

Ecommerce Europe's position paper on the New Legislative Framework

Ecommerce Europe welcomes the update of the New Legislative Framework to become a model, forward-looking tool supporting a strong Digital and Circular Single Market in the face of global challenges and transitioning economy. The New Legislative Framework (NLF), which consists of [Decision No 768/2008/EC](#) and [Regulation \(EC\) No 765/2008](#), has successfully improved the Single Market for goods and boosted the quality of conformity assessment of products¹. Thanks to its multifunctional structure, the framework was successful in setting the vision and general principles of the EU product *acquis*, and, in parallel, it has served as blueprint for more recent product rules. By placing the responsibility of product compliance with the economic operators and complementing the picture with the set-up of an EU-wide conformity assessment landscape, the NLF has been able to strike a good balance between guaranteeing entrepreneurial freedom and business innovation, as well as ensuring necessary public oversight.

However, new opportunities and challenges arising in the field of product policy are stress-testing the framework, which was only partly tweaked since its introduction in 2008. The boom of digital, omnichannel commerce and the emergence of new competitors in the international arena, as well as their consolidation on the Single Market, have been met in the EU with new, NLF-aligned legislation. Against indications of widespread non-compliance and difficulties in enforcing existing rules, the NLF can spearhead the discussions to forming a consistent EU approach to these issues. In the near future, the adjustment of the NLF provisions will help foster the import of compliant products, fluidify their cross-border movement in the EU, and reinstate a level playing field between law-abiding companies and rogue traders.

Given the potential of a fit-for-purpose NLF to address urgent challenges related to the overflow of non-compliant products in the EU, Ecommerce Europe calls on the European Commission to undertake a comprehensive and holistic approach in revising the framework legislation. This exercise should be targeted at addressing specific issues - namely simplifying compliance for legitimate traders, while strengthening enforcement against jointly prioritised non-compliance cases. The EU must ensure the functioning of the Single Market for law-abiding businesses to be acknowledged for their compliance efforts and for consumers to trust that the products they buy online are compliant. In other words, the EU urgently needs to devise a *New Approach* as regards the effectiveness of its rulebook. **Compliance should revert to being an incentive for businesses and a tool to facilitate authorities' enforcement.**

With our paper, we also aim to provide relevant feedback to the ongoing evaluation of the Regulation (EU) 2019/1020, the implementation of Regulation (EU) 2023/988 (General Safety Product Regulation) as well as the partial evaluation of the Regulation (EU) 2022/2065 (Digital Services Act) as per Article 91.1 second subparagraph. Ecommerce Europe is confident that our reflections and call to actions will be reflected in an updated European Commission's Blue Guide on the implementation of the EU product rules.

¹ Commission Staff Working Document, Evaluation of the New Legislative Framework, SWD(2022) 364 final/2, 16.11.2022

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I. For a principle-led and targeted NLF revision

The NLF revision provides the opportunity to further rationalise and strengthen the entire EU product *acquis*. Ecommerce Europe acknowledges the role that the NLF has played in boosting EU-wide cross-border sales and movement of products thanks to harmonised rules. The NLF provides for common definitions, streamlined procedures and minimally rationalised requirements, which help businesses navigate the landscape of product legislation, increase product quality and conformity, and reduce overall compliance costs. The framework has also struck the right balance in ensuring a granular approach and has allowed for conformity to be based on traders' self-assessment or requiring the involvement of a third-party conformity assessment body.

The aim of the NLF revision should be to tweak the framework in a way that it lives up to current challenges affecting product compliance without overburdening policymakers, enforcers and diligent businesses. The revision should thus yield instruments to facilitate business compliance and authorities' enforcement simultaneously and in an effective and efficient manner. As ever before, the ultimate objective of the EU product *acquis* is to ensure that only compliant products, fulfilling the applicable EU requirements guaranteeing a high level of protection of public interests, are placed and made available on the market. The NLF provides a window of opportunity to reflect on these elements in the light of new EU rules and market trends.

