EuroCommerce
Retail & Wholesale

Position Paper

14 October 2024

Call for action to establish a level playing field in retail

European retailers and wholesalers call upon EU legislators and national authorities to establish an **EU-level playing field** in retail for **all players** targeting EU-based consumers, regardless of where they are established. To achieve this, we need a **multi-faceted effective and efficient enforcement strategy**[1] based on all **relevant legal instruments,** aiming to incentivise competent authorities, Member States and the European Commission.

The European Retail Sector

1. The European retail and wholesale sector provides an **essential service to consumers** by ensuring they have access to a wide choice of affordable food and non-food products and services, also during crises.

2. We represent **5 million companies** in the EU, 99% of them are small and micro enterprises and create over 10% of the EU GDP. We are the largest private employer in the EU, generating 1 in 7 jobs, offering careers to 26 million Europeans, many of them young people. We create millions of indirect jobs throughout the supply chain, from small local suppliers to international businesses. Additionally, we contribute to local economies and our shops are crucial for the vitality of towns and rural areas.

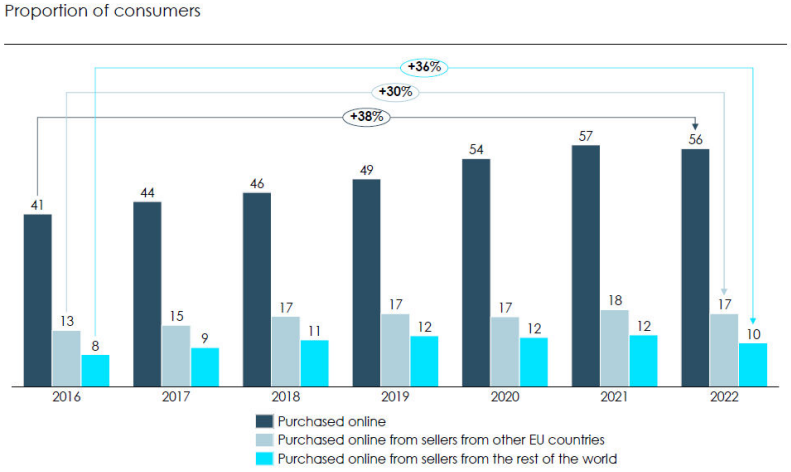
3. Retailers compete fiercely for consumers' favour every day, making them well-aware of what consumers expect and need. To maintain and grow that relationship **consumers need to trust that the products they buy are safe and compliant, that their rights are respected, and that they have access to redress**, no matter where, from whom, and how they purchase products and services. This trust is the foundation for growth and innovation, as it enables small, new and unknown traders to market their products and services to consumers.

[1] All relevant Commission services, EU coordination bodies, expert groups, national competent authorities should work together e.g. with regards to Regulation (EU) 2019/1020 on market surveillance and compliance of products, Regulation (EU) 2023/988 on general product safety, Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, Regulation (EU) 2022/2065 on a Single Market For Digital Services, Directive 94/62/EC on Packaging and Packaging Waste (PPWD), Regulation (EU) 2023/1542 concerning Batteries and Waste Batteries, Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE), Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data (GDPR), EU Customs Union, Regulation on prohibiting products made with Forced Labour on the Union market, Corporate Sustainability and Due Diligence Directive (CS3D), etc.

The impact of unfair competition

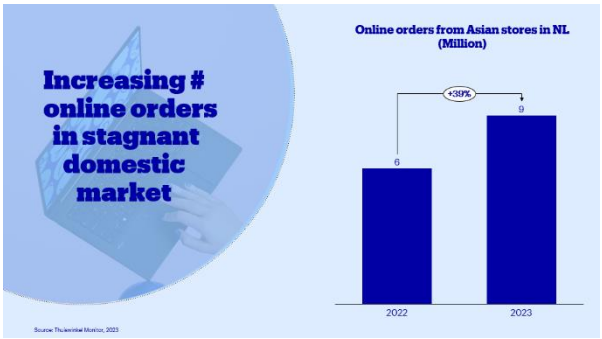
4. In the past years competition from **non-EU-based traders and marketplaces targeting EU-based consumers has drastically increased**: the proportion of EU consumers making online purchases from sellers outside of the EU has risen by 36% between 2016 and 2022.[2] We believe that a part of the rapid growth of some of these non-EU-based traders and marketplaces may be based on unfair competition. EuroCommerce welcomes more competition as it creates new opportunities, drives innovation and increases choice and the availability of affordable products for consumers but all players need to respect the rules.

