The legal loophole – elaborated): Due to the lack of recognition in current legislation of online marketplaces as proactive obligated economic operators, products sold by 3rd country sellers to EU consumers through these platforms are not considered company-imported into the EU. As a result, no operator has an incentive to ensure compliance.

A solution could be to introduce a new legal category, such as “giving access to the market,” which would assign due diligence responsibilities to the marketplaces.

- **The Digital Services Act (DSA)** (see 3. The Digital Services Act and challenges) is meant to regulate digital services – especially intermediary services as this has become an important part of the EU economy⁴. As of 2025, the DSA has failed to address the key role online marketplaces play in distributing products from 3rd-country sellers to EU consumers. The DSA grants platforms a liability shield and no obligation to monitor content, which contradicts the proactive compliance obligations required under EU product and environmental law. This undermines the fundamental principle that a responsible economic operator must ensure product compliance before sale. Therefore, online marketplaces should be regulated as economic operators with due diligence duties for products.

² Toy Industries of Europe (TIE), October 17th 20th 2024: <https://www.toyindustries.eu/80-of-toys-bought-from-third-party-traders-on-online-marketplaces-fail-eu-safety-standards-and-could-be-a-danger-to-children/> The Danish Consumer Council (Tænk), August 19th 2024: <https://taenk.dk/forbrugerviv/elektronik-og-digiale-tjenester/undersogelse-varer-fra-temu-fejler> The Finnish Commerce Federation, test purchases made on the Temu.com marketplace in May 2024: <https://kauppa.fi/lataa/634417/> Toy Industries of Europe (TIE), February 20th 2024: <https://www.toyindustries.eu/95-of-toys-bought-from-new-online-platform-break-eu-safety-rules/> Toy Industries of Europe (TIE) June 17th 2020: <https://www.toyindustries.eu/ties-eu-toy-safety-report-the-problem-of-unreputable-sellers-on-online-market-places/>

³ EU agerar mot Temu och Shein: ”Steg i rätt riktning men ingen lösning” - Svensk Handel

⁴ See recital 1 of the Digital Services Act.

- **Compliance by design** (see 4.31. The Digital Services Act and the compliance by design) aims to impose proactive duties on online marketplaces, but it remains largely ineffective in practice. While marketplaces must organize their interface to help traders comply and make “best efforts” to check information, required data does not cover actual product compliance. Moreover, Article 8 limits their monitoring obligations, giving marketplaces broad liability protection. As a result online marketplaces are rarely seen as economic operators under product and environmental laws, and liability exemptions mostly remain.
- **Very Large Online Platforms (VLOPs)** (See 3.2. Strict rules on Very Large Online Platforms (VLOPs)) apply only to platforms with over 45 million EU users, a threshold few meet. Webshops selling products from sellers from 3rd countries must comply with EU product safety and environmental laws, but they can easily transform themselves into an online marketplace to avoid these responsibilities in relation to risk assessments. This regulatory loophole threatens both consumer safety and fair competition. From the consumer’s perspective, it is nearly impossible to distinguish between webshops, dropshippers, and marketplaces.”

1.6 Pending initiatives

The EU Commission is currently working on several initiatives to solve the challenges with platforms facilitating products from sellers from 3rd countries, as well as the large volumes of a noncompliant products sold to consumers in EU.

- **Inspectors and police as a central tool** (see 6.1 Inspectors and police as a central tool): The EU Commission states that authorities can handle non-compliant products after they are listed for sale. This means the enforcement falls on member states’ authorities to reactively identify and remove unsafe products and inspect incoming parcels. Given that approximately 80 percent of products sold by 3rd-party sellers to EU consumers through online marketplaces do not comply with EU legislation when they are sold, this reactive approach is ineffective. The Commission’s plan overlooks the need to extend proactive compliance obligations to online platforms to adapt product and environmental rules for the digital age.
- **Deemed importer concept** (see 5.2 The “deemed importer” concept): The EU Commission plans to introduce a “deemed importer” concept under the Customs Reform (UCC-reform), requiring online marketplaces to provide compliance data before parcels are released. The intention is to create a concept in which the deemed importer (e.g. online marketplace) must ensure that the seller has provided documentation demonstrating that all products and packaging sold from 3rd countries are both legal and taxable prior to release. However, significant challenges remain as the system obliges deemed customs importers to collect information of compliance and customs information only after the product has been sold and while the consumer is already expecting delivery of the parcel.
- **E-commerce handling fee** (see 5.3 E-commerce handling fee): The European Commission plans to introduce a small customs handling fee on small parcels from online platforms facilitating products from sellers from 3rd countries. The aim is to decrease sales of cheap, noncompliant products. However, the proposed €2 fee (€0.50 for warehouse deliveries) is largely symbolic and unlikely to impact consumer behavior or reduce the volume of unsafe goods entering the EU. Crucially, the proposal fails to address the root issue: the continued lack of accountability for platforms that enable the sale of non-compliant products.