Ecommerce Europe is of the opinion that more can be done to achieve better compliance and enforcement results without modifying the delicate balance reached by the NLF. On the other hand, we believe that certain amendments to the NLF are necessary, including to better address the sales of second-hand products and address gaps in the applicability of the NLF for the purpose of online sales. The revamp of

the NLF also provides the chance to simplify the framework for diligent businesses, materialising the political priority of regulatory simplification. In line with the above, Ecommerce Europe supports the reopening of the NLF to tackle the following aspects:

- Strengthen the enforcement chapter in the NLF by streamlining the **definitions and rules of recent legislation impacting the product** and assessing persisting gaps. These could include testing the capability of the current responsibility regime to guarantee the presence of an accountable operator in the EU. Whereas a number of new horizontal laws were adopted to adjust the EU product *acquis* to new market realities and business models, the NLF remains a key piece of the puzzle. Its unique cross-cutting scope should be better exploited.
- Improve the uptake of **digitalisation and e-commerce** in the framework.
- Reflect concepts and market realities proper to the **circular economy**, ensuring that second-hand products are rightfully defined and considered in EU product legislation, and that operators in that field can benefit from an appropriate and enabling legislative framework.

These specific objectives are tackled throughout the paper. To perform a principle-led and targeted revision, we propose a two-step approach. First, making the NLF a purposeful and futureproof tool centralising the most updated, horizontal product requirements, accommodating a new enforcement strategy. Second, amending the EU product *acquis* to match the objectives of the Circular and Digital Single Market. In this exercise, simplification can be achieved by rationalising requirements, amending multiple pieces of legislation at the same time and in the same way, and harmonising enforcement measures.

II. A purposeful and futureproof NLF

Ecommerce Europe is supportive of a NLF with a clear status and scope within the EU product *acquis* and a strong forward-looking component. The NLF must remain relevant in the current EU product rules landscape and the Circular and Digital Single Market, especially since this has been populated with ad-hoc, ambitious rulebooks – which are conceived on the blueprint of the NLF but go well beyond the framework. In line with this, we recommend non-legislative as well as legislative changes to both the NLF Decision and the NLF Regulation.

1. A multifunctional NLF Decision providing reference provisions for the Circular and Digital Single Market

The NLF Decision should be updated in a way that reflects all recent horizontal legal provisions regarding products in general (i.e., the Market Surveillance Regulation - MSR, the General Product Safety Regulation - GPSR, the Product Liability Directive – PLD, and the Ecodesign for Sustainable Products Regulation - ESPR). Moreover, given the rise of omnichannel commerce and the role of platforms in facilitating the sale of products via online sales channels, relevant provisions embedded in the Digital Services Act (DSA) should be integrated in an updated NLF Decision. **Incorporating general product requirements in the NLF would contribute to making the framework into an official source for guidance on the EU product *acquis*, both for businesses, policymakers and public authorities.** In short, the NLF Decision

could become a key tool for businesses and their representatives to navigate the regulatory landscape, alongside fulfilling its original function as reference for policymakers.

For this goal to be achieved, we recommend:

- **Integrating the definition of intermediaries and similar business models ('providers of online marketplace') in the NLF, based on the definition provided in the GPSR.** These actors contribute to a certain extent² to enforcing EU product rules and should therefore be considered as integral part of the EU product *acquis*.
- **Incorporating the definition of 'fulfilment service provider' in the NLF.** This new economic operator, introduced by the MSR to address online sales, should become a reference provision. The concept is flexible enough to catch business models in which no traditional operators (e.g., importers) are involved. These actors also play a role in the cascading principle laid out in Article 4 of the MSR as well as in Article 8 of the PLD, in principle contributing to a solid accountability chain.
- **Transposing legal concepts related to products such as 'remanufacturing', 'refurbishment', 'repair', 'substantial modification' in the NLF.** These definitions are key to determining the applicable requirements for a given product. For example, when a product is remanufactured, it becomes a new product which needs to be placed on the market. Instead, the refurbishment or repair of a product is linked with obligations proper to the 'making available on the market', which mainly imply factual checks.
- **Developing the concept of the EU Responsible Person.** Pursuant to Article 4 of the MSR, for each product³ placed on the EU market there must be an economic operator based in the EU who takes on responsibility for the compliance of that product. The concept was then integrated and extended in scope via Article 16 of the GPSR. While the concept should become a reference provision in the NLF, it is recommendable to rediscuss its limits and possible improvements. For example, the verification of this requirement by relevant stakeholders should be prioritised, and the appointment system should be underpinned by clear responsibilities and foresee fallback options (e.g., what happens if no Responsible Person exists, but a product was already sold to a consumer).

