LIGHTINGEUROPE
THE VOICE OF THE LIGHTING INDUSTRY

Position Paper on the non-compliance of products on the EU market: How to address product compliance online?

Executive Summary

Online sales have been increasing at a rapid rate. A study has shown that online sales for lighting fixtures alone have grown on average 18% per year since 2012. Whilst online sales provide consumers with quick and easy access to products, LightingEurope is concerned by the significant number of non-compliant and dangerous (lighting) products sold on online marketplaces.

To ensure that compliant and safe products are sold on online marketplaces in the European Union and a competitive European industry, LightingEurope calls on the European policymakers to:

√ **allocate liability and clear obligations for non-compliant products sold via online marketplaces in the upcoming Digital Services Act and the revision of the General Product Safety Directive:**
  o Know your seller obligation: Online marketplaces must verify:
    - the identity of the seller
    - If there is a responsible person established in the EU, especially an importer
    - If no importer is named, the platform will overtake the responsibility and obligations of the importer if the product is listed on its platform
    - check if the producer is registered under a WEEE scheme and in the EU VAT database
  o Obligation to inform sellers about their obligations under EU law
  o Notice and take-down procedure**:** The DSA should clarify the different steps towards the removal of non-compliant products and harmonise them so that the process does not differ from one online marketplace to another
  o Obligation to remove products that have been confirmed as non-compliant within 24 hours
  o Obligation to inform the consumers that have bought the removed product that it is in fact illegal and to start a recall
  o Obligation to collaborate with Market Surveillance Authorities (MSAs):
    - Upon requests from MSAs
    - Monthly reporting to MSAs on how many products were taken down, how many manufacturers were contacted to establish compliance, etc.
√ **provide sufficient resources, tools and support to EU market surveillance and customs authorities in their actions**
√ **establish rules that are easy to be understood and applied by all manufacturers placing products on the EU market (online and offline), as well as Market Surveillance and Customs Authorities.**

Introduction

An ever-increasing number of non-compliant and potentially dangerous products, including lighting products, remain easily accessible to end-users on the EU Single Market. The European Commission's *long-term action plan for better implementation and enforcement of single market rules*[1] highlights that the proper enforcement of EU rules remains a challenge, even more so in the context of online sales.

Users rely increasingly on e-commerce to access goods. According to EU statistics, 71% of Internet users in the European Union shopped online in 2019[2], with electronic equipment being one of the most sought-after products. In 2019, in Belgium alone, web shops achieved €8.2 billion in revenue, of which 25% was generated by online shoppers across the border.[3] Global e-commerce sales amounted to nearly 3.5 trillion dollars worldwide in 2019.[4] A dedicated study for e-commerce in the lighting sector showed that online sales for lighting fixtures alone have grown on average 18% per year since 2012[5].

The increase in online sales brings not only opportunities, e.g. fast access to a wide range of products, but it also brings issues that cause major concerns for both manufacturers and customers.

Challenges for the Industry

Do a simple search on online marketplaces and you will see that one can still purchase lighting products that have been banned by EU legislation from the EU market for many years. Many illicit and counterfeited products are also entering the EU market. In 2018 alone, European customs authorities detained almost 27 million fake and potentially dangerous products[6]. An EU-wide survey conducted in 2019, illustrated that 11% of respondents had received wrong or damaged goods or services, 6% found it difficult to make complaints and seek redress after a complaint, and 5% had difficulties in finding information on guarantees and other legal rights.[7]

The availability of non-compliant products not only puts customers' safety at risk, but also distorts the level-playing field between the law-abiding companies that invest in compliance – up to 25% of annual turnover for some of our members - and the free-riders that benefit from not applying the EU legislation. The investment of companies illustrates how much resource, financial and in terms of manpower, are allocated in order to place a compliant product on the market. Some examples of what such investments include:

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[1] https://ec.europa.eu/info/files/commission-communication-long-term-action-plan-better-implementation-and-enforcement-single-market-rules_en