These initiatives are all attempts to solve the problem. However, many of them are superficial and none of them take into account the fundamental principles of the internal market where the product and environmental legislation is based. Namely the principle that the company (the economic operator) that earns the revenue by enabling products from 3rd countries to enter the EU bear the obligation to proactively ensure compliance. The current initiatives switch this burden to the customs and public authorities, while failing to assign the necessary proactive due diligence obligations to the online marketplaces. These platforms, despite being the actors profiting from granting market access to 3rd-country products, remain largely exempt from proactive compliance obligations.”

Moreover, it is unlikely to become reality in the near future as for example the Customs Reform is expected to be fully implemented in 2038.

Online marketplaces are currently not obligated by proactive due diligence obligations to ensure compliance of the products and packaging they facilitate from sellers in 3rd countries before these products are offered for sale on their platforms. This lack of due diligence obligations for online marketplaces undermines the fundamental rights to a high level of environmental and consumer protection. Moreover, it undermines the single market, distorts the level playing field and results in a lot of illegal and unsafe products packaging into the market, the home of consumers and the waste stream.

Therefore, we propose the following legislative solutions:

1. An omnibus regulation defining further due diligence obligations for online marketplaces facilitating the sale of products from sellers in 3rd countries. These obligations should be aligned with those of regular importers. Such a regulation would amend all relevant laws on product safety and the environment at once (New legislative framework-legislation, General Product Safety Regulation etc. and all the green deal legislation on Eco-Design, Waste Framework, Packaging, Extended Producer Responsibility etc.). This is practically feasible because the definitions of economic operators and their duties are more or less the same across these regulations.
2. An amendment to the DSA, e.g. by strengthening and expanding the due diligence obligations in Article 31. Therefore, obligating the online marketplaces and any similar business model to ensure that the relevant documentation of compliance is provided for each product sold by traders in 3rd country to EU consumers through the online marketplace and that all fees e.g. related to extended producer responsibility are paid by the sellers.

1.7 Justification of proposals for solutions

The EU has decided that economic operators must proactively ensure compliance, and there must always be an operator in the EU against whom the legislation can be enforced. This principle is grounded in Articles 37 and 38 of the Charter of Fundamental Rights of the European Union and is concretely reflected in the New Legislative Framework legislation.

In practice, this principle does not apply in cases where consumers purchase products from traders in 3rd countries through an online marketplace—regardless of whether the marketplace itself is established within the EU. In such cases, there is no economic operator under EU jurisdiction who can be held accountable for ensuring compliance with EU law.

”The most effective solution will be to categorize online marketplaces as economic operators, assigning them due diligence obligations similar those of importers in the product and environmental legislation, when no one else in EU has that role (see 3 The legal loophole – elaborated).

In this regard it is important to realize that the definition of “an importer” is not the same in the product and environmental legislation and the customs legislation. Even if the EU legislators decide to make online marketplaces deemed importers in the Customs Reform it will not solve the problem (see 5.2 the “deemed importer” concept). This will only involve a duty to declare compliance at the EU border. At this point the product is already sold, and the product will still end up in the hands of the consumer, when it is released upon this documents declaration from the deemed importer.

In practice it will be impossible for customs to control, and it will in any case be a unsustainable waste of resources that parcels and products are produced, sold and transported, if there is no chance that they are compliant.

Both suggestions 1 and 2 should be followed in combination with the introduction of the deemed importer initiative in the EU Customs Reform, which is currently being negotiated by the Council⁵.

