

Empirical foundations of the personal scope of the PLD proposal

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Program

1. Problem regarding ecommerce and personal scope of PLD proposal
 1. Why empirics?
 2. Empirical foundations of the proposal
 3. One of my own empirical legal projects
 - fulfilment services



Problem...

Manufacturer



Importer



Distributor



Fulfilment service providers
(logistics)

*“we are definitely not distributors,
although we walk like distributors
and talk like distributors”*



Problem...



Product safety solution...

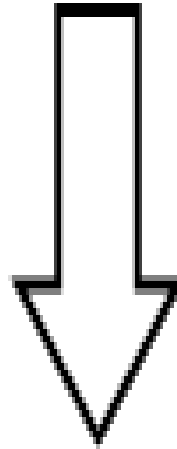
**Manufacturer/
seller**

Fulfilment service providers (warehouse,
package, address, dispatch – 2 out of 4)

**Authorized
representative**

Online platforms
Bol.com
Amazon
Rakuten France

Art. 22 GPSR and art. 6 DSA – ask for
seller info, voluntary monitoring and
notice and take down



PLD proposed solution...

Manufacturer or importer

Authorized representative

Fulfilment service provider – 2 out of 4

Distributor, unless within 1 month after request shows who supplied him with the product.

Online platform, who “average consumers would think is the seller” or “...acting under its authority or control” unless within 1 month after request shows who is manufacturer/importer/auth. rep. -> council mandate ‘a union based EO’



Manufacturer



Seller (webshop)

**Authorized
representative?**

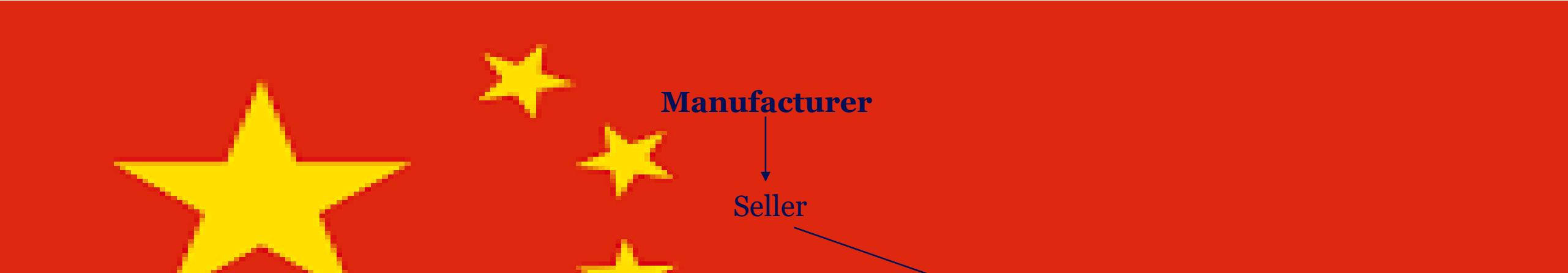
Direct import

Fulfilment service providers
(logistics)?



See Veldt, EUCML 2023-1, p. 24.





Manufacturer

Seller

Online platforms
Bol.com
Amazon
Rakuten France

intermediaries

Fulfilment service providers (logistics)

No authorized representative

DSA hosting exemption +
able to identify the seller
= NO product liability,
only fault liability

X



Veldt, EUCML 2023-1, p. 24.

Why empirics? The “is” and the “ought”....

Normative justifications for strict liability are based on **factual assumptions**:

Manufacturer has knowledge and capability regarding product safety (prevention), option to take out insurance and convert risk in product price, cheapest cost avoider.

Importer has less knowledge and capacity, but may contractually determine product quality and standards, has financial gain and may convert an increase in liability and insurance costs into product prices.

Fulfilment Service Provider does not trade the *good*, but may adjust the conditions of the *service* (prevention?) and increase the price of its *services*.

Online platforms? EC: “mere intermediary, see other EU law” (= only a coherency argument)

-> We have values (read: the proposal) and assumptions, but what are the actual facts?

Empirical foundations of the proposal

RQ: On what empirical information has the European Commission based the “cascade” and corresponding requirements for liability?

Method: evaluation and impact assessment

Some results:

- No clear picture on the effects of the current directive and the baseline scenario
- Fulfilment service providers were not part of the stakeholder consultation while due to growth of ecommerce this is a potentially big group of companies
- Small and medium enterprises were under represented in the stakeholder consultation while this potentially concerns a large group of online sellers
- No research on current importers or authorized representatives
- Market surveillance regulation still has to be evaluated

Conclusion: We need a better overview of current practices in e-commerce with regard to product safety and liability

Own empirical research - fulfilment

- > Are logistic service providers aware of their product safety obligations and the proposal?
- > What do the e-commerce business models look like? (who contracts with who)
- > How do FSP ensure safe products and compliance?
- > What happens in contracts with FSPs and their insurance?

Method: semi structured interviews with fulfilment service providers legal staff and external advisors and additional interviews with other stakeholders (triangulation).

- Explore how the law works in practice
- Experiences with these provisions in the field
- Form a base for quantitative research to test assumptions about effects of measures by legislator and MSA and from law & economic and compliance theory, applied in this particular context.

Relevant for compensation and prevention as main goals of the PLD proposal.

Part of a bigger project on product safety, e-commerce and private law.

**Thank you
For questions or
recommendations, please
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