Figure 5
The proportion of EU consumers making online purchases from any source and from other EU countries



Source: Study for the further evaluation of the Geo-blocking Regulation (July 2024)

5. Some of these non-EU-based players have doubled or even tripled their online market share in a very short amount of time.[3] For example, one of these players has developed their market share very quickly in Austria: In October 2023 "only" 23% of the online shoppers bought from this platform and in April 2024 this had already risen to 37%.[4] In Spain, another non-EU based platform registered a sales growth of 83% between Q3 2022 and Q3 2023.[5] And The Netherlands saw a rise of 39% in online orders from Asian players from 2022 to 2023.[6]



Source: Thuiswinkel Monitor 2023

[2] Study for the further evaluation of the Geo-blocking Regulation (2024), p. 25
[3] JKU, EU Online Shopping Report, May 2024 & Thuiswinkel Monitor 2023
[4] JKU, EU Online Shopping Report, May 2024, p. 25
[5] IntentHQ – Discovering the Shein effect in Spain, Analysis: 2022-2023
[6] Thuiswinkel Monitor 2023

6. At least a part of the success of some of these third-country players is based on aggressive marketing practices,[7] misleading and manipulating consumers,[8] not respecting EU consumer contract law, [9] offering products that do not comply with EU product safety rules, [10] lacking due diligence, disregarding customs rules, breaching data protection rules,[11] creating unsafe online environments, subsidies received from Chinese authorities,[12] etc. In short, some non-EU based players selling on the EU market do not comply with European rules and regulations. By now, ample evidence is available that illustrates the challenges this poses:

7. *Hazardous products*: Due to growing concerns about the composition of products sold by non-EU-based players, random product samples have been tested in different Member States. Test results confirm that the majority of products that were tested do not comply with at least one or more EU law(s). Several sources confirm that dangerous levels of hazardous chemicals were often identified by different organizations and authorities, for example:

    a. Kaupan Liitto (Finnish Commerce Federation) tested a wide range of products in 2024, ranging from home appliances and kitchenware to toys, clothing and cosmetics. None of the products tested were fully compliant with EU law.[13]
    b. The customs authorities in Germany have investigated over 800 products purchased from non-EU-based marketplaces, including clothing, toys, safety helmets and electronic products. They concluded that 95% of these products did not comply with EU law.[14]
    c. In August 2024, Öko-Test revealed the results of the tests they performed on fashion products from a non-EU-based platform: 8 out of 21 products were found to contain toxic chemicals in levels significantly above the EU law thresholds.[15]
    d. In November 2022, Greenpeace already raised concerns about the hazardous chemicals present in the product of a non-EU-based player. Product tests on 47 products ordered from this company's website found that 15% of the products contained hazardous chemicals that break EU regulatory limits, with 32% of the products containing hazardous chemicals at levels of concern.[16]

8. The results of these investigations are consistent with the conclusions of the EU-wide enforcement project by the European Chemicals Agency's Enforcement Forum in 2021, that already found that the non-compliance rate for REACH for marketplaces from outside the EU ranged from 84% to 98%.[17] However, these investigations have not yet led to measurable outcomes.

[7] JKU, EU Online Shopping Report, May 2024, p. 6
[8] Letter Polish Government to Temu, 27 May 2024 & BEUC press release – Surging online marketplace Temu flouting new EU law meant to keep consumers safe – 16 May 2024 & Recent launch of investigation against Shein for possible misleading advertising, 26 September 2024
[9] Letter Polish government to Shein, 27 May 2024
[10] The European Commission reported in the EU Safety Gate 2023 results, that in 2023 3412 dangerous products were reported to the EU Safety Gate, which is an increase by 60%. China accounts for 37% of reported dangerous products.
[11] https://www.test.de/Schnaeppchen-Plattform-Bei-Temu-ist-Vorsicht-angesagt-6098821-0/
[12] Sarek, L. - Party-state Support for Chinese E-commerce Export Development (2024)
[13] I. Kallio & J. Kurjenoja – Competitive advantage of Asian e-commerce – Test purchases from the Temu.com marketplace, 17 September 2024
[14] https://rp-darmstadt.hessen.de/presse/produkte-von-online-plattformen-aus-dem-asiatischen-raum-im-fokus
[15] Öko-Test, Test zeigt: Shein-Mode teilweise voller giftiger Chemikalien, 29 August 2024
[16] Greenpeace, Taking the Shine off Shein: A business model based on hazardous chemicals and environmental destruction, November 2022
[17] European Chemicals Agency – Forum Ref-8 project report on enforcement of CLP, REACH and BPR duties related to substances, mixtures and articles sold online, 2021