Understanding the full scope

2. The legal loophole – elaborated

The challenges regarding marketplaces arise when an online marketplace, such as Amazon Marketplace, Allegro, Temu, Wish, LightInTheBox, etc. facilitates the sale of goods to EU consumers on behalf of sellers based in 3rd countries, such as China, India, Bangladesh etc.

In these situations, there are currently no regulations in place to ensure that a business in the EU is proactively responsible for ensuring that the products are legal and compliant under EU law before the products are sold. This is because the seller — who is considered the economic operator under product and environmental legislation — is located outside EU jurisdiction and thus cannot be held accountable under existing enforcement mechanisms.”

The challenge and the legislative loophole exist because the regulation on product safety and environmental regulation have failed to update the definitions of proactive obligated operators to reflect the digital age. Terms such as “placed on the market”, “making available”, “economic operators”, “importer” etc. have remained unchanged for decades.

E.g. Article 11 in General Product Safety Regulation (GPSR) states:

“Before placing a product on the market, importers shall ensure that the product complies with the general safety requirement laid down in Article 5 and that the manufacturer has complied with the requirements set out in Article 9 (2), (5) and (6) [...]”

In relation to environmental protection and circular economy, the new Eco-design Regulation (ESPR) stipulates in Article 29 that:

“Importers **shall**, with regard to products covered by a delegated act adopted pursuant to Article 4, **only place on the market products** that comply with the requirements set out in the applicable delegated acts”.

These obligations must be fulfilled prior to the products are listed for sale – regardless of whether the sale occurs physically or through an online platform.” However, due to the lack of recognition of online marketplaces as economic operators, products sold by 3rd country sellers to EU consumers via platforms are not considered company-imported into the EU. In this case the consumer is the importer. Consequently, neither the products nor their packaging is accounted for by the system that has been developed for over 30 years in the EU.

If legislator finds it inconsistent to define the actions of online marketplaces as “placing on the market” because the marketplaces do not own the products, it would be possible to create a new term as e.g. “giving access to the European Market”. This would assign the platforms the same due diligence obligations as importers, as the consequences of their corporate actions result in the same outcomes.”

The consumers would have had very limited access to purchase from the sellers in 3rd countries without online marketplace. Online marketplaces as such play a crucial role in this regard. A role that should be reflected in their obligations.

Therefore, there are reasons to argue that the online marketplace in these cases should be considered an economic operator and the actual operator giving access to the products to the market. Essentially, it is the marketplace that makes the products available to consumers in the internal market, thereby **placing the products on the market**⁶.

⁶ See e.g. the definitions of “making available” and “placing on the market” in Article 3 of the General Product Safety Regulation (EU-2023/988). These definitions are broadly used across the product- and environmental regulation in EU.

3. The Digital Services Act and challenges

The Digital Services Act (DSA) is intended to regulate digital services, particularly intermediary services as these⁷ become an important part of the EU economy. It is stated that the E-commerce Directive is outdated, as new risks and challenges have arisen.

The intentions behind the DSA were good as the legislation intended to give more responsibilities to intermediary services, playing an increasingly central role.

However, as is often the case, legislation lags behind the digital and commercial development. Since the negotiations of the DSA, the online marketplace business model has grown explosively. Even before the DSA entered into force, the risks and challenges arising from online marketplaces facilitating products from sellers in 3rd countries to EU consumers had escalated to extreme and unforeseen levels⁸. This poses a threat to the function of the single market as well as the capacity of the customs and market surveillance authorities⁹.

A “one size fits all” model for all intermediaries in the DSA is insufficient for online marketplaces and future spinoffs of the online marketplace model, such as AI agents, when it comes to facilitation of products from sellers in 3rd countries to EU consumers.

In relation to classic consumer legislation, e.g. rules on advertising, and misleading of consumers there is hope that the current DSA legislation, combined with amendments and strengthening of regulations like the e.g. the Consumer Protection Cooperation Regulation (CPC) on this, can deal with challenges in this context.