2. An NLF Regulation with a clear scope and a strong enforcement chapter

The content of the NLF Regulation should be examined. With the introduction of the MSR, Chapter III ("market surveillance and controls on products entering the Single Market") of that Regulation was repealed and replaced. While certain sources consider that the MSR is officiously part of the NLF⁴, this is not legally clear and important misalignments remain between the two pieces of legislation. As a result of these legislative changes, the MSR came to tackle market surveillance, product compliance and controls on third-

² E.g., obligation to cooperate with authorities, ensure traders' traceability, remove illegal content.

³ Products subject to Union harmonisation legislation.

⁴ European Commission's website dedicated to the New legislative framework, https://single-market-economy.ec.europa.eu/single-market/goods/new-legislative-framework_en

country imports, while the NLF Regulation kept on covering accreditation relating to conformity assessment and the general principles of the CE marking.

In the upcoming months and years, both the MSR and the NLF Regulation are expected to be revised. The Commission's Single Market Strategy, published in May 2025, gives indications of the shortcomings affecting the framework and the actions foreseen by the Commission to fill the gaps. A European Parliament's Own-Initiative Report on the NLF ("[A new legislative framework for products that is fit for the digital and sustainable transition](#)") is also being developed, with a view to influencing the upcoming NLF revision by the Commission. At the same time, the evaluation process for the MSR should be set in motion soon. This legislative context provides a unique opportunity to link the two procedures and streamline their respective scope and objective, as well as bridging the knowledge gap and purpose between the two sets of rules. **Ecommerce Europe pushes for an updated NLF to become the reference piece of legislation enshrining a definition of 'general product compliance', the underlying requirements applicable to businesses, obligations and procedures, as well as an updated and harmonised enforcement chapter.**

To prepare the ground, we recommend:

- **Pursuing coherence in the scope, definitions, minimum requirements, objectives of horizontal legislation impacting general product compliance.** General product requirements, economic operators' obligations and enforcement provisions are scattered across different texts, which have complementary and partially overlapping objectives. This makes it difficult to connect the dots between product conformity assessment and enforcement measures, even regarding the same product category, creating inefficiencies and uncertainty for businesses and enforcers alike.
- **Rethinking the enforcement structure underpinning the EU product *acquis*.** The concept of general product compliance must be supported by a fit-for-purpose enforcement chapter. With the MSR, and later the GPSR and ESPR, market surveillance has been strengthened in the respective areas of product compliance – that is, product safety and ecodesign requirements. In the face of the sheer number of direct non-EU imports via e-commerce, the market surveillance enforcement structure is increasingly more oriented towards alignment with the customs sphere. Ecommerce Europe has been calling, in the context of its [Level Playing Field campaign](#), to explore means to optimise enforcement against abuses, unburden enforcing authorities, while avoiding penalising law-abiding businesses. This implies assessing existing and upcoming requirements on different businesses in the light of their contribution to support enforcement actions and implementing those as a priority.

Moreover, we point to the complexification of conformity assessment due to the entry into application of new rules applying to a large pool of products, such as those embedded in the ESPR. Streamlined conformity assessment processes should be explored, for example factoring in the type of operator commercialising a product, so as to facilitate compliance for economic operators with a positive compliance record.

Meeting challenges affecting enforcement of product rules in an omnichannel environment

Despite the ambitious, even if fragmented, EU regulatory framework for products, independent research and public data show that non-compliance rates remain high, and that the current enforcement structure is not delivering as it should. Among the numerous factors explaining these unsatisfactory levels of compliance is the globalisation of e-commerce and the entry into the global arena of large third-country players offering different services in the EU, including direct selling. The development of this phenomenon, which allows traders situated everywhere in the world to offer products for (direct) sale in the EU via an online interface, was not matched, in the EU, by an overarching policy reflection on the potential challenges this would bring along.