[2] https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals

[3] Belgian E-Commerce Barometer 2019, available at: https://www.thehouseofmarketing.be/download-e-commerce-barometer-2019?utm_term=e-commerce%20report&utm_campaign=E-commerce+Barometer+2018&utm_source=adwords&utm_medium=ppc&hsa_tgt=kwd-671429531400&hsa_grp=97580879885&hsa_src=g&hsa_net=adwords&hsa_mt=b&hsa_ver=3&hsa_ad=426628844388&hsa_acc=7866903306&hsa_kw=e-commerce%20report&hsa_cam=9672550014&gclid=Cj0KCQjwpfHzBRCiARIsAHHzyZq8Ec1ST83WgUEdnTp3Iw8yM0mXpmvGVTIdAEEsR9jtP7xHYSRiN9YaAmr6EALw_wcB

[4] https://www.emarketer.com/content/global-ecommerce-2019

[5] Csil, e-Commerce for the lighting industry, March 2019, M03

[6] https://ec.europa.eu/commission/presscorner/detail/en/IP_19_5581

[7] See footnote number 2.

- **Product costs**: internal - laboratory costs, percentage of R&D work to ensure compliance, technical file production, waste charges, external laboratory testing costs, work from the production line, and testing time (Ecodesign seeks 3,600h), etc.
- **Costs to comply with new legislation/revisions:** external database entry for each product, re-packaging costs due to change in labelling requirements (e.g. Energy labelling), changes to internal IT systems, renew conformity documentation (need to collect from suppliers), etc.
- **Additional costs:** trade association membership, attendance at tech workshops, purchase of standards, software for monitoring legislation, education of technical staff & training of internal stakeholders, awareness campaigns & white papers (in-house, public), compliance schemes fees: WEEE, batteries, packaging, costs of preventive recalls (prior to non-compliance), 3rd party certification, etc.

LightingEurope is committed to ensuring a level playing field for all actors on the market and supporting policymakers and Market Surveillance Authorities with its expertise. A number of LightingEurope member associations are running their own compliance tests and programs, as well as cooperating with national authorities on inspections of lighting products.

EU market surveillance authorities do carry out tests of potentially non-compliant products, but the resources allocated to them are not commensurate with the volume of items they must check or the number of product rules that apply in the EU. As an example, the French national authority bought products from 8 online marketplaces in 2018, deliberately picking low cost products and in the case of lighting, electric garlands. Of the 15 products analysed, all were found to be non-compliant and 10 dangerous (66% safety failure rate) having defects that can lead to electric shock or fire.

Furthermore, when non-compliant products enter the EU from third countries, it is often the case that there is no liable person in the EU. Many non-compliant suppliers disappear from the market before any action can be taken and still EU citizens have access to their products. Goods that have been taken down from online marketplaces also often reappear on another platform or under a new denomination.

Europe's regulators must develop a single harmonised response and clarify who is liable for products available on marketplaces that can put customers at danger, undermine the credibility of the European Single Market and the level playing field.

Recommendations

LightingEurope believes in a fair allocation of liability between all actors involved, from the manufacturer to the online marketplaces that make products available to EU customers. To achieve this, LightingEurope recommends the following actions:

1. **Revision of the liability regime and introduction of a set of obligations for online marketplaces in the Digital Services Act and the revision of the General Product Safety Directive to reflect today's reality**

LightingEurope expects that the Digital Services Act, will 'upgrade EU liability and safety rules for digital platforms, services and products'[8] to clearly address the challenges

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[8] https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

identified above. The eCommerce Directive, which sets the limited liability regime for online platforms, was adopted in 2000. Some of the companies that the legislation was targeting in 2000 have evolved to become the biggest market players. Many other new companies and business models have since then been developed as well. We believe that the EU legislation has yet to fully reflect the role that online platforms, including online marketplaces, play nowadays, and call upon policymakers to adapt the current regime accordingly.

We regret to see the discussion shifting away from updating the liability and safety rules for online platforms to increasing their responsibility. Emphasis should be put on preventing non-compliant products from entering the EU market. This cannot be achieved through voluntary actions from online platforms, which proved insufficient to counter an ever-growing number of non-compliant products sold online

LightingEurope strongly believes that the Digital Services Act should introduce a clear set of proactive and reactive obligations for online marketplaces, which ensures that products that do not comply with EU product legislation cannot be marketed in the first place and clarify and standardize processes for notice and take down actions for the cases in which non-compliant products already listed are notified to online marketplaces.