The reason why it is possible to deal with challenge within classic consumer legislation by using existing legislation, is that advertising and digital misleading of consumers relate to commercial communication which is a sort of immaterial content in the same category as other immaterial contents. This happens by using text, audiovisual or visual content. The digital content itself can do no physical harm to consumers nor harm the environment

What seems to be very clear at this point (in 2025), is that the DSA has failed to deal with the crucial role that online marketplaces play in relation to distribution and supply of products from sellers from 3rd countries to European consumers

Rules on product safety and environmental issues relate to the compliance of physical products and the protection of consumers and the environment.

Negligence of the proactive due diligence obligations in the product safety or environmental regulation can be harmful as soon as the products or packaging are in the hands of a consumer or become part of a recycling process. That is why it is central that the compliance work is carried out and documents are checked before the products are listed for sale.

The fundamental principle of the DSA is the exact opposite: That the platforms, including online marketplaces, covered by the DSA, have a shield against liability and a right to invoke a “no obligation to monitor”.

This “no obligation to monitor” that the platforms (including the online marketplaces) have been granted, contradicts the obligation of importers and other economic operators to ensure the compliance of products from 3rd countries **before** the products are placed on the EU market.

⁷ See recital 1 of the Digital Services Act.

⁸ “Last year, around 4.6 billion low-value consignments, i.e. goods with a value not exceeding €150, entered the EU market equaling to 12 million parcels per day. This is twice as many as in 2023 and three times as many as in 2022, and many of these goods have found to be non-compliant with European legislation. This exponential growth is raising numerous concerns” (quote from the E-commerce tool box communication from the Commission: Safe and sustainable e-commerce imports”).

⁹ Reference is made to the discussions and presentations in the IMCO committee of the European Parliament on 17 February 2025: Safety of products sold via online platforms | Hearings | Events | IMCO | Committees | European Parliament . Both German and Dutch authorities explain the challenge very clear.

There is in fact a fundamental obligation in the product and environmental regulation to ensure the compliance of the products and packaging **before** they are sold.

Further – in relation to subject of responsibility - the EU product safety and environmental protection system is built on a principle that there shall always be a company (an economic operator) in the EU that can be held responsible for having ensured that products sold to EU consumers are legal, safe and compliant with EU law, **before** they are sold.

This principle is undermined by not regulating online marketplaces as economic operators with proactive obligations in relation to the compliance of products and packaging that they facilitate on behalf of sellers from 3rd countries

3.1 The Digital Service Act and the compliance by design

When the DSA was adopted, a compromise was made during the negotiations realizing that there was a need for designing special proactive duties to online marketplaces. This led to the introducing of Article 31¹⁰ - the rule on “compliance by design”.

Article 31 is unfortunately not very useful or strong in relation to online marketplaces.

The first and third parts of the Article give hope of effectiveness as it states that online marketplaces shall organize their interface in such a way that it enables traders to comply with their compliance obligations under Union law. Furthermore, the online marketplace is also obligated to make “best efforts” to assess whether the information it provides **before the products are listed for sale**.

However, several other points in Article 31 extinguish this hope.

The second part of the Article states that the actual information the trader “at least” should be able to provide is identification of the products or services, identification of the trader by trademark, logo or symbol and information concerning the labelling and marketing.

Unfortunately, this information does not say anything about the compliance of the product, as none of this information covers documents of compliance, technical documentation etc. Further it does not give any information on whether the traders have registered themselves in an extended producer system in the member states that their products are sold to.

Furthermore, **Article 8** of the DSA limits the use of Article 31 by stating

“No general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers”.

Article 8 is often mentioned by the Commission as a “fundamental principle” of the DSA that prohibits the introduction of proactive or factfinding obligations on online marketplaces.

This view and interpretation of Article 8 is most likely the reason why online marketplaces have not yet been recognized as economic operators in e.g. the General Product Safety Regulation (GPSR) or in the Eco-design for Sustainable Products Regulation (ESPR). This although the DSA is not a higher-ranking legislation than the product and environmental legislation.

The limitation of the exemption from liability in **Article 6 (2) and (3)**¹¹ can also be seen as a possible strengthening of the responsibilities of online marketplaces.