For example, ensuring trader awareness about the specific EU rules is more difficult when businesses are based in third countries, possibly resulting in lacking, even though involuntary, compliance. On the other hand, enforcement measures are admittedly more difficult to implement or impossible to enact without the cooperation of the trader placed in another jurisdiction. In other words, **global omnichannel commerce is exacerbating a more radical, underlying shortcoming of the EU regulatory framework – that is, its effective enactment beyond the EU borders, whereas the global flow of products, services and resources is precisely driven by the removal of barriers**. This important element should be taken into account when reflecting about the shortcomings in enforcement, as addressing this issue might come at the expense of free trade.

Nonetheless, there is leeway for the enforcement structure underpinning EU product legislation to adapt to the challenges posed by global e-commerce. First, a coherent enforcement approach for competent national authorities based on prioritisation could help improving the effectiveness of enforcement measures. Second, a rationalisation and clear hierarchy of product requirements, using the general scope of the NLF, could help channel resources for both compliance and enforcement in those requirements which have a higher likeliness to result in enhanced enforcement. Our suggestions for actions concerning enforcement in general⁵ are as follows:

- **Back to the basics. Prioritise compliance of minimum traceability and safety requirements, harmonise authorities' enforcement actions, and reflect strategically about the date of application of upcoming product requirements.** The application of EU laws in the current political and economic context faces daunting challenges. Non-compliance is reportedly widespread; resources for enforcement are scarce; effectiveness of enforcement decisions is variable, depending on how businesses operate and where they are situated; while non-compliance seems to relate to long-standing requirements, a high number of new rules are being introduced. This bleak overview calls the legitimacy of EU rules into question – which is also measured based the level of rules' observance. The legitimacy crisis encourages ill-intentioned traders to continue disrespecting the rules and raises doubts among diligent businesses about regulations' real objectives and effectiveness to create a level playing field. Against this backdrop, a serious rethinking of the framework is imperative. Because enforcement encourages compliance, and compliance helps enforcement, actions impacting both faces of the coin should be prioritised. In

⁵ We deep dive into compliance and enforcement for the specific purpose of online sales in a dedicated section below.

our opinion, minimum traceability (and safety) requirements, such as those tested as part of the first product safety sweep conducted between 1 April and 15 May 2025 by the Consumer Safety Network (CSN) should be the object of priority enforcement area for *all* products and across all Member States. When non-compliance with these minimum requirements is found, serious action should be taken. If there is reason to suppose that the only accountable operator of the distribution chain is placed outside the EU jurisdiction, the measures should be stricter and, where relevant, quickly escalate to removal of the content or the product. Checks and activities carried out by national authorities should be aligned with such priorities and should yield comparable enforcement decisions, based on proportionality and prioritisation of combating non-compliance from third-country operators. The decision to apply requirements still in the pipeline should be linked to an assessment of the available resources to enforce those and aligned with the roll-out of upcoming compliance tools (e.g., EU Customs Data Hub, Digital Product Passport Registry etc.).

- ***Fast-forward to a unified, rationalised EU product legislation. Rationalise product requirements, differentiating between minimum requirements and additional requirements.*** Minimum traceability and safety requirements may refer to those minimum requirements that allow economic operators to prove general product compliance as specified in the updated NLF. Such minimum requirements should comprise the EU Responsible Person provision, feature an EU Declaration of Conformity, where relevant, as well as other essential documentation attesting to product safety. Other requirements could be further added and based on customs and market surveillance surveyed needs to carry out their activities, with the objective of facilitating pro-forma checks. In addition, the number and objectives of requirements applicable to specific products should be rationalised. For example, the requirements specifying the Digital Product Passport could be part of the rationalisation exercise (e.g., obligations of economic operators to generate and update the DPP).