9. *Misleading and manipulating consumers:* In May 2024, the Polish government expressed their concerns about practices of two non-EU-based players that do not comply with EU regulations and which have the potential to mislead consumers.[18] The same month, BEUC published a complaint against one of these players which alleges that several of the practices through which prices and products are presented to consumers are manipulative or misleading.[19]

10. Similarly, a study by Handelsverband (Austrian Retail Association) found that claims on a non-EU-based platform give consumers the impression that a product is only available for a short period of time under certain conditions.[20] This can mislead consumers into making a purchase under supposed time pressure, even though the same products are offered again a few days later as part of a 'special sale'.[21] In addition, the platform encourages its customers to visit the app daily to receive rewards or to earn points for discount, partly through the use of gambling techniques.[22]

11. *Climate and environmental impact*: There are several dimensions to the climate and environmental impact of third country players, such as misleading statements about the environmental impact of products (greenwashing), the impact on EPR schemes and logistics. The Italian authorities suspect a non-EU-based player of making potentially misleading sustainability claims about their clothing, and have therefore opened an investigation in September 2024.[23] Czech authorities have investigated the impact of non-compliance of these platforms with Extended Producer Responsibility (EPR) schemes. Calculations of Czech professional organisations indicate that there is a shortfall of € 41 million in EPR schemes in Czechia alone.[24] In addition, authorities are worried about the effect of unsubstantiated environmental claims about the environmental friendliness of the products sold through these platforms.[25]

12. *Exploitative labour practices:* Several non-EU-based players have repeatedly been criticized for the intransparency about their supply chains, labour conditions and social protection of their workforce: Several reports have found that one of these players' production workers work 18 hour days with only one day off per month. This contradicts labor law provisions in Europe and in China.[26]

13. In its latest sustainability report the company exposed that they have found two cases of child labour in their supply chain through audits that took place between Q1 and Q3 2023.[27] The company claims to have remedied these situations and to have taken a stronger stance towards its suppliers.

14. Another non-EU-based player on the other hand, stated that they are a platform operator and therefore they consider that the provisions of the US Uyghur Forced Labor Prevention Act do not apply to them, in response to a request for information about compliance with the United States Uyghur Forced Labor Prevention Act.[28]

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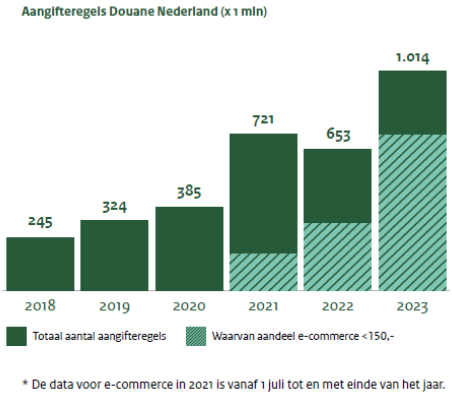
[18] Letter Polish Government to Temu, 27 May 2024 & Letter Polish government to Shein, 27 May 2024
[19] BEUC – Taming Temu: Why the fast-growing online marketplace fails to comply with the EU Digital Services Actv, May 2024
[20] Handelsverband – Press release Beschwerde wegen festgestellter Verstösse gegen das Bundesgesetz gegen unlauteren Wettbewerb (UWG) durch den Online-Marktplatz von Temu, 4 September 2024
[21] Handelsverband – Beschwerde wegen festgestellter Verstösse gegen das Bundesgesetz gegen unlauteren Wettbewerd (UWG) durch den Online-Marktplatz von Temu, 30 August 2024
[22] HDE and ibi research – Drittstaatenhändler und ihr Einflusse auf den deutschen Handel. Exemplarische Betrachtung anhand der beiden Plattformen Temu und SHEIN, September 2024
[23] https://www.agcm.it/media/comunicati-stampa/2024/9/PS12709
[24] www.socr.cz
[25] Letter Polish government to Shein, 27 May 2024
[26] Issue Brief – Shein, Temu and Chinese e-Commerce: Data Risks, Sourcing violations and Trade Loopholes (14 April 2023)
[27] Shein – 2023 Sustainability and Social Impact Report
[28] The select committee on the Chinese communist party – Fast Fashion and the Uyghur Genocide, Interim Findings, June 2023

