



**DANSK  
ERHVERV**  
Danish Chamber of Commerce



Deutsche Umwelthilfe





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## **Green Deal ambition for sustainable products threatened by gaping online sales loophole**

United NGOs and European industry warn that millions of products sold online including textiles, electronics, furniture, and cosmetics will be able to escape the EU framework on product sustainability currently being negotiated. Some online sellers will undermine the Green Deal by dodging current and future EU legislation without having to face any consequences.

The online sale of goods to consumers in cases where traders are located outside of the EU and do not have an EU-based economic operator that can be held liable for the traders' products and activities presents a serious loophole for Green Deal policies attempting to improve product sustainability – threatening the competitiveness of European businesses and Europe's environmental objectives, as well as misleading consumers.<sup>1</sup>

Stakeholder's main concerns:

- Textiles, electronics, furniture and cosmetics, as well as other sectors identified in the [new ESPR product priorities document](#), are increasingly sold online and are among the most important in terms of their environmental (climate and material) footprint.
- There are many different routes products purchased online take before reaching European customers, this often involves online marketplaces and fulfillment service providers however new pathways are continuously emerging. Heterogeneous definitions in existing legislation such as manufacturers, importers, distributors and dealers are not well adapted to the online reality, especially when traders are located outside of Europe without an EU-based importer.

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<sup>1</sup> These risks are confirmed by a report developed by the European Environmental Bureau and Eunomia Consulting published alongside the statement though independent of the other signatories: <https://eeb.org/library/espr-online-markets-report/>

- As exemplified by the evidence below, Europe is already experiencing flagrant non-compliance linked to products sold online and imported from outside of the EU – with high rates of free-riding, tax avoidance, unfair competition to EU industry, product safety risks, toxicity and negative environmental impact.
- The Digital Services Act (DSA) introduces new rules for online platforms, such as the know-your-business customer obligation. However, the rules do not apply to all platforms and the DSA does not clearly allocate liability online when there is no economic operator in the EU. This remains a legal loophole to be fixed, as online platforms often have an active participation in the sale, for example through payment processing, storage, shipping, and customer service.
- As it stands, the current text of the ESPR will allow third country businesses to sell and unfairly generate revenues from non-compliant products. The measure initially introduced by the new Market Surveillance Regulation to designate a responsible person within the EU remains insufficient and comes with limited obligations. In many cases, there will be no economic operator liable for the non-compliant products sold online on the EU Market.
- These issues are also relevant for many other existing and future policies including but not limited to: the Corporate Sustainability and Due Diligence Directive; the Empowering the Consumers for the Green Transition Directive; the Packaging and Packaging Waste Regulation; and Article 8 of the Waste Framework Directive.

Key recommendations for the ESPR from the undersigned organisations:

- Ensure that for all avenues of online sales there are EU- or EEA - based economic operators liable for the compliance of products sold in the EU under the scope of the ESPR
- Online marketplaces should have distinct obligations to ensure that either traders selling on their platform meet ESPR requirements or the traders demonstrate that they have a liable economic operator registered in the EU or EEA - these requirements should amount to a checking requirement not a monitoring obligation, in line with the DSA (exploring examples from [France](#) and [Germany](#))
- In cases where fulfillment service providers are the only EU- or EEA - based economic operator in contact with an imported product before it reaches consumers, they should only service products that comply with the delegated acts, matching the obligations of importers.
- Enforcement on non-EU retailers who sell directly to EU consumers should be increased, with the potential to block parcels and/or their vendors' sites which demonstrate non-compliance.

The undersigned organisations call for urgent action to prevent market failure under the Green Deal. A growing imbalance in new sustainability laws further distorts fair competition and undermines the efforts of European companies that invest in complying with EU rules.

Existing evidence of non-compliance related to online sales:

- 15% of products sold on SHEIN exceed EU chemical limits. [Greenpeace, 2022, Taking the Shine off SHEIN: A business model based on hazardous chemicals and environmental destruction](#)
- 5-10% of EPR fees remain unpaid for electronics. [OECD, 2018, Extended Producer Responsibility and the Impact of Online Sales.](#)
- Two-thirds of products from online marketplaces fail safety tests. [BEUC, 2020, Two-thirds of 250 products bought from online marketplaces fail safety tests, consumer groups find](#)
- 90% of chemicals non-compliant with REACH come from outside the EU. [CEFIC, 2021](#)
- 10 out of 12 lights bought online failed to meet electrical safety regulations. [Which?, 2022, Beware illegal Christmas lights sold at AliExpress, Amazon, eBay and Wish](#)
- Face whitening creams contain illegal levels of mercury as investigations (based on a target list of potentially dangerous creams) in 2019 (60% of products tested) and 2022 (70% of products tested) revealed. [EEB & Zero Mercury Working Group 2019 and 2022.](#)
- 84% of toys offered by non-EU sellers on online marketplaces did not meet EU safety requirements in a [coordinated market surveillance campaign \(CASP\) in five EU countries](#)
- Only 8% of the lighting products the algorithm proposed to their mystery shoppers complied with mandatory information obligations under EU law. Out of the 30 products delivered to their doorsteps, 77% did not comply with EU rules. [Lighting Europe, 2021, Online Mystery Shopper.](#)
- 95% of products sold via online marketplaces are non-compliant with chemicals laws (REACH, CLP and BPR). The recommendations of the report note that *“the main recommendations of the project are for the European Commission to make marketplaces responsible and liable for enforcement of illegal products/offers”*. [ECHA, 2021 enforcement of CLP, REACH and BPR duties related to substances, mixtures and articles sold online](#)

- 98% of Amazon and Cdiscount's sellers did not pay VAT in France in 2020, and Amazon only paid 100 million EUR taxes in 2017 for a turnover of 6,5 billion EUR. [Les Amis de la Terre, 2020. Impacts of E-commerce in France.](#)

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