III. An NLF becoming the reference for the Circular and Digital Single Market

Following a targeted revision, the NLF will become the repository for updated, future-proof reference provisions on *all* products. Concretely, the requirements' scope should be as wide as possible in terms of product coverage, inclusive of second-hand goods and products with digital components, and offered for sales via any types of sales channel. The NLF offers a suitable legislative and non-legislative framework to set these questions from a horizontal point of view. In this second part of the paper, we focus on recommendations on how to exploit the scope and timely revision of the NLF to settle product-related interpretation and implementation matters. Namely, the status of second-hand goods and sellers of these products in EU law, the fitness of certain traditional legal concepts and definitions to cover for complex value chains.

1. Facilitate the circulation of compliant second-hand products

The circulation of second-hand products, spare parts, components and other resources has the potential to become a key driver for the EU's competitiveness and sustainable growth. The last 2019-2024 mandate of the European Commission recognised the high potential of this growing market and revised the

Ecodesign Directive to a Regulation, expanding its product scope, adapting the text to the digital era and raising the ambition in terms of product requirements. The new Ecodesign for Sustainable Product Regulation (ESPR) thus became the cornerstone of the EU policy for sustainable (and circular) products, including market surveillance and product compliance provisions going beyond the scope of circularity⁶. Given the transversal nature of the NLF, and its role as reference for future product-specific policy initiatives, Ecommerce Europe invites to transpose product-related objectives and tools enshrined in the ESPR in the wider context of the NLF.

First, the NLF should include a general definition of ‘second-hand product’, encompassing products that are repaired, refurbished or that underwent other prepare-for-reuse activities. The ESPR includes, in Article 2, points (18) and (20), clear definitions for respectively ‘refurbishment’ and ‘repair’, while examples of ‘preparing for re-use’ activities are listed in point (16), Article 3 of the Waste Framework Directive (WFD). These definitions refer to the operations performed on a product that was discarded by its holder, but do not specify how the product is expected to be affected as a result of such activities. On the other hand, ‘reused’ products might refer to products that are resold without necessarily getting discarded, becoming waste, or going through established and standardised prepare-for-reuse operations.

In any case, such products cannot be considered new. However, it is important to maintain a level of granularity in the definition of second-hand products. First, it is key to exclude products traded in consumer-to-consumer (C2C) transactions from the scope of the definition. Second, it should remain possible to differentiate whether a second-hand product is reused, refurbished or repaired, based on a seller’s declaration triggering that operator’s responsibility. This approach allows to reflect the reality of the second-hand market, where diverse business models and related products and services co-exist, while establishing a practical framework bolstering the circular economy.

On the other hand, although the definition of ‘product’ varies across horizontal pieces of legislation in EU product acquis⁷, none of them explicitly covers or excludes second-hand products. However, distinguishing reused and refurbished goods from new goods would have positive implications for the purposes of taxation, customs and market surveillance. Specifically for the scope of EU product policy, a clear regime for second-hand products, starting from their definition, would result in better value chain’s transparency, traceability and accountability, also contributing to improved sector attractiveness and circular business model’s scalability.

Ecommerce Europe welcomes the discussions on redefining ‘second-hand goods’ in the field of EU Taxonomy. However, we note that a definition of ‘second-hand product’ in the NLF is equally fundamental to facilitate compliance, streamline customs and market surveillance activities and relieve authorities’ workload. The negotiations in this field should depart from the definition of ‘second-hand goods’ embedded in the Council Directive on the EU VAT but will need to be shaped in a manner that fulfills other policy objectives beyond the scope of customs and taxation. For example, collectibles, antiques and works of art could be included under the definition of second-hand products for NLF purposes, while they are subject to separate rules in the area of customs and taxation.

⁶ See, for example, the potential use of the Digital Product Passport as a general product compliance tool (points (e) and (f) in Annex III, Regulation (EU) 2024/1781).

⁷ See point (1), Article 3, Regulation (EU) 2023/988, point (1), Article 2, Regulation (EU) 2024/1781, point (1), Article 4, Directive (EU) 2024/285.