However, this part of the DSA unfortunately also contains several obstacles. Firstly, an online marketplace will only fall out of the shield and the exemption from liability, if the consumer believes that the contract is entered with the online marketplace itself (and not the seller) or if the seller acts under the authority or control of the online marketplace. The-

¹⁰ [Text of DSA](#)

¹¹ https://www.eu-digital-services-act.com/Digital_Services_Act_Article_6.html

se situations will almost never occur. The online marketplaces most often state the name of the trader, and it is in practice impossible for any

authority (including the Commission) to prove that any individual e.g. Chinese seller acts under control or authority of an online marketplace.

Secondly, an often overlooked obstacle is, if Article 8 should be of any use, it would require that the online marketplace could be met with liability or obligations according to the underlying legislation, e.g. the product or environmental legislation.

This is currently not the case as the online marketplace does not meet the definition of an importer or a manufacturer in these legislations, as outlined above. The minor additional obligations that have been introduced in the DSA, especially regarding online marketplaces, e.g. in Article 30, 31 and Article 6 (2) and (3) do unfortunately not solve the challenge. This is the reason why the Nordic Organizations of Commerce (NOC) consider the regulation of online marketplaces as part of the DSA to be inadequate, when it comes to obligations in relation to product and environmental regulation.

3.2 Strict rules on Very Large Online Platforms (VLOP's)

From the Commission and from other stakeholders, reference is made to the strict rules on Very Large Online Platforms (VLOPs) when solutions to the challenge of Temu, Wish etc. are discussed. The VLOP rules make it possible to sanction these very large online platforms, if they e.g. have not fulfilled their obligations to do a proper risk assessment. These obligations, however, are not similar to the obligations of economic operators.

Investigations according to these rules have started and are currently pending.

However, it is obvious that these rules are not tailored for platforms that facilitate physical products but rather for social media platforms etc.

Further the application of those rules requires that an online marketplace has more than 45.000.000 users pr. month in the EU. Very few online marketplaces meet this requirement and as such exclude any online marketplace below this threshold.

To illustrate how dangerous it is to rely on the VLOP rules alone it is important to bear in mind that retail or wholesale webshop, which has suppliers of products and packaging from 3rd countries, must ensure compliance with the EU legislation on product safety and environmental protection as they own the products and sell them themselves.

All webshops could transform themselves into online marketplaces and change the status of suppliers to traders. This would entail that they opt out of their current obligations as economic operator and leave the obligations with the seller outside EU jurisdiction.

This would mean that the owners of the webshop don't need to spend resources on ensuring compliance of the products and packaging before they are sold – instead they can focus on the promotion of the products on the webinterface. These examples show how important it is that there are similar safeguards for consumers and for the internal market; no matter which business model that gives the consumers access to buy products from third countries.

The consumers are not able to distinguish between a dropshipper, a webshop and an online marketplace and they should be able to shop safely no matter which business model is behind the interface.

4. Fundamental principles and new business models

A high level of consumer and environmental protection is a fundamental right.

According to the Charter of the European Union¹³ the people of the European Union have certain rights. It follows e.g. from the introduction of the Charter that:

“To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter”.

“Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations”.

In this context it is crucial to refer to Article 37 and 38 that give the population of the EU a fundamental right to a high level of environmental and consumer protection

Article 37 Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38 Consumer protection

Union policies shall ensure a high level of consumer protection

The EU legislation on environmental protection, the Green Deal initiatives, product safety legislation, and the classic consumer legislation reflect the level of obligations deemed necessary to ensure that the Member States, the Commission, and the European Parliament fulfill their obligations according to Article 37 and 38 of the charter.

Therefore, it can only be seen as a negligence of these duties in the charter, that 4,6 billion parcels with products and packaging yearly reach European consumers without any entity ensuring these parcels comply with safety and environmental requirements.

Furthermore, it could be viewed as an even more severe negligence of these duties to grant a legislative right for one specific business model **not** to monitor whether the parcels fulfill the requirements, especially when it is wellknown that this business model is the primary reason these parcels can be bought and delivered to EU consumers, ultimately becoming part of the European waste system.

5. Pending initiatives - elaborated

5.1 Customs inspectors and police as a central tool

As part of “the communication” (A comprehensive EU toolbox for safe and sustainable e-commerce¹⁴) the Commission refers to the tools and obligations in the DSA.

Furthermore, the Commission focuses on enforcement and other existing legislation.

