

## **Increased e-commerce – increased chemicals risks?**

A mapping of the challenges of e-commerce and proposed measures.  
Report of a government assignment.

# REPORT 6/21



Swedish Chemicals Agency

The Swedish Chemicals Agency is supervisory authority under the Government. We work in Sweden, the EU and internationally to develop legislation and other incentives to promote good health and improved environment. We monitor compliance of applicable rules on chemical products, pesticides and substances in articles and carry out inspections. We review and authorise pesticides before they can be used. Our environmental quality objective is A Non-toxic Environment.

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# Foreword

The Swedish Chemicals Agency has for some time monitored the development of e-commerce to get a better understanding of the chemical risks that arise in e-commerce. We have also worked with inspection of products traded via e-commerce and the results have shown that there are more deficiencies in products purchased via e-commerce, mainly from countries outside the EU, and that these products contain chemicals that do not comply with EU chemicals regulations or lack proper labelling to a very high degree.

This report is the final report of a Government assignment<sup>1</sup> and a broad mapping and analysis of the problems and risks associated with e-commerce regarding products containing chemicals that may pose a risk to health and the environment.

The remit and its purpose, objectives, and delimitations can be found in Chapter 1. The global development of chemicals production and the key conventions and agreements governing it are described further in Chapter 2. Chapter 3 reports how e-commerce has developed over time and what trends and challenges exist, from a chemicals perspective, with respect to e-commerce of products. Current legislation, the division of responsibilities between operators in the supply chain, and the conditions for enforcement of e-commerce are set out in Chapters 4, 5, and 6. The issues related to e-commerce are described in Chapter 7. Chapter 8 analyses the impact of the different proposed measures and assesses the measures based on possible effectiveness and achievement of the intended goal. Our conclusions from the assignment and our proposed measures can be found in Chapter 9.

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Anette Andersson was the project manager for this Government assignment. Team members included Helena Dorfh, Johan Forsberg, Anna Lindberg, Karin Rumar, Åsa Thors, and Boris Vasic. Karin Abrahamsson, Gunilla Ericsson, and Tove Åstrand also contributed to this report.

Ing-Marie Olsson Ressner at the Strategies and Assigned Projects unit was the responsible manager.

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<sup>1</sup> Appropriation directions for the financial year 2020 regarding the Swedish Chemicals Agency. Government decision 2019-12-19. M2019/02218/V (in part).

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## Summary

Shopping online, especially from companies outside the EU and EEA, can pose a risk to both health and the environment if consumers are not sufficiently conscious and informed and sellers are not knowledgeable and honest. This risk is higher when buying from companies without physical stores in the EU and from marketplaces based outside the EU, as consumers may purchase products that do not comply with the requirements of the European chemicals legislation.

The Swedish Chemicals Agency has been commissioned by the Government to present an analysis of the specific challenges regarding e-commerce with respect to products' content of chemical substances that are regulated within the EU. In this report, regulated substances refers to restricted substances that must not be present in a product as well as substances that are subject to information requirements. According to the assignment, we will, if necessary, propose socio-economically efficient measures to address potential issues.

There are synergies between this assignment and ongoing efforts within the environmental quality objective A Non-Toxic Environment, the EU Chemicals Strategy (European Commission, 2020a), and the 2030 Agenda, and foremost SDG 12 "Sustainable Consumption and Production" (UN General Assembly, 2015). A prerequisite for long-term sustainable production and consumption is that products and materials must be non-toxic by design. This will reduce the number of hazardous chemicals in circulation and reduce the negative effects on the environment and health. Achieving chemical-safe e-commerce and preventing damage caused by chemicals in products requires knowledge and information about the hazardous properties of substances, as well as phasing out particularly hazardous substances.

There are several problems linked to products in non-compliance with European chemicals legislation entering the Swedish market via e-commerce. Especially private imports via e-commerce from countries outside the EU and the EEA could result in products containing unknown or restricted chemicals circulating in the EU, as there is no company with knowledge of the rules responsible for the imports. In addition to increasing the risk of damage to health and the environment, the competitiveness of European companies is also affected as companies compete on different terms in the internal market.

Products imported from countries outside the EU and the EEA do not necessarily contain chemicals that are not permitted within the EU. However, the results from the Swedish Chemicals Agency's enforcement of products placed on the Swedish market through e-commerce show that the proportion of products that do not comply with European chemicals regulations is much higher when buying from suppliers outside the EU and the EEA.

Other enforcement authorities also have experiences of similar challenges regarding e-commerce and private imports. This is partly about deficient products, and partly about difficulties in establishing liability and conducting enforcement when the regulation is designed for physical trade. One of the reasons for this is the limited possibilities for responsible authorities to take action against companies outside the EU and the EEA.

The Swedish Chemicals Agency's goal with this report is to propose effective measures to improve legal compliance with regard to chemical substances in products that reach Swedish consumers via e-commerce, in order to contribute to an e-commerce that is safe and sustainable. We see that growing e-commerce can create complex problems and challenges

that need to be resolved on several fronts, while the measures should not create barriers to trade or reduce e-commerce.

Among other things, we recognise a need for deepened collaboration between government agencies regarding e-commerce, as many public authorities face the same type of challenges. We also recognise a need for collaboration with industry organisations and companies, as well as the need for greater harmonisation of regulations within the EU and more global collaboration on these issues. The e-commerce challenges we see in Sweden are global, and they should therefore be addressed at all levels: internationally, within the EU, and nationally.

This report shows that there is no single measure to address the identified problems with e-commerce. The Swedish Chemicals Agency's proposed measures are of varying degrees of efficiency and should therefore be combined to provide a high degree of chemical safety in e-commerce. In accordance with the assignment, the Swedish Chemicals Agency proposes a number of measures to the Government that we assess to be potentially effective in dealing with the challenges.

*The Swedish Chemicals Agency's proposed measures\* that can be implemented in different combinations.*

#### **Measures assessed as most effective**

- Sweden can influence future EU regulations to increase accountability of marketplaces (e.g., through the e-Commerce Directive).
- The Swedish Chemicals Agency can increase its support to the Government to develop and implement global systems that contribute to more secure e-commerce.
- The Swedish Chemicals Agency and Swedish Customs can further develop their cooperation to identify products that do not meet the chemical requirements within the EU and stop these products at the border.

#### **Measures assessed as highly effective**

- The Swedish Chemicals Agency can strengthen communication aimed at and collaborations with industries involved in e-commerce.
- The Government may appoint a Legal Adviser to review the limits of Swedish jurisdiction regarding enforcement, as well as prepare guidelines in this area.
- Sweden can work towards ensuring that more chemicals regulation (the REACH, CLP, and POPs regulations) become subject to requirements for a responsible economic actor within the EU.

#### **Measures assessed as effective**

- The Swedish Chemicals Agency and the other market surveillance authorities may be tasked with formalising collaboration on e-commerce.
- The Swedish Chemicals Agency can increase its support to the Government regarding the chemicals perspective on sustainability-related issues in trade policy, in line with the EU's chemicals strategy.
- The Swedish Chemicals Agency can assist in developing a proposal for a common EU strategy to minimise chemicals risks in e-commerce.
- The Swedish Chemicals Agency can initiate dialogue with industry organisations and with relevant actors in innovation or substitution matters.
- The Government can establish a national centre for coordination and support on e-commerce issues (for enforcement). Each market surveillance authority has expertise in its field but can

receive support from this coordination centre on e-commerce issues.

**Measures assessed as less effective**

- The Swedish Chemicals Agency can contribute to information-sharing on potential risks associated with products purchased online.
- Sweden can bring the chemicals perspective on e-commerce to the agenda at the UN Environment Conference, scheduled for 2022.
- The Government can appoint an Adviser to review the special challenges regarding e-commerce, involving all relevant authorities. The Adviser shall propose effective measures to achieve more secure e-commerce.

\* Chapter 8 provides a detailed description and impact assessment of the various measures. Section 8.12 lists additional measures that we have considered but assessed not to have as great an effect. Therefore, we did not perform an impact assessment for these measures.



# 1 E-commerce – important to map the challenges

In recent years, e-commerce has increased as internet use has increased and the smartphone has entered our lives. More services have moved online, physical stores have created a digital presence, and some shops and services are only available online. A new market has been created – the global digital market where customers, faster than ever before, can access goods and services from all over the world. This creates challenges for products and chemicals regulation in Europe as not all products are made for the European market. This report maps the specific challenges of e-commerce in terms of products' content and information requirements for chemical substances that do not comply with EU chemicals legislation.

## 1.1 What happens when e-commerce increases?

As e-commerce increases, and the number of operators marketing products on the market also increases, so does the risk of buying products that do not meet the legal requirements on the Swedish market. An international study by the Organisation for Economic Co-operation and Development (OECD) suggests that cross-border e-commerce is much more common and that the different standards for product safety are not being met (OECD, 2016).

In a Nordic e-commerce project, the results showed that products sold on global marketplaces based outside the EU twice as often violate chemicals regulation compared to e-commerce companies within the EU (Klar, et al., 2020). All in all, this may mean an increased risk of humans and the environment being harmed by hazardous chemicals.

One example of this problem could be a smartphone charger purchased in an online store. It is comparatively cheap, has perhaps a fun shape, or is purely functional. The company outside the EU selling the product may not be aware of the legal requirements of the chemicals regulation that apply to sales of the product to the Swedish consumer. The company may not have full knowledge of its supply chain, may lack procedures to make the right demands on manufacturing, and may not carry out inspections. In the worst-case scenario, the product has been manufactured in substandard working conditions, where the workers manufacturing the product do not have a fair wage or good working conditions. Unauthorised chemicals might be used in manufacture and the product could contain substances that must not be present in the product if it is to be sold within the EU. The product may have been manufactured for a particular market outside the EU but sold to one within the EU, which may mean that it does not meet the legal requirements of the chemicals regulation of the country whose market it will end up on.

### 1.1.1 *Online shopping compared to shopping in a physical store*

In accordance with the environmental quality objective A Non-Toxic Environment, knowledge and information on the hazardous properties of substances is necessary, as well as phasing out particularly hazardous substances. This is to prevent damage from chemicals in products.

In traditional commerce in a physical store, there are also risks, but when consumers purchase online from countries outside the EU, the risk of products not complying with the legal requirements of chemicals regulation increases. This applies to both chemical content and the right to information about hazardous substances in the product.

There are many reasons for choosing to shop online. It may be that the product is cheaper, that the product is not available on the Swedish market, or that it is more convenient.

However, online shopping can pose a risk to both health and the environment if consumers are not very conscious and informed and sellers are not knowledgeable and honest. There is a risk that consumers will purchase products that do not comply with the requirements of the products and chemicals regulation.

In this report, the Swedish Chemicals Agency examines the challenges that consumers' e-commerce can bring, both in terms of increased chemicals risks and the ability to conduct enforcement when the regulation is designed based on commerce in physical stores.

## **1.2 Assignment, purpose, and objectives**

In the 2020 appropriation directions, the Swedish Chemicals Agency was given the following assignment:

The Swedish Chemicals Agency shall present an analysis of the specific challenges of e-commerce with respect to the content of regulated chemical substances in articles and, if necessary, propose socio-economically efficient measures to address any problems. The assignment shall be reported to the Government (Ministry of the Environment) no later than by 29 January 2021.<sup>2</sup>

The assignment is linked to the Global Sustainable Development Goals in Agenda 2030, mainly SDG 12 'Sustainable consumption and production' but also SDGs 3, 6, 8, 15, and 17<sup>3</sup> (UN General Assembly, 2015). Strengthening the chemicals perspective on sustainable consumption and production reduces the environmental and health-related impact on both producers and consumers as fewer hazardous chemicals are in circulation. The EU Chemicals Strategy (European Commission, 2020a) and its measures are also relevant to addressing the long-term challenges of chemical-safe e-commerce.

Our focus is to broadly map how products containing chemical substances that do not comply with chemicals regulation in the EU still reach the Swedish market. In the report, we take both articles and chemical products and pesticides into account and consistently use the term 'products' as a generic term for these.

The report aims to highlight the problem that consumers can buy products that do not comply with current chemicals regulation via e-commerce. These products are not legally intended for sale on the Swedish market but are currently still available to consumers online.

The objective of the report is to propose effective measures to improve legal compliance with respect to regulated chemical substances in products that reach Swedish consumers via e-commerce. Read more about the objectives and measures in Chapter 8.

### **1.2.1 Our definition of e-commerce**

Several definitions of the term 'e-commerce' have been developed, depending on the context. Annex I provides examples of definitions to demonstrate the complexity of different variants.

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<sup>2</sup> Appropriation directions for the financial year 2020 regarding the Swedish Chemicals Agency. Government decision 2019-12-19. M2019/02218/V (partly).

<sup>3</sup> SDG 3 - Good Health and Well-Being, SDG 6 - Clean Water and Sanitation, SDG 8 - Decent Work and Economic Growth, SDG 15 - Ecosystems and Biodiversity, and SDG 17 - Implementation and Global Partnership.

In this report, we have chosen to define e-commerce as follows:

E-commerce refers to all types of transactions that are not traditional retail sales and where the internet is used in some way.

### **1.3 Our focus and delimitations in the assignment**

The focus of this report is primarily on consumers' e-commerce. It is generally more difficult for consumers to make demands in connection with e-commerce and to get information about the properties of products and other information about their purchases. The risks of e-commerce of products containing banned substances are therefore considered to be greater when consumers purchase them online compared to when companies procure them.

According to current regulation, marketplaces that only supply products are not responsible for the products offered on their websites. This makes it more difficult for EU enforcement authorities to require these companies to comply with EU chemicals legislation.

Another aspect is that it has become easier for smaller companies and individuals to start an online store. In many cases, these online stores are likely to import their products via e-commerce and then resell them to consumers.

The chemicals perspective on the e-commerce field covers almost all regulatory frameworks for which the Swedish Chemicals Agency is responsible. The following elements are particularly relevant to this assignment:

- Regulation <sup>4</sup>: regulation relevant to this mission include the CLP Regulation, the REACH Regulation, the POPs Regulation, the Plant Protection Products Regulation, and the Biocidal Products Regulation, as well as the Toy Safety and RoHS Directives. The advertising rules for pesticides and chemical products, restrictions and prohibitions on substances in goods and chemical products, and the rules on the authorisation of pesticides are particularly suitable for the enforcement of e-commerce.
- Products: Articles, chemical products, and pesticides.
- Operators: The market participants that make products available on the Swedish market. This may apply to online stores and marketplaces, as well as, to some extent, social media and individuals.

In this report, we have not reviewed e-commerce of groceries, pharmaceuticals and cosmetic products as the Swedish Food Agency and the Medical Products Agency are responsible for the regulations and enforcement of these product groups. As a result, these product groups fall outside the Swedish Chemicals Agency's field of responsibility.

Further delimitations we have made in the assignment include not taking changed e-commerce trends as a result of the coronavirus pandemic into account, but several studies and studies indicate that e-commerce has been affected as a result of the pandemic.

Furthermore, we have not considered that the recently adopted and implemented chemical taxes on home electronics as well as clothing and footwear can affect the volume of products traded online.

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<sup>4</sup> The full names of the acts are set out in Chapter 4.

Also, we have not examined e-commerce between companies as existing chemicals regulations place clear demands on these operators.

We have briefly touched on the impact of e-commerce on the circular economy when chemical substances that are not permitted in the EU enter the EU via e-commerce.

The measures proposed have also been linked to non-toxic and resource-efficient material cycles and the circular economy.

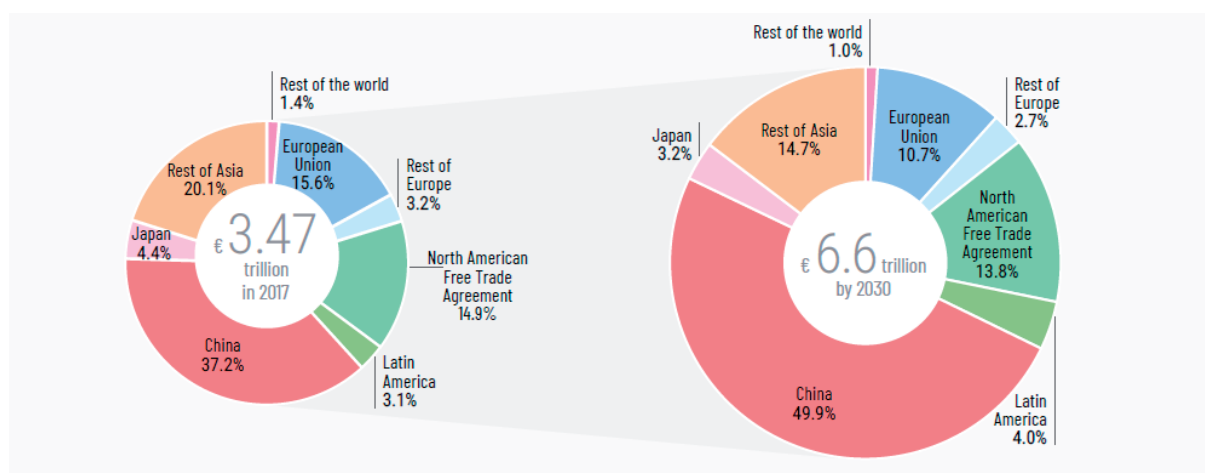
## 2 Global production and trade in chemical products and articles

The production of both chemicals and articles is increasing sharply in countries outside the EU. This means that many products we buy are manufactured in countries with a different chemicals regulation. Global efforts on preventive control of chemicals are therefore becoming increasingly important. In this chapter, we describe the global production of chemicals as well as conventions and agreements, all of which limit the use of certain hazardous substances.

### 2.1 Global production of chemicals will double by 2030

The sales value within the global chemical industry exceeded SEK 3.7 trillion in 2017 and is expected to double by 2030 (United Nations Environment Programme, UNEP, 2019).

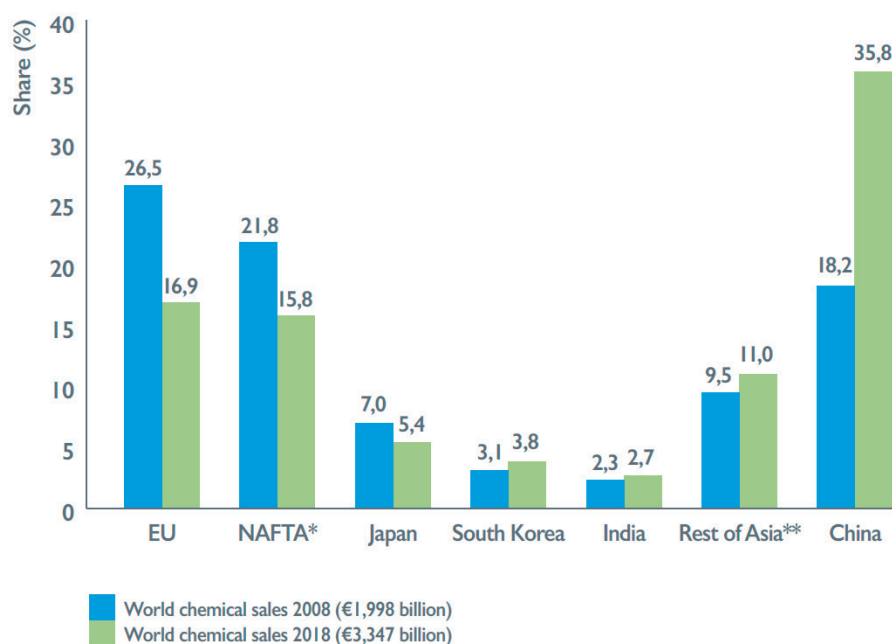
Figure 1. Sales of chemicals are expected to double by 2030.



Source: United Nations Environment Programme, UNEP, 2019

The largest increase occurs in countries with weaker chemicals management than in the EU (European Chemical Industry Council, 2020). It is not known how many chemical substances are produced and placed on the global market, but a study of 22 chemical registers from 19 countries showed that more than 350,000 substances and mixtures of substances have been registered for production and use (Wang et.al, 2020). The same study also shows major differences in which substances are registered in different countries or regions, and that many are registered only in low- and middle-income countries.

Figure 2. Increased chemical production in countries with a weaker regulatory framework.



Source: The European Chemical Industry Council, 2020.

One challenge considering the large volume and large number of chemicals in circulation is to assess the overall risks. For most chemicals, there is no complete hazard and exposure assessment for human health and the environment (European Environment Agency, 2020). In the EU, around 22,500 substances are registered in accordance with the requirements of the REACH Regulation. Of these, more than 200 substances or groups of substances are considered particularly hazardous<sup>5</sup>. In May 2018, the European Chemicals Agency (ECHA) assessed that:

- 450 substances were satisfactorily regulated within the EU,
- 270 substances were high priority for risk management measures, and
- for 1,300 substances, additional data is required for ECHA to assess whether or not more robust regulation is needed (European Chemicals Agency, ECHA, 2019).

The estimate of the number of substances requiring further regulation may be an underestimation as substances manufactured or imported in low volumes (1–10 tonnes/year) lack sufficient data to make a reliable risk assessment.

Low- and middle-income countries with weaker chemicals regulation often lack systems for regulating substances not covered by international conventions. Therefore, we often know nothing about the properties of substances produced in these countries. Although companies outside the EU are obligated to ensure that products they place on the EU market comply with EU chemical requirements, producers in the country where the products and articles are

<sup>5</sup> This refers to so-called SVHC substances (i.e., Substances of Very High Concern) identified in accordance with the criteria set out in Article 57 of the REACH Regulation. These substances are listed in the EU Candidate List available on the website of the European Chemicals Agency (ECHA): <https://www.echa.europa.eu/candidate-list-table>. The Candidate List is updated twice a year.

manufactured and the respective supply chains of producers are not obligated to do so if the product remains in the country where it was produced.

In particular, products purchased via private imports – i.e., when a consumer buys a product online from outside the EU and EEA – entail a higher risk of products containing unknown chemicals, or chemicals regulated in the EU, entering the European market. This is because, in the case of private imports, there is no company responsible for imports with knowledge of the rules. Exposure to humans and the environment can occur both when using the products and when the products are treated as waste.

## **2.2 Global conventions and agreements make a difference**

Through global conventions, the countries of the world have tried to reduce the presence of the most hazardous substances to human health and the environment. A smaller number of substances and groups of substances are therefore subject to international regulations. The countries party to the conventions have undertaken to implement the agreed prohibitions and restrictions nationally.

The Stockholm Convention of 2004 aims to limit persistent organic pollutants that have negative effects on human health or the environment, so-called POPs. Today, the Convention regulates 30 POPs or substance groups, and 184 countries are parties.

The Minamata Convention on Mercury entered into force in 2017 and covers the entire life cycle, from primary mining, use in processes and products, as well as commerce to waste management and final disposal.

The global chemicals strategy SAICM,<sup>6</sup> which aims to ensure safe chemicals management throughout the life cycle, expired in 2020 without reaching the global chemicals goal. It is necessary to have a new goal and a continued strategy beyond 2020 that includes concrete goals to remedy the problems that chemicals may present. The process of developing such new strategy is ongoing and called *Beyond2020*. Within the scope of *Beyond2020*, Sweden, through the Swedish Chemicals Agency, is pushing for a specific goal that all countries shall introduce requirements that the manufacturer of chemicals produces and provides information about the properties of the substances. One prerequisite for safe products on the market is that the manufacturer of the products knows which substances are included and what their properties are.

Information on hazardous chemicals is provided through the Globally Harmonised System of Classification and Labelling (GHS).<sup>7</sup> GHS and the conventions lead to the phasing out or restriction of hazardous substances and to better information on the content of products and their potential danger to human health and the environment. The information also needs to be passed on throughout the life cycle of both chemical products and articles. In the long run, this means that products coming from countries outside the EU and EEA can be used more safely.

The global conventions are important for the Global Development Agenda and the SDGs. They are also important components of the sustainability chapters of the EU Free Trade Agreement that contribute to the implementation of the parties' existing international commitments (National Board of Trade Sweden, 2019), such as the Multilateral

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<sup>6</sup> SAICM (Strategic Approach to International Chemicals Management) is a strategy for the international chemicals objective to achieve safe handling of chemicals throughout their life cycle by 2020.

<sup>7</sup> Read more about GHS here [http://www.unece.org/trans/danger/publi/ghs/ghs\\_welcome\\_e.html](http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html)

Environmental Agreements, which include international conventions on chemicals. Sweden is promoting strengthening sustainability aspects in more of the European trade agreements with the world's markets and countries<sup>8</sup>.

The European Commission's chemicals strategy for sustainability (European Commission, 2020a) includes the above conventions and agreements and intends to set examples 'for a global sound management of chemicals'. The measures for increased sustainability are also relevant in highlighting the long-term challenges of chemical safe e-commerce. The chemicals strategy proposes measures to achieve a non-toxic environment, design correctly from the start, promote robust chemical management globally, increase enforcement to monitor the border, offset competitive disadvantages, and take a leading role in advocating high chemical standards in the world. By implementing the measures in the EU Chemicals Strategy, we can achieve synergies globally.

### **Summary of Chapter 2**

- Global chemicals production is increasing rapidly.
- Chemicals production is increasing the most in countries outside the EU and EEA.
- Low- and middle-income countries often have weaker chemicals management.
- Awareness of all chemicals' risks to human health and the environment is lacking.
- Directly imported products from countries outside the EU imported via e-commerce risk containing substances that do not comply with EU chemicals legislation.
- Global conventions and agreements are important instruments for harmonising chemicals regulations and phasing out particularly hazardous substances.
- The EU Chemicals Strategy will be an important tool for achieving chemical safe e-commerce.

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<sup>8</sup> Government bill 2020/21:1 Expenditure area 24, p 131. Available at: <https://www.regeringen.se/rattsliga-dokument/proposition/2020/09/prop.-2020211/>



## 3 Development of e-commerce

It is becoming increasingly common for Swedish consumers to shop online. In a 2019 survey, consumers responded that they bought just under one in three articles online (PostNord AB, 2020a). In this chapter, we describe e-commerce trends, why consumers shop online and to what extent, which products are commonly purchased, and from which countries e-commerce takes place. We also describe sustainability aspects and efforts to face the growing e-commerce.

### 3.1 Cheaper and more convenient – why Swedes shop online

There are several reasons why consumers shop online. These may include, for example, price, convenience, and selection. In a 2019 Swedish survey (Nets, 2020), 39 percent responded that price was the main reason (lower prices or easy to compare costs) for why they shopped online, 37 percent stated that it was convenient (saves time, easy, better opening hours), and 21 percent responded that the selection (compared to physical stores) was the main reason.

The corresponding pattern is reported in an OECD report (OECD, 2019), in which consumers cited the following main reasons for shopping online:

- Cheaper products (49 percent)
- Saving time (42 percent)
- The ability to compare prices (37 percent)
- Selection (36 percent)

It is worth noting that reasons related to information were all considered less important. These reasons were as follows:

- Availability of reviews (21 percent)
- Product comparisons (20 percent)
- General information (18 percent)

There are differences in purchasing behaviour between different groups of consumers, depending on, for example, age, gender, and where in Sweden consumers live. For more information, see Annex II.

### 3.2 E-commerce trends

According to the OECD report (OECD, 2019), the major transactions are mainly between companies (B2B) and especially in manufacturing and wholesale, i.e., trade between manufacturers and retailers. However, consumer-oriented e-commerce (B2C) has increased in recent years and retail now accounts for 5 percent of total e-commerce turnover in the EU (6 percent in the US).

E-commerce trends can be measured in different ways, such as the proportion of consumers who indicate that they shop online, the proportion of e-commerce companies or the turnover or sales value of e-commerce (expressed as an absolute amount or as a percentage of the total value). In the latter case, there is no telling how many companies are involved. These measurements can therefore complement each other.

### 3.2.1 *E-commerce's share of total commerce in Sweden is growing*

According to the E-barometer<sup>9</sup>, Swedish e-commerce turnover amounted to SEK 87 billion in 2019 in terms of consumers' online purchases of products. This was an increase of SEK 10 billion from the previous year. According to the same survey, seven out of ten Swedes aged 18 to 79 had made online purchases during an average month in 2019 and 13 percent more than five times a month.

E-commerce's share of total retail sales has increased from 3 percent in 2007 to just under 10 percent in 2018. Table 1 shows the development of Swedish e-commerce<sup>10</sup> in various industries<sup>11</sup> over the past 10 years.<sup>12</sup>

*Table 1. The development of e-commerce in Sweden between 2010 and 2019.*

| Year  | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|------|------|------|------|------|------|------|------|------|------|
| Turnover, SEK billion                         | 25   | 27.7 | 31.6 | 37   | 42.9 | 50.1 | 57.9 | 67   | 77   | 87   |
| Percentage growth (compared to previous year) | 13   | 11   | 14   | 17   | 16   | 19   | 16   | 16   | 15   | 13   |

Sources: Posten, 2011–2013 and PostNord AB, 2014–2020.

Another study, published by Nets<sup>13</sup> in 2020, indicates that e-commerce in Sweden in 2019 had a turnover of SEK 116 billion in articles, SEK 144 billion in travel, and SEK 50 billion in services (Nets, 2020).

### 3.2.2 *E-commerce's share of total trade is also growing abroad*

In the EU, the share of e-commerce companies catering to consumers in retail trade increased between 2010 and 2017. The increase in the share of companies was 65 percent or 11 percentage points (from 17 percent to 28 percent) and 6 percentage points in terms of share of turnover. (OECD, 2019)

Globally, the share of companies from OECD countries participating in e-commerce has also increased, from an average of 16 percent in 2008 to around 23 percent in 2017. Sweden is one of the five countries with an increase of more than 10 percentage points, from about 20 percent to about 30 percent of companies. Compared to other OECD countries, Sweden also has a high proportion of small companies engaged in e-commerce.

The proportion of consumers in OECD countries shopping online has increased from an average of one in three consumers to over half (57 percent) between 2009 and 2018, representing an increase of 61 percent. According to the same survey, around eight out of ten consumers in Sweden had made online purchases of goods, services, or travel in 2018.

<sup>9</sup> The E-barometer is a Swedish survey published quarterly by PostNord (formerly Posten) in collaboration with Svensk Digital Handel and HUI Research.

<sup>10</sup> E-commerce is defined in the E-barometer as 'online sales of goods delivered home, to a distribution point, or collected at a physical store, warehouse or delivery centre by consumer'.

<sup>11</sup> Children's items and toys; Books and media; Vehicles; Home electronics; Clothing and footwear; Food; Furniture and home furnishings; Beauty and health; Sports and leisure

<sup>12</sup> E-barometern, Annual reports. Available on <https://www.postnord.se/vara-losningar/e-handel/e-handelsrapporter>

<sup>13</sup> Nets (formerly DIBS) is a payment system provider.