The question of definition is closely related to the concepts of ‘placing a product on the market’ and ‘making available a product on the market’. These legal concepts are situated at the core of the EU product rules, as they determine the EU requirements a product must comply with, and which economic operator must ensure that product’s compliance. These notions are useful to track product events within the EU (e.g., offer for sale, product supply, transfer of ownership etc.), starting from their exposure to EU consumers, but are less effective for documenting products’ journey outside the EU jurisdiction. As a result, if a product was already used or refurbished elsewhere than in the EU, such events would not be captured and a product being made available for the first time on the EU Single Market would be considered as new. As such, it will need to comply with the same requirements as new products.

As a consequence, **adapting the requirements associated with a placement on the market of second-hand products could support compliance of those products**. For example, placing a second-hand product on the market could correspond to issuing a reduced number of documentation, or generating a partial Digital Product Passport wherever relevant, proving compliance with minimum traceability and safety requirements, which would simplify the compliance process and adapt it to the market reality of second-hand products (i.e., missing information, potentially lower sustainability standards compared to the most updated ones).

On another note, the approach adopted by the General Product Safety Regulation (GPSR) concerning “products which are explicitly presented as to be repaired or to be reconditioned” (Recital (18) and Article 2.3) should be extended to compliance with rules beyond product safety. **The entry and circulation of to-be-repaired and to-be-reconditioned products in the EU is strongly dependent on their exemption from the same product requirements as new, ready-for-use products**. This would minimise the risk of formal non-compliance that these “non-finished” products naturally incur, and it can boost the creation of a strong, EU-wide refurbishment and recycling industry.

Subsequently, the obligations of refurbishers, repairers and sellers of second-hand products should be adapted to the products they offer for sale. In practice, certain second-hand products might be lacking some information mandated by law, either because it was lost in the product journey, or because it was never created in the first place. This notably happens when a new product is placed on the Single Market before a set of product requirements applies and then gets repaired or refurbished. At that point, the distributor, dealer or independent operator must generally verify compliance with the most updated product requirements applicable to the product in question. For example, information on specific product aspects as listed in Article 5 of the ESPR might not be easy to test or retrieve. To fill this gap, **circular economy operators should be allowed to update product data to their best knowledge, prioritising essential safety and traceability information**. This should also concern information requirements, such as the creation of a Digital Product Passport.

Actions to facilitate compliance

- Enshrine an updated definition for ‘second-hand product’ in the NLF, beyond the definition of ‘second-hand good’ in the Council Directive on the EU VAT

- Provide interpretation on how the concepts of ‘placing on the market’ and ‘making available on the market’ apply to second-hand products (e.g., whether they are reused, repaired, refurbished and if they were placed as new products on the market) and clarify the general duties and requirements associated with these concepts
- Extend the approach about exempting products explicitly presented as to be repaired or to be reconditioned from complying with safety requirements to general product compliance

Actions to improve enforcement

- Roll out a definition for ‘second-hand product’ that facilitates customs’ authorities checks (e.g., via a distinct customs code) and market surveillance activities (e.g., specific EU Declaration of Conformity)
- Clarify and prioritise the sets of minimum requirements to be satisfied by second-hand products, starting with traceability and safety requirements, while informing market surveillance activities across Member States in view of harmonising measures

2. Tackle compliance gaps in online sales and compensate missing links in liability chains

Addressing current e-commerce challenges in the NLF is inevitable for this framework to become the reference for an EU-wide approach to general product compliance. In fact, some adjustments in the EU product legislation tackling online sales might be considered, namely concerning the interplay of the product rulebook with platform legislation and a reprioritisation (and update to respond to new challenges) of certain minimum traceability and safety requirements, such as the EU Responsible Person provision.

a) Address grey areas in the distribution of obligations on product compliance and compliance of online offerings referring to a product

In the Digital Single Market, products and services are offered for sales online and offline seamlessly. For smooth transactions and optimal customer experience to be guaranteed, it is instrumental to create one set of rules that can be applied in an omnichannel context. Nevertheless, certain legislative adjustments to the digital environment are sometimes considered necessary. For example, a consumer considering buying online is unable to try on a piece of apparel or verify products properties that can only be evaluated via physical checks. To cover for sizing issues and wrong shopping choices owing to the very medium, the EU consumer law grants a 14-day right of withdrawal from a distance contract. On the other hand, specific policy instruments to develop European businesses’ online presence were also phased in. The EU law introduced the concept of “information society services” and delivered a legal framework for these intermediaries to operate freely across Member States and consolidate at the EU level. In recent years, the EU rules for intermediary services were strengthened, notably mandating specific due diligence duties with regards to content displayed on their online interfaces and obligations to cooperate with competent authorities. In parallel, ad-hoc provisions on distance sales (including online) populated increasingly more

product legislation texts, covering for products sold via online interfaces without the intermediation of a platform.