In this regard, the Commission assumes that the national customs and authorities of the member states will have sufficient resources and tools to control the flood of parcels and enforce the legislation, provided they cooperate, organize, and utilize AI.

The Commission refers to “inspectors and police” as a central tool to solve the challenge, e.g. paragraph 2.1.2 of the communication:

“Requirements applicable for products, packaging and waste management should be effectively enforced also when goods are placed on the market through e-commerce. For this, **a strong network of environmental enforcers** is required across the EU, including inspectors and police. Enforcement efforts and cooperation among European enforcers should be stepped up”

And further in paragraph 2.2.2.:

“The Market Surveillance Regulation and the General Product Safety Regulation provide market surveillance authorities in the Member States with the necessary enforcement powers, including with respect to products sold online. They can, for example, issue takedown orders for removal of dangerous or noncompliant products from online shops and online marketplaces. Products investigated and the related measures must be communicated in the Information and Communication System for Market Surveillance (ICSMS) and measures taken concerning unsafe products shall be notified by Member States to the EU Safety Gate, the rapid alert system for dangerous nonfood products managed by the Commission.”

It is wellknown that none of these regulations – whether already adopted or currently under negotiation – obligate online marketplaces or any other relevant EU operators to proactively ensure the legality of products and packaging facilitated directly between sellers in 3rd countries and consumers in the EU before they are sold. Additionally, there is no obligation to verify that extended producer responsibility fees have been paid, or the seller is registered with the national schemes.

It appears that the Commission assumes that “inspectors and police”, with the tools at their disposal, will be able to enforce legislation that unfortunately, still does not impose a proactive role on digital operators such as online marketplaces.

Since only sellers or manufacturers in 3rd countries, outside of EU jurisdiction, are proactively responsible for compliance with the legislation before products and packaging are listed for sale on online marketplaces, the Commission's statement in the e-commerce toolbox communication entails in practice that Member States' enforcement authorities are required to:

1. act as a compliance department for online marketplaces by identifying all products and packaging online that do not comply with EU legislation, allowing the online marketplaces to lift their obligation to remove them
2. intercept and check packages upon arrival in the EU.

In this context, it is worth noticing that most studies show that approximately 80 percent of products sold by 3rd country sellers to EU consumers through online marketplaces do not comply with EU legislation at the time of sale¹⁵.

Given that online marketplaces often have millions of products for sale from various sellers, the authorities must inspect a vast number of products to ensure effective enforcement and due respect to Article 37 and 38 of the EU Charter.

The Commission does not specify how enforcement will be effective when authorities can only require reactive measures from online marketplaces, and only after products are listed for sale on the online marketplace.

Furthermore, it is unclear where the resources for effective enforcement of the conditions will come from, aside from the potential introduction of a handling fee.

The above mentioned assumption from the Commission is central to the entire communication. It raises concerns about whether the Commission acknowledges the significant importance of the cascade system of proactive responsibilities for economic operators. This cascade system is a crucial component of EU environmental and product legislation and should be promptly adapted to the digital and global era.

5.2 The “deemed importer” concept

The Commission is planning to introduce a “deemed importer” concept in the Customs Reform. This is described in paragraph 2.1.1. of “the communication”:

“The proposals align the VAT and customs rules and would establish that online marketplaces and sellers registered in the IOSS become the ‘deemed importer’ and collect the relevant duty and VAT, ensure that goods entering the customs territory comply with other EU requirements and provide the data to the customs authorities at the moment of the sale, prior to the arrival of the goods to the EU border. In 2024, IOSS holders accounted for 92% of imports of goods up to EUR 150. In addition, IOSS holders would report all their EU sales to the EU Customs Data Hub and be supervised by their Member State of registration (as opposed to 27 potential Member States of destination), both for VAT and customs purposes.”

The operators categorized as deemed importers in this context will be the same operators currently obligated to collect VAT on behalf of their sellers. The Commission's intention is to create a concept

in which the designated deemed importer (e.g. online marketplace) must ensure that the seller provides documentation that all products and packaging sold from 3rd countries are legal and taxable before the parcels can be released. However, as this concept is introduced in the EU Customs Reform and thus within the customs system, it is important to emphasize that the definition of an importer in the product and environmental legislation is **not** the same as in the customs legislation.