The E-barometer's surveys show that the Nordic countries have a well-developed e-commerce. This is especially true in Sweden, Denmark, and Norway, where between 60 and 70 percent of consumers indicate that they have purchased products online and spent an average of SEK 2,000 – 2,400 per month. (PostNord AB, 2020b)

### **3.3 Articles and products bought and sold on the internet**

The regulation for which the Swedish Chemicals Agency is responsible distinguishes between chemical products, pesticides, and articles. In this section, we therefore present these groups separately and report differences in e-commerce between Sweden, the EU, and globally. Regarding chemical products and pesticides, there is no specific data on the size of e-commerce. However, our assessment is that these products are not traded online to the same extent as articles.

#### **3.3.1 Chemical products and pesticides**

With the E-barometer and the Swedish Chemicals Agency's experience in enforcement, our view is that e-commerce is less extensive for pesticides and chemical products than for articles. Reasons may include relatively high shipping costs and long delivery times, as the products are often large and heavy and can be more difficult to ship than other products due to health and environmental classification or temperature sensitivity. This makes it less attractive for consumers to buy these products online and for businesses to offer them for e-commerce.

The fact that pesticides generally require national authorisations also means that international sales platforms can choose not to market pesticides. The commerce observed during the Swedish Chemicals Agency's inspection includes consumers importing insecticides from Asia. In addition, we have seen tips on various internet forums about plant protection products that are not approved in Sweden but are available via e-commerce from mainly other European countries.

Kemisk Tekniska Företagen (KTF)<sup>14</sup> estimate that the majority of chemical products (e.g., glue, paint, cleaning agents) are sold through traditional grocery stores or via e-commerce platforms provided by these stores. Few consumers buy these types of products online.

During the autumn of 2020, the Swedish Chemicals Agency conducted a consultant study to identify what types of products, to what extent, and from which countries consumers buy both pesticides and other chemical products online. The conclusion is that a relatively small share in terms of the total market is imported via e-commerce, with the exception of a few categories as set out in Table 2 below. Some of these products are regulated or unauthorised on the Swedish market, such as liquids for e-cigarettes or rodenticides. Some niche beauty products such as glue for false nails and false eyelashes also have a high proportion of e-commerce imports, with beauty salons importing from companies outside Europe, among others. Finally, the consultant study shows that the toy product Slime is imported via the internet to a large extent.

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<sup>14</sup> Emma Jansson, KTF, SVEFF, email conversation on 11 November 2020.

*Table 2. Chemical products including certain pesticides where e-commerce imports have a significant share of the total Swedish market (the figures are based on an estimate).*

| Category   | Estimated imports to Sweden via the internet, share of total market. |
|--|--|
| Chemical products for cosmetics; Eyelash glue, false nail glue | 30–80 %  |
| Liquid for e-cigarettes  | 30–80 %  |
| Pesticides for rats and mice (biocides)                        | 50 %   |
| Slime  | 25–50 %  |

Source: Unpublished report (Swedish Chemicals Agency): Mapping of E-commerce imports of chemical products and pesticides, 2020.

### **3.3.2 Articles such as clothing, toys, and home electronics**

Data on the size of e-commerce is primarily available for different types of articles and there are several Swedish surveys of Swedish consumers' online shopping. The E-barometer is based on several consumer surveys as well as a business survey in which approximately 250 shops participate. Nets' survey is based on interviews and is limited to one quarter, after which extrapolations have been made based on demographics.

#### **Swedish consumers buy their books, clothes, and home electronics online**

Surveys of Swedish consumers' online shopping behaviour in 2019 show that particularly Books and media, Home electronics and Clothing and footwear are industries with a high proportion of e-commerce (20–60 percent) of total sales in their sector. For Pharmacy products, Building products, and Sports and leisure, e-commerce accounts for between 10 and 20 percent. For other industries, the share of e-commerce is less than 10 percent of total trade. The results of each survey are presented on the next page in Table 3.

Table 3. E-commerce turnover (growth and market share) in various industries (categories) in Sweden in 2019.

| Industry                            | E-barometern 2019     |            |  |   | Nets 2019*                  |
|-------------------------------------|-----------------------|------------|--|---|-----------------------------|
|                                     | Turnover, SEK billion | Growth (%) | Share (%) of total trade in the industry | Share (%) of e-commerce consumers who have purchased this in the last month | Turnover, SEK billion       |
| Pharmacy products                   | 5                     | 36         | 11                                       | 21  | <i>Body and health: 11</i>  |
| Children's items & toys             | 2.6                   | 3          | No data                                  | 6   | 5                           |
| Building products                   | 5.1                   | 9          | 12                                       | 4   | 7                           |
| Books & Media                       | 4.6                   | 1          | 59**                                     | 23  | <i>Physical media: 5</i>    |
| Groceries                           | 7.1                   | 22         | 2  | 12  | 18                          |
| Home electronics                    | 17.8                  | 14         | 33                                       | 22  | 20                          |
| Clothes & Shoes                     | 13                    | 12         | 20                                       | 38  | 23***                       |
| Furniture & home furnishings        | 4.2                   | 14         | 7  | 11  | <i>Home furnishings: 12</i> |
| Sports & Leisure                    | 3.7                   | 13         | 14                                       | 11  | 6                           |
| Accessories: Motorcycle, car & boat |                       |            |  |   | 9                           |
| Erotica                             |                       |            |  |   | 1                           |

\* Nets may have some other product groups within the same industry category.

\*\* The number is an estimate in the E-barometer.

\*\*\* Including 'accessories'.

Sources: PostNord AB 2020 and Nets 2020, respectively.

The E-barometer shows that the industries that have experienced strong growth in e-commerce in 2019 are Pharmacy products (>30 percent), Groceries (>20 percent), as well as Home electronics, Clothing and footwear, Furniture and home furnishings, and Sports and leisure (all >10 percent). The growth in a particular industry depends, among other things, on how early e-commerce was launched in that industry. For example, sales of books were digitised early and e-commerce in that industry now has low growth, while the share of e-commerce is high. The development of e-commerce over time in the various industries is presented in Table 4. For each year, e-commerce turnover is expressed in billions SEK and e-commerce's share of the total retail trade in the sub-sector (as a percentage). It remains to be seen whether taxes on electronics and clothing and footwear affect volumes or flows of goods, and if so, to what extent.

*Table 4. The development of e-commerce in various sub-sectors (product groups) in Sweden, over the past five years.*

| Product group                         | 2015 | 2016 | 2017 | 2018 | 2019 |
|---------------------------------------|------|------|------|------|------|
| Pharmacy products*, SEK bn.           | -    | -    | -    | -    | 5    |
| Pharmacy products*, percent           | -    | -    | -    | -    | 11   |
| Children's items & toys, SEK bn.      | 1.4  | 1.7  | 2.1  | 2.5  | 2.6  |
| Children's items & toys, percent      | -    | -    | -    | -    | -    |
| Building products, SEK bn.            | 2.8  | 3.6  | 4.3  | 4.7  | 5.1  |
| Building products, percent            | 7    | 9    | 10   | 11   | 12   |
| Books & Media, SEK bn.                | 3.6  | 4    | 4.3  | 4,6  | 4,6  |
| Books & Media, percent                | -    | -    | -    | -    | 59** |
| Groceries*, SEK bn.                   | -    | -    | -    | 5.8  | 7.1  |
| Groceries*, percent                   | -    | -    | -    | 1.9  | 2    |
| Home electronics, SEK bn.             | 11   | 12.2 | 13.9 | 15.6 | 17.8 |
| Home electronics, percent             | 23   | 26   | 30   | 32   | 33   |
| Clothing & footwear, SEK bn.          | 8.4  | 9.1  | 10.3 | 11.6 | 13   |
| Clothing & footwear, percent          | 13   | 14   | 16   | 18   | 20   |
| Furniture & home furnishings, SEK bn. | 2    | 2.5  | 3    | 3.7  | 4.2  |
| Furniture & home furnishings, percent | 4    | 5    | 5    | 6    | 7    |
| Sports & Leisure, SEK bn.             | 1.8  | 2.3  | 2.7  | 3.3  | 3.7  |
| Sports & Leisure, percent             | 7    | 9    | 10   | 12   | 14   |

\* The product group has been added to the survey in recent years.

\*\* The number is an estimate.

Source: PostNord AB, 2016–2020.

### **Six out of ten EU consumers bought fashion and sporting goods in 2018**

According to the OECD, just over six out of ten EU consumers who shop online purchased products from the clothing, footwear, and sporting goods categories in 2018. The corresponding share was just under half in 2009 (OECD, 2019). There has been an increase in purchases of products where quality, size, or fit can be difficult to determine remotely (such as clothing), while the purchasing of other types of products without this challenge (such as books) was digitised early on and a corresponding increase is thus not visible there.

### 3.4 Swedish consumers shop mostly from the UK, Germany, China, and the US

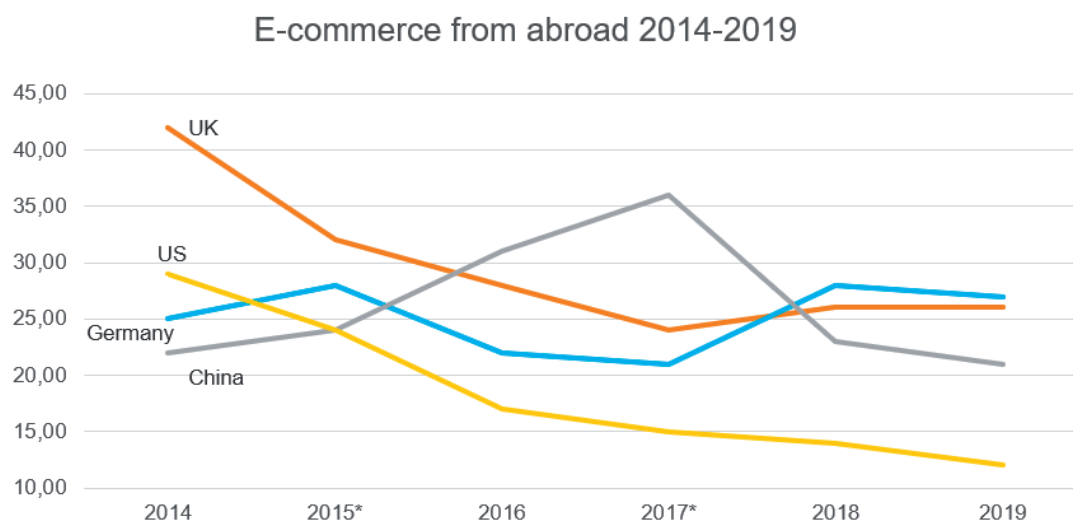
According to the Nets survey (Nets, 2020), four out of ten Swedish consumers stated that they had used foreign online stores. Reasons for buying in foreign online stores are reported to be lower price (51 percent) and that the product was not available in Sweden (46 percent). Six percent cited as a reason that 'the product cannot be sold in Sweden'.

The most common countries outside Sweden to purchase from online are the UK, Germany, China, and the US<sup>15</sup>. In Figure 3, the trend of Swedes' e-commerce from each country over the past six years is presented.

It remains to be seen how trade patterns will change as a result of Brexit and future trade deals with the UK. Buying patterns of Swedish consumers may be affected if, for example, customs declarations or charges and fees are introduced.

Otherwise, Swedish consumers mainly shop from other EU countries such as Denmark, France, Finland, and Spain (measurements in 2018 and 2019), but that e-commerce is significantly lower (Nets, 2020).

Figure 3. E-commerce from abroad 2014–2019. Share (%) of Swedish consumers who have shopped online in the last month, from each country.



\* Measurements only in Q4 for 2015 and 2017 and do not show data from the entire year like the other annual reports.

Source: PostNord AB 2015–2020.

The share of Swedish consumers who have made online purchases from China has decreased in recent years. This may be due to, among other things, the fee imposed by PostNord on articles purchased online from countries outside the EU. The decrease in trade from the US and the UK can be explained by the fact that the Swedish krona has been weak against the dollar and the pound during the same time period. (PostNord AB, 2020a) Sustainability reasons may also have affected e-commerce in these cases as environmental aspects of

<sup>15</sup> PostNord AB 2015–2020.

transport, returns, and packaging have been highlighted recently. In addition, several overseas e-commerce operators have established themselves on the European market in recent years, which may have affected Swedish consumers' e-commerce from operators in the US and China.

Data from the OECD report (OECD, 2019) shows that Swedes shop online to a greater extent than the average EU citizen. This also applies to where Swedes shop. Here, the OECD report shows that our e-commerce is higher both nationally, within the EU, and globally compared to other EU citizens, see Table 5.

*Table 5. From where consumers in Sweden and the EU, respectively, have made online purchases in 2018. The percentages are rounded.*

|               | Nationally | From the EU | Outside the EU |
|---------------|------------|-------------|----------------|
| <b>Sweden</b> | 70 %       | 28 %        | 21 %           |
| <b>EU</b>     | 50 %       | 21 %        | 16 %           |

Source: OECD, 2019.

A trend is EU citizens increasing their purchases from foreign websites. At the same time, it has become increasingly difficult to determine the origin of the products because the structures behind a website are becoming increasingly complex with web pages in multiple languages. In 2018, just over one in five consumers in the EU (21 percent of EU consumers) had made online purchases from other EU countries and 16 percent from the rest of the world. The share of consumers who have shopped from an unknown country of origin increased from 2 percent to 7 percent between 2008 and 2018. In 2017, eight out of ten EU consumers who made online purchases outside the national borders reported that they had bought 'physical goods'.

Cross-border e-commerce of goods accounted for about 10 to 15 percent of the total e-commerce volume in 2015 (World Customs Organization, 2015). The World Customs Organization<sup>16</sup> estimates that, by 2025, Asia will account for 40 percent of this volume, Europe for 25 percent, and the US for 20 percent. This particularly applies to articles weighing less than 2 kg.

### 3.5 Efforts to ensure more secure e-commerce

Despite the fact that an increasing share of consumers make their purchases online, e-commerce is a comparatively unexplored area from a chemicals perspective. As far as the Swedish Chemicals Agency is aware, there are no analysis made of whether e-commerce leads to restricted substances entering the EU and Sweden. There are also no public summaries of the enforcement carried out in the EU in this area.

On the other hand, some efforts have been made both nationally, in the EU, and globally to meet the challenges of adapting enforcement activities, producer responsibility, and product safety as products are increasingly purchased online.

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<sup>16</sup> The World Customs Organization is an intergovernmental organisation working to harmonise international trade.



### **3.5.1      *Actions undertaken show a need for regulations, voluntary commitments, and information***

In 2018, the Swedish Medical Products Agency had a government mandate that included an assessment of how to develop enforcement of distance selling via e-commerce<sup>17</sup>. The report shows that the Swedish Medical Products Agency has special regulations applicable to distance selling (Swedish Medical Products Agency, 2019). Furthermore, they apply a risk-based selection method of enforcement objects, where activities believed to pose a higher risk are prioritised in enforcement. Pharmacies that conduct long distance e-commerce are one example of activities with a slightly higher risk classification. The Swedish Medical Products Agency determined that both regulatory frameworks and enforcement methodologies need to be developed as a result of e-commerce in medicines.

In 2018, the Swedish Environmental Protection Agency received a government assignment regarding certain issues related to producer responsibility for packaging and recycled paper.<sup>18</sup> The part of the remit connected to e-commerce was as follows:

*The Swedish Environmental Protection Agency shall investigate and propose how packaging accompanying packaged goods brought into Sweden by individuals (non-professional imports) should be handled when they become waste in relation to the Ordinance (SFS 2018:1462) on producer responsibility for packaging. In particular, the Swedish Environmental Protection Agency shall investigate and propose how funding for the waste management of this packaging should be designed.*

In its official letter to the Government, the Swedish Environmental Protection Agency proposed amendments to certain provisions in the Packaging Ordinance to, among other things, clarify that distance sellers abroad are subject to producer responsibility. The Swedish Environmental Protection Agency also investigated the needs and possibilities of assigning responsibility to intermediaries (such as e-commerce platforms and parcel deliverers) but found that this area needs further investigation in cooperation with several authorities. This applies, among other things, to regulations on hazardous substances in articles. (Swedish Environmental Protection Agency, 2020).

Some of the major global marketplaces (Amazon, E-bay, CDiscount, Alibaba, and Allegro) have agreed, together with the European Commission, on a commitment on how to work with product safety, the so-called Product Safety Pledge (European Commission, 2020b). In the Product Safety Pledge, the marketplaces undertake, among other things, to

- remove products that do not meet the requirements of the regulation within two days,
- provide an e-mail address to which authorities can submit information on deficient products,
- inform about recalls, etc.

The National Board of Trade Sweden has published an investigation into product liability for marketplaces. The report emphasises that the degree of responsibility is a balancing act between facilitating free movement of digital services and preventing the sale of illegal products. The conclusion of the investigation is that the balance struck in the e-Commerce Directive is essentially appropriate, and that changes to the distribution of responsibilities

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<sup>17</sup> Appropriation directions for the financial year 2018 regarding the Medical Products Agency. Government decision 2018-08-23. S2018/04560/FS.

<sup>18</sup> Remit to the Swedish Environmental Protection Agency on certain issues related to producer responsibility for packaging and recycled paper. Government decision 2018-08-23. M2018/02331/Ke.

requires further investigation (see section 4.2.1 for a description of the e-Commerce Directive). (National Board of Trade Sweden, 2020)

The European Consumer Organisation (BEUC)<sup>19</sup> conducted a study showing that two thirds of 250 products purchased on online marketplaces did not meet the safety requirements tested, which were based on various authorities' areas of responsibility. Safety requirements that products failed to meet included, for example, that a user could receive electric shocks or that the product could catch fire. (European Consumer Organisation, 2020)

The OECD had a Global Awareness campaign on the safety of products sold online in 2018, as they had seen that products were not being recalled by companies even though they did not meet the requirements set out in the regulation. The campaign targeted consumers, marketplaces, and online stores. (OECD, 2018)

### **3.5.2      *Ongoing efforts support low- and middle-income countries***

In Sweden, the Market Surveillance Council is working on developing a Swedish Product Safety Pledge for secure e-commerce (see section 6.7.1 for more details). Furthermore, the Directors-General of the Swedish Energy Agency, the Swedish Chemicals Agency, and the Swedish Consumer Agency have jointly decided that the authorities will cooperate on market surveillance issues, including e-commerce. For example, the authorities jointly carry out awareness activities and enforcement projects.

The Swedish Chemicals Agency also supports low- and middle-income countries in strengthening chemicals laws and institutions in cooperation with Sida, among others. This way, our trade partner countries will have better laws and stronger chemicals management, which eventually may lead to fewer products with serious deficiencies reaching Sweden via e-commerce.

At EU level, a public consultation on the Product Safety Directive<sup>20</sup> was underway in the autumn of 2020, highlighting issues relating to e-commerce. Among other things, the European Commission intends to strengthen the legal liability for the marketplaces based outside the EU but selling on the European market.

In the autumn of 2020, the European Commission proposed new and amended rules to strengthen the digital single market<sup>21</sup>. A public consultation on the initial impact assessment took place in June 2020. Among other things, BEUC has pointed out the need for amendments to various regulations for e-commerce, enforcement, and trade policy<sup>22</sup>.

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<sup>19</sup> The European Consumer Organisation, Bureau Européen des Unions de Consommateurs

<sup>20</sup> Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety.

<sup>21</sup> <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>

<sup>22</sup> [https://www.beuc.eu/publications/beuc-x-2020-024\\_product\\_liability\\_position\\_paper.pdf](https://www.beuc.eu/publications/beuc-x-2020-024_product_liability_position_paper.pdf)

### 3.6 E-commerce affects circular economy and sustainability

Regarding environmental aspects of e-commerce, sustainability issues related to climate, transport, and packaging in particular have been investigated and debated in society. However, there has been little discussion of how a product is manufactured, of potential health and environmental effects of the chemical content or how long a product lasts.

For a circular economy to work, it is highly important that particularly hazardous substances are phased out and that materials can be recycled. The chemical substances, materials, and products on the market must be designed correctly from the start so that they are adapted for non-toxic and resource-efficient cycles. The rapid and high turnover in e-commerce of products manufactured outside the EU may hinder the secure flow of materials and sustainability. For example, the products may contain hazardous chemical substances which at a later stage complicate or make reuse and recycling impossible.

Sustainability-related issues are becoming increasingly important in European trade policy. The Swedish Government is promoting greater coherence between environmental, social, and economic sustainability, not least in order to achieve the Global Sustainable Development Goals in the 2030 Agenda and the Paris Agreement<sup>23</sup>. Sweden's trade-related aid has promoted the participation of developing countries in global trade and has contributed overall to sustainable and open trade<sup>24</sup>. Similarly, the Swedish Chemicals Agency's international work has contributed to strengthening chemicals regulation in our collaborating countries.

#### **Summary of Chapter 3**

- More and more Swedish consumers are shopping online. In 2019, the proportion was 70 percent.
- There are several reasons for online shopping, such as price, convenience, and selection.
- Popular products to buy online include clothing and footwear as well as home electronics.
- Four out of ten Swedish consumers who have shopped online have made online purchases from abroad, mainly from countries within the EU, as well as from the US and China.
- The European Commission will propose new and amended rules to strengthen the digital single market.
- The rapid and high turnover in e-commerce of products manufactured outside the EU may make it more difficult to achieve sustainability and a non-toxic circular economy.

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<sup>23</sup> <https://www.regeringen.se/regeringens-politik/parisavtalet/>

<sup>24</sup> Government bill 2020/21:1 Expenditure area 24, p. 141–144. Available via: <https://www.regeringen.se/rattsliga-dokument/proposition/2020/09/prop.-2020211/>

## 4 Many regulations govern e-commerce

Like all other products, products sold through e-commerce are subject to chemicals regulation. There are also other common EU regulations relevant to e-commerce. In this chapter, we describe these regulations.

Supervision means, according to the Swedish Environmental Code, authorities ensuring compliance with the provisions of the Environmental Code and rules, judgments and other decisions issued in pursuance thereof, as well as advice and information. EU regulation, on the other hand, uses the somewhat narrower concept 'market surveillance', which concerns products placed on the market. Market surveillance involves compliance checks and measures aimed at ensuring that products that do not comply with EU law are recalled, banned, or prevented from being made available on the market. In this report, the terms 'enforcement' also refer to 'market surveillance'.

### 4.1 Chemicals regulation

Chemical substances are primarily regulated by common EU regulation. The regulations cover chemical substances and mixtures, pesticides and, to some extent, articles.

The regulation requires products sold in Sweden and within the EU to be safe to use.<sup>25</sup> All products contain chemical substances because the materials and components from which they are made consist of different substances. Some substances may be added to give the product a certain function, such as plasticisers to make a plastic soft, or flame retardants to prevent a material from igniting easily. Chemical substances may, under certain circumstances, leak from products and expose humans and the environment to the substance. If the substance has hazardous properties, it can harm human health or the environment.

All companies that manufacture, import, and sell products in the EU are responsible for ensuring product safety and must comply with the applicable chemicals regulation on the market where the product is offered for sale. Companies must therefore have knowledge of the chemical content and applicable information requirements and be able to make demands on the content of the product with their suppliers. The company that places the product on the market<sup>26</sup> is principally responsible for compliance with the regulation.

When consumers purchase products online from a company or supplier outside the EU (so-called direct imports), the product is subject to the same legal requirements as the products sold in physical stores. The difference is that when consumers import products, there is no company in the EU responsible for ensuring the products' compliance with EU regulation. This means that there may be a greater risk that the products do not meet the EU's legal requirements.

Below is a compilation of the most important regulations in the Swedish Chemicals Agency's area affecting each product group and applicable to both physical trade and e-commerce.

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<sup>25</sup> If there is no other regulation, the general requirements of the Product Safety Directive, Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety apply.

<sup>26</sup> The term 'placing on the market' is defined in Regulation 765/2008 as the first making available of a product on the Community market. 'Making available on the market' means any supply of a product for distribution, consumption or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge. However, there are other definitions in the chemicals regulation, see Table 7.

Table 6. Regulatory frameworks affecting various product groups.

| Regulatory framework                 | Pesticides | Chemical products | Articles |
|--------------------------------------|------------|-------------------|----------|
| REACH Regulation                     | X*         | X                 | X        |
| CLP Regulation                       | X          | X                 |          |
| Biocidal Products Regulation         | X          | X**               | X**      |
| Plant Protection Products Regulation | X          |                   |          |
| Toy Safety Directive                 |            | X                 | X        |
| RoHS Directive                       |            |                   | X        |
| POPs Regulation                      | X          | X                 | X        |

\* Pesticides are regulated separately in regulation and are only affected by certain parts of REACH.

\*\* Applies to the rules on treated articles.

#### 4.1.1 REACH Regulation

The REACH Regulation<sup>27</sup> applies to chemical products, including pesticides, and articles. Certain substances with particularly hazardous health and environmental characteristics are regulated by restrictions or authorisation rules.

Annex XVII to the REACH Regulation includes substances for which certain uses present an unacceptable risk and the use of the substance is therefore restricted or prohibited. The use of the substance in articles may also be subject to these regulations. For example, certain plasticisers (phthalates) are not permitted in articles and cadmium must not be present in certain plastic materials.

#### Candidate List

The Candidate List is a list of more than 200 substances that meet certain criteria for particularly hazardous intrinsic properties. The list is part of the REACH Regulation. The substances on the Candidate List are subject to a specific obligation to provide information. This means that if an article contains more than 0.1 percent by weight of a substance on the Candidate List, the supplier of the article must provide information so that the recipient can handle the article safely. Professional customers shall receive the information no later than upon delivery of the article. Consumers requesting the information shall receive it free of charge and within 45 days.

Substances on the Candidate List may be subject to additional measures to completely prohibit or severely restrict the use of substances in articles. Annex XIV to the REACH Regulation lists the substances requiring authorisation to be used in the EU, including use in the manufacture of articles. If the use of the substance is permitted outside the EU, substances subject to authorisation can still enter the EU via imports. The substance can then be regulated by other means, through restriction in Annex XVII.

<sup>27</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency

### **4.1.2 CLP Regulation**

The CLP Regulation<sup>28</sup> includes rules for classifying, labelling, and packaging chemical products. The purpose of the rules is to provide users with information on potential dangers connected to the products and how to safely handle and store these.

In order to place chemical products on the market, these rules must be complied with. The same applies to imports and if the product is imported for own use. Anyone selling chemical products on a website must clearly display certain information on the packaging label (Article 48 of the CLP Regulation). The rules exist so that customers can see what hazards are associated with the product before purchase. These 'advertising rules' apply to both chemical products and pesticides. Selling products in an online store is considered a form of advertising and therefore subject to the requirements set out in Article 48 of the CLP Regulation. When e-commerce companies advertise hazardous chemical products, they must inform consumers about the hazardous properties of the products. Article 48 states:

1. Any advertisement for a substance classified as hazardous shall mention the hazard classes or hazard categories concerned.
2. Any advertisement for a mixture classified as hazardous or covered by Article 25(6) which allows a member of the general public to conclude a contract for purchase without first having sight of the label shall mention the type or types of hazard indicated on the label.

### **4.1.3 Rules for pesticides**

Pesticides include biocidal products and plant protection products and are regulated by the Biocidal Products Regulation<sup>29</sup>, the Swedish Chemicals Agency's regulations on pesticides<sup>30</sup>, and the Plant Protection Products Regulation<sup>31</sup>.

To sell or use a pesticide in Sweden, the product must be examined and approved by the Swedish Chemicals Agency<sup>32</sup>. A pesticide is only approved if it is acceptable from a health and environment perspective. All other pesticides are illegal.

Authorised pesticides shall have a label on the packaging with a registration number and information on how to use the product. The same applies if they are sold online. Authorised pesticides are sorted into user categories showing who may use the pesticide. Only pesticides in class 3 may be used by consumers.

In addition to the rules on pesticides, biocidal products and plant protection products are subject to the rules on chemical products. Pesticides are therefore also, like other chemical products, subject to the requirement that the consumer is informed of the potential hazardous properties of the product on the website where it is sold. In addition, it is mandatory to, in the marketing on the website (referred to in the CLP Regulation as 'advertisement'), call for the consumer to use the biocidal product or plant protection product safely and to read labels and product information before use (this is regulated by Article 72 of the Biocidal Products

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<sup>28</sup> Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006.

<sup>29</sup> Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products.

<sup>30</sup> The Swedish Chemicals Agency Regulations (KIFS 2008:3) on Pesticides

<sup>31</sup> <https://www.kemi.se/lagar-och-regler/regler-for-vaxtskyddsmedel>

<sup>32</sup> However, for certain types of pesticides, in particular certain disinfectants and preservatives, authorisation is not required for a transitional period while the active substance is under evaluation in the EU.

Regulation and Article 66 of the Plant Protection Products Regulation, respectively). The seller must also not include expressions that may lead the buyer – whether a professional user or consumer – to underestimate the dangers of the product, such as describing the product as 'natural', 'environmentally friendly' or similar.

### **Rules on treated articles**

There are also rules on treated articles. A treated article is any substance, mixture, or article that has been treated with or which intentionally contains one or more biocidal products. The purpose of the treatment shall be to give the product a desired function, for example making a sports shirt odourless or a cutting board antibacterial. Other examples of articles that may be treated include building materials, impregnated wood, shoes, mattresses, cleaning supplies, household appliances, etc.

Article 58 of the Biocidal Products Regulation provides that only active substances approved in the EU may be used. In addition, the article shall have a special label, including the substances with which the product has been treated and what precautions the user should take.

#### **4.1.4 POPs Regulation**

The Persistent Organic Pollutants Regulation (POPs Regulation)<sup>33</sup> prohibits the placing on the market and use of a number of substances that are persistent and can harm the environment and human health at low concentrations. One example of a restriction in the regulation is about short chain chlorinated paraffins in plastic products.

#### **4.1.5 Product regulation**

Within the EU, regulations covering different types of products have, to a great extent, been designed in a similar way. The purpose is to improve the functioning of the internal market through uniform regulation of responsibilities and definitions of key concepts, etc. The basis for this regulation is the so-called 'New Approach'<sup>34</sup>. This report uses the term 'product regulation' for these regulatory frameworks.

Two important product directives in the field of chemicals are the Toy Safety Directive and the so-called RoHS Directive. The chemical contents in toys are regulated by, *inter alia*, the Toy Safety Directive<sup>35</sup>. This Directive has rules on limit values and prohibits certain particularly hazardous substances and some perfume ingredients.