As a consequence, EU regulations targeting e-commerce for products derive from different policy areas: those shaping the free movement of information society services (e.g., e-Commerce Directive, TRIS Directive), and later the platform economy (e.g., DSA), as well as the EU product *acquis*. Although coherence between the two policy tracks has been pursued, notably by equating the sale of dangerous and non-compliant products to ‘illegal content’, some discrepancies remain. These are related to specificities in the market dynamics and distribution chains, as well as to differing policy logics.

For example, a third-party provider of an online marketplace⁸ does not have the ability to assess *product* aspects that determine compliance with safety standards, and thus cannot autonomously certify this type of compliance for a product sold by an economic operator via their intermediary service. Another significant divergence is that, while economic operators are responsible for the compliance of their products and related information (including when provided in the context of online sales), online marketplaces play a role in ensuring that the digital content hosted on their platforms is compliant, notably by making their best efforts to assess the reliability and completeness of information as provided by the economic operator, and removing illegal content as notified or checked from product safety databases. As a result, the responsibilities of intermediaries for products non-compliance and those of economic operators as relates to the “pre-market placement” (or related to the making available) of their products, are inherently different.

Ecommerce Europe points to a workable margin to improve the interplay of the diverse EU rules applying to the sale of products online. In a nutshell, we suggest clarifying how the concepts of ‘placing on the market’ and ‘making available on the market’ apply, in order to help traders determine their precise obligations when offering a product online to EU consumers.

Whereas for traditional supply chains with a manufacturer, an importer or a distributor, the allocation of obligations linked to these concepts⁹ is clearly laid down, this is not the case for more complex supply chains, involving an authorised representative, a fulfilment service provider, or an intermediary. For example, when a product is offered for sales online, it is considered to be ‘made available’, no matter whether this is done by a manufacturer or a distributor. The Blue Guide offers other examples where the placement on the market of a product is not considered to have taken place or to take place at a specific moments, depending on different factors, in the context of online sales. However, the placement on the market is the most important act in the journey of a compliance product. Obviously, the absence of a placement on the market does not equal with non-compliance of any kind, but it makes it more difficult for authorities to track back the distribution chain and for businesses to interpret which requirements are applicable to their activities.

⁸ A provider of online marketplace acting as an intermediary.

⁹ E.g., drawing up of technical documentation and the EU Declaration of Conformity (DoC), generally associated with a placement on the market and the role of a manufacturer or importer. Conversely, verifying formal requirements (e.g., that the EU DoC is present) is part of the tasks entailed with making a product available on the market.

In the process of clarifying these points, we urge the Commission to highlight who is responsible for the (presumably compliant) content referring to a product and assessing whether a more adapted version of the two concepts could be proposed for the purpose of online sales. **Such clarifications are ever more important as a growing number of traders from the global arena are making available products mostly or exclusively via online sales channels.**

We encourage to identify a set of requirements that should be satisfied to ensure that a *product offer* is compliant with minimum traceability and safety requirements and provide for a strong chain of responsibility. Ecommerce Europe is adamant that an updated EU Responsible Person provision should be at any rate part of these requirements. Further ideas for action are tweaking the definitions of economic operators to cover for non-EU based producers and sellers prevalently exploiting online sales channels, and laying out possible options for online marketplaces to improve their role in ensuring compliant listings, in accordance with the no general monitoring obligation. Finally, generalising such requirements to the largest pool of products could simplify compliance as well as enforcement.

b) Boost existing EU provisions enhancing traceability, accountability and enforceability (e.g., EU Responsible Person provision)

