



Finnish Commerce Federation's comments to the Commission's roadmap/inception impact assessment "Digital Service Act package: deepening the Internal Market and clarifying responsibilities for digital services"

1 Introduction

Finnish Commerce Federation is a nationwide lobbying organisation whose mission is to promote Finnish commerce. We work to improve the operating conditions for companies active in wholesale and retail trade, to stimulate co-operation within the sector and to enhance the commercial and employer interests of our members. We have a total of 2,200 corporate members that represent all sectors of commerce: the retail trade, wholesale trade, technical trade and car trade. In addition to corporate members, we have 25 member associations. Our lobbying efforts cover some 7,000 companies in total.

Finnish Commerce Federation is grateful for the opportunity to comment the Commissions work regarding roadmap of Digital Service Act package: deepening the Internal Market and clarifying responsibilities for digital services.

Finnish Commerce Federation welcomes the Commissions' intend to harmonize responsibilities and obligations for digital services including online platforms. We also share the view that this should happen on the European level instead of national level to be effective.

2 Online marketplaces benefit from legal loopholes – Non-compliant products entering the EU

Online marketplaces such as Amazon, AliExpress, E-bay and Wish, have become very popular among consumers. In the Nordic countries, online marketplaces are on the top-10 list of consumers preferred online shops. In the US, the UK, Austria and Germany, Amazon has around 50 percent of the online market of goods.

When goods are sold to European consumers via an online marketplace from a supplier which is not established in the EU, a legal loophole occurs. The responsible actor is not established in the EU and there is therefore no possibility to hold them liable. Even though the new Enforcement and compliance regulation which comes into force in 2021 will allow authorities to control private imports from 3rd countries, this will not solve the problem. The sheer number of parcels means that it is impossible to check everything at customs.

The lack of enforcement means, in practical terms, that products imported directly to consumers from non-EU countries (through both EU and non-EU platforms) do not require the same level of compliance, as if the products were bought through the traditional chain where an EU-importer or distributor buys the products from a supplier (from a non-EU country) and sell it to European consumers. In the latter case the first commercial actor in the EU (typically the importer or the distributor) has the responsibility to make sure that the products comply with the EU rules on product safety. If it turns out a product does not comply and can be harmful, the importer or distributor must remove the item from the market and in some cases make a product recall.



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When a consumer shops directly from a foreign supplier on an online marketplace, the consumer will de facto take the role as “importer” and in practical terms assumes the responsibility to ensure that the product is safe. This problem is accentuated since several of the online marketplaces have sub-sites in several Member States or their websites are in the local languages, which makes it less clear to consumers that the trader is a seller from outside the EU.

The current legal framework also affects the competitiveness of European companies, especially SMEs. A study by the Finnish Commerce Federation estimated that the average purchasing price for a (on the surface) comparable product that does not comply with European product safety legislation can be sold to consumers at a significantly lower price and still be profitable. This means that it is impossible for responsible European companies to compete with the price of the products sold without complying with the EU-regulation on product safety.

According to Finnish Commerce Federation it is crucial that EU Commission improves product safety and competitive neutrality by making online marketplaces to align with the same rules as European companies. Finnish Commerce Federation encourages the Commission to modernize rules so that the same, or similar, rules applies to online marketplaces when facilitating the sale of goods from a producer that is not established in the EU to European consumers, as we currently apply to importers.

3 Commissions policy options

The Commission sets out three optional approaches to clarify roles and responsibilities of digital services:

1. The first solution maintains the e-Commerce Directive as it is but strengthens the obligations of online platforms by introducing e.g. notice-and-action mechanisms.
2. The second solution includes more comprehensive legal intervention with updating and modernizing the e-Commerce Directive.
3. The third solution includes harmonization of rules and procedures as well as cooperation between the national enforcement authorities which would be supported at the EU level.

Finnish Commerce Federation supports the option 3 which would ensure better opportunities to authorities to monitor and enforce the rules. It is important that the rules can be enforced effectively. Common EU level rules and cross-border cooperation is needed between the authorities in order to supervise the online platforms effectively.

Finnish Commerce Federation also supports some of the elements of option 2. We support the suggestion that specific criteria will be developed for different types of platforms. In principle platforms should have the same obligations as the companies the platforms are de facto in competition with. Rules should provide the platforms with a strong incentive to ensure that they are not selling illegal goods or services on their platform. Commission should ensure that online marketplaces becomes subject to the same due care requirements that apply to regular economic operators such as importers and distributors; and that this liability also entails a more active role and due care obligations for the online marketplaces, requiring them to act ex ante to ensure the safety of products, rather than the current notice-and-takedown obligation that permits the online marketplace to take a more passive role. According to our understanding the voluntary Product Safety Pledge, which is not mentioned in the roadmap, but which is good example of voluntary



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action, has provided a false sense of security and has only been delaying legislative regulatory obligations for the platforms.

4 Final remarks

As we have stated in the chapter '1 Introduction' we support the Commission's plan to harmonize responsibilities and obligations for digital services including online platforms. Online platforms should be regulated on the European level instead of national level to be effective. Our main concern relates to non-compliant goods and the competitiveness of European companies. In order to improve these issues the Commission should ensure that online marketplaces become subject to the same due care requirements that apply to regular economic operators such as importers and distributors.

For any questions on our contribution, please send an e-mail to toni.jaaskelainen@kauppa.fi

Yours sincerely

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