The RoHS Directive<sup>36</sup> restricts certain substances in electrical and electronic equipment<sup>37</sup>.

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<sup>33</sup> Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants.

<sup>34</sup> The New Approach is a method of harmonising regulation within the EU in order to promote the free movement of goods. One important element is that the technical requirements for the product, so-called Essential Requirements, are briefly set out in the sectoral directives. Technical specifications for how the product can be designed to meet the requirements of the Directives are not directly specified in the Directives but are set out in European harmonised standards. These standards are voluntary, but a product that meets a harmonised standard is assumed compliant with the requirements of the sectoral directives. Another principle is that the manufacturer shall verify and certify that the product complies with the essential requirements set out in the sectoral directives.

<sup>35</sup> In Sweden, the Toy Safety Directive is implemented through the Act (SFS 2011:579) on Toy Safety, the Toy Safety Ordinance (SFS 2011:703), and the Swedish Chemicals Agency's Regulations (KIFS 2017:8) on the combustibility and chemical properties of toys.

<sup>36</sup> Directive 2011/65/EU of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

<sup>37</sup> These include the metals lead, cadmium, mercury, hexavalent chromium, the brominated flame retardants PBB and PBDE and the plasticisers DEHP, BBP, DBP, and DIBP.

By using the so-called CE mark, the manufacturer warrants that the products comply with the requirements set out in the product directives.

## 4.2 Other relevant regulation

In addition to chemicals regulation, there are other common EU regulation relevant to e-commerce. These are general rules on e-commerce and regulations on trade control, which include e-commerce.

### 4.2.1 E-Commerce Directive

E-commerce in the EU is regulated, *inter alia*, by the so-called e-Commerce Directive<sup>38</sup>, which entered into force in July 2000. The Directive aims to contribute to the proper functioning of the internal market by ensuring the free movement of information society services<sup>39</sup> between Member States.<sup>40</sup> One of the aims is to contribute to economic development by improving the opportunities to engage in e-commerce.<sup>41</sup> The Directive regulates the establishment of service providers, commercial communications, contracts concluded by electronic means, the liability of intermediaries, the extrajudicial settlement of disputes, the possibility of bringing legal proceedings, and cooperation between Member States.

The E-Commerce Directive establishes certain obligations for providers of information society services<sup>42</sup> (such as marketplaces) established within the EEA. Among other things, the service provider is required to submit certain information, such as name, place of establishment, and e-mail address<sup>43</sup>.

The Directive has limited the liability of service providers. The basic idea is that service providers who only act as intermediaries in sales shall not have any independent responsibility for goods and services sold.

For providers of certain services<sup>44</sup> (such as marketplaces), suppliers providing services in the form of storing information submitted by the recipient of the service (the person using the marketplace as seller) shall not be responsible for such information. This applies as long as the supplier is not aware of the existence of illegal activities or information.<sup>45</sup>

These provisions apply when a company operating an online marketplace has not exercised an active role that may give it knowledge of or control over stored data. However, the Court of Justice of the European Union has ruled that the company may be liable if it has been informed of illegalities.<sup>46</sup>

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<sup>38</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. The Directive is the key regulation within the EU in this area. The Directive has been implemented into Swedish law through the Act on Electronic Commerce and Information Society Services (SFS 2002:562), 'the E-commerce Act'

<sup>39</sup> Services normally provided for remuneration and provided remotely, electronically, and at the individual request of a recipient of the service, such as the provision of a website.

<sup>40</sup> Article 1 (1)

<sup>41</sup> Recitals 2-4.

<sup>42</sup> The term refers to - simply put - every online activity of any economic significance.

<sup>43</sup> Article 5.

<sup>44</sup> These services are referred to as 'hosting' in the Directive.

<sup>45</sup> Article 14.

<sup>46</sup> See e.g., judgment C-324/09, L'Oréal/eBay, EU:C:2011:474, paragraph 122.



#### **4.2.2 Market Surveillance Regulation**

Within the EU, there is a market surveillance regulation with harmonised rules on market surveillance<sup>47</sup>. The Regulation has been revised and new market surveillance rules apply from 16 July 2021<sup>48</sup>. The new regulation handles problems with e-commerce and introduces new provisions on e-commerce measures. It is a question of economic operators providing relevant data for the assessment of ownership of websites. In some cases, enforcement authorities shall be able to demand that products are removed from an online interface (such as a website) on the internet or that access to an interface be restricted. Exactly how this should be implemented is up to each Member State. The matter is currently under investigation in Sweden.<sup>49</sup> In Swedish law, a supervisory authority currently has no mandate to require certain content to be removed from a website.<sup>50</sup>

The inquiry into the implementation of the Market Surveillance Regulation proposes that a market surveillance authority should have these powers, with the limitation that the power shall not apply to online interfaces covered by the protection of the Fundamental Law on Freedom of Expression. The power is divided into two parts. The first part concerns the restriction of the online content, the second concerns the restriction of access to online content. It shall also be possible to target the measures at different types of suppliers.<sup>51</sup>

The requirement that, in certain cases, products may not be placed on the market without the presence of a responsible economic operator<sup>52</sup> established in the Union is new in the new Market Surveillance Regulation. This can provide opportunities to impose enforcement requirements on these operators that we lack today. However, this new requirement applies only to the RoHS product regulations and the Toy Safety Directive. There is no such requirement for other chemicals regulation such as the REACH, CLP, and POPs Regulations. This economic operator should not be confused with the role of 'only representative' in the REACH Regulation<sup>53</sup>.

Plant protection products are not covered by the Market Surveillance Regulation but by the so-called Official Controls Regulation<sup>54</sup>, which aims to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

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<sup>47</sup>Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

<sup>48</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

<sup>49</sup> Ministry for Foreign Affairs 2019:01 2019 market surveillance inquiry. The official report was submitted in September 2020, Uniform and Effective Market Surveillance, SOU 2020:49.

<sup>50</sup> Op. cit., p. 468. The inquiry uses the term 'online interface'.

<sup>51</sup> Op. cit., p. 471 ff.

<sup>52</sup> 'Economic operator' refers to a manufacturer established in the Union, an importer, a representative authorised by the manufacturer, or a distribution service provider established in the Union.

<sup>53</sup> 'Only representative' (Article 8 of the REACH Regulation): A supplier outside the EU can appoint a so-called only representative within the EU to fulfil the obligations on importers under REACH.

<sup>54</sup>Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

#### **Summary of Chapter 4**

- All companies that manufacture, import, and sell products in the EU are responsible for ensuring that the products are safe and comply with chemicals regulation, whether they are sold via e-commerce or in physical stores.
- With e-commerce, consumers can directly import products from countries outside the EU and there is no company in the EU responsible for ensuring that the products comply with EU regulation.
- The e-Commerce Directive aims, *inter alia*, to contribute to the proper functioning of the internal market and to contribute to economic development by improving opportunities for e-commerce.
- The EU Market Surveillance Regulation has recently been revised and new e-commerce rules have been introduced, such as the closure of websites and the need for intermediaries such as marketplaces (and possibly its sellers) to have a responsible economic operator in the EU to which the Authority can address requirements.

## 5 It can be difficult to establish liability in the e-commerce supply chain

In this chapter, we describe different types of e-commerce operators and the difficulty in determining who is responsible for ensuring that a product sold over the internet meets chemical requirements.

Products sold through e-commerce shall meet the same requirements as when the products are sold in a physical store. The main difficulties with e-commerce concern the determination of responsibilities in the supply chain, the jurisdiction of the authorities, and the possibility of imposing measures.

The regulation applicable to traditional commerce also applies to e-commerce, but the rules must be put in a new context when determining the responsibilities of market participants.

EU regulation has uniformly regulated the responsibilities of different operators in the traditional supply chain. Definitions of the various operators can be found, *inter alia*, in the Market Surveillance Regulation<sup>55</sup>. In a typical supply chain, the following operators may appear:

- A *manufacturer* is any natural or legal person who manufactures a product or who has a product designed or manufactured and markets that product in its own name or under its own brand. A manufacturer can be established both inside and outside the EU. Manufacturers may in certain cases appoint a representative to fulfil their obligations.
- *Importer* is any natural or legal person established in the Community who places a product from a third country on the EU market.
- *Distributor* refers to any natural or legal person in the supply chain, other than the manufacturer or importer, who makes a product available on the market.

In general, the responsibility is greater higher up the supply chain. Manufacturers and importers are responsible for ensuring that the products meet all applicable requirements, while distributors have a less far-reaching responsibility.

EU regulation has sought to align many of the key concepts of regulation based on the so-called 'new approach'. A key concept of product law is 'making available on the market'. This refers to every delivery of a product for distribution, consumption or use in the EU internal market in the context of commercial activities, for payment or free of charge. Another important concept is 'placing on the market', which means the first making available of a product on the Community market.

The concept 'placing on the market' is key because it is used to determine the time when different product requirements must be met. On the other hand, the regulation does not specify that imports are included in the terms 'placing' or 'making available on the market'. Meaning, for someone to be considered a distributor, the product must be made available on the market by the distributor. Thereby, imports for own use fall outside the definition, and the importer of products from third countries is not responsible for ensuring that the product complies with the applicable requirements in such cases.

However, other definitions are partly used in the main acts in the field of chemicals. The REACH, CLP, and POPs Regulations only use the term 'placing on the market', which is

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<sup>55</sup> Regulation (EC) No 765/2008 (on accreditation and market surveillance).

defined as ‘supplying or making available, whether in return for payment or free of charge, to a third party’. Thus, the term ‘placing on the market’ in these regulations refers to each stage of the transfer chain and not the first time on the EU internal market as in the product regulations in the paragraph above.

Another difference is that, pursuant to the REACH, CLP, and POPs Regulations, imports are to be considered as placing on the market, even if the product is not provided to anyone else. The impact is that requirements which, under these regulations, apply when products are placed on the market apply directly when the product is imported. Thus, when products are purchased from countries outside the EU and EEA, the importer, consumers and individuals alike, have a formal responsibility for ensuring that the product complies with applicable chemicals regulation, even when the product is only for own use. This situation does not apply to the harmonised product regulatory frameworks, which in the chemical field are the Toy Safety Directive and the RoHS Directive.

The impact of the fact that definitions vary between different regulatory frameworks is that responsibility for, for example, imports for own use also varies. According to product regulation, there is no responsibility for ensuring that the products meet the applicable import requirements for own use. On the other hand, there is such a responsibility under, for example, the REACH Regulation. Table 7 lists the definitions of the regulatory frameworks.

*Table 7. Definitions of key concepts in regulatory frameworks in the field of chemicals.*

|  | <b>Import</b>  | <b>Importer</b>  | <b>Placing on the market</b>  | <b>Making available on the market</b>   |
|--|--|--|---|---|
| <b>Chemical regulations</b><br>REACH, CLP, and POPs Regulations      | Physical import into the customs territory of the Community. | A natural or legal person established in the Community and responsible for imports.                                  | Delivery or supply to third party, for payment or free of charge.<br>Importing shall be considered placing on the market.   | Not defined.  |
| <b>Biocidal Products Regulation</b>                                  | Not defined.   | Not defined.   | First making available a biocidal product or treated product on the market.   | Every delivery of a biocidal product or treated product for distribution or use in connection with commercial activities, for payment or free of charge.        |
| <b>Plant Protection Products Regulation</b>                          | Not defined.   | Not defined.   | Holdings for sale within the Community, including offers for sale or for any other form of transfer, free of charge or not, and sale, distribution, and other forms of transfer... Release for free circulation in the territory of the Community shall be considered tantamount to placing on the market ... | Not defined.  |
| <b>Product regulations</b><br>RoHS Directive<br>Toy Safety Directive | Not defined.   | Any natural or legal person established in the Union that places a product from a third country on the Union market. | First making available a product on the Community market.   | Every supply of a product for distribution, consumption or use on the Community market in connection with commercial activities, for payment or free of charge. |

In general, the placing/making available on the market occurs when the products are available for sale in stores. For e-commerce, this corresponds to when the products are available for purchase online. The same applies to products sold from countries outside the EU and EEA, provided that the products are placed on the EU market. If an e-commerce feature on a

website is available in any European language and it is possible to order and pay from any EU country, the products are considered placed on the EU market.<sup>56</sup>

## 5.1 Different operators have different responsibilities set out in regulation – practical application

The legal definition of a purchase is a transfer of ownership in exchange for compensation. A purchase is associated with different obligations for the seller and the buyer. There are different types of operators who are e-retailers and who have varying legal responsibilities. The Swedish Chemicals Agency's enforcement of legislation on products sold via e-commerce depends on who are legally liable for the legality of the products upon sale. For e-commerce, different operators may be legally responsible depending on the structure of the e-commerce platform and the company operating the platform. The different types of operators and how legal responsibility differs between them are described below. The list is schematic and not comprehensive. E-commerce is rapidly evolving and new technological solutions are constantly being developed.

### 5.1.1 Who is the responsible economic operator?

When assessing legal liability concerning a purchase of a product, the crucial aspects are; who owns the product and with whom does the buyer conclude a purchase agreement. Meaning, who is the actual seller. It is therefore important to clarify what type of store and who you conclude a purchase agreement with when buying a product online. This is important whether you are shopping for professional purposes or as a consumer.

This can be difficult to determine, as there are various types of business solutions. The amount of information available about the setup and ownership structure also differs between different e-commerce companies. A supervisory authority needs to fit the role of a company into the different operator definitions in different regulations.

In the classic linear supply chain, the ownership of a product passes from one operator to the other, see Figure 4. (Håstad, 2009)

Figure 4. Classic supply chain.

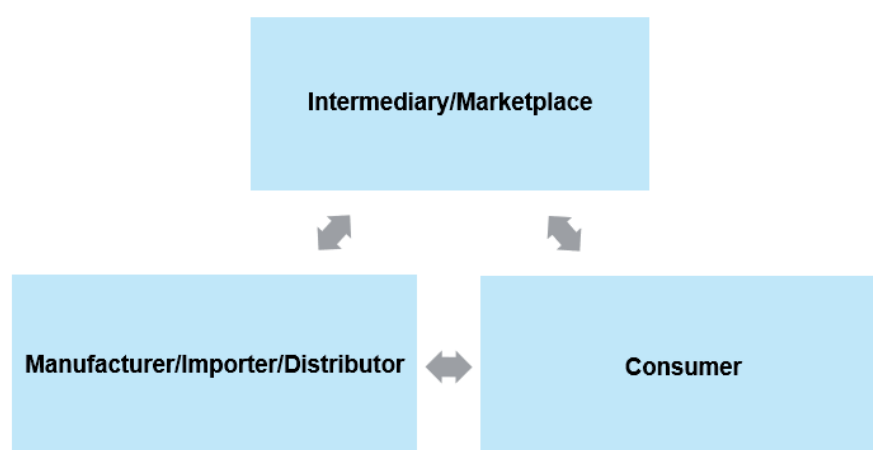


There are also various sales solutions based on there being an intermediary of some kind between buyer and seller. The ownership of the product then passes from seller to buyer through the intermediary. Such a structure is illustrated below (Figure 5). This design has been around for a long time but has become common in various forms in e-commerce. ‘Intermediary’ refers to what this report calls ‘marketplaces’.

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<sup>56</sup> Commission Notice on the market surveillance of products sold online (C/2017/5200), p. 5.

Figure 5. Model for e-commerce sales solution.



In these cases, there may be different indications of who the economic operator is, for example in the general terms and conditions of the website. In some cases, a different company name may be shown when the customer places an item in their shopping basket by clicking, suggesting that a different company, and not the marketplace, is selling the product. There may also be company names on the order confirmation of the product.

If it is unclear whether the intermediary has acted on its own account or on behalf of someone else, the intermediary, i.e., the marketplace, shall clarify the circumstances. If the intermediary cannot demonstrate that it has acted on behalf of someone else, it may be assumed that the intermediary has acted on its own account and is thus bound by the purchase agreement. (Adlercreutz & Gorton, 2011)

### 5.1.2 ***The online store sells articles on its own account***

When a customer buys an article from a company through an online store that has ownership of the product, such as in a classic supply chain, the only difference from a purchase in a physical store is that the purchase is made online and not in a physical store. The purchase agreement is concluded with the company that operates the store and the ownership of the product passes directly from the company to the customer.

Here, two types of products can be distinguished: those resold from other suppliers and those sold under the seller's own brand. Many Swedish online stores, such as Apotea and Clas Ohlson, as well as foreign online stores, such as Plantagen and Zalando, are importers or distributors who buy their products from their suppliers and then resell them.

Those who sell products under their own brand may be manufacturers providing own-manufactured articles or products through their own online store. Examples include H&M, but parts of some companies' range of products can also have their own brands. One example is Clas Ohlson's Cocraft brand.

Those selling products under their own brand are in many regulatory frameworks equated to a manufacturer. They often have more control over production and thus also the content of chemical substances in their products than those acting as distributors.

### **5.1.3 Marketplaces**

Marketplaces connect sellers and buyers, who can be both natural and legal entities. A marketplace can take a larger or smaller role in the supply chain, such as managing inventory, distribution, and deliveries. Marketplaces with greater responsibility often require extensive flows of goods. When marketplaces manage warehouses (and thus take a larger role in the supply chain), the marketplace is said to be offering ‘fulfilment services’ or having a ‘fulfilment centre/house’. Some variants of these services are described below.

The intermediary page is often in Swedish while the company supplying the product is established in another country. Applicable national law, either that of the country of establishment or the country in which the purchase is made, depends on the design of the intermediation service and who owns the product. An assessment of liability must be made on a case-by-case basis in enforcement matters.

#### **Marketplace without responsibility for the products marketed**

##### ***Marketplace***

A marketplace is a company that operates a website and supplies products from other companies (sellers) but does not own the products itself. The marketplace can provide the seller with website and payment solutions for a commission, but it is the seller who owns the product. Most often, the products are shipped directly from the sellers to the buyer in Sweden.

These marketplaces have no legal responsibility for ensuring that the products meet the applicable requirements. The sellers have that responsibility. This form is the most common form of marketplaces.

Examples are, according to the Swedish Chemicals Agency's assessment, Amazon, E-bay, CDON, Wish, Gearbest, Etsy, Light in the box, and Vova.

##### ***Advertising site***

There are also marketplaces where sellers (both companies and consumers) market their products themselves through advertisements (they act as message boards). These marketplaces can be called advertising sites. The transaction goes directly from the seller to the buyer and the advertising site is only an advertiser and therefore not legally responsible for the products complying with the regulatory frameworks.

Examples according to the Swedish Chemicals Agency's assessment of advertising sites in this category<sup>57</sup> are Blocket, Facebook Marketplace, and Tradera.

#### **Marketplace responsible for the products marketed**

It is difficult to draw the line between a company offering certain logistics services and being a distributor, i.e., bear full responsibility. We at the Swedish Chemicals Agency are aware of a few variants (described below), but there may be others. When pursuing enforcement activities, we always need to make a case-by-case assessment of how much responsibility a company has.

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<sup>57</sup> This does not include websites that compare prices in an existing market, such as Pricerunner.

### ***'Fulfilment houses'***

The European Commission has given its opinion on the distinction between the 'Fulfilment-houses' business model in relation to energy labelling regulation, but it should also be relevant in the field of chemicals.

'Fulfilment houses' represent a new business model generated by e-commerce. Products offered by online operators are generally stored in fulfilment houses located in the EU to guarantee their swift delivery to EU consumers. These entities provide services to retailers. They store products, package the products and ship them to customers. Sometimes, they also deal with returns. There is a wide range of operating scenarios for delivering fulfilment houses. Some fulfilment houses offer all of the services listed above, while others only cover them partially. Their size and scale also differ, from global operators to micro businesses.

The type of fulfilment house described above goes beyond parcel service providers that provide clearance services, sorting, transport and delivery of parcels. The complexity of the business model they offer makes fulfilment service providers a necessary element of the supply chain and the placing of products on the market. Thus, when a fulfilment house provides services as described above which go beyond those of parcel service providers, they should be considered as distributors and should fulfil the corresponding legal responsibilities.<sup>58</sup>

Examples include Amazon's Fulfilment Centre, where Amazon takes full responsibility for sales. Amazon's liability takes effect in July 2021 when new market surveillance regulations come into force.

### ***'Temporary ownership'***

The category 'temporary ownership' consists of companies that operate a website and act as distributors of products sold by a large number of different companies. The business concept is to gather different products on a website. The company does not maintain its own stock.

When a customer buys from the company, the product is instead delivered directly to the customer from the company's supplier, who is usually also the owner of the product. Formally, however, the purchase agreement is concluded with the company, which is thus legally responsible towards the customer for the product and the delivery. In this case, the company acts as a distributor or importer, depending on whether the company's supplier is located inside or outside the EU. This means the company is subject to the obligations applicable to importers and distributors, respectively, as set out in the relevant regulatory frameworks.

Examples include Fyndiq, which works with a flash sale model. When an order is placed by a customer, Fyndiq purchases the product from the seller (in a 'flash') and sells the product to the customer. Fyndiq is the party that invoices and handles payments from the customer and arranges payment to the merchant.

### ***Hybrid marketplace***

In some marketplaces, the company that operates the platform sells products both on behalf of someone else and in its own name. These companies fall into the category 'hybrid marketplace'. The general terms and conditions often state that the marketplace applies this model. For the individual products, it is usually stated which company is the seller, either

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<sup>58</sup> Administrative Court of Appeal in Jönköping's judgment 2017-11-13 in case 599-17.



when the product is placed in the shopping basket or when the buyer pays. For the products sold by the companies themselves, the companies shall be considered to be online stores.

Examples include, according to the Swedish Chemicals Agency's assessment, Amazon, Ebay, and E-ville.

#### **5.1.4 Social media**

Social media is to some extent used for sales. This enables smaller companies or individuals to market their products in a comparatively inexpensive way.

Legally, social media has the same responsibility as advertising sites, i.e., they are not responsible for verifying the legality of the articles sold. The company or individual is legally responsible for the advertisement.

Examples include, according to the Swedish Chemicals Agency's assessment, Facebook and Instagram.

## **5.2 Potential room for manoeuvre in supervision**

For operators in Swedish jurisdiction, violations in the field of chemicals are usually sanctioned by penalty or environmental sanctions. Enforcement authorities also have the possibility to issue injunctions that may be accompanied by an administrative penalty. What administrative measures, such as injunctions or bans on sale, can be taken against operators who are not established in Sweden but make products available on the Swedish market is currently unclear and untested by the Swedish Chemicals Agency and, as far as we know, not examined by other enforcement authorities.

In criminal and civil law, there are international agreements on how to handle cross-border crime and civil and commercial matters. As far as is known to the Swedish Chemicals Agency, administrative law lacks such regulation. Potential interventions against foreign operators must therefore be assessed based on public international law. One general rule of public international law is that a State may not exercise sovereign authority within the territory of a foreign state. However, this has been considered possible in certain specific situations.<sup>59</sup>

The Swedish Chemicals Agency considers the legal position in this area to be unclear. The European Commission's guidelines for economic operators and market surveillance authorities state that a supervisory authority can take corrective action against an operator in another EU country within its jurisdiction<sup>60</sup>. The Swedish Chemicals Agency finds this wording unclear and has therefore not taken any such measures so far.

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<sup>59</sup> Bogdan, Michael, Om svensk exekutionsbehörighet, Svensk Juristtidning 1981, p. 401.

<sup>60</sup> Commission Notice on the market surveillance of products sold online C/2017/5200, p. 14

### ***Summary of Chapter 5***

- The definitions of certain key concepts vary between different regulatory frameworks, which means that the responsibility for, e.g., imports for own use also varies. Regarding the REACH, CLP, and POPs Regulations, all importers, including consumers, are responsible for ensuring that products purchased from outside the EU and EEA comply with the applicable chemical requirements. However, this situation does not apply to the Toy Safety Directive and the RoHS Directive.
- There are different types of operators who are e-retailers and who have varying legal responsibilities.
- E-commerce is rapidly evolving and new technical solutions and arrangements are constantly being developed.
- At present, it is unclear and untested what measures a supervisory authority can take against operators who are not established in Sweden but make products available on the Swedish market.

## 6 Enforcement of e-commerce

This chapter describes experiences in the enforcement of e-commerce, where there are different kinds of challenges. The chapter describes the situation based on the regulations in place at the time of writing this report. Enforcement responsibilities and other matters may be affected by the new Market Surveillance Regulation<sup>61</sup>. Products from marketplaces outside the EU display the most deficiencies, authorities lack legal means to intervene against these marketplaces, and the responsibility for ensuring that the products meet safety requirements falls on consumers.

The purpose of the Swedish Chemicals Agency's enforcement activities is to ensure that companies comply with the rules that exist in the field of chemicals and to reduce the risks of damage to human health or the environment caused by chemical substances. The aim is also to promote fair and healthy competition on the market.

The Swedish Chemicals Agency estimates that we can inspect all types of e-commerce companies operating on the Swedish market. For the foreign online stores and marketplaces, products are made available on the Swedish market by, for example, using the Swedish language on the website, using the conclusion '.se' as a domain name, delivering parcels to Sweden, or allowing payments to be made in Swedish currency.

Everything checked in traditional enforcement can also be checked with e-retailers. The Swedish Chemicals Agency has, in particular, inspected articles sold online. Few of our enforcement projects have thus far focused specifically on e-commerce of chemical products and pesticides. This is because they are believed to be traded to a lesser extent than other products online. Many physical stores also have an online store. Thus, during inspections, information on websites is also often checked, as well as the rules on information that must appear in advertising (see sections 4.1.2 and 4.1.3).

The Swedish Chemicals Agency is responsible for inspecting the approximately 15,000 companies that have entered the SNI code 'Retail sale via mail order houses or via Internet' (Alla bolag, 2007)<sup>62</sup>. It is a challenge in and of itself to effectively check that many companies. Add to that the foreign companies that we cannot demand correction from, only inform them about the deficiencies – see section 6.2.

### 6.1 Different regulations provide different conditions for enforcement

The conditions for the Swedish Chemicals Agency's enforcement of pesticides, chemical products, and articles differ in terms of regulations, authorisation requirements, number of enforcement objects (companies), existence of business registers, information requirements, number of products, how accessible the products are to consumers, and our own experience of enforcement in e-commerce. This is why we distinguish between these three groups in this report.

Most of the Swedish Chemicals Agency's enforcement also apply to products sold via e-commerce. For pesticides, the authorisation requirement and the information requirements for advertising are rules that can be enforced directly on the screen when inspecting e-commerce companies. This type of control can therefore be carried out unannounced and

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<sup>61</sup> See section 4.2.2.

<sup>62</sup> Allabolag, <https://www.allabolag.se>

relatively quickly through a screening of the selection in the online store that can show which products do not meet the requirements. For the enforcement of articles, control is not as simple as we need to perform chemical analyses in order to discover deficiencies.

The enforcement authority needs to act more quickly when it comes to inspecting e-commerce companies compared to inspecting physical stores as the supply of products generally changes faster in e-commerce.

### **6.1.1      *Pesticides and chemical products – divided enforcement responsibilities present challenges***

The Swedish Chemicals Agency has enforcement responsibility for the placing on the market of chemical products and pesticides by primary suppliers (i.e., manufacturers and importers) and municipalities are responsible for other operators' placing on the market. Regarding articles, the Swedish Chemicals Agency has enforcement responsibility throughout the supply chain (primary suppliers, retailers, and the retail trade) and thus shares the enforcement responsibility for Swedish retailers and the retail trade with the municipalities.

For retail chains with stores in several municipalities, the enforcement responsibility becomes difficult to clarify. For example, a large company engaged in e-commerce may be the primary supplier for certain chemical products and retailer for others. The authorities will then need to consider whether the enforcement responsibility for nation-wide e-commerce lies with the municipality where the company's head office is located. This makes the enforcement responsibility regarding e-commerce companies relatively complicated as it is difficult to determine, solely from the information on a website, whether the company is a primary supplier or not. Another factor that complicates enforcement arises when the companies are not established in Sweden, which can be difficult to determine, for example, when the language on the website is Swedish and the price is stated in Swedish kronor.

## **6.2      What we do in case of violations**

The main difference between the inspection of e-commerce and traditional commerce with respect to the exercise of official authority concerns our ability to enforce infringement claims. The responsible company may be outside the authority's jurisdiction even though sales are targeting the Swedish market and Swedish consumers. The Swedish Chemicals Agency then applies the guidelines developed by the European Commission<sup>63</sup>.

1. When we find deficiencies in products from **Swedish companies**, we treat it as standard enforcement matters. Meaning, we can demand correction, decide on any environmental sanctions charges, and bring charges.
2. If the product has been sold by a **company in another EU country**, we contact the company and urge them to take action and inform the competent enforcement authority in that country. If the company does not take corrective action, we can officially turn the matter over to the responsible authority.
3. If **the company** that sold the product is located **outside the EU**, we contact the company, inform about the deficiency, and urge them to remove the offer from the EU market. It has not been our standard practice to contact the enforcement authorities in the country, as we find it difficult to identify the responsible authority. These are mainly non-EU resident companies.

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<sup>63</sup> Commission Notice on the market surveillance of products sold online (2017/C 250/01).

### **6.3 Enforcement of articles**

The priority product groups for the Swedish Chemicals Agency's enforcement are based on the Authority's own criteria, which are designed based on the possibility of limiting the risk of injury to humans or the environment, the likelihood that hazardous substances may be present in an article, and the possibility of exercising enforcement.

In traditional retail, it is sometimes possible to identify certain products with chemical content by touching and smelling them. When articles have a 'chemical' smell, they are more likely to contain substances that do not comply with EU chemicals legislation, even though that is not necessarily the case. In e-commerce, it is not possible to identify risky products in the same way as it is more difficult to assess the quality of a product when it is not possible to touch, see, or smell them. On the internet, for example, it is not possible to assess the type of plastics, when looking for example flexible plastics (which are usually problematic).

Table 8 describes in which goods the Swedish Chemicals Agency most frequently has found substances at unauthorised levels. The examples of articles and their most common deficiencies are listed only for illustration purposes and should not be considered comprehensive. Note that all substances listed in the table are restricted in some form, with the exception of phthalates, which are checked because they are on the Candidate List (i.e., they are not restricted, but there is a duty to provide information on them).