As such the introduction of the deemed importer concept will **not** assign online marketplaces the role of an economic operator, nor will it obligate them to proactively ensure that the seller has documented compliance of the products before the products and packaging are sold. For this to become a reality, the proposed legislative initiatives in this paper will be necessary.

In principle, the deemed importer concept will obligate deemed customs importers to collect compliance information and customs documentation before parcels can be released. However, this will only occur after the products **have been** sold to the consumer and the consumer expects the parcel to arrive

This solution is, of course better than nothing. However, if this is the only solution and initiative – besides existing legislation - that EU legislators will take to solve the challenge, the EU will still see a significant amount of noncompliant products for sale, at the borders, in the hands of consumers, and as part of our waste streams.

Despite the Custom Data Hub and the introduction of the Digital Product Passport as part of the ESPR¹⁶, it will still be very easy to circumvent the compliance requirements, e.g. by placing non-compliant products in parcels, while the accompanying documentation behind indicates compliance. By recognizing online marketplaces and similar business models as economic operators and giving them proactive obligations to ensure compliance before sale, the market surveillance authorities will be able to verify compliance with legislation through methods such as test purchases and mystery shopping, just as they do today with other economic operators (retailers and wholesalers operating as distributors and importers)."

¹⁶ <https://data.europa.eu/en/news-events/news/eus-digital-product-passport-advancing-transparency-and-sustainability>

5.3 E-commerce handling fee

The EU Commission has recently under the UCC reform introduced a non-paper that introduces a handling fee at customs for small consignments bought from online marketplaces facilitating product from 3rd country sellers:

- Flat rate of 2 Euros per package
- 0.50 cent if sent to a warehouse

The purpose of this proposal is to limit the sales from the platforms and change the consumers' usage of lowcost and non-compliant products. Additionally, it is suggested that part of the revenue should cover costs controls and contribute to the EU budget.

This proposal does not address the main challenges regarding non-compliant products from platforms facilitating products from 3rd country sellers.

First, the suggested fee can only be seen as a symbolic and will not be effective. In the US, the administration implemented a 100 dollars tax on small packages, which immediately impacted the sales level of Temu and Shein. Shein reported a 23 percent sales decrease, and Temu reported a 17 percent decrease in the last week of April 2025 (according to a report from Bloomberg Second Measure¹⁷). Compared to this measure from the US, it is reasonable to believe that the proposal from the Commission will have very little to no impact.

Secondly, this measure does not address the broader consumer protection problem. It allows non-compliant sellers to retain an unfair advantage over EU-based companies that invest in product safety and meet stringent regulatory standards. Responsible businesses are being outcompeted by competitors who ignore EU rules and offer cheaper, but riskier alternatives.