15. *Accusations of copyright infringements:* Several non-EU-based players have already faced a high volume of copyright infringement accusations and lawsuits for intellectual property (IP) rights violations.[29]

16. *Avoiding tariffs:* The European market is flooded with individual shipments from third countries, often containing incorrect goods values, which leads to a correspondingly lower tax payment.[30] Every day, two of the largest non-EU-based players are responsible for sending over 400,000 packages to Germany. Due to limited resources only a minimal percentage of these shipments can be checked, which leads to under-declaration by non-EU based players to remain under the €150 customs threshold.[31]
    a. According to a customer survey run by HDE and ibi research, only 5-7% of respondents have had to pay customs duties for their purchases from non-EU-based players.[32]
    b. In The Netherlands, the number of e-commerce declaration lines more than doubled from 2022 to 2023. In 2023, 718 million of the total of +1 billion declaration lines came from e-commerce.[33] As a result, the Dutch customs authorities conclude that effective enforcement is no longer possible according to the existing methods.



Source: Stand van de Uitvoering, 2024 - Douane

Enforcement challenges

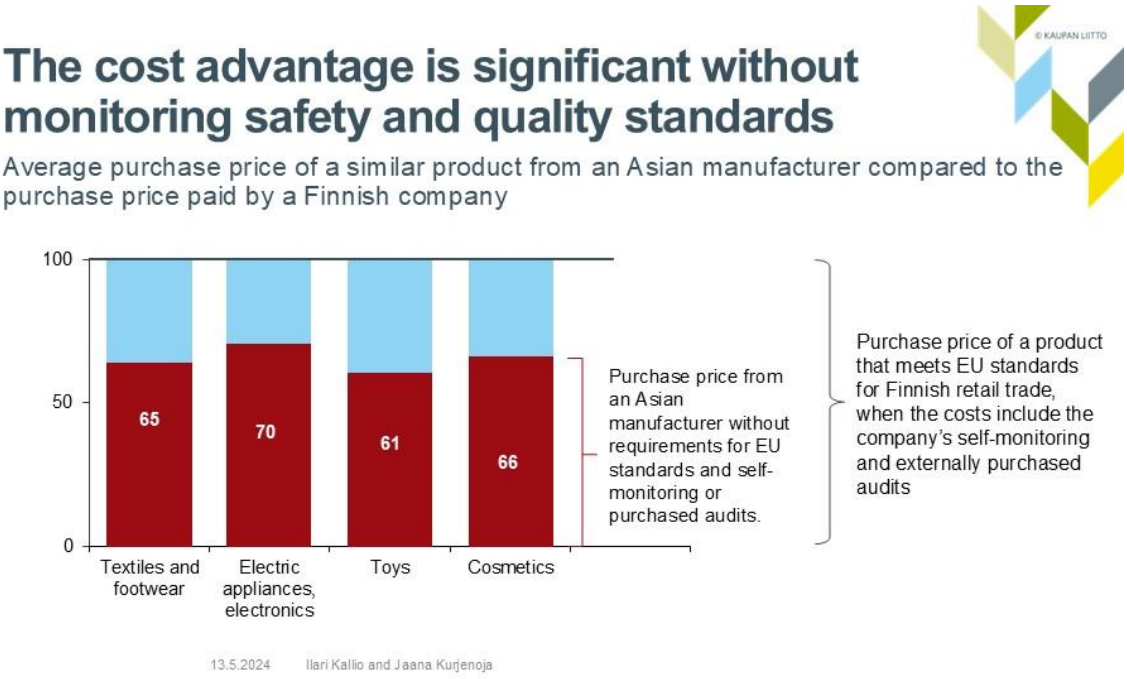
17. While, generally speaking, more research needs to be done into the impact of unfair competition on European retailers, some of the recent studies provide an indication already:
    a. 63% of Austrian consumers' online spending - € 5.3 billion in absolute figures - is spent abroad (on platforms).[34]
    b. A comprehensive survey among retailers performed by HDE and ibi research in Germany showed that 15-19% of retailers had already lost customers to the largest non-EU-based players. Another 18-23% feared that this would be the case in the future.[35]
    c. In Spain, the total expenditure from Q3 2022 to Q3 2023 for fashion retailers grew by 4.49% while the total expenditure for a large non-EU-based player grew by 83.86%.[36]