Table 8. Examples of deficient articles for different regulations and chemical substances.

| Regulation<br>Product groups                                 | Reach   | POP                                | Toy Safety<br>Directive | RoHS<br>Directive        |
|--|---|------------------------------------|-------------------------|--------------------------|
| <b>Toys and childcare items</b>                              |   |                                    |                         |                          |
| Applicable   | X   | X                                  | X                       | X                        |
| Examples of articles   | Dolls, bath toys  | Dolls, bath toys                   | Slime,                  | Electronic toys          |
| Examples of deficiencies                                     | Soft plastic phthalates   | SCCP in soft plastic               | Boron in slime          | Lead in soldering points |
| <b>Clothing, footwear, accessories</b>                       |   |                                    |                         |                          |
| Applicable   | X   | X                                  | X                       | X                        |
| Examples of articles   | Clothing, footwear, jewellery   | Soft plastic or artificial leather | Costumes for children   | Electronic shoes         |
| Examples of deficiencies                                     | Phthalates on the Candidate List<br>Chromium in leather<br>Lead, cadmium in jewellery | SCCP in soft plastic               | Catch fire too quickly  | Lead in soldering points |
| <b>Electronics</b>   |   |                                    |                         |                          |
| Applicable   | x   | X                                  | -                       | X                        |
| Examples of articles   | Cords   | Cords                              | -                       |                          |
| Examples of deficiencies                                     | Phthalates on the Candidate List  | SCCP in soft plastic               | -                       | Lead in soldering points |
| <b>Building products and furnishings</b>                     |   |                                    |                         |                          |
| Applicable   | X   | X                                  | -                       | X                        |
| Examples of articles   | Shower curtains   | Table mats<br>shower curtains      | -                       | Electric tools etc.      |
| Examples of deficiencies                                     | Phthalates on the Candidate List  | SCCP in soft plastic               | -                       | Lead in soldering points |
| <b>Other articles, including sports and leisure articles</b> |   |                                    |                         |                          |
| Applicable   | X   | X                                  | -                       | X                        |
| Examples of articles   | Yoga mat  |                                    | -                       | Bicycle lamp             |
| Examples of deficiencies                                     | Phthalates on the Candidate List  | SCCP in soft plastic               | -                       | Lead in soldering points |

### 6.3.1 Which articles are prioritised upon inspection?

When pursuing regulatory enforcement of articles sold online, the Swedish Chemicals Agency focuses on the same product groups as in traditional enforcement. The different

product areas reported by the E-barometer are very similar to our own grouping of priority groups for enforcement (Table 9). During regulatory enforcement, we give special priority to articles with lower prices, materials that may pose a greater risk of containing regulated substances, and articles that we know from experience have a higher risk of containing regulated substances. Priority is also given to articles aimed at children and articles available in children's local environment.

*Table 9. Industries whose online stores are popular among shoppers.*

| Industry                       | Share of e-commerce consumers who have made purchases from each respective industry |
|--------------------------------|---|
| Clothing and footwear          | 38 %  |
| Beauty and health              | 34 %  |
| Books and media                | 23 %  |
| Home electronics               | 22 %  |
| Groceries                      | 12 %  |
| Sports and leisure             | 11 %  |
| Furniture and home furnishings | 11 %  |
| Children's items and toys      | 6 %   |
| Building products              | 4 %   |

Source: PostNord AB, 2020a.

The Swedish Chemicals Agency inspects most of the product groups listed in Table 9 above, but focus less or not at all on the following product groups:

- Books and media – exemption for soft plastic children's books.
- Groceries – mainly the Swedish Food Agency's area.
- Beauty and health, which include cosmetics, pharmacy products, etc. (which are primarily the responsibility of the Swedish Medical Products Agency).

### **6.3.2 *Electrical products, jewellery, and toys have the most deficiencies upon inspection***

When comparing enforcement of regulation on products bought in traditional stores and products bought via e-commerce, there is no difference between which goods and substances that are most problematic. The difference lies in how common these deficiencies are. Annex III describes the various hazardous properties of the substances.

Below are the most common deficiencies that we have identified so far:

- Electrical products: lead in soldering points. Lack of CE marking and contact details required for these products.
- Jewellery: existence of cadmium and sometimes lead.

- Toys: existence of phthalates, mainly DEHP<sup>64</sup> (restricted in toys) and short chain chlorinated paraffins (SCCP) in soft plastic toys such as bath toys, hopping balls, dolls, cords for electric toys. Presence of boron in slime toys.
- Treated articles such as fitness wear, helmets, hockey pads and boxing gloves: lack of mandatory labelling stating that the article has been treated.
- Content of substances on the Candidate List.

### Substances on the Candidate List

Upon enforcement, priority is especially given to substances from the Candidate List that we know from previous experience are found in certain materials, or in articles that often display deficiencies. This means that enforcement activities are focused on certain products and materials with a ‘risk profile’, which is effective for enforcement, but at the same time it means that we do not include all particularly hazardous substances on the Candidate List (more than 200 substances and groups of substances) in enforcement activities.

### 6.3.3 Comparison between enforcement of articles in traditional commerce and e-commerce

The Swedish Chemicals Agency annually compiles statistics for the five different product groups that the Agency inspects. Below, Table 10 shows the results of enforcement within the different product groups between 2014 and 2019. Please note that the tables below only show deficiencies related to restricted substances in articles, not, for example, the content of substances on the Candidate List or deficiencies in CE marking.

*Table 10. Percentage of deficiencies (with regard to the presence of restricted substances) in traditional product enforcement compared to the 2019 e-commerce project (Nordic).*

| Product categories       | Share of articles with deficiencies in the Swedish Chemicals Agency's product enforcement 2014-2019 | Share of articles with deficiencies – in the Nordic e-commerce project 2019 |
|--------------------------|---|---|
| Toys and childcare items | 24 %  | 23 % (21% for Sweden)   |
| Electrical products      | 31 %  | 57 % (48% for Sweden)   |

On average, just under one in four (24 percent) inspected toys had defects and about one in three inspected electrical products (31 percent) had defects between 2014 and 2019. Note that the survey between 2014 and 2019 may include some e-commerce, but it still gives an average worth comparing. In the Nordic e-commerce project (see section 6.6.4), the corresponding figures were 23 percent (21 percent for Sweden) and 57 percent (48 percent for Sweden) for all types of e-commerce companies. For electronics, there is a major difference, but not for toys. If you instead look at articles purchased by companies located within or outside the EU (see Table 11), as we did in the Nordic project, a greater proportion of deficiencies are found outside the EU, whether it be toys or electronics.

<sup>64</sup> DEHP – Di-2-ethylhexyl phthalate CAS no: 117-81-7



Table 11. Comparison of deficiencies (with regard to the existence of restricted substances), within and outside the EU, in the 2019 Nordic e-commerce project.

| Origin         | Toys | Electronics |
|----------------|------|-------------|
| EU             | 12 % | 40 %        |
| Outside the EU | 44 % | 67 %        |

## 6.4 Enforcement of chemical products

A chemical product is a substance or a mixture of different substances.

Consumers are considered to have less knowledge than professionals about how chemicals can be handled safely and therefore regulatory enforcement of labelling and packaging rules is a priority, as this is the only hazard information consumers receive. Advertising rules are important to help consumers make conscious product choices, but compliance has thus far been very low.

### 6.4.1 Chemical products in e-commerce

Today, we have low awareness of how common it is to purchase chemical products online. We have noted that it is fairly common for niche companies to be selling e-cigarette liquids, glue for eyelash extensions, car care products, and hobby products (model building, sport fishing, artist colours, art forging, etc.) in their online stores. Today, major grocery chains and building product chains also have online stores where you can buy chemical products.

The Swedish Chemicals Agency has mapped e-commerce of chemical products and pesticides, see section 3.3.1. This shows that online imports are particularly high for nail and eyelash glue and e-cigarette liquids. Experiences from previous projects and the tips we receive indicate that companies that only sell through online stores generally often have low knowledge regarding the regulatory frameworks for chemical products.

## 6.5 Pesticide enforcement

Pesticides are generally special priority products from a risk perspective for human health and the environment, as the purpose of pesticides is to affect an organism in some way. The products are therefore legally required to be evaluated and authorised and users must be provided sufficient information to be able to use the products safely. All these elements are checked upon inspection.

The enforcement of pesticides is also important from a competition perspective. Applying for approval of a pesticide is a resource-intensive process for companies, so the sale of unauthorised pesticides can mean an unfair competitive advantage.

The authorisation requirement means that, in other ways than for other products, there is a threshold for commencing production or import, thereby reducing the risk of companies or sole proprietorships entering the market too quickly, without sufficient knowledge or resources to ensure that the products provided by the company comply with current regulation. However, something that increases the risk of pesticides not complying with the regulation is the requirement for national authorisation, which means that a product that is legal in another EU country cannot be expected to be legal in Sweden in the same way as other products. The risk that products imported from other EU countries are not allowed in the own country is therefore greater for pesticides in particular.

The Swedish Chemicals Agency prioritises the enforcement of pesticides that lack authorisation. The product groups where deficiencies are found the most include pesticides where there may be a conscious demand for unauthorised products, and product groups where there is less awareness that the product is a pesticide and therefore subject to pesticide regulation. A conscious demand for unauthorised products may be due to the product being perceived as stronger or more effective than authorised pesticides or that the product is cheaper than similar, authorised, products. Examples include rodenticides, insecticides, and antifouling paints.

The misconception that products must kill harmful organisms in order to be classified as pesticides is relatively common. Repellents and attractants are types of products where it is more common for both consumers and businesses not to know that the product is a pesticide. Disinfectants and preservatives are also product types where consumers in particular, but also companies, may be unaware that the products are pesticides.

The enforcement of plant protection products is a particular priority, as there are significant risks to users, the environment and food safety in the event of deficiencies. It has been estimated that 10 percent of all plant protection products on the European market may be illegal products, such as pirated products or containing unauthorised active substances<sup>65</sup>. This likely varies greatly between countries and the Swedish Chemicals Agency's analyses of products on the Swedish market have so far shown a low percentage of deficiencies (Swedish Chemicals Agency, 2019). However, it remains important to actively search for illegal or substandard products that, for example, do not contain the correct level of an active substance.

When pesticides are sold online, certain information needs to be on the website. For example, hazard information shall be provided in connection with e-commerce purchases, but special pesticide labelling shall also be provided, indicating how to use these products safely (this is regulated by Article 72 of the Biocidal Products Regulation and Article 66 of the Plant Protection Products Regulation). As with chemical products, advertising rules are important to help consumers make conscious product choices, but this is an area where compliance has thus far proved to be very low.

### **6.5.1        *Pesticides in e-commerce***

When inspecting pesticides sold via e-commerce, the main focus is on checking whether the products are approved. Deficiencies where products are sold for pesticide purposes without approval often concern insecticides such as mosquito repellents, small bottles of insect repellents, or adhesive traps with attractants. In 2020, we have also analysed the content of pesticide products purchased online. Both plant protection products and mosquito repellents have been analysed, but mainly disinfectants as the demand for disinfectants increased sharply due to the coronavirus pandemic. In 2020, we saw disinfectants purchased via e-commerce contain harmful levels of methanol that would trigger classification and that products contain a very low level of ethanol. The report on the results will be published by the Swedish Chemicals Agency in January 2021.

The Swedish Chemicals Agency has mapped e-commerce of chemical products and pesticides, see section 3.3.1. The mapping shows that imports made via online stores are particularly high for certain rodenticides.

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<sup>65</sup> [https://ec.europa.eu/food/sites/food/files/plant/docs/pesticides\\_ppp\\_illegal-ppps-study.pdf](https://ec.europa.eu/food/sites/food/files/plant/docs/pesticides_ppp_illegal-ppps-study.pdf)

## 6.6 E-commerce enforcement projects 2011–2020

This section describes the experiences of the Swedish Chemicals Agency and other public authorities from various e-commerce enforcement projects.

### 6.6.1 *'E-commerce II' found just under 1,300 illegal products*

The project ran from 2011 to 2013 and focused on biocidal products and products covered by the Swedish rules on permits for private handling and professional transfer of very hazardous chemical products. A total of 1,289 illegal products were found in the project, which involved eight countries. Sweden contributed by finding 34 illegal products.<sup>66</sup>

### 6.6.2 *Forum pilot project – major shortcomings in compliance with the advertising rules for chemical products*

In 2016-2017, an EU pilot project (Forum<sup>67</sup>) was carried out, focusing on the application of Article 48(2) of the CLP Regulation. The rule states that a consumer, before concluding a sales contract over the internet, shall first have access to information about the type or types of hazards indicated on the label (the so-called advertising rules). 15 countries, including Sweden, participated in the project and a total of 1,043 chemical products were checked against these regulations. The selection of online stores included all potential manufacturers, importers, and distributors of chemical products classified as hazardous. The results of the project showed that just over eight out of ten (83 percent) of the products did not meet the requirements of Article 48(2). (European Chemicals Agency, ECHA, 2018)

### 6.6.3 *'E-commerce articles 2018' found unauthorised levels of restricted substances in just over 40 percent of cases*

In 2018, the Swedish Chemicals Agency carried out its first enforcement project focused purely on e-commerce, where we inspected articles (toys, jewellery, and electronics) from web-based companies in Sweden, other EU countries, and countries outside the EU. The inspection was carried out in accordance with the European Commission's guidelines on e-commerce<sup>68</sup>. Our checks consisted mainly of conducting chemical analyses of the articles to check the content of restricted chemical substances (Swedish Chemicals Agency, 2018).

Of the 106 goods checked, 40 contained restricted substances at levels above the limit values. In addition, the packaging of one of the articles contained a restricted substance. The product group with the most deficiencies was Electronics and the most common deficiency was lead in soldering inside the article.

When comparing equivalent products from e-commerce based in Sweden, within the EU, and outside the EU, the proportion of articles with unauthorised substances was higher for articles from companies outside the EU than for articles from companies in Sweden and the EU. The investigation indicated that articles sold directly from companies outside the EU are at greater risk of containing unauthorised substances.

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<sup>66</sup> The report cannot be accessed online. The Swedish Chemicals Agency has the report for anyone interested.

<sup>67</sup> The Forum for Exchange of Information on Enforcement (Forum) is a network of authorities responsible for the enforcement of the REACH, CLP, and PIC regulations in the EU, Norway, Iceland, and Liechtenstein. In 2017, Forum set up the Forum Biocidal Products Regulation Subgroup (BPRS).

<sup>68</sup> Commission Notice on the market surveillance of products sold online (2017/C 250/01)

Two important conclusions from the project:

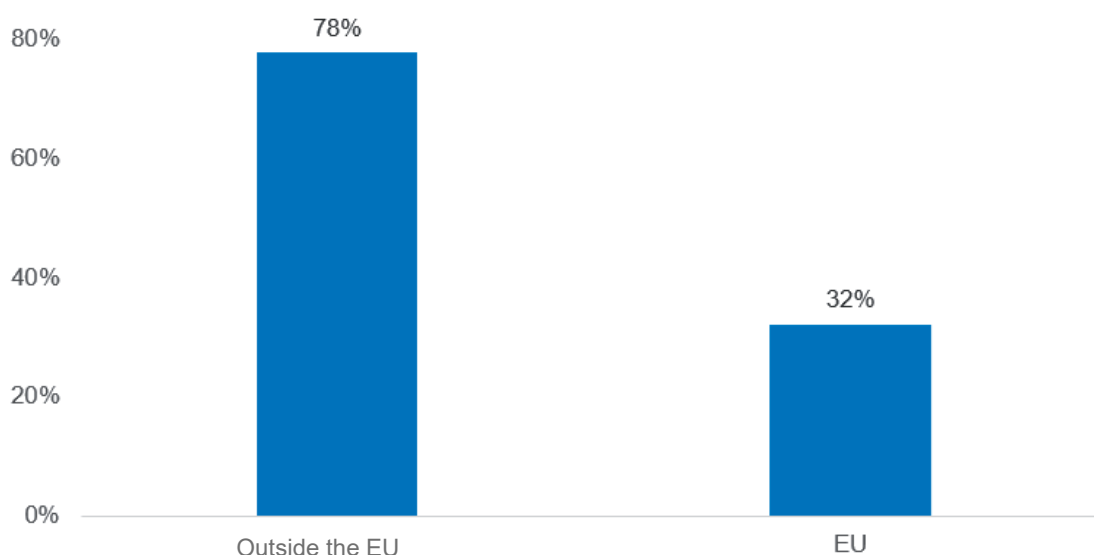
1. Consumers need to be more aware that there are risks associated with purchasing articles from companies outside the EU.
2. More internet-based companies need to take responsibility for the articles they market.

#### **6.6.4      *Nordic e-commerce project 2019 showed that eight out of ten products from third countries had deficiencies***

In 2019, the Swedish Chemicals Agency led a Nordic enforcement project on e-commerce (Klar, et al., 2020). All Nordic countries except Iceland participated. The project focused on developing and harmonising methodology within the Nordic region, but the countries chose the types of products and companies they inspected for themselves. In Sweden, biocidal products, toys, and electronics from Swedish companies, companies in other EU countries, and companies outside the EU were inspected.

The results from all participating countries showed a major difference between e-commerce companies outside or within the EU. Up to 78 percent of products purchased directly from companies outside the EU had deficiencies. The main deficiencies were the discovery of restricted substances or the absence of CE marking or contact details. The corresponding figure for products purchased from companies within the EU was 32 percent. One reason for the results may be that companies outside the EU are often marketplaces that are not responsible for the products and merely act as intermediaries. Below is a figure showing the results of the Nordic report (Figure 6).

*Figure 6. A comparison of the proportion of defects in articles and chemical products sold within the EU and outside the EU. The difference is statistically significant.*



The inspections included analyses of chemicals in electronics, toys, sports equipment, pet products, bags, soft plastic items, etc. Of these goods, electrical products had by far the most deficiencies. Of the electrical products inspected, purchased both from companies within and outside the EU, 57 percent contained restricted substances. When inspecting toys and other articles, just under one in four (23 percent) of products contained restricted substances.

For chemical products, biocidal products, and plant protection products, the results show widespread deficiencies in the 'advertising rules' applicable when products are sold online (Table 12). Only products purchased within the EU were examined here. Before making an online purchase, consumers should be informed about the hazardous properties of the product and this information should be available on the website. Almost none of the products checked in this project complied with the rules of advertisement. The fact that the proportion is so high here can partly be explained by the fact that for some of them it was a follow-up from previous projects and that the products that did not have deficiencies with respect to the rules of advertisement were not reported (risk-based selection). However, inspectors say it is most common that the information is not available on websites.

*Table 12. The proportion of deficiencies in the online sale of chemical products, biocidal products, and plant protection products (risk-based selection caused high numbers in this particular check).*

| Product Category         | CLP's rules on advertisement | Requirements for advertisement of biocidal products | Requirements for advertisement of plant protection products |
|--------------------------|------------------------------|---|---|
| Chemical products        | 100% deficiencies            |   |   |
| Plant Protection Product |                              |   | 100% deficiencies   |
| Biocides*                | 93% deficiencies             | 100% deficiencies                                   |   |

\* Biocides are subject to the rules of advertisement set out in the CLP and Biocidal Products Regulation.

### 6.6.5 **Ongoing European e-commerce enforcement project to be completed in 2022**

In 2020, a common EU e-commerce enforcement project launched under Forum's project 'REF-8 PROJECT - Enforcement of CLP, REACH and BPR duties related to substances, mixtures and articles sold online'. The Swedish Chemicals Agency has drawn on previous experiences in enforcement of e-commerce when helping to develop guidance documents for inspectors within the EU.

The operational phase of this project was completed in 2020, when pesticides, chemical products, and chemicals in articles were all inspected. Sweden will publish its own report on the Swedish results in 2021, while Forum's report will be ready in early 2022.

## 6.7 **Experiences from enforcement projects on e-commerce**

The results of the Swedish Chemicals Agency's e-commerce enforcement projects clearly show that the inspected products from companies outside the EU have a higher proportion of deficiencies than the corresponding products from companies within the EU.

Most companies that have products with defects voluntarily remove the products from the market when we contact them. The same applies to companies outside the EU (primarily the largest international marketplaces). Our experience from the contacts with the companies concerned is that the companies usually remove the specific products we have checked but still continue to sell similar products without working proactively themselves.

In the 2020 e-commerce project, we discovered more new marketplaces, usually located outside the EU, that neither remove the products nor respond to our official letters. In cases where a company does not take corrective action (or cannot be reached), we lack the tools to move forward when the company is based outside the EU.

Communication with other EU countries' authorities works well in most cases. The responsibility for authorities to follow up on cases handed over from another country will be clarified in a new EU regulation on market surveillance. This regulation has entered into force but will mainly apply from July 2021.

During enforcement, we have encountered a number of practical experiences and challenges for e-commerce enforcement:

- It can be difficult to identify who is operating a website and even more difficult to find contact information for the seller behind a marketplace.
- It can be difficult to determine the role (for example, whether the company is a primary supplier) and the responsibilities of a company, especially in connection with so-called marketplaces. It is usually only once contact has been established with the company that you can clear up the companies' responsibilities.
- Thus far in our enforcement, we have noted two cases where the companies have somehow shut us out, either by not allowing us to complete the purchase or that they have blocked our IP address from making purchases. In those cases, we have used a so-called Stealth computer<sup>69</sup> or private login to their website. In both cases, these were marketplaces outside the EU.
- It is important to keep track of what you have ordered, not purchase products that are too similar, remember to take pictures and save websites and links. When parcels arrive from marketplaces outside the EU, a different company name may be used and it can be difficult to track where the product was purchased from, for example if it was via Amazon or Ebay.
- We have also experienced problems with certain notifications for samples ordered not being delivered to the Swedish Chemicals Agency, resulting in articles being returned to the supplier.

#### **6.7.1 Other Swedish authorities' e-commerce enforcement**

During the work on this report, the Swedish Chemicals Agency sent a survey to the authorities within the Market Surveillance Council<sup>70</sup> to learn about their experiences. Seven of these authorities have conducted market surveillance of e-commerce, but none of them has any specific report on such market surveillance, see Table 13 below. The number of operators checked in 2018 and 2019 is also stated in the table.

As for the unit that works with medicines and narcotics at the Swedish Medical Products Agency, that part does not count as market surveillance. However, we have chosen to include their answers in the compilation as they work with e-commerce enforcement and have a lot of practical experience.

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<sup>69</sup> Stealth computer - special computers that hide the IP address used. This is used for anonymous searches on the internet as certain pages may be blocked to government IP addresses.

<sup>70</sup> The Market Surveillance Council is a national coordination body for market surveillance. The Market Surveillance Council is housed by Swedac, the Swedish Board for Accreditation and Conformity Assessment, which is responsible for the Presidency of the Council and the Secretariat. <https://marknadskontroll.se/>

Table 13. Market surveillance of e-commerce by market surveillance authorities.

| Authority   | E-commerce enforcement                         | Number of operators – 2018 | Number of operators – 2019 |
|---|--|----------------------------|----------------------------|
| Swedish National Board of Housing, Building and Planning          | No   | 0                          | 0                          |
| Swedish National Electrical Safety Board                          | Yes  | 61                         | 36                         |
| Swedish Energy Agency   | Yes  | 40                         | 40                         |
| Public Health Agency of Sweden                                    | No   | 0                          | 0                          |
| Swedish Consumer Agency   | Yes  | No statistics              | No statistics              |
| Swedish Medical Products Agency (medical devices)                 | Yes  | 30                         | 70                         |
| Swedish Medical Products Agency (cosmetics)                       | Yes  | 100                        | 110                        |
| Swedish Medical Products Agency (pharmaceuticals, narcotic drugs) | Yes, but does not count as market surveillance | 65                         | 60                         |
| Swedish Civil Contingencies Agency                                | Yes  | 0                          | 7                          |
| Swedish Press and Broadcasting Authority                          | No   | 0                          | 0                          |
| Swedish Environmental Protection Agency                           | Yes  | 2–5                        | 2–5                        |
| Swedish Post and Telecom Authority                                | Yes  | 50                         | 10                         |
| National Board of Health and Welfare                              | No actual market surveillance                  | 0                          | 0                          |
| Swedish Radiation Safety Authority                                | No   | 0                          | 0                          |
| Swedish Transport Agency - RCD <sup>^</sup>                       | No   | 0                          | 0                          |
| Swedish Chemicals Agency  | Yes  | 30*                        | 46*                        |

\* Number of inspections linked to specific e-commerce projects. However, more market surveillance of e-commerce has taken place in other projects.

<sup>^</sup> Recreational Craft Directive - 2013/53/EU on recreational craft and personal watercraft.<sup>71</sup>

When asked what the biggest problem with e-commerce is from each respective authority's perspective, there is consensus on the following:

<sup>71</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0053>

- The authorities do not have jurisdiction to take actions against companies outside Sweden. Therefore, some authorities prioritize looking only at Swedish companies. Within the EU, the authorities can forward cases to another authority within the EU, but it is not guaranteed that the other country gives the case priority. Outside the EU, the authorities can only urge operators to remove deficient products.
- Marketplace sellers are ignorant of regulatory frameworks. Often, marketplaces outside the EU display more deficiencies and sell, for example, products that do not meet safety requirements.
- It can be difficult to find contact details and ownership structure for the companies, which makes it difficult to identify a counterparty in the cases. In addition, invoicing may be handled by a separate company and delivery to customer by another.
- The authorities do not have a legal basis for making so-called hidden purchases on the internet. This sometimes leads to us being denied to buy products by receiving a reply that the product is sold out, it is not possible to make payments, or that the money is returned to the account without comment. Six authorities responded that they had been blocked from buying products in some way.
- The perception is that it is relatively easy to start e-commerce and many companies have low awareness of regulations. Online stores appear and disappear relatively quickly. It is difficult to visually check certain products as the inspector needs to see them in real life or run tests/analyses before it is possible to determine whether the product is defective.

When asked if there are differences within and outside the EU, most authorities agree that there is a difference. Operators outside the EU are more likely to provide products that do not meet European safety requirements and these operators are more difficult to reach. However, one authority considered EU operators only marginally better than those outside the EU, as operators within the EU usually shop outside the EU themselves.

Other information from the survey:

- Sales of certain products take place within closed Facebook groups. As authorities do not have legal support to join these closed Facebook groups, it is difficult to enforce these operators.
- In practical terms, there are problems associated with knowing where the products come from (for example, the product is purchased through Amazon, but the parcel says otherwise) and that parcels do not arrive for various reasons.

The Market Surveillance Council has a special working group on e-commerce. The group is working on developing a manual on market surveillance of e-commerce. Furthermore, the group has been working towards a Swedish Product Safety Pledge and it is possible the Market Surveillance Council will have a joint e-commerce project in the future.

The Swedish National Electrical Safety Board has, together with the Swedish Consumers' Association and Länsförsäkringar, written a report on the risks of private imports, published in December 2020 (Swedish Consumers' Association and Swedish National Electrical Safety Board, 2020). It draws attention to the same problems that we see with the fact that the marketplaces cannot be held responsible and that companies do not compete on a level playing field and consumers become responsible for product safety.



### **6.7.2      *Similar experiences of e-commerce supervision by European authorities***

The Swedish Chemicals Agency has asked other countries' enforcement authorities if they have any reports on e-commerce enforcement. We have received information from two countries, Germany and France. France has the same experience as the Swedish Chemicals Agency for non-compliant articles, i.e., that marketplaces and online stores outside the EU have twice as many deficiencies as those within the EU. In its report on e-commerce enforcement between 2004 and 2012 for explosives and chemical products, Germany reports major deficiencies<sup>72</sup>. The CLEEN enforcement network<sup>73</sup> ran an e-commerce project on biocidal products in 2013, which discovered many deficiencies. At that time, supervision did not cross national borders; each country inspected its national operators.

In 2020, a common EU project on e-commerce market surveillance is underway within the scope of CASP<sup>74</sup>. In this project, not only chemicals are checked, but also other regulatory areas of market surveillance. The Swedish Chemicals Agency has not participated in this project.

## **6.8      *Is it possible to enforce consumers' actions in e-commerce?***

The division of enforcement responsibilities regarding consumers follows the same line as for other chemicals regulation. The Swedish Chemicals Agency has enforcement responsibility for the placing on the market of chemical products and pesticides by manufacturers and importers, and municipalities are responsible for other operators' placing on the market. The Swedish Chemicals Agency and the municipalities share the enforcement responsibility for articles.<sup>75</sup> Please note that sole proprietors do not count as consumers.

Thus, when products are purchased from countries outside the EU and EEA, the importer, including consumers, formally has a responsibility to ensure that the product meets the applicable requirements, even when the product is only for own use. This situation does not apply to the harmonised product regulations, which in the chemical field are the Toy Safety Directive and the RoHS Directive. Formally, therefore, it is possible for an authority to enforce consumer imports based on the requirements of the REACH, POPs, and CLP Regulations.

Historically, the Swedish Chemicals Agency has occasionally had cases of consumers who have sold products that have not fulfilled the applicable requirements (mainly chemical products and pesticides). There have been cases where the person in question has sold clearly prohibited products to more than one person, i.e., that they have kept a stock, but also made single purchases for own use. In the future, it is also relevant to make assessments on a case-by-case basis whether an inspection of a consumer should take place. Blocket, Facebook Marketplace, and Tradera and others may be platforms where we can monitor this type of

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<sup>72</sup> Federal State Working Committee Chemical Safety.

[https://www.blac.de/documents/blac\\_bericht\\_internet\\_en\\_ladrz\\_m210715\\_1503996776.pdf](https://www.blac.de/documents/blac_bericht_internet_en_ladrz_m210715_1503996776.pdf)

<sup>73</sup> An earlier enforcement network for chemicals before Forum. CLEEN stands for Chemical Legislation European Enforcement Network.

<sup>74</sup> CASP stands for Coordinated Activities for the Safety of Products and is supported by the European Commission.

[https://ec.europa.eu/consumers/consumers\\_safety/safety\\_products/rapex/alerts/?event=casp:2020&lng=sv](https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=casp:2020&lng=sv)

<sup>75</sup> Chapter 2, Sections 21, 31-32 of the Environmental Enforcement Ordinance (SFS 2011:13).

sales. On social media, there is a difficulty with us having to log in with private accounts and the question is whether the authority has legal support for this.

It is more difficult to enforce the regulation of articles online as it is not possible to determine whether an article contains restricted substances without performing chemical analyses. We should, naturally, take action if we notice that individuals are selling a large number of articles through, for example, Blocket, and we know that restricted substances are present in these articles.