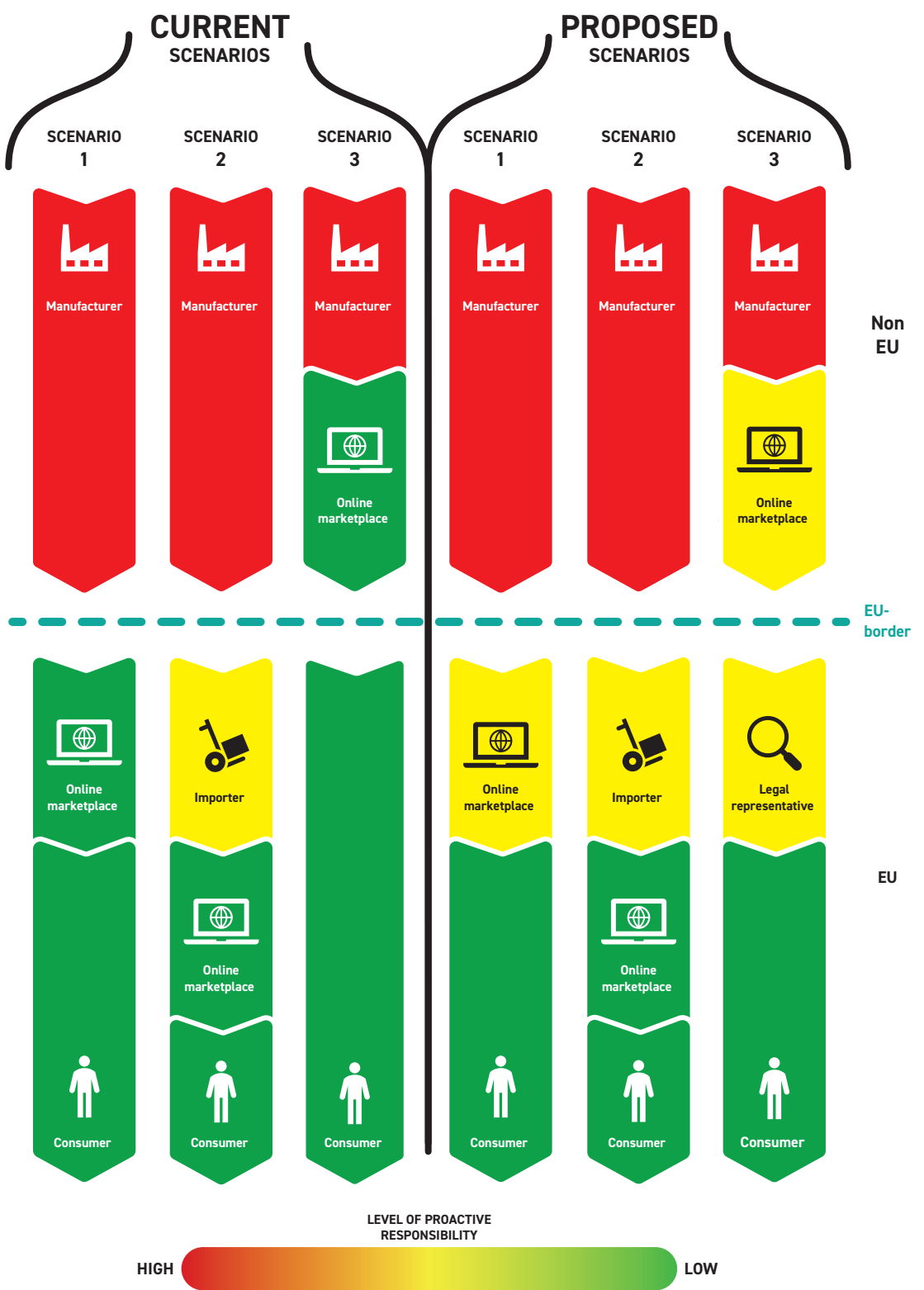
Thirdly, the symbolic fee will not enable national customs to test all incoming parcels, as actual testing usually involves opening the package and often destroying the product, making it impossible to send it through to the final consumer. Checks will primarily be limited to documentation reviews etc. Moreover, with 12 million parcels imported to the EU each day, it is impossible for customs to conduct proper inspections¹⁸.

Measures do not have to be as extreme as those implemented by the U.S., but any fee needs to be substantial enough to demonstrate that the EU protects and takes its own rules, their own economy, and consumer protection seriously. However, a fee alone is insufficient and must be accompanied by additional actions. The real issue is the daily flood of unsafe and non-compliant products reaching EU consumers through online platforms, without anyone being accountable for the compliance and safety of these products. To ensure consumer safety, foster competitiveness, and maintain a level playing field, the EU must go beyond superficial measures. The real solution lies in closing legal loop-holes that currently allow online platforms to act as facilitators in the sale of unsafe goods — including toys, electronics, cosmetics, and other high-risk items—without accountability.

¹⁷ <https://www.businesstimes.com.sg/companies-markets/temu-shein-see-us-sales-drop-week-after-tariff-price-hikes>

¹⁸ https://commission.europa.eu/news/tackling-challenges-e-commerce-imports-2025-02-05_en?utm_source=chatgpt.com

The allocation of responsibilities and levels of accountability among the various businesses involved in facilitating products from third countries to consumers in the EU



Graphic for the situations where an online marketplace is involved in the sale of goods from 3rd countries to EU consumers



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E-COMMERCE FROM 3rd COUNTRIES

The role of
online market places



DANSK
ERHVERV

SH Svensk
Handel
Swedish
Commerce

KAUPAN LIITTO

medlem av
VIRKE

SVP Samtök
verslunar og
þjónustu