

Liability for online marketplaces: What is illegal offline, should be illegal online

In December 2020, the European Commission presented the *Digital Services Act (DSA)* and with it, a proposal for new and updated rules for the liability of online marketplaces facilitating the sale of physical goods from seller to a buyer.

The currently applicable legislation governing the liability of online marketplaces, or in most cases the lack thereof, is 20 years old and it is due time that these rules are updated to better mirror today's digital commerce and the challenges of today.

A Swedish SME company importing a physical good from a trader in a country outside the EU has according to the rules of today, *more* liability for complying with product safety and chemical legislation than a global online marketplace such as Amazon, Wish or Alibaba. When online marketplaces act as importers of the same type of physical good, they have very limited or no liability according to the current regulatory framework.

This is not competition on a level playing field. Rather, it is VIP treatment of the global tech companies.

Authorities and consumer organisations in Europe have for several years brought the problem of the limited liability of the online marketplaces to the attention of the legislator. When the marketplaces do not have liability for the physical goods they are importing directly from sellers outside the EU, it is in practice the consumer that take on the liability of the products they are buying and the problems that these products may entail.

The Swedish Retail and Wholesale Council view the DSA proposal as a welcomed step towards a more level playing field with the tech giants. However, the proposal does not give a sufficient liability for European product safety and chemical legislation to the online marketplaces that are de facto importing goods from seller in 3rd countries to European consumers. The time has come to address these issues and problems with an unfair competition. Starting from the DSA proposal, the Council and the European Parliament need to ensure that online marketplaces that facilitate goods from 3rd countries are regulated with an equivalent legal liability as other companies in the commerce sector that are importing products from 3rd countries, in terms of product safety and chemicals legislation.

The message from the European legislator to the general public will otherwise be that European consumer rights legislation, product safety rules and chemical legislation have all lost their relevance in the digital world and that there are no real and tangible demands that such rules should be followed when goods are sent via the platforms directly from the sellers outside Europe. Moreover, a lack of action would signal that the legislators are willing to give a free pass to the global online marketplaces in terms of abiding by the rules that the EU have built up for decades in protection of its citizens and consumers. And not least, it signals that the legislators are not standing up for the principle of a level playing field.

The Swedish Retail and Wholesale Council is calling upon the Council and the European Parliament to ensure that the DSA prescribes a liability for online marketplaces that is equivalent to the liability already imposed on other commerce sector companies that are importing goods directly from suppliers in 3rd countries.

For a safe, competitive and well-functioning digital trade, it is important that the EU upholds the principle: What is illegal offline, should also be illegal online.

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