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Status of “fulfilment centres” with regard to the economic operators under the New Legislative Framework

1. Introduction

The deployment of e-commerce has contributed to generalising the possibility for both consumers and professionals to directly import products from a vendor established outside of the EU without the intervention of an importer.

In such cases, products are often supplied by the vendor to the end users with the support of a third party carrier that provides so-called ‘fulfilment’ services. ‘Fulfilment’ refers to the process initiated in a company when an order for the shipment of a product is received. This may include warehousing, finding the item ordered, packaging it, and shipping it to the correct address¹.

While the use of fulfilment centres is not new, Orgalime understands that it may appear challenging for market surveillance authorities faced with the development of cross-EU border e-commerce. However, we consider that instruments currently exist to stop rogue trading practices without imposing obligations on fulfilment centres which would be inappropriate with regard to their role in the supply chain of products.

We call on the European Commission and Member States to clarify in the revised version of the Blue Guide 2014 the status of fulfilment centres with regard to the existing legal framework.

2. Description of the situation

End-users cannot take the obligations that the legislation aligned with the New Legislative Framework foresees for economic operators, even when they directly import products into the EU. As a result, end-users cannot be obliged to ensure that the products they import are compliant.

3. Qualification of fulfilment centres as “intermediary service providers”

The online vendor should be regarded as responsible for ‘placing the product on the market’ at the time it is released for free circulation on the EU territory by the relevant customs authorities. When stored at the fulfilment centre’s premises, the product is still owned by the online vendor and within his sole and ultimate responsibility for ensuring the conformity of the product to the applicable harmonisation legislation. Therefore, the online vendor should be considered as economic operator

¹ See [EC Decision C\(2014\) 7156 final](#) of 07/10/2014 on Luxembourg alleged aid to Amazon by way of a tax ruling.

Orgalime, the European Engineering Industries Association, speaks for 43 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.3 million people in the EU and in 2014 accounted for more than €1,825 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union

in the sense of harmonisation legislation, which means either ‘manufacturer’ or ‘distributor’ of the product.

The fulfilment centre acts on behalf of the online vendor. This means that the fulfilment centre offers a service to the economic operator, such as shipping ordered products to the customer of the economic operator. In this sense, the fulfilment centre is integrated into the delivery process of the product under the responsibility of the economic operator concerned.

Consequently, **fulfilment centres as such cannot be considered as:**

- **importers**, since they are not responsible for the first making available of the products for distribution, consumption or use on the EU market (placing on the market).
- **distributors**, since they are not allowed to supply the product under their own responsibility but provide a service for and in the name of the online vendor. Acting as ‘distributor’ would require the transfer of ownership (or any other property right) of the product so that the operator concerned can dispose of it at his own discretion and perform his own selling activity.
- **authorised representatives**, since they have not received a written mandate from the online vendor to act on his behalf in relation to showing compliance with regard to the vendor’s obligations under the relevant Union legislation.

Even before the deployment of e-commerce, manufacturers used transport and logistic services. These are described in most Member States’ legal frameworks as “*intermediary service providers*”. According to such legislation, the manufacturer is liable for any infringement of the law caused by the products and for any damage that they might cause to third parties in the course of their delivery to the end-user. For the delivery of the product to the end-user, distributors or importers have to fulfil certain obligations, such as to ensure the storage or transport conditions laid down by the manufacturer.

Therefore, Orgalime considers that fulfilment centres should be considered as “intermediary service providers” taking direct orders from the online vendor and operating under their control and responsibility. Fulfilment centres as such cannot take the responsibilities defined in NLF-aligned legislation as ‘manufacturer’, ‘authorised representative’, ‘importer’ or ‘distributor’. On the contrary, the economic operator should together with the fulfilment centre fulfil the relevant legal requirements.

4. For an efficient enforcement preserving international practices in e-commerce

Overall, we would like to reiterate our conviction that market surveillance in the EU operates within a broadly effective and workable legal framework of harmonisation legislation for placing products on the market, be it at national or at EU level. There is no need to change this framework.

On the other hand, we believe that there is a need to clarify the status and role of fulfilment centres in the interpretation documents. Therefore, we request the European Commission to clarify in the Blue Guide that market surveillance authorities have the right to conduct market surveillance controls against non-compliant products that are stored in the premises of fulfilment centres. The fulfilment centre should support the dialogue of market surveillance authorities with the online vendor in cases of unsuccessful attempts of communication with the online vendor.

We call on Member States to allocate adequate resources to market surveillance activities and make the best possible use of these within the existing legal framework applying to digital cross-border purchases and parcel delivery: this would “*encourage more businesses to sell online across borders and increase consumer confidence in crossborder e-commerce*”, as it is stated in the Commission’s Digital Single Market Strategy.

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