Given the e-commerce sector's strong growth and its significant contributions to the EU's competitiveness, the regulatory approach based on introducing light-touch provisions in EU product legislation and developing parallel requirements for intermediary services can be regarded as successful. Nonetheless, recent trends unfolding at the global level are nuancing this picture. The potential pool of producers and sellers able to reach EU consumers, including via an online interface, has continuously increased, namely thanks to platform services matching worldwide offer and demand. To respond to this development, the EU allocates proportionate but stricter responsibilities on economic operators placed within the EU territory, consolidating the liability chain and encouraging European businesses to act with due care. Now, this regulatory approach is affected by multiple shortcomings. First and foremost, there are clear signals that the EU Responsible Economic Operator obligation in Article 4 of MSR is underperforming, as indicated by the evaluation of that provision published by the European Commission in March 2025¹⁰. Second, the role of European sellers and importers in enticing suppliers upstream in the value chain to respect of EU rules is limited.

Against this background, Ecommerce Europe suggests adopting a practical approach, starting from pinpointing and tackling recurring issues in the implementation of product legislation.

For products directly shipped in the EU from a third country and offered on an online platform, it might be difficult to identify an accountable economic operator in cases where product liability is triggered, and to enforce measures against those due to jurisdictional limits (e.g., an authorised representative has not been appointed). When an intermediary is involved in the online transaction, it should be possible to place residual liability obligations on these actors as a last resort option, pursuant to the cascading liability

¹⁰ Evaluation study on the implementation of Article 4 of Regulation (EU) 2019/1020 on market surveillance and compliance of products, <https://op.europa.eu/en/publication-detail/-/publication/b295c69e-f32e-11ef-b7db-01aa75ed71a1/language-en>

principle embedded in Article 8 of the PLD, entering into application by 9 December 2026. We encourage the Commission and the Member States to make sure that this mechanism works in practice.

Furthermore, as for identified cases of technical non-compliance, as well as for less serious cases, such as formal non-compliance or a request for information initiated by a market surveillance authority, tapping the potential of Article 4 of MSR should be the primary step. First, the role of ‘authorised representatives’ should be further studied. It is regrettable that no authorised representative was involved in the European Commission’s evaluation study on Article 4 of MSR¹¹, given their potential contribution to a successful implementation of the product responsibility cascading principle. Minimum requirements in terms of expertise, financial stability, and potential tasks could be considered, but should always be balanced with the need to keep costs for appointing an authorised representative reasonable and affordable for SMEs. It should remain possible for these actors to represent both EU-based and non-EU based manufacturers, but in the latter case, the higher risks of responsibility and liability default, related with the limits of EU enforcement powers, should be taken into account.

To close the loop, providers of online marketplaces could take a more active role in tackling product listings which miss minimum traceability and safety information. Namely, intermediaries should step up their efforts to ensure that all products available on their interface bear information on the EU Responsible Person fulfilling the prescribed requirements. In their efforts to prevent the placing of non-compliant products on their platform, they should prioritise the assessment of such information, notably the presence of contact details of the EU Responsible Person. If no EU Responsible Person is provided for a products sold by a seller placed outside of the EU, the online marketplace should urgently require that the content referring to a product is brought into compliance or remove the content and mitigate such non-compliance, including by assuming residual responsibility in case of consumer redress. Online marketplaces could also facilitate the identification of reliable authorised representatives and provide guidance for sellers on ensuring compliance with minimum traceability and safety requirements.

Actions to facilitate compliance

- Clarify the concepts of ‘placing on the market’ and ‘making available on the market’ in case of distance and online sales, highlighting the underlying requirements, and associate the concepts and requirements to each trader involved in the supply chain
- Push investment in the implementation of the EU Responsible Person provision, while keeping costs for microbusinesses and SMEs reasonable
- Involve online marketplaces in the identification and appointment process of the EU Responsible Person

Actions to improve enforcement

- Outline how a “compliant online offer of a product” should look like from the perspective of product compliance

¹¹ *Ibid.* footnote 10

- Consider adjusting economic operators' responsibilities for online sales and explore ways to improve online marketplaces' potential role in ensuring compliance of content referring to a product
- Prioritise verification of the EU Responsible Person in authorities' checks