The Swedish Chemicals Agency has collaborated with Swedish Customs in a project on jewellery where we analysed jewellery on site with an XRF instrument that can measure metals, among other things. The main purpose was to find companies that had a certain volume on the consignment. However, it turned out that some of the shipments went to consumers and that they brought in several pieces of jewellery – around 40–50 items. In those cases, the question of transmission of goods was raised. The persons were issued a prohibition decision, i.e., they did not receive the articles and the Swedish Chemicals Agency filed charges. If we were to enforce the regulation for consumer imports for personal use, we need to consider whether it is a sufficiently resource-efficient measure. The issue has been discussed at a market surveillance conference where the customs authorities of various Member States argued that the increase in imports via consumer purchases is not possible to inspect efficiently. The number of individual parcels is huge and it is extremely resource-inefficient to stop a single article. It is also doubtful whether consumers can be expected to shoulder the heavy responsibility of examining whether the articles comply with all regulations.

Many practical questions arise as to whether or not we should try to find relevant products that consumers buy. For example, there are privacy aspects – how do we know when and what the consumer is buying? If so, this requires collaboration with Swedish Customs, so that we can find out that the consumer has bought. However, we do not know exactly which article they purchased and finding risky products in this way is like looking for a needle in a haystack. We also need to do a chemical analysis of the article, which takes about 6 weeks. The alternative is that we find articles online that we deem to have a risk profile and then contact the marketplace or online store. However, the flow of goods from the international marketplaces is massive and, even if we manage to stop some, it does little to reduce the risk of regulated substances. Instead, marketplaces need to do much more proactive work.

However, there may be arguments for starting to inspect consumers who directly import articles. The issue may draw media attention and it may raise awareness among consumers about the risk of shopping on marketplaces outside the EU. It may change consumer behavioural patterns such as avoiding the international marketplaces or requesting further information on chemical content from the supplier. Further developed cooperation with Swedish Customs is a prerequisite for being able to enforce the regulation also for consumers.

Chemical products and pesticides differ from the articles because much of the deficiencies of the products are visible on the website. There are indications that illegal chemical products are being sold online by both companies and individuals, such as refrigerants containing fluorinated greenhouse gases. Sales are made through various advertising sites, such as Blocket and Facebook Marketplace. There is also an increased risk of consumers purchasing unauthorised pesticides online from other countries. As pesticides require national authorisation, there is a risk that the product is not allowed in Sweden when consumers make online purchases from other countries, including from countries within the EU.

The measure that authorities can take in terms of enforcement is to file charges against the consumer, but this only applies if the rules of the REACH, POPs, or CLP Regulations are violated, as they consider imports as placing on the market (see the introduction to Chapter 5). Please note, however, that municipalities have the enforcement responsibility for consumers' personal use, and not the Swedish Chemicals Agency. On the other hand, for the product regulations RoHS and Toy Safety Directives, this measure is not applicable, as imports are not considered as placing on the market.

## **6.9 Challenges of e-commerce enforcement**

The main difference between inspection of e-commerce and traditional commerce with respect to exercising official authority is the ability to enforce claims for the infringements found by enforcement authorities. The responsible economic operator may be outside the authority's jurisdiction even though sales are targeting the Swedish market and Swedish consumers. This means that enforcement authorities are unable to impose requirements on companies outside the EU and marketplaces that only serve as intermediaries. These companies do not have the legal responsibility of other companies and we can see that they need to be more proactive to meet EU requirements for safe products.

There are also more marketplaces selling cheap products and it is difficult for a consumer to see who actually is selling the product. An online store can have all the text in Swedish but the company behind it is not in the EU, which can be difficult to detect. This means that consumers can easily shop directly from companies not subject to EU regulation, which can lead to an increased risk of buying deficient products (Klar, et al., 2020).

It is relatively easy for small businesses to start e-commerce. There is a fear that these companies, which may lack resources or competence with respect to chemicals regulation, contribute to a greater flow of deficient products being made available on the Swedish market. Compared to other OECD countries, Sweden has a high proportion of such small e-commerce companies. This means that the Swedish Chemicals Agency will have significantly more enforcement objects.

As an enforcement authority, it is challenging to be able to check new products that are rapidly becoming a trend and to use regulatory frameworks that are not updated at the same rate as the world is changing. For example, groups of undertakings whose roles are not described in the regulatory frameworks are formed, such as marketplaces that supply products sold by other operators, some of which may be outside the EU. An enforcement authority must be able to properly prioritise products to be checked using existing regulations.

The changed circumstances place new requirements on enforcement for it to remain effective. Table 14 below provides examples of what can change in the area of e-commerce enforcement.

*Table 14. Increased e-commerce means the following changes for authorities' enforcement of products bought and sold online.*

| New circumstances  | New needs for effective enforcement   |
|--|---|
| <p>Cross-border trade with economic operators outside the authority's jurisdiction, such as:</p> <ul style="list-style-type: none"> <li>- companies outside the EU.</li> <li>- intermediary service providers. (e.g., marketplaces, logistics companies)</li> <li>- private import.</li> </ul>   | <ul style="list-style-type: none"> <li>- Increased cooperation between authorities in other countries.</li> <li>- New rules, such as the possibility to shut down websites, or increased responsibility for intermediaries.</li> <li>- New working methods, for example, for the dissemination of information to consumers.</li> </ul>  |
| <p>EU rules can (un)knowingly be circumvented by importing directly from factories in third countries – the likelihood of what reaches the consumers is illegal increases, such as products containing restricted substances, having incorrect labelling, etc.</p> <ul style="list-style-type: none"> <li>- Private import.</li> <li>- (new) companies without any specific knowledge of regulation can easily find and start selling products.</li> </ul> | <p>Increased need for checks to protect the end user as there are more deficiencies and the awareness among companies and consumers may be lower.</p>   |
| <p>A short distribution chain results in higher turnover of articles/products and companies. New products reach consumers more quickly.</p>  | <p>Higher demands on the regulator to act quickly both in terms of inspection of the product itself and communication with relevant (new) stakeholders, i.e., responsible company, service providers, other Member States.</p>  |
| <p>Inspections through internet searches often do not provide information on the role of the economic operator.</p>  | <p>New requirements on enforcement methodology to, among other things, determine whether the company is the primary supplier, which is required for the enforcement of pesticides and chemical products. Different e-commerce companies may also have different divisions of responsibility for the products.</p> <p>Linked processing of authorities' registers can help solve the problem – for example, the Swedish Companies Registration Office, the Swedish Tax Agency, or Statistics Sweden.</p> |

## 6.10 Swedish Chemicals Agency's future enforcement of e-commerce

The new market surveillance regulations are likely to improve the possibilities of intervening against e-commerce companies whose products do not meet the applicable requirements. For example, web pages or product pages can be shut down. Sellers/manufacturers in marketplaces outside the EU need to have a responsible economic operator within the EU, which applies only to products covered by the RoHS and Toy Safety Directives. However, we will still not be able to make demands on the marketplaces.

For the enforcement of articles, we need to establish our own business register, which we do not have today, so that samplings and priorities can be made in a more structured and efficient way. In 2019, we conducted a pilot study, but additional resources will be required to establish a business register. SCB's business register is an important part of such a register. Currently, an extract with relevant SNI codes costs about SEK 60,000. It is a deficiency that

national authorities are not able to access this government information for market surveillance and enforcement purposes, free of charge. In its budget request, SCB has included an increase in appropriations to make it possible to make the information in the General Business Register available free of charge (see Annex V on consultation).

We will continue to invest in e-commerce in terms of product enforcement, where we also include collaboration with Swedish Customs.

A survey conducted by the Swedish Chemicals Agency shows that imports of chemical products and pesticides online are more common for certain product types. Therefore, future supervision of chemical products may need to pay attention to chemical products used in conjunction with cosmetics such as glue for eyelashes and nails, and liquid for e-cigarettes. For pesticides, rodenticides are of particular interest.

### **Summary of Chapter 6**

- Regulatory efforts show that articles purchased mainly from marketplaces outside the EU have twice as many deficiencies compared to within the EU. This indicates that the marketplaces lack sufficient proactive work.
- For chemical products and pesticides, there are major shortcomings in the rules of advertisement (no hazard information on websites), and unauthorised pesticides are sold online.
- Supervisory authorities lack legal possibilities to impose requirements on companies outside the EU and marketplaces that only serve as intermediaries.
- The requirement for national authorisation for pesticides means that products that are legal in other EU countries are not necessarily legal in Sweden. The risk of illegal products being purchased online is therefore greater for pesticides, especially for rodenticides.
- Consumers become importers when they purchase online outside the EU in relation to the chemicals regulations (but not RoHS and Toy Safety Directives). Through some advertising sites, individuals can sell products that do not comply with the chemicals regulation. There are questions surrounding the effectiveness of enforcing the regulation towards consumers, but this should be done when justified.
- There is also a fear that many small companies that may lack resources and competence on chemicals regulation can relatively easily start up e-commerce and thus contribute to a greater flow of products that do not comply with the chemicals regulation. For chemical products, this may be relevant for, e.g., liquid for e-cigarettes and nail and eyelash glue.

## 7 Why is e-commerce problematic from a chemicals perspective?

This chapter describes the issues of products purchased online containing chemical substances that do not comply with EU chemicals legislation, based on economic theory and identified market failures. Different types of instruments addressing market failures are presented in Annex IV.

According to economic theory, interventions by public authorities are justified by market failures. Market failures arise when a free market does not itself generate socio-economically efficient solutions. Market failure traditionally consists of a situation where market pricing does not correspond to the socioeconomic cost of a product and thus does not generate optimal use of resources in society. In this report, we have identified the following market failures regarding e-commerce:

1. **Lack of legal compliance when consumers and businesses purchase products containing chemicals that do not comply with EU chemicals legislation from countries outside the EU that are not checked by EU authorities or companies.** This is a market failure because competition is not saturated, which is one of the fundamental prerequisites for a perfect market economy with a price system for goods and services governed by supply and demand.
2. **Information problems or lack of information.** This is a market failure as the consumer and other operators in the supply chain are unable to make informed (rational) choices based on complete information.
3. **A non-internalised negative externality of the content of restricted chemical substances.** This market failure arises when direct imports can have unintended negative environmental and health effects that affect persons other than the one who purchased the product. Examples of such persons may be other family members of a household or the recipient of the product in the case of a gift. Non-internalised negative externalities may also affect competition in the internal market.

E-commerce changes many parts of the production and consumption chain that otherwise applies to traditional commerce. Some examples of changes are new operators such as marketplaces that only act as intermediaries and thus do not have or take any responsibility for product safety. There are also other problems with e-commerce than those mentioned in the three paragraphs above, which can have negative environmental and health effects compared to physical commerce.

### 7.1 Lack of legal compliance – consumers and businesses can import products intended for other markets

One problem with e-commerce compared to physical commerce is that products that are not intended for the European market or not subject to EU chemicals legislation can reach the Swedish market by consumers directly importing products from companies outside the EU. Through private imports via e-commerce from third countries, chemicals regulated within the EU and products that do not comply with EU chemicals legislation can still enter the EU market, which can pose a risk to both human health and the environment.

The fact that chemicals regulations are different in the countries of the world also makes it more difficult for e-commerce operators to get it right from the start. Products manufactured based on different regulatory frameworks in different parts of the world also provide different

conditions to comply with the rules that exist in other countries. Although companies outside the EU must comply with EU regulations if they place products on the EU market, local producers and other operators in their supply chains are not obligated to do so.

Swedish regulation for enforcement and the enforcement carried out by Swedish public authorities are not adapted for e-commerce. The Swedish Chemicals Agency's enforcement of products sold via e-commerce is based on who has the legal responsibility for the transaction. Unlike traditional, physical commerce, legal responsibility for e-commerce rests with different parties depending on the structure of the marketplace. This means that checks or requirements for rectification of companies' compliance with regulation cannot be fully implemented.

The results of the Swedish Chemicals Agency's enforcement project show that trade in articles purchased from companies outside the EU poses a major problem in terms of legal compliance as the articles contain restricted substances and the lack of CE marking, read more about this in section 6.6. For chemical products and pesticides, we have thus far only examined products sold within the EU, but there are unauthorised pesticides and deficiencies in the form of a lack of information on hazard labelling. Part of the problem is the lack of legal means to reach sellers through enforcement when third-country operators advertise products within the EU via marketplaces that have no legal responsibility within the EU.

In summary, the shortcomings in legal compliance and the inadequate regulation on private imports through e-commerce is one of the main problems that we address in this report. The fact that there is no company within the EU responsible for the chemical safety of the product in case of online shopping from marketplaces outside the EU is one example of shortcomings in the current regulation. In addition, the companies do not compete on a level playing field in the internal market.

## **7.2 Information problems - ignorance of the content of the product**

Another market failure is that consumers and other operators in the supply chain do not have access to information on which chemical substances a product contains or what risks these chemical substances may pose. This may be because:

- manufacturers lack knowledge of the intrinsic properties of substances
- manufacturers lack knowledge of how exposure occurs from the product and the risks such exposure may pose
- buyers and sellers do not have the same information as other operators in the supply chain, so-called asymmetric information
- even if the information is available, it can be difficult for consumers to understand and act on.

This may lead to the existence of hazardous chemical substances not affecting operators' choices when purchasing products or the extent to which products are consumed. Consumers who are not aware of the risk that certain articles may contain regulated substances also do not know that they have the right to request more information about the content of the article. Read more about the obligation to provide information in the REACH Regulation and information on substances in articles, CE marking, and advertising rules in Chapter 4.

In addition, knowledge varies among consumers. There are consumers who are well versed in sustainability issues, but also those who believe that all products on the market are safe to buy.

The number of e-commerce operators changes over time and it is therefore difficult to get an overview of which companies are active in the market for Swedish consumers. The Swedish Chemicals Agency deems that companies' knowledge of the chemicals regulations also varies. There are companies that are well aware of the rules for placing products on the market. There are also companies that do not know that their sales are subject to chemicals regulations.

Lack of knowledge and information about exposure<sup>76</sup> is a major problem for many e-commerce operators. This problem is even greater due to long supply chains and the lack of direct customer contact, as in the case of consumers buying a product via a marketplace.

### 7.3 Negative externalities and competition

A negative externality (or an *external cost*) arises in cases where a third party, who is neither the buyer nor the seller of a product, is adversely affected by the use of a product. The third party can be an individual, a group, or society at large. The health or environmental risks to which the purchaser and user of a product are exposed are not categorised as an externality. On the other hand, the risks that affect others in the household can be considered externalities.

The health risks affecting employees of an employer who purchased a product are also categorised as negative externalities. Examples of negative environmental and health externalities of e-commerce can be when substances cause cancer or allergies or when substances persist in the environment. See Annex III for more information on other negative environmental and health externalities that may result from products' non-compliance with legal requirements.

When an instrument leads to the inclusion of the negative externalities in the price of the product, it is said that the external costs have been internalised and there is no longer a market failure to remedy<sup>77</sup>.

The lack of information may result in the price, demand, and supply not reflecting the advantages, disadvantages, and costs of the product. The fact that human health or the environment is adversely affected by hazardous chemical substances can be categorised as a negative externality that the consumer does not consider when purchasing a product via e-commerce. Insufficient information may mean that a seller may be willing to accept a higher or lower price for the product than the actual cost of producing it. As a result, the price of the product is less than the socially optimal price as it does not include the damages or costs suffered by others than those selling and purchasing the product. A lower price leads to a higher consumption of the product than socio-economically desirable, which constitutes a market failure.

Many studies analyse the correlation between the price of a product and the objective quality assessment the product has received in tests carried out by independent organisations. Some literature shows that the correlation between price and quality is generally low (Imkamp, 2008). However, there are studies that indicate that there is a stronger correlation between

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<sup>76</sup> information on the risks linked to chemical substances in articles, such as how chemical substances in articles can leak and affect the user of the article.

<sup>77</sup> Internalising means to include by also pricing the effects.



price and quality for lasting and more expensive products (Kirchler, et al., 2010). Studies also show that:

- when considering market shares and price level, pricing may be true and fair (Olbrich & Jansen, 2014)
- the price is a signal of quality but also signals scarcity (in economics, scarcity means that available resources are limited in relation to people's total demands and needs, which may include land, food, water, money, etc. to satisfy human needs) (Imkamp, 2008)
- the correlation between price and quality is higher for more complex products as the consumers believe that a higher price indicates a higher quality (Kirchler, et al., 2010)
- consumers (subjectively) experience the complexity of different products, which also has an impact on the consumer's perception of the relationship between price and product quality (Kirchler, et al., 2010).

As mentioned earlier in Chapter 3 and Annex II, the E-barometer has identified various reasons why consumers shop from other countries online and price is one of these reasons. In several blog posts on the DG blog, the Market Surveillance Council has pointed out that a low price is often synonymous with low quality and that there is a risk of product law violations (Persson, 2020) (Holmberg, 2020) (Sjöblom, 2020). The lack of information may, among other things, result in the buyer being willing to pay a higher or lower price for the product because they do not know its actual advantages or disadvantages. The results of the Swedish Chemicals Agency's and the Swedish Tax Agency's evaluation of the electronics tax show that the companies' costs for the tax have been passed on to the consumer. The tax has thus led to a higher price, which can be interpreted by the consumer as if it is a higher quality product when in fact this is due to the product being taxed for its content of dangerous flame retardants (Swedish Tax Agency, 2020).

Companies that comply with EU regulation when placing products on the market compete with companies that do not comply with the regulation, causing distorted competition that constitutes another market failure.

The fact that the price or supply of products in other markets entices consumers to buy them through online marketplaces is both good and bad for the internal market. It is good from a competition perspective, but bad if it entails increased risks for consumers from a health perspective. In the longer term, it can cause, for example, disabilities or deteriorating health, which can increase healthcare costs for both the individual and society. For society, it can also lead to environmental problems and higher costs for waste management, as well as difficulties in recycling as, for example, the equipment is not adapted to take care of or identify these substances. This does not promote circular economy (Ministry of the Environment, 2020) and is therefore not sustainable in the long term.

There are therefore both environmental and health risks that have socioeconomic impact on the internal market when products containing regulated chemical substances are traded online, across borders. This market failure arises because direct imports can have negative environmental and health effects that affect persons other than the consumer who purchased the product.

### **Summary of Chapter 7**

- Current regulation cannot address the problems of e-commerce.
- Further measures are needed to improve the conditions of competition for businesses on the EU market.
- In e-commerce, the negative externalities regarding health and the environment are not included in the pricing of the product. Therefore, there are reasons for implementing additional measures to address the problem and provide more effective control.
- Identified information failures in purchasing and the existence of unregistered and regulated substances in products purchased and sold via e-commerce justify the implementation of additional measures.
- Conditions of competition – companies that only supply products (marketplaces) do not have the same responsibilities as companies that purchase the products. Thus, they bear different costs of trading on the EU market.
- Quality is not always synonymous with a higher price. A higher price may be due to taxes, fees, or exchange rate changes.
- A lower price can, according to the Swedish Chemicals Agency's experience from enforcement activities, mean a higher proportion of compliance deficiencies.
- Compliance deficiencies among e-commerce operators outside the EU can make it more difficult for enforcement, sustainability, and a non-toxic circular economy.
- Risk of health economic costs for individuals and society.

## 8 Impact assessment

This chapter analyses the impact of the proposed measures on society, consumers, businesses and authorities, as well as the contribution of the measures to achieve the intended goal defined in the report and compliance with EU regulation.

In order to meet the challenges of chemical risks in e-commerce, there are several possible measures that could be applied at different levels: internationally, within the EU, and nationally. The measures can be voluntary or legally binding and have an effect in the shorter or longer term. The Swedish Chemicals Agency has identified several possible measures that can help reduce the risk of consumers or the environment being exposed to hazardous substances as a result of e-commerce.

This chapter analyses the possible measures that are considered likely to apply to reach an achievement to a greater extent, as listed in Table 15 below. Alternative measures identified but not selected for further analysis are listed and commented on in section 8.12.

### 8.1 Measures selected for an impact assessment

Measures that we believe can contribute to achieving the intended goal to a greater extent and of which we have therefore chosen to carry out an impact assessment are set out in Table 15. The impact assessments of the measures presented below are carried out in sections 8.5–8.10.

*Table 15. Measures that we analyse the impacts of in this report.*

| Measures related to   | Brief description of the measures   |
|---|---|
| International agreements and initiatives                      | <ul style="list-style-type: none"><li>• Global systems for phasing out particularly hazardous substances from an e-commerce perspective</li><li>• Increased support to the Government on sustainability issues in trade policy</li><li>• E-commerce from a chemicals perspective on the agenda at the UN Environment Conference 2022</li></ul>    |
| Harmonised measures at EU level                               | <ul style="list-style-type: none"><li>• Influence EU regulations related to e-commerce</li><li>• The requirement for a responsible economic operator within the EU involves more chemicals regulations</li><li>• Common EU strategy to minimise chemicals risks in e-commerce</li></ul>   |
| Awareness activities  | <ul style="list-style-type: none"><li>• Information on potential chemicals risks in products</li></ul>  |
| Educate, communicate, and cooperate with e-commerce operators | <ul style="list-style-type: none"><li>• Communication and cooperation with industries that are operators within e-commerce</li><li>• Dialogue with industry associations and with relevant operators in innovation or substitution matters</li></ul>  |
| Enforcement   | <ul style="list-style-type: none"><li>• Increased enforcement cooperation between the Swedish Chemicals Agency and Swedish Customs</li><li>• Market surveillance authorities formalise cooperation on e-commerce</li></ul>  |
| National assessments and assignments to special Analysts      | <ul style="list-style-type: none"><li>• Analyse the specific challenges of e-commerce from a broader enforcement perspective, including all relevant authorities</li><li>• Analyse the limits of Swedish jurisdiction with respect to enforcement</li><li>• Analyse a national centre for coordination and support on e-commerce issues</li></ul> |

## 8.2 Scope of the impact assessment

This impact assessment applies parts of the Ordinance (SFS 2007:1244) on Regulatory Impact Assessments as a starting point and support for identifying and analysing effective measures and for developing the basis for decisions on measures. The impact assessment therefore does not concern all the elements specified in the Impact Assessment Ordinance, as the Swedish Chemicals Agency does not draft new regulations in this report.

In this report, the impact assessment includes a review on which operators will be affected by the measures, identification and analysis of a reference alternative<sup>78</sup>, analysis of the cost of the measures and other significant impacts. Consultations with operators and stakeholders have been carried out to give other authorities, organisations, and companies the opportunity to comment on, for example, problems, measures, and impacts. The results of the consultation are reported in Annex V.<sup>79</sup>

## 8.3 Criteria for effective measures and objective

In the Government assignment, it is stated that, when necessary, socio-economically efficient measures shall be proposed to remedy any problems. As we, within the scope of this report, are not able to carry out a cost-benefit analysis or a cost-effectiveness analysis, we need to assess what is an effective measure in other ways. In this report, a cost-effective e-commerce measure is defined by how it meets the following criteria:

1. That it contributes to stated objectives, has immediate effects, and improves compliance already in the short term. (The measure can still be considered effective if it takes longer).
2. That it has an effect every time the measure is applied.
3. That it is applicable.
4. That it can be implemented within the current framework and authorisation.
5. That it is possible to follow up, measure, and evaluate.

The goal of the assignment is to identify socio-economically efficient measures that improve the legal compliance of chemical substances regulated within the EU in products that reach Swedish consumers via e-commerce. The goal is for legal compliance in e-commerce to correspond to that of physical commerce, which today averages 83 percent. The goal is also to address the market failures described in Chapter 7, i.e., deficiencies in legal compliance and insufficient regulation, information problems, negative externalities, and different conditions of competition. Addressing the identified problems that current laws cannot address is another goal. In the impact assessment and in the proposed measures, we use a number of different variables to measure and analyse the achievement of the intended goal and to compare increased compliance with. These are:

- The number of deficiencies found during enforcement projects today is twice as many for the global marketplaces as for other e-commerce.

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<sup>78</sup> Also called baseline option/zero alternative.

<sup>79</sup> A problem description is presented in Chapter 7 and an assessment of the scope of action and compliance with EU membership obligations is set out in section 8.11. In sections 8.5-8.10, we analyse the alternative measures based on their impact on businesses, consumers, society, and public authorities.

- When selling chemical products and pesticides via e-commerce, information on hazardous properties is currently largely lacking. The Swedish Chemicals Agency's enforcement activities are focused on finding deficiencies. Between 93 percent and 100 percent of chemical products and pesticides sold via e-commerce indicate a lack of legal compliance.
- The share of electrical products that do not comply with chemicals regulation in the national product enforcement of physical trade is around 21 percent in total, compared with 48 percent for e-commerce of electrical products.
- The share of electrical products in e-commerce that do not comply with the limits in RoHS and REACH is 40 percent within the EU, while the corresponding share for e-commerce outside the EU is 67 percent.

Market failures regarding hazard information for chemical products, negative externalities, and conditions of competition are compared in the analysis of achieving the intended goal based on the following:

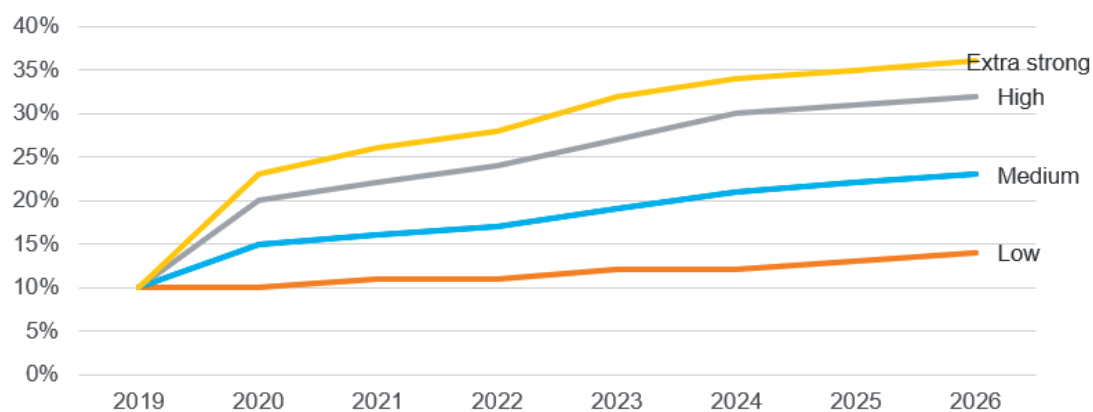
- In physical trade, five percent of products are deficient in terms of hazard information.
- The proportion of products that lack equivalent hazard information within e-commerce is close to 100 percent.

## **8.4 What happens if no further measures are implemented?**

This section identifies and analyses the reference alternative, which give an idea of what happen if no further measures are implemented to address the identified e-commerce issues addressed in this report.

E-commerce sales are expected to continue to increase in the coming years (see different scenarios in Figure 7). It can therefore be assumed that consumers will continue to shop online. New buying habits that have emerged as a result of the coronavirus pandemic can partly contribute to this development. It can also be assumed that this will lead to continued compliance deficiencies at least equivalent to the levels described in section 8.4.5. The problems identified in Chapter 7 will thus persist and compliance deficiencies are believed to follow the development of e-commerce linearly. If no further action is taken to address the challenges of e-commerce, products with regulated substances will reach the Swedish market and Swedish consumers to an even greater extent than today. The trend of e-commerce in recent years indicates that its turnover and share could continue to grow by at least 11 percent per year. The Commercial Employees' Union estimates that there will be a continued increase in e-commerce on the Swedish market that at least corresponds to the low development curve in the line chart in Figure 7. It represents a continued percentage increase in line with developments between 2007 and 2018, when the share increased from 3 percent to 9.8 percent. The development in the medium and high scenarios is based on forecasts from Svensk Handel produced in 2018, which estimated that the e-commerce share could be 22 percent and 33 percent respectively in 2025. In 2020, we saw a significant increase in the share of e-commerce. In Figure 7, we have therefore also developed another scenario that we call extra strong, where we start from the E-barometer's report and the estimated median e-commerce share in November 2020, which was 25 percent.

Figure 7. The development of e-commerce in Sweden from both Swedish and foreign operators in terms of share of total retail sales to date and four estimated scenarios (low, medium, high, and extra strong) for continued development without further action being taken. The X axis in the table indicates the year and the y-axis indicates the e-commerce share of total retail trade.



Source: The Swedish Chemicals Agency's own processing based on data from (Commercial Employees' Union, 2016) and (Svensk Handel, 2018).

It is not easy to predict further developments if no further measures are adopted and implemented. How e-commerce in the Swedish market and Sweden's global e-commerce will develop depends on consumers and on the actions of companies. Swedish consumers are reported to have more confidence in Swedish e-commerce companies and e-commerce companies in the EU than in companies outside the EU. The trend also shows a decrease in e-commerce and direct imports from Asia that may be attributed to, among other things, the introduced package charge.<sup>80</sup> However, we assume from current developments that the e-commerce share of total retail in Sweden will continue to increase, as all four scenarios in Figure 7 show.

#### 8.4.1 **Impact on society**

There are several problems with products that reach the Swedish market via e-commerce. They do not comply with chemicals legislation in the EU, but above all they entail an increased risk of negative health and environmental effects. This can have a negative impact on society, such as increased costs for healthcare, treatment of land and water areas, and waste management. In this scenario, such impacts on society will continue to increase.

#### 8.4.2 **Impact on consumers**

A lack of knowledge and information about regulated substances and their hazards is a major problem for e-commerce, which can, among other things, deteriorate further as a result of reduced direct customer relations. Private imports via e-commerce from third countries in particular mean that products containing unknown chemicals or chemicals regulated within the EU can still enter circulation on the EU market. This consumption of products purchased online can expose both humans and the environment to negative effects throughout the life

<sup>80</sup> Note from consultation 3 November 2020

cycle of the product. In this scenario, consumers will continue to buy products online containing substances that do not comply with EU chemicals legislation, with the risk that these will continue to spread within the EU. The fact that consumers do not have sufficient information or knowledge of the problems and risks that e-commerce may entail results in inefficient control through existing measures, as consumers today are unable to make informed choices.

A survey from the Swedish Consumers' Association shows that nine out of ten consumers are concerned (three out of ten say they are very concerned) about how emissions of chemical substances can have negative effects on health and the environment both today and in the future. The study also shows that consumers want to have access to more information on the chemical content of products. Of the consumers surveyed, 86 percent responded that they wanted to be informed about the content of hazardous chemical substances in products. (Swedish Consumers' Association, 2020)

### **8.4.3      *Impact on companies***

When the chemicals regulations do not keep up with market developments, long-term sustainability risks being eroded and competition distorted. A functioning e-commerce with the same compliance as physical commerce can promote Swedish growth, while non-functioning e-commerce can create unequal competition in the market.

Studies show that increased e-commerce can strengthen competition (Swedish Competition Authority, 2017). Using the internet, consumers can compare prices and selection as well as make purchases. Increased e-commerce can bring increased competition to the market, resulting in, for example, lower prices. This reduces the costs for small businesses to establish themselves in the e-commerce market. This makes it easier for small businesses to compete with companies that engage in both e-commerce and physical commerce, which also provides increased and more equal competition. Swedish companies that combine e-commerce and selling in shops have a competitive advantage among consumers requesting service.