[29] Issue Brief prepared by the research staff of the US-China Economic and Security Review Commission, 14 April 2023
[30] HDE and ibi research – Drittstaatenhändler und ihr Einflusse auf den deutschen Handel. Exemplarische Betrachtung anhand der beiden Plattformen Temu und SHEIN, September 2024, p. 42
[31] HDE and ibi research – Drittstaatenhändler und ihr Einflusse auf den deutschen Handel. Exemplarische Betrachtung anhand der beiden Plattformen Temu und SHEIN, September 2024, p. 42
[32] HDE and ibi research – Drittstaatenhändler und ihr Einflusse auf den deutschen Handel. Exemplarische Betrachtung anhand der beiden Plattformen Temu und SHEIN, September 2024
[33] Douane, Stand van de Uitvoering 2024, p. 8
[34] WKÖ, Letter to Finance Minister Brunner, July 2024
[35] HDE and ibi research – Drittstaatenhändler und ihr Einflusse auf den deutschen Handel. Exemplarische Betrachtung anhand der beiden Plattformen Temu und SHEIN, September 2024, p. 24
[36] IntentHQ – Discovering the Shein effect in Spain - Analysis: 2022-2023, February 2024

18. At the same time, we observe that enforcement authorities face challenges when applying the rules to players outside their jurisdiction.[37] For example, authorities may lack resources and expertise to effectively enforce the rules,[38] and there is a lack of coordination and collaboration between the different authorities within Member States as well as between Member States. Even in cases where authorities do have the capacity to respond, they are often unable to identify or reach the party that is responsible for cross-border e-commerce.[39] This has an aggravating effect on the competitiveness of EU-based retailers and wholesalers, as well as on consumer protection.

19. As a result, several EU governments have recently expressed their concerns. In September 2024, the German government has released an E-commerce Action Plan, in which it proposes a concerted action by market surveillance authorities and customs in Germany and, if possible, in all EU Member States. At the request of Germany, and supported by 10 countries, EU Ministers discussed e-commerce challenges, during a recent meeting of the Competitiveness Council.[40]

20. This unfair competition results in a significant cost advantage for Asian e-commerce players. A recent survey from EuroCommerce member Kaupan Liitto estimated that the costs of compliance with EU law for textiles, footwear, electronic appliances and electronics, toys, cosmetics vary between 39 and 30% of the sourcing price.[41]



Source: Competitive advantage of Asian e-commerce – Kaupan Liitto (September 2024)

[37] I. Kallio & J. Kurjenoja – Competitive advantage of Asian e-commerce – Test purchases from the Temu.com marketplace, 17 September 2024
[38] Douane, Stand van de Uitvoeringv (2024)
[39] I. Kallio & J. Kurjenoja – Competitive advantage of Asian e-commerce – Test purchases from the Temu.com marketplace, 17 September 2024
[40] Request by the German delegation for an AOB agenda item for the Competitiveness Council on 26 September 2024 – Information by the German delegation on the need to discuss and reflect on the further unified approach regarding the enforcement of EU-standards in e-commerce.
[41] I. Kallio & J. Kurjenoja – Competitive advantage of Asian e-commerce – Test purchases from the Temu.com marketplace, 17 September 2024

Investments crucial to make the digital and green transition

21. Our sector needs to heavily invest in the green transition and in the digital transformation and skills, to a total number of €600 billion until 2030.[42] Unfair competition will undermine the investment capacity of EU-based retailers and wholesalers and may even put them out of businesses. This will reduce choice for consumers and make the EU dependent on traders, marketplaces and producers from third-countries.