The set of obligations should include:

➢ **Know your seller obligation: Online marketplaces must verify:**
  • the identity of the seller
  • If there is a responsible person established in the EU, especially an importer
  • If no importer is named, the platform will overtake the responsibility and obligations of the importer if the product is listed on its platform
  • check if the producer is registered under a WEEE scheme and in the EU VAT database

➢ **Obligation to inform sellers about their obligations under EU law**

➢ **Notice and take-down procedure:** The DSA should clarify the different steps towards the removal of non-compliant products and harmonise them so that the process does not differ from one online marketplace to another.

➢ **Obligation to remove products that have been confirmed as non-compliant within 24 hours.**

➢ **Obligation to inform the consumers that have bought the removed product that it is in fact illegal and to start a recall.**

➢ **Obligation to collaborate with Market Surveillance Authorities (MSAs):**
  • Upon requests from MSAs
  • Monthly reporting to MSAs on how many products were taken down, how many manufacturers were contacted to establish compliance, etc.

Online sales should not offer a competitive advantage to suppliers of non-compliant products who have no legal presence in the EU's jurisdiction and therefore cannot be held liable for non-compliance with EU product rules. This set of obligations should apply to all online marketplaces, irrelevant of their size and place establishment (within the EU or in third countries if targeting EU customers).

2. Allocate more resources and support for Market Surveillance Authorities

Market surveillance and customs verifications are of utmost importance. The 1st EEPLIANT project inspected the technical documentation of 141 lamps. 117 lamps were screened for tests and 80 lamps went under product testing.[9] The results showed that up to 54% of products did not meet requirements regarding packaging information and/or technical documentation and only 14% of the tested models were fully compliant. The 3rd EEPliant project will screen around 200 lighting products and tests on 80 models. In 2015, 1.7 billion light sources for general lighting purposes were sold in EU28.[10] While we strongly support the efforts made by the European Commission and market surveillance authorities under the EEPLIANT Project, we would like to stress that, considering the volume of lighting products being placed on the market via online and offline sales, it is key to allocate more resources to increase the capacity to check and test products, with a particular focus on online sales. In this regard, investment in digital tools and infrastructure will be crucial.

3. Better Regulation and Enforcement is needed

There are many EU product-related requirements that apply to lighting products and their use, from chemicals (RoHS, REACH), to waste (WEEE, Waste Framework Directive), product design and safety (Radio Equipment Directive, Ecodesign Directive, Low Voltage Directive, Electro-Magnetic Compatibility Directive, etc), energy efficiency (Energy Performance of Buildings, Energy Labelling). In order to ensure that manufacturers and authorities have the resources to apply and enforce all these measures, we believe that policymakers should not create new rules before existing ones are fully enforced. If deemed necessary, they should:

- be evidence-based, simple, easy to understand and to be applied
- be easy to enforce – impact assessments should evaluate the average cost to comply with new rules and explain how economic actors can demonstrate compliance at the time they place a product on the EU market
- be attached to specific targets on market surveillance
- be accompanied by funding to market surveillance authorities to test products
- be consistent across legislation – proposed policies should not contradict existing requirements/timelines

Having rules that are easy to understand and apply not only for manufacturers, but also for the authorities, is key for the EU Single Market. Only in this way can we ensure a high level of compliant products entering the market and a level playing field for all actors.

Contact

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[9] More information on EEPLIANT 1 tests for lighting products: http://www.eepliant.eu/index.php/new-products/wp4-led?id=71

[10] Ecodesign Impact Assessment Part 3, VHK, *Model for European Light Sources Analysis (MELISA)* (study commissioned by the European Commission), 25 October 2017, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1551-Review-of-ecodesign-requirements-for-lighting-products

LightingEurope is the industry association that represents the lighting industry in Europe. We are the voice of more than 1,000 lighting companies that employ more than 100,000 Europeans and create an annual European turnover of over € 20 billion. Our daily mission is to advocate and defend the lighting industry in Brussels, while reconciling it with ongoing EU policy aims. In doing so, we are dedicated to promoting efficient lighting practices for the benefit of the global environment, human comfort, and the health and safety of consumers. More information is available on: www.lightingeurope.org.