The enforcement carried out by the Swedish Chemicals Agency reveals deficiencies in e-commerce in the form of a lack of information on hazard labelling for chemical products and articles with unauthorised levels of chemical substances. The hazards and necessary safety information shall be communicated to, for example, an importer or end user in order to achieve the safe handling of chemical products. It can be assumed that the deficiencies continue in this scenario and that market failures such as deficiencies in this type of information are not addressed.

Many e-commerce companies are small businesses and often sole proprietorships or micro-enterprises with 1-10 employees. The Swedish market has a higher proportion of small businesses compared to other OECD countries. There is therefore a risk that companies on the Swedish market will be less able to stay informed about current chemicals regulation for their products. Based on previous enforcement projects, the Swedish Chemicals Agency estimates that companies that only sell chemical products through online stores often have little knowledge of current regulatory frameworks for chemical products.

Liability in the distribution chain is another problem that leads to products that do not comply with chemicals regulation being placed on the EU market. The way many marketplaces are constructed, the person responsible for the marketplace currently has no responsibility under current EU regulation to verify that the products sold comply with these laws. However, current regulation leads to competitive disadvantages for companies with a higher degree of

self-auditing. Distorted competition cannot be compensated by market surveillance in this scenario.

Marketplaces outside the EU have a much higher proportion of deficiencies among their products and the Swedish Chemicals Agency does not have legal means to impose requirements on this activity. In consultation with various operators, it is stated that marketplaces outside the EU are not proactive because they believe it is the sellers who are responsible for the products on the marketplaces and therefore their attention is only drawn to what is pointed out in the inspection.

The number of global marketplaces is expected to continue to increase in this scenario. Overall, the impact on companies without further action being taken is estimated to result in continued high costs that are not internalised, additional administrative costs and burdens because of information gaps and compliance deficiencies.

#### **8.4.4      *Impact on authorities***

The enforcement activities of the Swedish Chemicals Agency are not deemed able to, without additional measures, fulfil the objective of ensuring that companies comply with applicable regulation, reducing risks to human health and the environment, or promoting healthy and fair competition. The need for enforcement and control by authorities and others to ensure that the system works both nationally and within the EU therefore cannot be met.

The rapid development of the e-commerce market means a high rate of change in supply and distribution chains. The enforcement authorities will not be able to keep up with the e-commerce transition on the market, with respect to both regulatory application, enforcement and information activities. The impacts of this may be that the enforcement authorities are not up to the task of preventing adverse effects on health and the environment. The work of the enforcement authorities is based on knowledge and internal competence on traditional product development and market mechanisms. As a result, authorities need to review their skills supply in the field in order to stay up to date. With their current resources, the authorities do not have sufficient conditions to monitor developments in the e-commerce market where there is a rapid transition. This has an impact on the proactive work that enforcement activities can provide, as well as for compliance and risk reduction work.

#### **8.4.5      *Achievement of the intended goal***

In summary, continued development without additional measures may mean that:

- physical trade and e-commerce will continue to differ in terms of risk reduction and compliance
- current rules will not be applied or adapted to be applicable within e-commerce or private imports via global marketplaces
- compliance with current chemicals regulations will not function effectively in e-commerce with respect to chemical substances
- deficiencies in compliance for products traded through online stores and global marketplaces will continue to increase
- there will continue to be a lack of hazard information for chemical products and pesticides in e-commerce



- e-commerce continues to risk causing negative environmental and health effects due to the dissemination of regulated substances
- companies will continue to compete on different terms on the internal market as consumers can purchase products that are not manufactured under the same conditions
- distorted competition cannot be compensated by existing market surveillance.

The above paragraphs show that it is not possible to achieve the intended goal without further action. Thus, the legal compliance of e-commerce will not correspond to the levels measured for physical commerce, i.e., 83 percent.

The assessment of the Swedish Chemicals Agency is that the number of deficiencies that will be found for the global marketplaces in this scenario will be more than twice as many as for other e-commerce. Deficiencies in the sale of chemical products and pesticides regarding the lack of hazard information will remain high (between 93 and 100 percent) for products sold via e-commerce. The deficiencies in compliance with EU limits will continue to be greater for products purchased online from outside the EU than for products purchased within the EU.

The enforcement activities of the Swedish Chemicals Agency will continue to be unable to issue injunctions to companies outside the EU and EEA for products that do not comply with the chemicals regulations. Both companies and consumers are believed to have a lack of knowledge and information about the content of products. In our assessment, products purchased online will continue to fail to comply with the advertising rules and thus will not have a hazard label without the introduction of additional measures. The problem is expected to grow due to growing internet trade and private imports from outside the EU, which means that more products containing restricted substances are placed on the Swedish market, with negative health and environmental effects as a result.

## **8.5 Actions related to international agreements and initiatives**

Global conventions and agreements are important instruments for harmonising chemicals regulations and for phasing out particularly hazardous substances. This is especially important when it comes to e-commerce, where Swedish consumers can import products directly, which do not meet the requirements set out in EU chemicals legislation.

The Swedish Chemicals Agency has long worked on the international arena with capacity development and institution building as well as with the sustainability goals in Agenda 2030. Several of the measures proposed in the EU Chemicals Strategy are in line with the Swedish Chemicals Agency's ongoing international work, read more about these in section 8.12.

Below are examples of further international measures assessed to be particularly important for achieving more secure e-commerce in terms of the chemicals perspective.

### ***Global systems for phasing out particularly hazardous substances from an e-commerce perspective***

- The Swedish Chemicals Agency can increase its support to the Government to develop and implement global systems that contribute to more secure e-commerce. For example, the GHS system enables better product information and phasing-out of more particularly hazardous substances using the Stockholm Convention. Tools such as the SCIP database and digital product passports can be further developed to facilitate traceability and enable a circular economy.

**Justification:** Global trade needs global solutions. The Agency's ongoing work on existing conventions and the Globally Harmonised Classification and Labelling System (GHS) can be strengthened in order to achieve more secure e-commerce. The faster flow of products in e-commerce means that additional tools may also need to be developed to enable the rapid and systematic handling of particularly hazardous substances in imported products and to increase traceability. Digital product passports, which have been discussed within the EU, increase the possibility of learning about the chemical content of products. The knowledge is necessary partly to protect consumers during use and partly to enable materials and products to be reused or recycled correctly when discarded. The common EU database SCIP<sup>81</sup>, which aims to be substitution-driven, is an example of tools that can be used for this purpose. The Swedish Chemicals Agency can contribute with its expertise in the assessment of hazardous substances and their presence in different types of products.

### ***Increased support to the Government on sustainability issues in trade policy***

- The Swedish Chemicals Agency can increase its support to the Government regarding the chemicals perspective on sustainability-related issues in trade policy, in line with the EU Chemicals Strategy. Sweden should also support the European Commission in its work on sustainable development and Policy Coherence for Development.

**Justification:** The chemicals perspective needs to be highlighted in more contexts than in chemicals regulation. For example, the possibility of imposing chemical requirements in the sustainability chapters of trade agreements should be examined. The Swedish Chemicals Agency can start working with the National Board of Trade and others to integrate the chemicals perspective at an early stage in negotiations on the EU's free trade agreements. The sustainability chapters of trade agreements support the implementation of the parties' existing international commitments, including the Multilateral Environmental Agreements<sup>82</sup> that include international conventions on chemicals. *Integrated sustainability aspects of trade policy* are one of the indicators of the Government's external trade, export, and investment promotion targets<sup>83</sup>. Sweden has been a driving force for sustainability aspects in trade both within the EU and globally and it is an opportunity to work in line with *Non-Toxic from the start* by designing it correctly from the start.

### ***E-commerce from a chemicals perspective on the agenda at the UN Environment Conference 2022***

- Sweden can bring the chemicals perspective on e-commerce to the agenda at the UN Environment Conference, scheduled for 2022. The Swedish Chemicals Agency can provide arguments as to why chemicals risks need to be included in sustainability issues related to global trade and e-commerce.

**Justification:** With respect to sustainability and e-commerce, the perspective is often climate and energy impact, but the chemicals perspective also needs to be made visible and strengthened in this discussion. It is appropriate to raise chemicals issues related to e-commerce in a global context where many operators are gathered, such as at the UN

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<sup>81</sup> SCIP: Substances of Concern In articles, as such or in complex objects (Products). A database to which suppliers of articles shall notify the presence of particularly hazardous substances in the articles. The rules will take effect in 2021.

<sup>82</sup> In Swedish: multilaterala miljöavtal.

<sup>83</sup> Government bill 2020/21:1 Expenditure area 24, p. 131. Available at: <https://www.regeringen.se/rattsliga-dokument/proposition/2020/09/prop.-2020211/>

Environment Conference. The aim is to highlight the importance of chemicals in e-commerce and link this to the global goals of the 2030 Agenda in order to deepen environmental cooperation and achieve international and concrete solutions.

#### **8.5.1      *Who is affected by the measures?***

The operators primarily and directly affected by the measures are the Government Offices of Sweden, the Swedish Chemicals Agency, and the National Board of Trade Sweden, as well as the relevant EU authorities. Indirectly, companies and consumers active in e-commerce are affected at international, EU, and national level.

#### **8.5.2      *Impact on society***

The measures relating to global agreements, as well as highlighting the issue at a high-level meeting of the UN, can contribute to more effective governance both internationally, within the EU, and nationally. Agenda 2030 is an important basis for the work, as are the SCIP database and GHS. For example, the use of the SCIP database is assessed to be able to contribute with measures that are not currently written into the current wording of the agreed international conventions.

We also believe that the measures can contribute to increased information dissemination, a higher degree of compliance, and to fewer products containing regulated substances traded online. The Swedish Chemicals Agency therefore assesses that the measures may have an impact on dealing with the market failures mentioned in Chapter 7.

Measures relating to, for example, global systems are also assessed to be capable of providing substance-specific problem solving and risk reduction that can be addressed at the source. For society, these measures are therefore considered effective as they can manage the large flows and volumes of regulated substances as well as unregistered substances, thereby contributing to significant positive impacts on society.

#### **8.5.3      *Impact on consumers***

The Swedish Chemicals Agency concludes that measures such as the UN Environment Conference will help raise consumer awareness of the problems of products that do not comply with the regulation entering circulation and possibly hindering environmentally sustainable development. Thereby, we assess that consumers will be able to make demands to a greater extent and request information on which substances are part of different products. Consumers can then help phase out particularly hazardous substances in e-commerce to a greater extent than they can today.

The global systems for identifying and phasing out particularly hazardous substances are generally considered to have a risk-reducing effect on products sold online and can contribute to safer products from both a health and environmental perspective. Then, it will not be as crucial for the consumer to consider from which country the product was originally supplied.

#### **8.5.4      *Impact on companies***

Above all, the measures are expected to have a significant positive impact on EU companies, through increased access to information and improved conditions of competition. Measures to reduce the quantities and flows of regulated substances in e-commerce can also reduce administrative costs for companies for, for example, information retrieval and communication. On the other hand, working with the SCIP database entails additional

administrative costs for companies. However, this impact is assessed as lower in the long term and in relation to the positive impacts that the measures may result in in terms of a level playing field, increased knowledge and awareness, which may lead to increased opportunities to prevent negative impact on human health and the environment.

There needs to be more information on substances in articles at the different distribution stages. The systems for identifying and phasing out particularly hazardous substances create additional opportunities to achieve this, which can help address all market failures listed in Chapter 7. The introduction of product passports would also contribute to the traceability of particularly hazardous substances.

In the event that the Swedish Chemicals Agency increases support to the Government in the work on chemical substances and sustainability issues in trade policy, it is also assessed to have positive impact on the conditions of competition between companies in the internal market and companies from countries outside the EU and EEA. Addressing the chemicals issue at the UN Environment Conference can lead to increased awareness and knowledge among companies that can give them the opportunity and tools to work in line with the Global Sustainable Development Goals of the 2030 Agenda. In the long run, this could lead to concrete, international solutions to chemical-related issues in e-commerce.

#### **8.5.5      *Impact on authorities***

The measures entail additional liability for the relevant enforcement authorities which have not previously enforced SCIP regulation. It has not been possible to estimate the public authorities increased need of resources to enforce these measures. The measures provide an additional opportunity for the Swedish Chemicals Agency to promote the strategy of ‘Non-toxic from the start’ and facilitate work on non-toxic resource-efficient cycles for increased opportunities to have an impact throughout the life cycle. The measures may also have an impact on Sweden's sustainability work within the WTO<sup>84</sup> and OECD. Raising the chemicals issue at the UN Environment Conference also provides an opportunity to reach a global agreement to address chemical-related e-commerce issues.

#### **8.5.6      *Achievement of the intended goal***

The measures are more comprehensive and far-reaching than the harmonised EU regulatory framework. However, a prerequisite for their implementation is that the EU also supports these measures. Thereby, the Swedish Chemicals Agency assesses that these measures can be considered to be in accordance with the obligations for Sweden's EU membership.

International measures and harmonised measures also have the support of the companies concerned as they are believed to create a level playing field. The Swedish Chemicals Agency assesses that these measures can be effective. We estimate that they can contribute to significant achievement of the intended goal that can be monitored in future enforcement activities. Then with a reduced number of deficiencies more closely in line with those for physical trade, which today stands at 17 percent. The global measures are also assessed as potentially significant for the long-term goal achievement regarding compliance deficiencies related to the e-commerce advertising rules currently found in 93–100 percent of chemical products and pesticides.

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<sup>84</sup> The World Trade Organization (WTO) is an international organisation that deals with trade agreements between participating countries.

The measures provide additional guidance to existing chemicals regulations and contribute to higher compliance with these. As a result, international measures can also help to address the identified problems that current chemicals regulations cannot address, as well as increase the achievement of the intended goal of the global sustainability goals in the 2030 Agenda.

## 8.6 Measures related to harmonising measures at EU level

The European Commission is currently working on revising the e-Commerce Directive and the Market Surveillance Regulation. Below are measures at EU level considered particularly important for achieving more secure e-commerce from a chemicals perspective.

### ***Influence EU regulations related to e-commerce.***

- Sweden can influence future EU regulations (e.g., the e-Commerce Directive). The aim is to place greater responsibility on the marketplaces to ensure the products they supply are safe.

**Justification:** The European Commission has presented plans to modernise, *inter alia*, the e-Commerce Directive through the Digital Services Act (DSA) legislative package<sup>85</sup>. The European Commission says it is important that the rules applicable to digital services in the EU are strengthened and modernised in order to clarify the roles and responsibilities of web-based marketplaces. The sale of illegal, hazardous, or counterfeit goods and the dissemination of illegal content must be handled as effectively as offline. (European Commission, 2020c) The Swedish Chemicals Agency needs to influence and monitor the outcome of these amendments and if sufficient changes are not made by the European Commission, the Swedish Chemicals Agency, together with other authorities and stakeholders, needs to pursue the issue of marketplaces' responsibility further.

### ***The requirement for a responsible economic operator within the EU includes more chemicals regulation.***

- Sweden can promote broadening the requirement for there being a responsible economic operator within the EU to apply to more regulation than the product laws of the revised Market Surveillance Regulation. The proposal is an amendment to the Market Surveillance Regulation by adding the REACH Regulation, the CLP Regulation, the POPs Regulation, and the Biocidal Products Regulation to the list of regulations in Article 4(5).

**Justification:** The revised Market Surveillance Regulation requires there to be a responsible economic operator within the EU when an economic operator outside the EU wants to place goods on the EU market. At present, however, this only applies to product regulation, i.e., to the RoHS and Toy Safety Directives. Sweden should promote the expansion of the requirement of the Market Surveillance Regulation to include more regulations. If more regulations are covered by the requirement, companies can be held accountable when issuing injunctions in enforcement matters for more products than toys and electrical products.

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<sup>85</sup> <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>

### ***Common EU strategy to minimise chemicals risks in e-commerce***

- The Swedish Chemicals Agency can assist in developing a proposal for a common EU strategy to minimise chemicals risks in e-commerce from countries outside the EU and EEA. This promotes the work for a non-toxic circular economy.

**Justification:** Harmonised regulation means that all Member States face the same kind of challenges in e-commerce, especially with regard to imports from third countries. That is why common solutions are also needed. In the EU Chemicals Strategy it has been identified that imported goods traded over the internet are at high risk of being deficient.

In order to propose measures to include imports of deficient products from countries outside the EU, a specific approach is needed where, for example, border controls against third countries may need to be strengthened. The Swedish Chemicals Agency has previously and successfully developed proposals for strategies in the field of chemicals in cooperation with other countries, for example for highly fluorinated substances. An appropriate time to present the strategy could be in connection with Sweden's presidency of the EU in 2023.

#### **8.6.1 *Who is affected by the measures?***

Those affected by the measures are mainly companies (manufacturers, importers, storers, suppliers), marketplaces, online shops, consumers, and authorities. The measures concern companies outside the EU and EEA, within the EU, and on the Swedish market. The companies concerned are both large, small, and medium-sized and are mainly found in the following industries: Beauty and health, Clothing and footwear, Home electronics, Groceries, Sports and leisure, as well as Furniture and home furnishings. See more information in Figure 8. Other operators affected by these measures include the Swedish Chemicals Agency, Swedish Customs, and the Government Offices of Sweden. At EU level, the European Commission and other relevant national authorities in other EU Member States are also affected.

With respect to the measure requiring a responsible economic operator in the EU in more chemicals regulations, companies whose activities are currently governed by the RoHS or Toy Safety Directive are not affected as the requirement is already included in these product regulations.

Statistics from Statistics Sweden (SCB) show that it is most common among large companies to also offer e-commerce, i.e., companies with 250 employees or more. In 2016, e-commerce accounted for 28 percent of the turnover of large companies. The corresponding data for companies with 10-49 employees was 10 percent (SCB, 2017). It is mainly companies that transport, store and stock, manufacture, and other e-commerce companies that are affected by the measures in this area of action. Approximately 15,000 Swedish e-commerce companies can be found on the SNI code 'Retail sale via mail order companies or via Internet'.

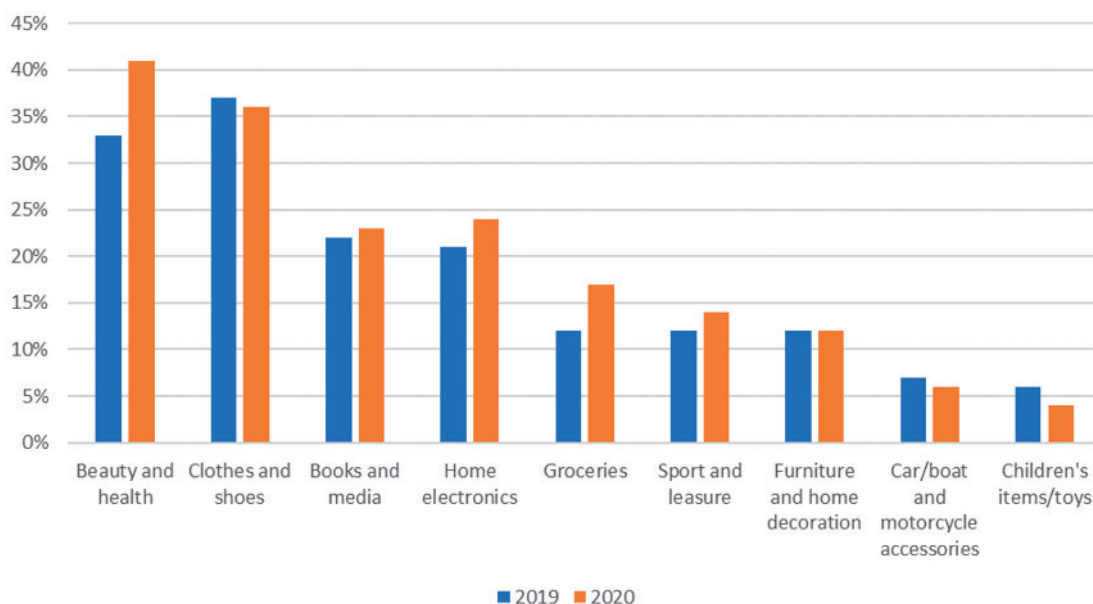
In 2016, 21 percent of Swedish companies' turnover came from e-commerce compared to 18 percent in 2010. According to the E-barometer, the e-commerce in Sweden increased by 25 percent in August 2020 compared to the same month the previous year (PostNord AB, 2020c).

Approximately eight out of ten (77 percent) Swedish consumers made purchases online in August 2020. Among the group of women between the age of 30 and 49, the corresponding proportion was 86 percent in the same month.

According to the data from the E-barometer 2020, consumers in Sweden, on average, buy articles 17 times a year via e-commerce. Most consumers report that they buy articles online

1–2 times a month. About 13 percent of consumers reported that they shop online at least once a week. The amounts for each purchase ranged from SEK 583 to SEK 2,682 during the period. However, this data is affected by the ongoing coronavirus pandemic. In 2020, 6 out of 10 Swedes avoided purchases in stores due to the pandemic. In Figure 8, you can see from which industries Swedish consumers mainly shop online, which also gives an idea of which industries are most affected by these measures .

*Figure 8. Articles purchased online in Sweden in August 2019 and 2020 respectively. Most of these industries are affected by regulation in the field of chemicals in one way or another. The statistics for 2020 have been affected by the ongoing pandemic.*



Source: PostNord AB, 2020c.

## 8.6.2 **Impact on society**

Products sold via e-commerce shall meet the same requirements as those sold within physical trade. The same applies when consumers import products from companies or suppliers outside the EU. Nevertheless, deficiencies in legal compliance are identified in connection with the Swedish Chemicals Agency's enforcement regarding products and chemical products sold via e-commerce, with respect to the following acts: REACH, CLP, and POPs Regulations, the RoHS Directive and the Toy Safety Directive and the Biocidal Products Regulation. This includes electronics, toys, jewellery, and products made of soft plastic. Deficiencies have also been discovered in textile products, clothing and footwear, furnishings and furniture, indoor flooring, mattress overlays, and other articles. The proposed measures could together contribute to fewer deficiencies and reduced costs for society for example for waste management.

A more secure internal market has positive impact on the work on the circular economy and provides positive health and environmental aspects at municipal, regional and national level. Thus, only positive impacts have been identified for society through the implementation of the three harmonised measures. The positive impacts concerns health and environmental effects, more effective enforcement of non-compliant products in the internal market, and more effective testing and enforcement of imported products.

As an EU Member State, Sweden has a responsibility to ensure compliance with harmonised regulation. Coordination between Member States is a prerequisite for ensuring a similar and consistent application of common regulation. This also includes enforcement and dealing with non-compliance as effectively as possible. The measures analysed for the EU level would all provide increased opportunities for Sweden and other Member States to fulfil the task of ensuring the application of a harmonised regulation.

### **8.6.3      *Impact on consumers***

In particular, the measures are expected to lead to a more secure internal market, which has positive impact on consumers through reduced negative environmental and health effects and a cleaner indoor and outdoor environment. Consumers are expected to have better protection in terms of health, the environment, and safety, which has positive impacts both in the home environment and in the working environment.

### **8.6.4      *Impact on companies***

The measures are mainly expected to have positive impact on relevant companies in the internal market as they contribute to a more level playing field. The measures are not expected to have any further significant administrative impact on relevant companies compared to today. Increased self-monitoring requirements reduce the share of illegal products and thereby also the administrative costs arising from injunctions. An EU regulation on market surveillance places more responsibility on the marketplaces for the products they supply and that the products comply with current EU regulation. To achieve this, more proactive work is required, which also entails some administrative work. This is mainly considered to have positive impact on all the companies concerned as the safety of the products can be improved.

The measures result in a higher proportion of safe products than today reaching the EU's internal market. The measures can thus help companies in their efforts to prevent and reduce the negative environmental and health impacts and the effects of placing products that do not comply with current regulation on the market. Some companies may initially incur additional costs for adapting their activities for compliance information and for appointing a responsible economic operator in the EU.

All measures are expected to provide a better level playing field for e-commerce companies in the EU's internal market and fair competition. The companies that currently sell products that comply with chemicals regulation would no longer compete with companies that do not. The positive impacts on companies, including increased self-monitoring requirements, are expected to outweigh the negative.

### **8.6.5      *Impact on authorities***

To assess the impact of and the development of an EU strategy for e-commerce, the Swedish Chemicals Agency's work to develop an EU strategy for PFAS can be used as a comparison. For the joint EU-strategy on PFAS, mainly already allocated resources for strategic EU work was utilised. Existing working groups and established cooperation channels were used to a large extent. The costs mainly related to organising workshops. The PFAS strategy had a good impact and support from most Member States and from the European Commission and is therefore well situated to have a positive impact. Working on an EU e-commerce strategy would likely take a lot more time than the PFAS strategy did, as established forms of cooperation already existed at the time. For e-commerce, there is no established group within



the EU, but there is a broad interest among companies, the European Commission, and other Member States and there is a common problem to be solved.

The Swedish Chemicals Agency is deemed to be able to use existing resources for working to help introduce requirements on a responsible economic operator within the EU in other chemical regulations. To promote an EU regulation on market surveillance, Swedish input on the EU's negotiating efforts is required. This requires efforts from the Government Offices of Sweden and relevant national expert authorities in Sweden.

The measure to promote the expansion of the requirement on a responsible economic operator in the EU to include more regulations gives the Swedish Chemicals Agency increased opportunities to demand action from companies even outside the EU regarding compliance. The measure may have a positive impact in the long term.

The preparation of the three measures proposed is expected to begin relatively soon following a decision on the measure. However, they can only be expected to have positive impacts on society in the longer term. As a result of these measures, public authorities can impose more requirements on companies, which facilitates enforcement.

The introduction of a requirement for the presence of a responsible economic operator in the EU will facilitate enforcement with respect to CLP regulation as enforcement authorities can hold someone accountable for products that are not properly classified and labelled. The fact that the REACH and POPs Regulations are also included provides additional opportunities to exercise enforcement to ensure a higher degree of legal compliance. A requirement for a responsible economic operator in the EU is adopted in the Toy Safety and RoHS Directives and applies from summer 2021 pursuant to the Market Surveillance Regulation.

#### **8.6.6      *Achievement of the intended goal***

The measures are deemed to be in line with the obligations arising from EU membership. It is difficult to assess the expected achievement of the overall goal by the measures, but the Swedish Chemicals Agency deems that measures to influence EU regulation on market surveillance can have a major impact if they lead to the intended result. However, it can be assumed that the measures, if combined, can contribute to a higher compliance rate with a corresponding proportion of deficiencies measured for physical trade today.

As the shortcomings in compliance and information also require action within the EU, the Swedish Chemicals Agency assesses that the measures at EU level can be more socio-economically efficient than simply implementing additional national measures. We also believe that they promote better conditions of competition between e-commerce companies and companies in physical commerce. We also believe that an EU e-commerce strategy can help address the identified problems that current chemicals regulations cannot address.

The measures are also expected to improve the conditions of competition of companies established in the EU vis-à-vis companies outside the EU. The number of deficiencies discovered upon inspection is expected to decrease for global marketplaces to a level more in line with other e-commerce. By introducing the requirement for a responsible economic operator in the EU for more product areas and for more chemicals regulation, the proportion of deficient products in terms of chemicals regulation compared to physical trade is assumed to be closer to the inspection results we currently see for electrical products, i.e., 21 percent deficiencies in legal compliance in physical trade and 48 percent for products traded online. The proportion of electrical products purchased online, which do not comply with the limits set out in the RoHS and REACH regulations today, is estimated at around 40 percent in the

EU today. The corresponding share for e-commerce outside the EU is 67 percent. The Swedish Chemicals Agency assesses that the three EU measures described above can contribute to a significant increase in compliance in the long term for both electrical products and other affected products purchased online.

## **8.7 Measure related to information on chemicals risks in online trading**

Communicative instruments can be complementary to other instruments and aim, among other things, to influence the behaviour of operators through knowledge transfer. For example, consumers who have access to accurate information can make conscious decisions on which product to purchase or not, as well as on where to make purchases online.

### ***Information on possible chemicals risks in products***

- The Swedish Chemicals Agency can contribute to information-sharing on potential risks associated with products purchased online.

**Justification:** We believe that those who buy products online often have little knowledge of possible chemicals risks associated with products. The risk of the products not complying with chemicals regulation is higher if the products are purchased from companies outside the EU and EEA. Strengthened communication aimed at the target audience would raise awareness and be able to influence buying patterns, as well as ultimately affect the selling companies and their suppliers, both in terms of supply and chemical content in the products. In accordance with the Swedish environmental quality objective A Non-Toxic Environment, knowledge and information on the hazardous properties of substances as well as phasing out particularly hazardous substances are needed to prevent damages caused by chemicals in products. We also believe that communicative instruments are an important complement to other measures. The individual consumer is not the one who can or should solve the whole problem, but the actions of consumers can be part of the solution. For example, raising consumer awareness that leads to increased customer pressure can contribute to increased acceptance and compliance with, for example, legal instruments among companies selling products online.

### **8.7.1 Who is affected by the measures?**

The measure affects the Swedish Chemicals Agency, consumers and, by extension, selling companies and their suppliers.

### **8.7.2 Impact on society**

Consumers can use accurate information and increased knowledge to make conscious choices when buying, thereby contributing to changing trading patterns. This can lead to positive impact on society in terms of reduced negative environmental and health effects when products with unknown or restricted substances are imported to the internal market to a lesser degree.

### **8.7.3      *Impact on consumers***

Increased communication aimed at consumers can result in a higher degree of compliance through increased customer pressure on the companies that market products. Consumers can use accurate information about chemicals risks in e-commerce to make more demands on companies and thus affect trading patterns. This is also assumed to have positive impact on consumers who are able to prevent and reduce their exposure to hazardous chemical substances to a greater extent.

### **8.7.4      *Impact on companies***

Increased demand for safe products from conscious consumers can lead to companies placing greater demands on their suppliers and manufacturers and ensuring compliance with applicable regulations. For companies, this can therefore also have a positive effect on conditions of competition. The Swedish Chemicals Agency does not consider the initial administrative costs for companies to obtain information about the content and use of chemical substances to be an additional cost as it relates to a work effort that the companies already have in the reference alternative based on the current responsibility to obtain information.

### **8.7.5      *Impact on authorities***

The measure involves increased communication activities regarding e-commerce compared to the work that the Swedish Chemicals Agency is doing today. A targeted communication activity can be effective if the measure is primarily aimed at the consumer groups that currently shop online the most. This may include, for example, promoting increased cooperation between relevant authorities at all levels of government in order to jointly disseminate information and communicate with consumers shopping online.

