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. 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. 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’. 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. 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.² 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.⁶ 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,

Barbara Metz
Deputy Federal Managing Director
Deutsche Umwelthilfe e.V.

Stéphane Arditi
Director of Policy Integration and
Circular Economy
European Environmental Bureau

Justin Wilkes
Executive Director
ECOS – Environmental Coalitions on Standards

Joan Marc Simon
Executive Director
Zero Waste Europe

Valérie Plainemaison
Secretary General
FEAD – European Waste Management Association

Peter Kurth
President
Bundesverband der Deutschen Entsorgungs-, Wasser- und Rohstoffwirtschaft e. V.

Florian Schöne
Director
Deutscher Naturschutzzring e.V.

Leif Miller
Deputy Federal Managing Director
Naturschutzbund Deutschland e.V.

Raoul Roßmann
Executive Director
Dirk Rossmann GmbH

Christoph Bals
Policy Director
Germanwatch e.V.
Contact:

Philipp Sommer, Deputy Head of Circular Economy, Deutsche Umwelthilfe e.V. (DUH)
+49 151 74463368, sommer@duh.de

Stéphane Arditi, Director of Policy Integration and Circular Economy, European Environmental Bureau (EEB)
+32 2 289 10 97, stephane.arditi@eeb.org

Nerea Ruiz Fuente, Policy Director, Environmental Coalitions on Standards (ECOS)
+32 2 894 46 83, nerea.ruiz@ecostandard.org

Ana Oliveira, Communications Coordinator, Zero Waste Europe
+32 2 73 62 09, ana@zerowasteeurope.eu

Valerie Plainemaison, Secretary General, European Waste Management Association (FEAD)
+32 2 7327213, valerie.plainemaison@fead.be

Bernhard Schodrowski, Head of Communications, Bundesverband der Deutschen Entsorgungs-, Wasser- und Rohstoffwirtschaft e. V. (BDE)
+49 30 590 03 35-20, schodrowski@bde.de

Florian Schöne, Director, Deutscher Naturschutzzring e.V. (DNR)
+49 30 6781775-99, florian.schoene@dnr.de

Sascha Roth, Policy Officer - Environmental Policy, Naturschutzbund Deutschland (NABU)
+49 30 284984 1660, sasha.roth@nabu.de

Ansgar Kluge, Inhouse Lawyer, Dirk Rossmann GmbH
+49 5139 898-5433, ansgar.kluge@rossmann.de

Johanna Sydow, Policy Advisor, Resource Policy and IT Sector, Germanwatch e.V.
+49 30 28 88 356-91, sydow@germanwatch.org

---


3 OECD 2018: “Extended Producer Responsibility (EPR) and the Impact of Online Sales”, 6th of June 2018


5 Art.L541-10-9 of the Anti-Waste Law

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