22. Investments by our sector have a spill-over effect to other sectors of the EU economy. For example, retailers and wholesalers have a key role to play in the EU's journey to a circular economy and to achieve carbon neutrality by 2050. Reducing our direct (scope 1) and indirect (scope 2) greenhouse gas emissions by up to 90% by 2030 will require an investment of up to €300bn, e.g. for refurbishing and modernising stores and fleets, investing in renewable and energy saving solutions, rolling out electric charging infrastructure, and more.[43]

23. At the same time, we see that retailers and wholesalers have to invest heavily in compliance and are struggling to cope with the many pieces of new digital and green legislation that have been produced in the last years. And yet more is to come.

24. If we want a vibrant, healthy and competitive European retail sector in 2030 with strong EU-based players, decision-makers and enforcement authorities need to prioritise creating a level playing field.

Impact on consumers

25. Consumers are indirectly suffering from unfair competition, because information about environmental impact is not correct, products are made with forced labour,[44] products contain chemicals above health-threatening levels,[45] toys pose suffocation risk by small parts that can be swallowed or risk of strangulation,[46] price reduction announcements are misleading,[47] aggressive marketing practices push consumers into buying products they do not want or need, information is omitted. We also observe the rise of game-like shopping experiences, which in combination with for example gambling-like mini-games,[48] races with others, recommenders and monetary incentives to share with friends where in particular minors may be at risk.[49]

[42] Transforming the EU Retail & Wholesale Sector, McKinsey & EuroCommerce, 2022
[43] NET ZERO GAME CHANGER – Tackling the hidden carbon footprint in European retail and wholesale value chains, OliverWyman & EuroCommerce, 2024
[44] The report "Fast Fashion and the Uyghur Genocide – Interim Findings, The select committee on the Chinese communist party (2024)" concludes that neither Temu nor Shein has taken active measures to ensure compliance with the US Uyghur Forced Labor Prevention Act (UFLPA)
[45] European Chemicals Agency – Forum Ref-8 project report on enforcement of CLP, REACH and BPR duties related to substances, mixtures and articles sold online, 2021
[46] Toy Industries Europe, 95% of toys bought from new only platform break EU safety rules, 20 February 2024
[47] Letter Polish Government to Temu, 27 May 2024
[48] HDE and ibi research, Study on Third-country traders and their influence on German trade, 2024
[49] European Commission, TikTok commits to permanently withdraw TikTok Lite Rewards programme from the EU to comply with the Digital Services Act, 5 August 2024

Enforcement of existing rules is crucial for our long-term competitiveness

26. Effective and efficient enforcement will improve our sector and the EU's long-term competitiveness. Our sector plays a crucial role in making the EU more competitive and helps other business sectors to become more competitive, like manufacturing and other services sectors. As key partners at the end of value chains, retail and wholesale are ideally placed to help implement and coordinate solutions along the value chain while offering custom solutions to consumers. President Von der Leyen said "*our competitiveness needs a major boost. The fundamentals of the global economy are changing. (…) We need to deepen our Single Market across the board. We need (…) more trust, [and] better enforcement*".[50]

27. Enforcement is one of the cornerstones of the Single Market. Effective enforcement is the basis for trust between Member States, for trust between businesses and consumers, and for trust between businesses. It is important that all businesses targeting consumers in the EU comply with the relevant rules and that rogue players in or outside the EU cannot take advantage of a lack of enforcement. This will ensure a level playing field and fair competition.

28. The European Commission (e.g. DG GROW, CNECT, JUST, TRADE, ENVI, TAXUD), Union Product Compliance Network, Consumer Safety Network, Consumer Protection Cooperation Network, European Board for Digital Services, European Data Protection Board, Expert Group on Waste, Customs Expert Group, etc. have a crucial role to play in enforcing relevant EU law. Authorities should not only coordinate and collaborate within their mandate and with their peers, but also with other authorities covering enforcement of different legislation. We believe that all these different authorities with their different perspectives are one part of the puzzle, and they can only create a level playing field in the EU when they act together in a coordinated and coherent way.

29. *This requires high-level political support from the EU executive and the Council to drive a swift and* coordinated effort by the various Commission services and national authorities responsible for market surveillance, product safety, consumer protection, online content, data protection, extended producer responsibilities schemes, customs, and more. They must collaborate effectively at both EU and national levels. Together, they should develop concrete enforcement action plans and utilise all available instruments, including EU subsidy provisions, to ensure fair competition in the EU and a high level of consumer protection.

[50] Statement at the European Parliament Plenary by President Ursula von der Leyen, candidate for a second mandate 2024-2029