Through increased communication activities, authorities can contribute to raised awareness that can lead to more consumers requesting information regarding the content of hazardous chemical substances. Consumers can also become more aware that chemical hazardous substances may vary depending on where in the world a product is manufactured as well as where in the world it is purchased.

### **8.7.6      *Achievement of the intended goal***

Consumers' efforts are small and made in everyday life but can make a difference and contribute to a more sustainable and secure e-commerce. The individual consumer is not the one who can or should solve the whole problem, but the actions of consumers are part of the solution. Finally, someone is paying for the shortcomings in legal compliance and, to some extent, a communication activity aimed at consumers could make the problem visible and partially address the problem.

The measure complies with and does not go beyond the obligations arising from Sweden's EU membership. It is assessed to be an effective measure as it, together with existing legal instruments, can contribute to higher compliance, on par with that of physical trade, and the dissemination of information that may also reduce exposure to restricted chemical substances.

The Swedish Chemicals Agency believes that increased communication targeting consumers also indirectly can contribute to higher achievement of the intended goal for the global marketplaces and an improvement in legal compliance regarding restricted chemical substances. The highest percentage improvement can be expected for the product groups

where e-commerce from Swedish consumers is currently the highest, namely those reported in Figure 8.

We assess that the deficiencies in e-commerce of chemical products and pesticides will not be remedied only using communication targeting consumers. The long-term effects of this measure also depend on how companies act in the long term, as well as whether communication and increased awareness bring more long-term pressure from customers.

Achievement of the intended goal also depends on how long-term the targeted communication efforts from the Agency become and what resources the Agency can devote to this.

## **8.8 Measures related to educating, communicating, and collaborating with e-commerce operators**

Below are two measures that can be implemented in the field of communication, education, and cooperation with e-commerce operators and that concern chemical issues and e-commerce.

### ***Communication and cooperation with industries that are e-commerce operators.***

- The Swedish Chemicals Agency can strengthen communication aimed at and cooperation with industries that are involved in e-commerce. Examples of such industries are marketplaces and advertising sites as well as comparison sites. Cooperation can serve to help industries develop working methods so that relevant chemical information is relayed to consumers at the moment of purchase. The Swedish Chemicals Agency assists companies with information about current regulatory frameworks and the responsibilities and obligations of different e-commerce operators.

**Justification:** Information is a perishable commodity. By informing the consumer of any chemicals risks directly related to a purchase, the consumer is more likely to be able to make an informed and rational choice. The Swedish Chemicals Agency can cooperate with key actors who in turn can change and affect a broad clientele. This reduces private imports of products to Sweden that do not comply with chemicals regulations.

### ***Dialogue with industry associations and with relevant operators in innovation or substitution matters.***

- The Swedish Chemicals Agency can initiate dialogue with industry organisations and with relevant operators in innovation or substitution matters. The purpose is to support the operators so that they, in turn, can provide good support to member companies or other companies in the proactive work of replacing hazardous chemicals. For example, digital tools can be developed to help companies identify products that do not comply with chemicals regulation in the EU and Sweden.

**Justification:** By cooperating with operators tasked with supporting companies, we can get a good exchange of our communication efforts on chemicals risks linked to e-commerce. If more companies understand the chemicals regulations, their own responsibility, and receive help with replacing hazardous chemicals, fewer products that do not comply with the chemicals regulations will reach Sweden.

### **8.8.1      *Who is affected by the measures?***

The following operators will be affected by the measures: e-commerce companies, industry associations, and marketplaces. The measures also concern the Swedish Chemicals Agency and other relevant enforcement and market surveillance authorities.

### **8.8.2      *Impact on society***

For society, mainly positive impacts can be expected as a result of these measures, which provide additional instruments to promote increased compliance, reduced information gaps, and reduced exposure to regulated substances and more secure e-commerce.

### **8.8.3      *Impact on consumers***

Mainly indirect positive impacts can be assumed to result from the measures for consumers as more operators than today can actively promote more secure e-commerce with a higher degree of compliance. This is partly due to the fact that hazard information will then be available to customers.

### **8.8.4      *Impact on companies***

The measures will entail both financial and administrative costs for the companies concerned. Most of these costs are assessed to be related to work based on existing obligations and responsibilities and cannot therefore be assessed as merely increased costs. For these companies, the measures are also expected to improve conditions of competition, which may prove more significant than the increased costs of information collection and compliance.

### **8.8.5      *Impact on authorities***

The measures entail temporary increased resource needs from the Swedish Chemicals Agency for further work with communication, education, and dialogue work targeting new operators. To some extent, this work can fit into the work 'Non-toxic from the start'<sup>86</sup>. The administrative cost varies and depends on the current level of knowledge of each operator as well as on the challenges to achieve safer trade and increased compliance.

### **8.8.6      *Achievement of the intended goal***

If companies active in e-commerce have knowledge of the chemicals regulations and how their activities can be linked to the environmental quality objective A Non-Toxic Environment, they can better take responsibility for reducing the risks of hazardous chemicals harming humans and the environment. One important gain with this type of effort is that we as an authority, in dialogue with the operators, gain a greater understanding of the conditions of the companies, which facilitates the continued work on developing new instruments.

The measures are consistent and are not expected to go beyond the obligations arising from Sweden's EU membership. The measures are considered effective measures as they, together with existing legal instruments, can contribute to a higher degree of compliance and dissemination of information that can also reduce exposure to regulated chemical substances.

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<sup>86</sup> Appropriation directions for the financial year 2021 regarding the Swedish Chemicals Agency. Government decision 2020-12-17. M2020/00125 (partly), M2020/02056 (partly).

The Swedish Chemicals Agency estimates that increased communication aimed at new operators can contribute to increased goal achievement for the global marketplaces. The measures can also help to achieve better legal compliance in e-commerce. However, they are not expected to reach 83 percent, like physical trade, without additional measures in other areas of action also being introduced. The measures will address large parts of the information problems identified with, for example, the lack of hazard information, and are also expected to contribute to a more level playing field. The measures can also, to some extent, contribute to addressing the identified problems that current laws cannot address.

## **8.9 Measures related to enforcement**

The Swedish Chemicals Agency's enforcement activities are an important part of legal compliance in the market. The challenges of enforcement in e-commerce require, among other things, new working methods, such as AI, and more cooperation with other authorities. The proposed measures below aim to harmonise the control within Sweden of products sold online.

### ***Increased enforcement cooperation between the Swedish Chemicals Agency and Swedish Customs***

- The Swedish Chemicals Agency and Swedish Customs can further develop cooperation between the authorities. The aim is to identify products that do not meet the chemical requirements in the EU and stop these at the border before they are placed on the Swedish market.

**Justification:** Through further developed cooperation between the Swedish Chemicals Agency and Swedish Customs, we have greater capacity to check small operators, mainly small companies, but also to some extent consumers who bring products into the Swedish market other than for personal use.

### ***Market surveillance authorities formalise cooperation on e-commerce***

- The Swedish Chemicals Agency, together with the authorities that can engage in enforcement/market surveillance of e-commerce within the Market Surveillance Council, may be tasked with further developing cooperation in market surveillance. One proposal is to form a more formal group, similar to the one for toys between the Swedish Consumer Agency, the Swedish National Electrical Safety Board, and the Swedish Chemicals Agency (cooperation agreement <sup>87</sup>).

**Justification:** Today, the Market Surveillance Council has an established e-commerce group, working with common guidelines, joint market surveillance projects, and awareness activities. The advantage of formalising the cooperation is maintaining a long-term function within the Market Surveillance Council that works with e-commerce. Common guidelines, practices, projects, and actions can be strengthened through this assignment.

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<sup>87</sup> The cooperation agreement was signed in 2014 and contains forms of cooperation between the Swedish Consumer Agency, the Swedish National Electrical Safety Board and the Swedish Chemicals Agency. Among other things, annual meetings are held and a common manual is developed to act as an internal guide for administrators at the three authorities to make the processing of matters relating to the safety of toys uniform.

### **8.9.1      *Who is affected by the measures?***

The operators affected by the two measures include the Swedish Chemicals Agency, Swedish Customs, and the other 17 market surveillance authorities, as well as companies engaged in e-commerce (which corresponds to more than 15,000 companies).

### **8.9.2      *Impact on society***

Increased enforcement is expected to have a positive impact on society in the form of more secure e-commerce. The fact that products that do not comply with the applicable rules can be stopped before they reach the Swedish market is of great importance to all stakeholders as well as to society as a whole. In particular, the measures have an impact on consumers and society through positive health and environmental impacts as a result of enhanced, appropriate, harmonised, and effective enforcement.

### **8.9.3      *Impact on consumers***

Increased enforcement can mainly indirectly have positive impact on consumers who can then buy safer products online.

### **8.9.4      *Impact on companies***

For the companies concerned, these measures may indirectly lead to increased compliance and reduced administrative costs in the long term. In the short term, administrative costs may increase as companies need to allocate more resources in order to achieve increased chemical safety. In particular, companies are expected to benefit from more coordinated enforcement. In the longer term, conditions of competition are also expected to improve between companies as everyone will comply with chemicals regulation.

### **8.9.5      *Impact on authorities***

As previously mentioned, the Swedish Chemicals Agency has enforcement responsibility over approximately 15,000 companies that conduct mail order and e-commerce activities according to Statistics Sweden's statistics. To expand enforcement and for the cooperation between Swedish Customs and the Swedish Chemicals Agency, more resources are required. For the Swedish Chemicals Agency, the measures would therefore entail additional resource consumption and costs for enforcement and testing. To some extent, resources for 'Non-toxic from the start' can be used to implement these measures as well.

For Swedish Customs, the measures entail a need for significant increased resources for the measure to have an effect in the longer term as well. This is due, among other things, to the need to check packages to a greater extent than today. The measures are estimated to require additional resources from other market surveillance authorities as well. However, the advantage is that a long-term function within the Market Surveillance Council can be maintained for work on secure e-commerce. The common guidelines, practices, projects, and actions are expected to have a positive impact on the enforcement work of the relevant authorities.

### **8.9.6      *Achievement of the intended goal***

The measures relate to enforcement of harmonised regulatory frameworks and are therefore considered to be in line with EU law and not be more far-reaching. Enforcement activities are both a measure and a tool for reviewing compliance. Enforcement thus contributes to

strengthening the socio-economic efficiency of legal instruments by promoting a higher degree of compliance. The measures are both expected to contribute to goal achievement by strengthening and coordinating the national enforcement of e-commerce in the field of chemicals.

It is estimated that this can contribute to compliance of e-commerce corresponding to that currently in place for physical commerce. The measures are not expected to help address the identified problems that current laws cannot address. Coordinated and increased enforcement can contribute to a better level playing field as more illegal products can be stopped by the various operators upon inspection of e-commerce, but also at customs, before they are placed on the market. In the short term, cooperation with Swedish Customs and the Market Surveillance Council is expected to lead to more deficiencies being found upon inspection of operators and at the border and, in the longer term, reducing the number. Eventually, fewer Swedish consumers will receive products containing restricted chemical substances via e-commerce.

Although the Market Surveillance Council currently has a working group on e-commerce, there may be advantages to formalising the cooperation. The cooperation agreement concluded between the Swedish Consumer Agency, the Swedish National Electrical Safety Board, and the Swedish Chemicals Agency enables sufficient resources to be allocated for the enforcement of toys. Cooperation has involved common procedures and more harmonised enforcement of toys and the possibility to share confidential information. The benefits of the toy cooperation can be transferred to this cooperation, where resources can be allocated, information can be shared, and cooperation secured for the future.

## **8.10 Proposals for analysis and assignments to special Analysts**

Many enforcement authorities face similar problems and challenges associated with e-commerce and the fact that regulation is not adapted to e-commerce. There is also a lack of data and knowledge of e-commerce patterns, which makes it difficult for authorities to make effective and informed decisions when prioritising enforcement efforts.

### ***Assess the specific challenges of e-commerce from a broader enforcement perspective, including all relevant authorities***

- The Government can appoint an Analyst to review the special challenges regarding e-commerce, involving all relevant authorities. The effects on, for example, enforcement, circular economy, and competition also need to be assessed. The Analyst shall propose effective measures to achieve more secure e-commerce.

**Justification:** The Swedish Chemicals Agency assesses that there are broader challenges to deal with regarding e-commerce than just the chemical-related ones and therefore the issue should be assessed from an enforcement perspective.

### ***Assess the limits of Swedish jurisdiction with respect to enforcement***

- The Government can appoint a Legal Analyst to review the limits of Swedish jurisdiction regarding enforcement. This refers to a legal analysis of what enforcement measures Swedish authorities can take against foreign operators and to develop guidelines in this area.



**Justification:** Through e-commerce, the proportion of foreign companies releasing products on the Swedish market is increasing. There may be a need to clarify what opportunities Swedish authorities have to take such measures as can be taken against Swedish companies in those cases. The Swedish Chemicals Agency deems that this is currently unclear.

### ***Assess a national centre for coordination and support on e-commerce issues***

- The Government can assign an Analyst to assess the possibility of setting up a national centre for coordination and support on e-commerce issues (for inspection). The centre has expertise in identifying and tracking products and operators on the internet and, for example, monitoring the development of e-commerce. Each market surveillance authority has expertise in its field but can receive support from this coordination centre on e-commerce issues.

**Justification:** Within the EU, there are equivalents to such a centre, for example in France and Germany, which indicate improved enforcement and control of e-commerce (OECD, 2016). The experiences of these countries are good arguments for coordinating and increasing control through a national e-commerce centre in Sweden as well.

#### **8.10.1      *Who is affected by the measures?***

The measures concerning national assessments primarily impact the Government Offices of Sweden and the authorities that support the Committees with resources. Other relevant parties include operators and stakeholders in the external reference group. The establishment of a centre concerns all enforcement authorities and market surveillance authorities.

#### **8.10.2      *Impact on society***

The assignments are assessed to contribute to regulation that is also adapted and applicable to e-commerce. This means more secure e-commerce and reduced negative health and environmental effects. As a result, society's costs for, for example, healthcare and waste management can be reduced. The effects of the reports can mainly be expected in the medium to long term. The assessments also require resources from the central government. However, these are considered to be less than the benefits that improved health and environmental effects can bring.

A national study to review the specific challenges of e-commerce can take a greater approach and present measures from a broader perspective and issues that needs to be addressed. The assessments are therefore expected to have significant effects at a general level. However, it is not assessed to have a major effect and risk reduction with respect to the chemical problem and the shortcomings in compliance as an individual measure.

The establishment of a centre in Sweden can be assumed to have similar effects as in France and Germany. Meaning, increased coordination and support in the work on e-commerce and enforcement can result in more secure e-commerce.

#### **8.10.3      *Impact on consumers***

The proposals and results of the Committee's/Analyst's reports may contribute to more secure e-commerce for consumers, proposals and results that also include measures to manage more risks than those related to chemicals. The establishment of the centre is also expected to have positive impact on consumers in the form of more secure e-commerce.

#### **8.10.4      *Impact on companies***

The Swedish Chemicals Agency has not identified any direct significant impact on companies or on marketplaces as a result of these measures. During and after the assessment period, some companies and trade associations are expected to participate in external reference groups as well as act as consultation bodies. Better coordination and support for the authorities' work on e-commerce is also expected to have an impact on the companies concerned. However, this impact is mainly expected to be positive for companies facing more efficient and appropriate enforcement, which may indirectly also lead to improved conditions of competition and increased market shares as a result of a safer product range.

#### **8.10.5      *Impact on authorities***

The reports and the centre are expected to provide more knowledge and data on the e-commerce market and supply chains to authorities. The analyses of the challenges of enforcement work can lead to clarification of the division of responsibilities, which in turn can, for example, provide increased opportunities to influence the distribution of products containing regulated substances. The second proposal for a national review may lead to more efficient enforcement as roles, powers, and responsibilities are clarified.

A national assessment requires additional resources from the relevant authorities as well as other participating operators to participate in the assignment. The Swedish Chemicals Agency should actively participate to monitor the chemicals perspective, which is why the measure is assessed to have administrative impact on the Agency. However, in the longer term, the benefits of jurisdiction being clarified are assessed to exceed the administrative costs for the Agency.

The establishment of a national centre for coordination and support in enforcement matters and e-commerce can facilitate authorities' efforts to identify and track products and operators in order to achieve more effective enforcement activities. Similar national centres are already established in France<sup>88</sup> and Germany<sup>89</sup>, for example. The national centre in France is responsible for monitoring all aspects of e-commerce, including identifying products that do not comply with applicable regulation and are sold via e-commerce on the French market. The centre's 'cyber inspectors' receive training in relevant technologies to identify and track products and operators online. In 2013, for example, the centre in France checked 10,200 websites, 27 percent of which showed lacking compliance. Our assessment is that a national centre in Sweden can help avoid duplication of research, use common resources cooperatively, increase competence about e-commerce operators and achieve more effective enforcement activities.

The consultation with other relevant authorities during the work on this report indicates support for these three measures from, among others, the Market Surveillance Council, the Swedish Civil Contingencies Agency, and the Swedish Food Agency.

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<sup>88</sup> In France (2001), a centre, the Centre de Surveillance du Commerce Electronique (CSCE), was set up to monitor the e-commerce market (Under Direction Générale de la Concurrence de la Consommation et de la Répression des Fraudes (DGCCRF)).

<sup>89</sup> Since June 2013, Germany has had a 'centralised entity' responsible for official control of e-commerce in food, feed, cosmetics, commodities (consumer goods), and tobacco G@ZIELT™. The centre is subject to the Federal Office of Consumer Protection and Food Safety (BVL).

### **8.10.6      *Achievement of the intended goal***

Authorities have different mandates and remits and a more comprehensive and common approach is needed, as well as a more holistic approach to understanding, mapping, and addressing the problems associated with e-commerce. The proposed assessments could present proposals of measures that were not possible in this report considering the delimitation of the assignment. Whether measures relating to national assessments could be effective measures to address the problems of e-commerce in the field of chemicals depends on which proposals national assessments would put forward. Their importance to achieve the goal formulated for this report and for increased compliance is also difficult to assess at this point. However, the Swedish Chemicals Agency assesses that a review regarding jurisdiction is of great importance in creating conditions for increased compliance and thus a higher level of goal achievement. That review could create new opportunities for increased enforcement activity regarding operators outside the EU. None of the three assessments are assessed to directly contribute to addressing the problems associated with information or conditions of competition.

The establishment of a national centre can contribute to increased coordination and information enabling increased enforcement activities to achieve better compliance in e-commerce corresponding to physical commerce.

### **8.11      The compliance with EU law**

In this section, we assess the compliance of the measures with EU law and the possibility of introducing additional national measures based on the obligations arising from Sweden's EU membership.

As previously mentioned, the enforcement problems surrounding e-commerce are not due to the requirements on articles and chemical products, but to limited possibilities to impose measures and unclear liability in the supply chain. The powers of the authorities and the possibility of imposing measures within the own territory are governed by the EU Market Surveillance Regulation (section 4.2.2). The Regulation is adopted with support of Article 114 of the Treaty on the Functioning of the European Union (TEU).

The purpose of that legal basis is to harmonise Union regulation. The starting point is that such acts are full legislative acts, i.e., Member States must not have different rules, neither more nor less far-reaching than the EU regulation. In addition to the legal basis, the purpose of the regulation must also be examined to determine the national scope. If the purpose of national regulation differs from that of the EU regulation, national measures may still be permitted, even if Article 114 has been used as a legal basis.

The new Market Surveillance Regulation does not give market surveillance authorities powers directly in the Regulation. Instead, Member States shall confer powers on national authorities and the Regulation sets a minimum level of powers to be bestowed on them. One of these powers concerns actions against websites, requiring the removal of content or restricting access to the site.<sup>90</sup> This power only applies when it is needed to eliminate a serious risk. In the report SOU 2020:49 it was assessed how the provision is to be implemented in Swedish law. The inquiry has suggested that the enforcement authorities in Sweden should not have a more far-reaching right to take action against websites than is stated in the Market Surveillance Regulation. The power is also limited to websites not covered by the protection

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<sup>90</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council, Article 14(4)(k)).

of the Fundamental Law on Freedom of Expression. The power only applies to serious risks. The term ‘serious risk’ is subject to debate when it comes to chemicals risks, as it is unclear how the term should be applied in the context of chemicals.

Regarding jurisdiction and the ability of Swedish authorities to intervene against infringements by foreign operators and take enforcement measures against them, the Swedish Chemicals Agency considers the legal position unclear.

The e-Commerce Directive is, like the Market Surveillance Regulation, a full legislative act. As the purpose is to harmonise the conditions for e-commerce, the Swedish Chemicals Agency deems that there is no room for national deviations, but that any changes must be made at EU level. The Swedish Chemicals Agency's overall assessment is therefore that the scope for action to introduce additional national measures, to address the identified problems associated with e-commerce and hazardous substances, is limited in relation to the obligations arising from EU membership.

The measures described in section 8.1 are assessed to be compatible with the obligations arising from Sweden's EU membership. None of the proposals for national measures involve national regulations or otherwise have effects that may conflict with EU treaties or other EU regulation. The measures are to be implemented within the existing legal framework. The measures at EU level aim to influence EU regulation.

## 8.12 Other considered measures not subjected to an impact assessment

The following table is a compilation of possible measures that we have considered within the scope of this assignment. However, the measures below have not been assessed to have as much impact and contribute to goal achievement as well as the measures that were subject to impact assessment.

*Table 16. Possible measures that we have considered but do not propose as we do not assess them to have the same opportunity for achieving the goal. Furthermore, they already are a part of the Swedish Chemicals Agency's ongoing activities.*

| Measures  | Description  |
|---|--|
| <b>Internationally and the EU</b>   |  |
| Work internationally to strengthen the implementation of conventions and strengthen institutions for sustainable development and chemicals regulation | <p>The Swedish Chemicals Agency has been working on the international stage and to achieve the sustainability goals in Agenda 2030 for a long time. The measures proposed in the EU Chemicals Strategy are also in line with ongoing international work. This includes continuing to work to:</p> <ul style="list-style-type: none"> <li>• Ensure that all countries have regulation that requires manufacturers to produce and make available information about the intrinsic properties of substances. The work is carried out within the process of developing a global strategy after 2020.</li> <li>• Strengthen institutions and authorities in countries outside the EU and EEA, from which many products are purchased online. This increases the possibility of stopping illegal products at the source.</li> <li>• Support the Government in further developing the Stockholm Convention in particular, so that more particularly hazardous substances are phased out or restricted. When substances are restricted or phased out at global level, the risk of products placed on the market containing these hazardous substances is reduced.</li> </ul> <p><b>Justification:</b> We believe that the above measures are important to strengthen global chemical control and that they fit within the Swedish Chemicals Agency's operations. The measures are of such nature that they are ongoing within the Swedish Chemicals Agency's regular activities and will contribute to achieving the goal. In light of this, we</p> |

|   |   |
|---|---|
|   | have assessed that these measures complement our proposed measures and we have therefore not analysed the impact of this work in greater detail. We would like to emphasise that these are important measures to achieve a higher degree of legal compliance for all trade and sustainable production and consumption.  |
| The European Commission is given operational responsibility       | <p>The Swedish Chemicals Agency can work to ensure that the European Commission assumes operational responsibility for enforcement, for example for companies domiciled outside the EU and thus outside the mandate of the Member States.</p> <p><b>Justification:</b> We believe that the measure is effective, but it is doubtful whether the European Commission is in a position to act as an enforcement authority. In addition, the European Commission is currently working on a legislative package called the Digital Services Act that can move forward on the issue of marketplaces outside the EU. Hence, we are not moving forward with this measure.</p>  |
| <b>Enforcement</b>  |   |
| Increased frequency of inspections of e-commerce companies        | <p>The Swedish Chemicals Agency can increase its enforcement frequency with respect to e-commerce companies. This to reach more ecommerce operators in the fast-growing market that also has a quick turnover of products. The problem for articles is private imports, while chemical products and pesticides also have domestic problems, such as breach of advertising rules or unauthorised pesticides.</p> <p><b>Justification:</b> We believe that the intervention can be effective, but that it falls within the scope of the Swedish Chemicals Agency's regular activities.</p>  |
| Digital tools for e-commerce enforcement                          | <p>The Swedish Chemicals Agency can increase its competence regarding and development of digital tools, such as image and text recognition, which make it possible to automatically scan web pages advertising risk products or banned pesticides.</p> <p><b>Justification:</b> We believe that the intervention can be effective, but that it falls within the scope of the Swedish Chemicals Agency's regular activities.</p>   |
| Publication of non-compliant companies/mark etplaces and products | <p>The Swedish Chemicals Agency can make information from enforcement reports more accessible to the public by publishing lists and images of deficient products and explanations of what the deficiencies are on our website.</p> <p>Background: To make it easier for consumers to make conscious choices, the publication of articles with too high levels of unauthorised substances can be helpful. Today, we already do this in our enforcement reports, but the information can be made more easily accessible.</p> <p><b>Justification:</b> We believe that the intervention can be effective, but that it falls within the scope of the Swedish Chemicals Agency's regular activities.</p>   |
| Consumer enforcement  | <p>The Swedish Chemicals Agency may consider supervising consumer imports on a case-by-case basis. Situations that may result in such enforcement are:</p> <ul style="list-style-type: none"> <li>• Active monitoring and increased enforcement activities of sales of pesticides and chemical products, whether the seller is a company or an individual. There are signs that illegal products such as fluorinated greenhouse gases or pesticides from other countries are being sold online.</li> <li>• Consumer imports of articles may be subject to enforcement measures, which is described in greater detail under 'Increased enforcement cooperation with Swedish Customs'.</li> </ul> <p><b>Justification:</b> We assess that consumer enforcement is not effective, especially not for private imports for personal use (individual packages in customs) and not something that customs cooperation within the EU advocates. However, enforcement of individuals' resale of products is carried out on a case-by-case basis.</p> |

## New legal instruments

### New/ further developed national rules

Different national regulations regulating enforcement responsibilities and self-monitoring of companies may need to be changed, developed further, or established. The aim is to clarify responsibilities and to reflect Swedish consumers' online buying patterns.

- In its report on Uniform and Effective Market Surveillance (SOU 2020:49), the Government has proposed a division of enforcement responsibilities between municipalities and the Swedish Chemicals Agency for chemical products and pesticides. Unless the measure is adopted based on that proposal, the Government needs to separately change the enforcement responsibility in the Environmental Enforcement Ordinance. Section 5.1.1 *Pesticides and chemical products – divided enforcement responsibilities present challenges*, mentions the problem that the Swedish Chemicals Agency only has the right to inspect primary suppliers in relation to chemical products and pesticides. This complicates enforcement as we must find the primary supplier, information rarely seen in e-commerce stores. It is important that the Swedish Chemicals Agency can be given the opportunity to conduct enforcement at all stages if necessary, but that municipalities retain the main responsibility for enforcement at the retail level (Swedish retailers). One prerequisite is that municipalities are allowed to retain their ability to charge enforcement fees for this enforcement.

**Justification:** We assess that the measure can be effective, not only for the enforcement of e-commerce, but also for traditional enforcement. However, it is not considered to be as effective as the measures we have chosen to subject to an impact assessment.

- Propose provisions on self-monitoring rules with written procedures to be introduced in the existing Swedish self-monitoring ordinance. Norway's internal control rules<sup>91</sup> are more far-reaching than the Swedish ones, which only cover activities with an obligation for authorisation or declaration. The Norwegian companies also include companies selling articles that must have written procedures and, among other things, 'implement procedures for detecting, correcting, and preventing breaches of requirements set out in health, safety, and environmental regulation'. These procedures shall be documented in writing. The change concerns Swedish companies.

**Justification:** We believe that the intervention would be effective for Swedish companies selling articles. On the other hand, it does not address the problem of companies outside the national borders and the problem of marketplaces. That is why we have not considered this measure further.

## National collaborations

### Free company information from Statistics Sweden

By further developing and intensifying specific Swedish collaborations, our resources and competences can be used more efficiently.

Statistics Sweden may be commissioned to provide company information to the national enforcement authorities free of charge. All market surveillance authorities would benefit from free access to the register, allowing increased use of state-produced information. A business register for the enforcement of articles can then be established to streamline enforcement and support for prioritisation and selection.

**Justification:** We believe that the intervention can be effective, but that it falls within the scope of what we can promote in our regular activities. We and several market surveillance authorities would benefit from free access to Statistics Sweden's business register, and we will monitor the development of the upcoming Open Data Directive (see Annex V).

## Economic instruments

### Tax on packaging may be introduced

A tax on packaging may be introduced.

**Justification:** A tax on packaging can steer e-commerce more than physical commerce. Such a tax can also provide steering of packaging not specifically used for e-commerce. In light of this, we believe that a tax on packaging is an ineffective measure to reduce regulated chemicals in e-commerce.

<sup>91</sup> Forskrift om systematisk helse-, miljø- og sikkerhetsarbeid i virksomheter (Internkontrollforskriften)

|  |   |
|--|---|
| Taxes or charges and fees for risky products     | <p>Taxes or charges and fees for particularly hazardous chemical content may be introduced.</p> <p><b>Justification:</b> These taxes need to be well targeted so that they address the intended substances. Identifying and specifying which products contain these substances is a challenge. Often such a tax is transferred to the consumer when the price of the product is adjusted according to the level of taxation. In light of this, we believe that a targeted tax or charge on risk products is an ineffective measure to reduce regulated chemicals in e-commerce.</p>   |
| <b>Communication activities</b>                  |   |
| Government assignments on consumer communication | <p>The Government can issue a fixed-duration assignment on communication aimed at the target group consumers about sustainable e-commerce. This assignment is given to the relevant authorities of the Market Surveillance Council. A joint government mandate requires additional resources for the relevant authorities.</p> <p><b>Justification:</b> Several market surveillance authorities face similar challenges in e-commerce. A joint mandate can therefore have more weight and include more perspectives on e-commerce that are relevant to consumers. In accordance with the environmental quality objective A Non-Toxic Environment, knowledge and information on the hazardous properties of substances as well as phasing out particularly hazardous substances are needed to prevent damage from chemicals in articles. By allowing the relevant authorities to use each other's information channels within the scope of such a mandate, we can have an impact by reaching a wider group of consumers with specific chemical-related information. Considering that some authorities have already initiated joint communication activities, we believe that more such efforts can take place within the scope of the authorities' regular activities.</p> |

## 9 Conclusions and proposed measures

E-commerce is under development and in the expansion phase. Its continued development requires instruments and economic conditions – to achieve a safe and functioning trade and market. In the 2020 letter of appropriation, the Swedish Chemicals Agency was commissioned to ‘... *present an analysis of the specific challenges of e-commerce with respect to the content of regulated chemical substances in articles and, if necessary, propose socio-economically efficient measures to address any problems. ...*’.

This report shows that in the case of private e-commerce imports from countries outside the EU and EEA, there is an increased risk of products containing unknown chemicals, or chemicals regulated in the EU, entering the internal market as there is no company responsible for imports with knowledge of the regulations. Humans and the environment may be exposed to these chemicals throughout the entire life cycle of the product; during manufacturing and use, and when the product is no longer used and is disposed of in the rubbish or sent for recycling. More products containing hazardous chemicals also complicates sustainability efforts and the potential for a non-toxic circular economy. Consequently, more e-commerce collaboration between government agencies and businesses is necessary as many supervising authorities face the same kind of challenges, but greater harmonisation of EU regulations and increased global cooperation on these issues is also needed.

In this chapter, we present the main conclusions of the assignment and the measures that we consider could be effective.

### 9.1 Conclusions

Global chemical production is growing rapidly, primarily in countries outside the EU and EEA. At the same time, more Swedish consumers are shopping online and less in physical stores. From a chemicals perspective, not all e-commerce is problematic. Companies that have both physical stores and e-commerce sell products in compliance with EU chemicals regulations to a greater extent, as the regulation for physical stores is clear in terms of responsibilities and possible enforcement actions. The problem arises when Swedish consumers import products directly from countries outside the EU and EEA from companies that do not have a responsible economic operator within the EU to ensure that the products comply with EU regulation.

To our knowledge, there are no statistics showing the proportion of total e-commerce made up of e-commerce via marketplaces based outside the EU or EEA. However, data shows that economic operators within the EU and EEA have the highest percentage of e-commerce sales.

The Swedish Chemicals Agency's enforcement activities shows that articles purchased from marketplaces outside the EU have twice as many deficiencies compared to those within the EU. This indicates that marketplaces lack sufficient proactive work to ensure that the products sold comply with the requirements set out in the chemicals regulation. For chemical products and pesticides, there are major shortcomings in terms of regulations on hazard information on websites and the fact that pesticides sold online are not always approved in Sweden.

With respect to market platforms located outside the EU and EEA, it is not always possible to determine which company is selling the product and where that company is located. This makes it difficult for both consumers and enforcement authorities to determine which operator is putting the product on the market. Consumers also do not always have access to complete information about the product and its potential risks. Enforcement authorities have limited



legal possibilities to take action against companies outside the EU and EEA and against marketplaces that only serve as intermediaries.

Products imported from countries outside the EU and EEA do not necessarily contain chemicals that are not allowed within the EU, but findings from the Swedish Chemicals Agency's enforcement operations show that there is a higher risk that these products do not meet the requirements of the European chemicals legislation. This increases the risk of negative environmental and health effects.

In conclusion, we see that several different market failures have meant that products that do not comply with EU chemicals legislation can enter the internal market via e-commerce. The current regulation is designed around physical trade and cannot address the problem of regulated substances coming in via directly imported products. In addition, this puts companies established in the EU that comply with regulation at a competitive disadvantage.

## **9.2 Proposed measures**

In consultation with various operators and stakeholders, the Swedish Chemicals Agency has discussed possible measures as the issues associated with e-commerce are greater than just those included in the Agency's mandate. The consultations concluded that a combination of different measures is needed to address the problems of regulated chemical substances reaching Swedish consumers via e-commerce. For more information on these consultation meetings, see Annex V.

The proposed measures are listed below according to their effectiveness and their ability to achieve the goal and are based on the results of the impact analysis. The measures are assessed to be effective, i.e., resources are used where they provide the most benefit to society. The measures may be introduced separately or in combination. However, this report shows that no alone standing measure can handle the identified problems of e-commerce. The recommendations below rank the measures based on their expected impact on reducing risks to health and/or the environment and their contribution to achieving the goals. How we have weighted and assessed the measures according to impact and goal achievement is set out in Annex VI.

The Swedish Chemicals Agency assesses that the following measures can, among other things, create the conditions for a chemical-safe e-commerce through increased compliance. This means that consumers are better protected from health and environmental risks, including safety risks both at home and at work. Companies can also benefit from increased compliance as conditions become more equal and distorted competition decreases. The measures are in line with the EU Chemicals Strategy as all proposed measures in one way or another are alternative recommendations for how the strategy can be implemented. We also believe that several of the proposed measures enable collaborations to achieve the Global Sustainability Goals in Agenda 2030, and in particular SDG 12 'Sustainable consumption and production'.

#### **Measures assessed as most effective**

- Sweden can influence future EU regulations (e.g., the e-Commerce Directive). The aim is to place greater responsibility on the marketplaces to ensure the products they supply are safe.
- The Swedish Chemicals Agency can increase its support to the Government to develop and implement global systems that contribute to more secure e-commerce. For example, the GHS system enables better product information and phase-out of more particularly hazardous substances using the Stockholm Convention. Tools such as the SCIP database and digital product passports can be further developed to facilitate traceability and enable a circular economy.
- The Swedish Chemicals Agency and Swedish Customs can further develop cooperation between the authorities. The aim is to identify products that do not meet the chemical requirements in the EU and stop these at the border before they are placed on the Swedish market.

#### **Measures assessed as highly effective**

- The Swedish Chemicals Agency can strengthen communication aimed at and cooperation with industries that are involved in e-commerce. Examples of such industries are marketplaces and advertising sites as well as comparison sites. Cooperation can serve to help industries develop working methods so that relevant chemical information is relayed to consumers at the moment of purchase. The Swedish Chemicals Agency assists companies with information about current regulatory frameworks and the responsibilities and obligations of different e-commerce operators.
- The Government may appoint a Legal Adviser to review the limits of Swedish jurisdiction regarding enforcement. This refers to a legal analysis of what enforcement measures Swedish authorities can take against foreign operators and to develop guidelines in this area.
- Sweden can promote broadening the requirement for there being a responsible economic operator within the EU to apply to more regulation than the product laws of the revised Market Surveillance Regulation. The proposal is an amendment to the Market Surveillance Regulation by adding the REACH Regulation, the CLP Regulation, the POPs Regulation, and the Biocidal Products Regulation to the list of regulations in Article 4(5).

#### **Measures assessed as effective**

- The Swedish Chemicals Agency, together with the authorities that can engage in enforcement/market surveillance of e-commerce within the Market Surveillance Council, may be tasked with developing the cooperation further. One proposal is to form a more formalised group, similar to that for toys.
- The Swedish Chemicals Agency can increase its support to the Government regarding the chemicals perspective on sustainability-related issues in trade policy, in line with the EU's chemicals strategy. Sweden should also support the European Commission in its work on sustainable development and Policy Coherence for Development.
- The Swedish Chemicals Agency can assist in developing a proposal for a common EU strategy to minimise chemicals risks in e-commerce from countries outside the EU and EEA. This promotes the work for a non-toxic circular economy.
- The Swedish Chemicals Agency can initiate dialogue with industry organisations and with relevant actors in innovation or substitution matters. The purpose is to support the operators so that they, in turn, can provide good support to member companies or other companies in the proactive work of replacing hazardous chemicals. For example, digital tools can be developed

to help companies identify products that do not comply with chemicals regulation in the EU and Sweden.

- The Government may assign an Adviser to assess the possibility of setting up a national centre for coordination and support on e-commerce issues (for enforcement purpose). The centre has expertise in identifying and tracking products and operators on the internet and, for example, monitoring the development of e-commerce. Each market surveillance authority has expertise in its field but can receive support from this coordination centre on e-commerce issues.

#### **Measures assessed as less effective**

- The Swedish Chemicals Agency can contribute to information-sharing on potential risks associated with products purchased online.
- Sweden can bring the chemicals perspective on e-commerce to the agenda at the UN Environment Conference, scheduled for 2022. The Swedish Chemicals Agency can provide arguments as to why chemicals risks need to be included in sustainability issues related to global trade and e-commerce.
- The Government can appoint an Adviser to review the special challenges regarding e-commerce, involving all relevant authorities. The effects on, for example, enforcement, circular economy, and competition also need to be highlighted. The Adviser shall propose effective measures to achieve more secure e-commerce.

\* The measures presented in this report are possible to implement and should not be read as commitments.

To read about other alternative measures that the Swedish Chemicals Agency deems even less effective and which are not considered to be able to contribute as much to achieving the intended goal, the reader is referred to the action list in section 8.12.

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# Glossary

| Word                  | Explanation   |
|-----------------------|---|
| Advertising site      | Website that gathers ads from different sellers but serves no other purpose in the transaction.   |
| Article               | An object that, during production, acquires a special shape, surface, or design that determines its function to a greater extent than its chemical composition. Examples include Toys, Home electronics, Furniture, etc.  |
| Chemical product      | Chemical substances and mixtures of chemical substances, in the form of gases, liquids or powders. Examples are detergents, adhesives, paints, and pesticides.  |
| Consumer              | A natural person shopping for purposes that fall outside commercial activities. In this report, the term 'individual' is used synonymously with consumer.   |
| E-commerce            | E-commerce is a form of trade that makes it possible to transfer goods or services over the internet.   |
| Jurisdiction          | Legal authority, the area in which, for example, a enforcement authority is able to exercise its powers.  |
| Market surveillance   | Public authorities ensuring compliance of products subject to relevant harmonised EU regulation.  |
| Marketplace           | A company that enables sellers to sell directly to buyers through the marketplace. In this report, we define marketplaces that, unlike online stores, do not own the articles and only provide a marketplace for other sellers. Examples are Fyndiq, Amazon, E-bay, and Wish.                     |
| Mixture               | Mixture or solution consisting of two or more substances.   |
| Online store          | Covers all websites with the purpose of directly selling articles (and services) online. It includes websites for direct sales of own and others' products. In our definition, the online store owns the articles and resells them. Examples include Plantagen, Åhléns, Leksaklandet, Elgiganten. |
| Pesticides            | Chemical or biological products designed to prevent animals, plants, or micro-organisms from causing damage to property or harming human or animal health. Depending on the application, pesticides are either a biocidal product or a plant protection product.                                  |
| Platform              | The word platform is frequently used in the same sense as a marketplace, but it is really only a place where all types of operators can be found. In this report, we divide the different types into marketplaces and online stores.  |
| Product               | In this report, we use the word product as a collective term for the different product types; pesticides, chemical products, and articles.  |
| Regulated substances  | In this report, we mainly refer to chemical substances with restricted use, to substances that are on the Candidate List, and substances that have a hazard classification.   |
| Restricted substances | Chemical substances that are restricted in regulation.  |
| Substance             | Chemical element and its compounds in natural or manufactured form, as defined in the REACH Regulation (EC) No 1907/2006.   |
| Enforcement           | Public authorities' market surveillance and other compliance activities. In this report, we have chosen to use the word enforcement for the sake of legibility, even though market surveillance is included in the concept.   |
| Third country         | A country outside the EU and EEA.   |



# Annex I E-commerce definitions

## The E-barometer

The E-barometer<sup>92</sup> defines e-commerce as:

'online sales of goods delivered home, to a distribution point, or collected at a physical store, warehouse or delivery centre by consumer'.

## E-Commerce Directive

The E-Commerce Directive<sup>93</sup> is the key regulation within the EU in this area. The Directive, which has been implemented in Swedish law through the Electronic Commerce and other Information Society Services Act (SFS 2002:562), uses the term 'information society services', with the meaning:

'any service normally provided for remuneration, at a distance, by means of electronic equipment, and at the individual request of a recipient of a service. Information society services span a wide range of economic activities which take place online, in particular selling goods online. When purchasing articles online, this legislation thus covers the conclusion of the purchase agreement. Furthermore, information and payment may also be covered, but not the delivery of the goods as such.'

## OECD

The OECD (OECD, 2011) defines e-commerce as:

'the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders.'

Here, the method of ordering is decisive, not what type of item it is or what payment method is used.

## The European Commission's Blue Guide

The European Commission's Blue Guide (European Commission, 2016), which provides guidance on EU product rules, contains the following wordings:

Products offered for sale by online operators based in the EU are considered to have been placed on the Union market, regardless of who placed them on the market (the online operator, the importer, etc.).

Products offered for sale online by sellers based outside the EU are considered to be placed on the Union market if sales are specifically targeted at EU consumers or other end-users. The assessment of whether or not a website located inside or outside the EU targets EU consumers has to be done on a case-by-case basis, taking into account any relevant factors such as the geographical areas to which dispatch is possible, the languages available used for the offer or for ordering, payment possibilities, etc. When an online operator delivers in the EU, accepts payment by EU consumers/end-users and uses EU languages, then it can be considered that the operator has expressly chosen to supply products to EU consumers or other end-users. Online operators may offer online for sale a product

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<sup>92</sup> The E-barometer (*Sw. E-barometern*) is a Swedish survey published by PostNord. Available on <https://www.postnord.se/vara-losningar/e-handel/e-handelsrapporter>.

<sup>93</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. The Directive has been incorporated into Swedish law by the Act on Electronic Commerce and Information Society Services (SFS 2002:562), 'the E-commerce Act'

type or an individual product which has been already manufactured. When the offer refers to a product type, the placing on the market will only take place after the stage of manufacture has been completed.

As the products offered for sale by an online operator are likely to be (or have already been) ordered by consumers or businesses in the EU, they are being supplied in the context of a commercial activity by way of online sales.

## Annex II Differences in e-commerce among Swedish consumers

There are differences in purchasing behaviour between different groups of consumers, depending on age, gender, and where in Sweden consumers live. Below are some general examples.

### Age differences

Among Swedish consumers who shop online at least once a month, e-commerce has remained roughly the same in recent years. The table below shows how many people in each age group have made online purchases in the last month in measurements between 2016 and 2019.

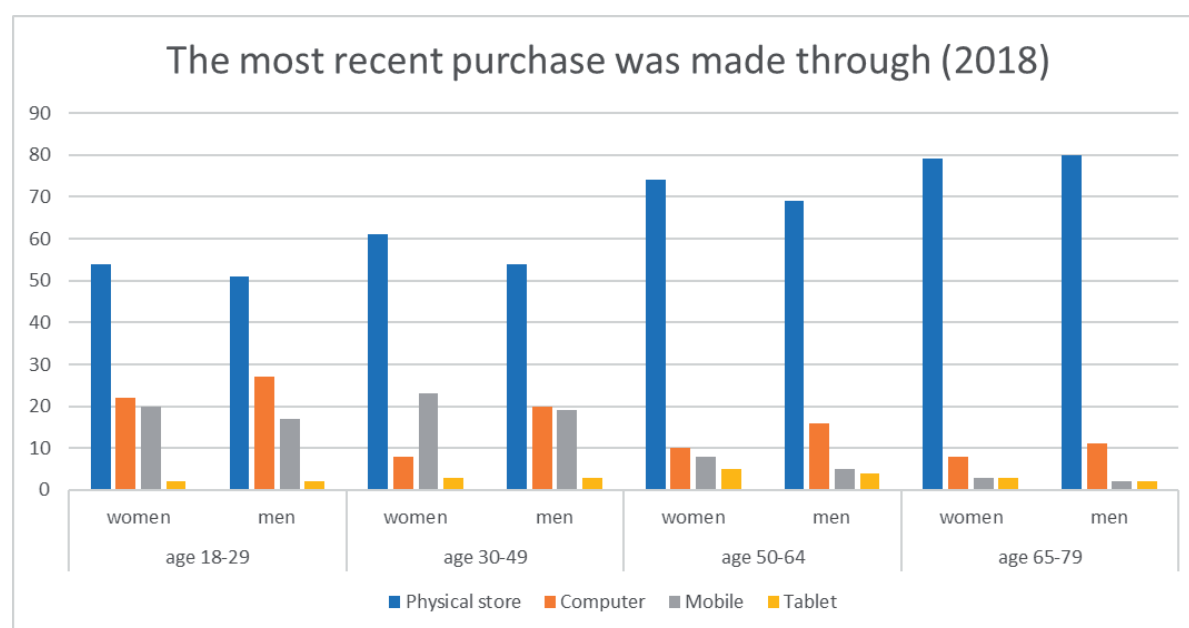
*Table 17.* Percentage of consumers in each age group who have made online purchases in the last month.

| Age         | Have shopped online at least once a month |
|-------------|---|
| 18–29 years | 75–80 %                                   |
| 30–49 years | 75–80 %                                   |
| 50–64 years | 60–65 %                                   |
| +65 years   | 45–50 %                                   |

Source: PostNord AB 2016–2019.

Among younger consumers (18–29 years old), 44 percent of purchases were made online. This number gradually decreased in the different age groups, down to 16 percent among older consumers (65–79 years). Men primarily do their online shopping by computer, while women use smartphones. The trend also shows that purchases over smartphones are increasing. In all age groups, more than half of purchases are still made in a physical store.

*Figure 9.* Consumer trade patterns for the last purchase of goods broken down by age group and gender.



Source: (PostNord AB, 2019).

**Regional differences**

According to the E-barometer's Annual Report 2018, there is a clear regional difference regarding e-commerce from abroad. Urban consumers tend to prefer to shop from the UK while US and rural consumers shop from China. PostNord notes that trade from China is usually low-priced goods with brands unknown in Sweden and likely via Wish (the e-commerce site with articles from China most popular in Sweden). Furthermore, the report concludes that trade from the UK and the US is more likely to consist of more established goods and brands and it may be the wider selection of established goods that is of interest rather than low prices. (PostNord AB, 2019)

## **Annex III Examples of substances and their hazardous properties**

This report mentions a number of substances and this Annex lists these substances and their hazardous properties.

### **Lead**

Lead is a heavy metal that has harmful effects on human health and the environment. Lead can, among other things, affect our ability to have children and in case of prolonged and repeated exposure, it can cause organ damage and cancer. Some groups, such as fetuses and children, are particularly sensitive to the harmful effects of lead. For example, lead can damage the nervous system and affect the ability to learn. The data available today suggests that lead lacks a threshold for when the harmful effects arise. It is therefore important that exposure to lead is minimised as far as possible.

### **Boric acid**

Boric acid is used as a preservative in, among other things, the toy product Slajm (Slime). The substance can damage our ability to have children and cause birth defects. If you imbue boron compounds, they can be converted into boric acid in the body.

### **Phthalates**

Phthalates are used as plasticisers. Examples of phthalates include DEHP, DBP, BBP, and DIPB. Most commonly, PVC plastic needs to be softened to achieve the desired function. Plasticisers are not bound to the PVC plastic and, therefore, phthalates leak from plastic products throughout their useful life. This diffuse dispersal means that phthalates are found almost everywhere in the environment.

In the EU, it is established that DEHP, BBP, DBP, and DIPB have endocrine disrupting properties, which means that they can affect hormone balance in humans. The substances can also reduce our ability to have children and cause birth defects. There are also other problematic phthalates.

### **Cadmium**

Cadmium is a heavy metal that can be found in rechargeable batteries, artists' colours, electronics, and old plastic.

Cadmium remains in the body for a long time and is mainly stored in the kidneys, which means that kidney function can be damaged in case of prolonged exposure. Cadmium can also be carcinogenic and cause osteoporosis. The substance is toxic to the environment.

The most common way to ingest cadmium is through food. This is because plants easily absorb cadmium from the ground. Cadmium ends up in the ground via air emissions from, among other things, electricity and heat production and from various fertilisers.

### **Chromium**

Chromium is an element that can be harmful to human health and the environment. It is primarily the hexavalent form of chromium, chromium (VI), that is associated with the harmful effects of the substance. Hexavalent chromium can cause skin allergy upon contact with the skin. Inhalation of dust containing hexavalent chromium can cause cancer. It is also hazardous for the environment.

Chromium is used, among other things, to tan leather. Then the tetravalent form of chromium, chromium (III) is used. If tanning is done incorrectly, tetravalent chromium can be converted into hexavalent chromium.

### **SCCP – Short-chain chlorinated paraffins**

Chlorinated paraffins are used, among other things, in refrigerants and lubricants in metal industries and as additives in sealants, paint, plastics, and rubber. They can function as a plasticiser and flame retardant.

Chlorinated paraffins are divided into three groups based on the length of the carbon chain: short-chain (SCCP) has 10 to 13 carbon atoms, medium-chain (MCCP) has 14 to 17 carbon atoms, and long-chain (LCCP) has more than 17 carbon atoms.

Short-chain chlorinated paraffins are stable, persistent compounds that can be bioaccumulated in the environment. They are also highly toxic to aquatic organisms and can have long-term adverse effects in the aquatic environment.

## Annex IV Instruments

**Informative instruments** aim to influence the behaviour of operators through knowledge transfer. These include information campaigns, training, or guidance. This group of instruments also includes the certification and labelling of goods and services (which are not statutory) aimed at guiding consumers in their choices. For example, consumers who have access to the right information can make conscious choices about which product they buy. If companies have knowledge of the chemicals regulations and how their activities can be linked to the environmental quality objective A Non-Toxic Environment, they can better take responsibility for reducing the risks of hazardous chemicals harming humans and the environment.

**Legal instruments** are also called administrative instruments, legal rules, or regulations. These instruments all have in common that they concern different types of legal rules and are issued by a legislator or other operator who has been mandated to do so in their place. Legal instruments differ from other instruments that do not provide mandatory incentives. Legal instruments can be divided into:

- **International agreements** are conventions that are primarily binding for states, thus providing an indirect instrument as states then develop national regulations in accordance with the international convention.
- **EU law** includes treaties, regulations, and directives. Is superior to national regulations. An EU treaty sets out the principles of EU collaboration. EU institutions adopt regulations and directives based on the treaties. The regulations are directly applicable in the Member States. The directives are implemented in national law.
- **National law** includes laws, regulations, and ordinances. Laws are made by the Riksdag, regulations are adopted by the Government and ordinances are adopted by administrative authorities and municipalities based on law or regulation. In addition to these, there are permits and enforcement that also belong to the legal instruments as they are binding and affect the behaviour of operators.

**Economic instruments** are instruments that, through financial incentives or price signals, control the market. They aim to influence the behaviour of operators in a direction desirable to society, by changing the economy's price signals and cash flows. It will then be cheaper or more expensive for operators to take a certain action. There are various forms of economic instruments that can be used:

- **Taxes** constitute a general revenue for the treasury and the national budget. They fund the public sector and public expenditure, redistribute revenue and aim to increase efficiency by internalising externalities<sup>94</sup> in the economy.
- The **Bonus malus system** is one example of economic instruments where a tax is imposed on operators who behave in an undesirable way. The revenue this generates is used to provide the corresponding tax relief/contribution to those who behave in a desirable manner.
- **Charges and fees** are funds earmarked for a particular use and returned in some form to the fee debtors. A fee requires a counter performance from society, such as

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<sup>94</sup>A negative externality (or an *external cost*) arises in cases where a third party, who is neither the buyer nor the seller of a product, is adversely affected by the use of a product. Internalising means to include by pricing the effects.

government oversight. A charge can be directly linked to, for example, a pollutant or an input product<sup>95</sup> that has caused emissions.

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<sup>95</sup> An input product is an article used and consumed in the manufacture of other articles or in production. For example, an input product can be a commodity, a semi-finished product or/and a consumable.



## Annex V Consultations

During the autumn of 2020, the Swedish Chemicals Agency has consulted various operators in Sweden active in e-commerce. These various consultations are presented below.<sup>96</sup> The opinions expressed in consultations were considered in the preparation of this report.

### Market Surveillance Council

The Swedish Chemicals Agency sent out a survey to the various authorities of the Market Surveillance Council regarding their experiences with e-commerce enforcement. The results are described in section 6.7.1.

In October 2020, we had a meeting with members of the Market Surveillance Council. The purpose was to reconcile the results of the survey and to get feedback on various proposed measures. Several members of the Market Surveillance Council were in favour of a national inquiry to shed light on e-commerce from a broader enforcement perspective. Swedish Customs welcomes collaboration with other market surveillance authorities.

The consultation revealed that the Swedish Medical Products Agency, the Swedish Food Agency, the Swedish Tax Agency, and the Swedish Consumer Agency are working together to introduce measures that can reduce illegal medicines in e-commerce. The group<sup>97</sup> has experiences of the challenges of finding relevant operators and how to act towards foreign operators. Collaboration between the Market Surveillance Council, which has similar experiences, and this group would be desirable.

The new market surveillance rules are believed to improve certain conditions, for example regarding anonymous purchases and the need for global marketplaces to have a responsible economic operator within the EU. However, they will not solve the problem of marketplaces not being responsible for the products they supply.

### National Board of Trade Sweden

In October 2020, the Swedish Chemicals Agency and the National Board of Trade Sweden met to discuss e-commerce and problems as well as possible measures. The National Board of Trade Sweden stressed that a revision of the e-Commerce Directive will take place in the context of the revision of the Digital Services Act.

The National Board of Trade Sweden shared the view that there is an opportunity for further collaboration in future negotiations on free trade agreements, to strengthen sustainability criteria and the chemicals perspective.

Market inhibitors and the importance of safeguarding harmonised conditions in the internal market were also discussed.

### Companies, trade organisations and trade unions, consumers' associations

In November 2020, the Swedish Chemicals Agency met with Svensk Handel (also representing Svensk Digital Handel), KTF, the Commercial Employees' Union (Handels),

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<sup>96</sup> The consultations are presented differently in the English version of the report compared to the Swedish version. For the wording submitted in connection with the reporting of the assignment to the Government, please refer to the Swedish version.

<sup>97</sup> Centre against illicit pharmaceuticals working group on supervisory methodology in inspection of e-commerce.

Fyndiq, CDON, Wish, Amazon, and the Swedish Consumers' Association to discuss e-commerce, problems, and possible measures.

The meetings were constructive and opened the possibility of future dialogue and collaboration. A majority of the operators agreed that several different measures are necessary to address chemical-related problems that may result from e-commerce.

### **Statistics Sweden (SCB)**

One possible measure that the Swedish Chemicals Agency has evaluated in this report is for Statistics Sweden to provide company information to the national enforcement authorities free of charge. SCB has made the following statement to the Swedish Chemicals Agency on this<sup>98</sup>:

According to the Ordinance on the General Business Register (SFS 1984:692), fees shall be charged when disclosing data from the General Business Register and the work on the register is funded by charges and fees. Providing the data free of charge to other authorities would significantly reduce revenues and, if this is not compensated by an increase in appropriations, this would result in reduced register maintenance and thus a deterioration in the quality of the register.

Otherwise, SCB refers to other ongoing investigations into this issue, both the inquiry on the Open Data Directive and the government assignment regarding basic data. The forthcoming Open Data Directive identifies company information as particularly valuable data that should be made available free of charge.

In its budget request, SCB has also included an increase in appropriations to make it possible to make the information in the General Business Register available free of charge.

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<sup>98</sup> Jessica Kühne, SCB, email conversation, 18 December 2020

## Annex 6 Assessment of possible measures following impact assessment

The Swedish Chemicals Agency considers all proposed measures listed in the table below and in the table in section 9.2 possible to implement. To a varying degree they are also considered to be socio-economically efficient measures, i.e., that the resources are used where they provide the most benefit to society. In the table below, short- and long-term effects refer to effects on human health and/or the environment. Based on the assessment of the measures in the table, sorting can be done based on set goals, increased compliance, and impact. An action can be assessed as effective even if it takes slightly longer for the measure to have measurable effects.

*The alternative measures are individually assessed in the table\*. For optimal and more efficient control, a combination of measures is usually better.*

| Proposed measures  | Contributes to achieving the intended goal | Increased compliance | Short-term effect | Long-term effect |
|--|--|----------------------|-------------------|------------------|
| Global systems to increase information on and phase out particularly hazardous substances in e-commerce. | Yes<br>(+++)                               | Yes<br>(+++)         | No<br>(-)         | Yes<br>(+++)     |
| Increased support from Keml for the work on sustainability issues in trade policy.                       | Yes<br>(++)                                | Yes<br>(++)          | Yes<br>(-)        | Yes<br>(++)      |
| E-commerce from a chemicals perspective on the agenda at the UN Environment Conference 2022.             | Yes<br>(++)                                | Yes<br>(+)           | No<br>(-)         | Yes<br>(++)      |
| Influence EU regulations related to e-commerce.  | Yes<br>(+++)                               | Yes<br>(+++)         | Yes<br>(++)       | Yes<br>(+++)     |
| The requirement for a responsible economic operator within the EU includes more chemicals regulation.    | Yes<br>(++)                                | Yes<br>(++)          | No<br>(-)         | Yes<br>(+++)     |
| Common EU strategy on e-commerce.  | Yes<br>(++)                                | Yes<br>(++)          | No<br>(-)         | Yes<br>(++)      |
| Information about the potential risks associated with products purchased online.                         | Yes<br>(+)                                 | Yes<br>(+)           | Yes<br>(++)       | Yes<br>(+)       |
| Communication and cooperation with industries that are operators within e-commerce.                      | Yes<br>(++)                                | Yes<br>(++)          | Yes<br>(+)        | Yes<br>(++)      |

|  |             |              |              |             |
|--|-------------|--------------|--------------|-------------|
| Initiate dialogue with industry associations and with other actors in innovation or substitution matters.          | Yes<br>(++) | Yes<br>(++)  | No<br>(-)    | Yes<br>(++) |
| Increase enforcement cooperation with Swedish Customs.   | Yes<br>(++) | Yes<br>(++)  | Yes<br>(+++) | Yes<br>(++) |
| Market surveillance authorities formalise cooperation on e-commerce.   | Yes<br>(++) | Yes<br>(+)   | Yes<br>(+)   | Yes<br>(++) |
| An evaluation of the specific challenges of e-commerce from a enforcement perspective including proposed measures. | Yes<br>(++) | Yes<br>(+)   | No<br>(-)    | Yes<br>(++) |
| A review to analyse the limits of Swedish jurisdiction for the enforcement of foreign operators.                   | Yes<br>(++) | Yes<br>(+++) | No<br>(-)    | Yes<br>(++) |
| National Centre for Coordination and Support of e-commerce.  | Yes<br>(++) | Yes<br>(++)  | No<br>(-)    | Yes<br>(++) |

\* The assessments have been made as follows:

(+++) Very high efficiency

(++) High efficiency

(+) Efficient

(-) Less efficient



Swedish Chemicals Agency

Box 2, SE-172 13 Sundbyberg  
+46 8 519 41 100

**Visitors' and delivery address**

Esplanaden 3A, Sundbyberg

[kemi@kemi.se](mailto:kemi@kemi.se)

[www.kemikalieinspektionen.se](http://www.kemikalieinspektionen.se)