

# Taming Temu: Why the fast-growing online marketplace fails to comply with the **EU Digital Services Act**

May 2024

*NB: evidence and screenshots used to substantiate this complaint were taken in April-May 2024 and are listed in the annex accompanying this document.*



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# What this is about and why it matters for **consumers**

The online marketplace Temu has seen skyrocketing numbers of consumers using its platform in a matter of months, including in Europe, and is already able to compete with other e-commerce giants.

Temu proposes heavily discounted products and relies extensively on gamification and intensive advertising to appeal to consumers.

Yet the marketplace also raises serious concerns. It is suspected of infringing various EU laws that are meant to protect consumers.

In this complaint, we show how Temu fails to comply with several of its obligations as laid down under EU Regulation 2022/2065 (the Digital Services Act – “DSA”).

Temu does not guarantee its users a safe, predictable, and trustworthy online environment as the law requires. Among other things, we have strong concerns that consumers are falling prey to manipulative techniques, that Temu fails to ensure the traceability of the traders operating on its platform, or that its overall functioning remains opaque, all of which breach the Digital Services Act.

For these reasons, consumer organisations from the BEUC network have filed complaints with their competent Digital Services Coordinators pursuant to Article 53 DSA and have also alerted the European Commission as Temu is a de facto Very Large Online Platform (“VLOP”) with tens of millions of users across Europe. We call on the competent authorities to force Temu to comply immediately with all the requirements listed in the DSA and to ensure a safe digital environment for all European consumers.

# Our call for action

*Based on our assessment around Temu's lack of compliance with the DSA, we request that:*

- **The competent Digital Services Coordinator** (*pursuant to Articles 51, 52 and 60 DSA*):
  - Starts formal proceedings to assess whether Temu has breached EU Regulation 2022/2065 (EU Digital Services Act), in particular (but not limited to) the legal obligations laid down in this report, namely: Art.30 (traceability of traders), Art. 31 (compliance by design), Art. 27 (transparency of recommender systems), Art.25 (manipulative practices), Art. 28 (protection of minors), Art. 14 (Terms and Conditions), and Art. 21 (out-of-court dispute resolution).
  - Launches a joint investigation with the participation of the concerned Digital Services Coordinators concerned by Temu's practices.

*Where infringements are established:*

- Orders the cessation of the infringements and immediate compliance with the DSA for all European consumers.
- Imposes a fine.

*Where necessary:*

- Imposes a period penalty payment.
- Adopts interim measures to avoid the risk of serious harms to all European consumers.

- **The European Commission:**

- Urgently designates Temu as a "Very Large Online Platform".
- Supports the work of the competent digital service Coordinator and of all digital service Coordinators concerned by Temu's practices.
- Carefully monitors Temu's compliance with its obligation once it is designated as a Very Large Online Platform (VLOP).

*Due to the cross-cutting nature of Temu's suspected infringements, we also call on the European Commission*

- Ensures cooperation, mutual information and coordination between Digital Services Coordinators, the European Board of Digital Services, and the other relevant EU enforcement networks, in particular, the Consumer Protection Coordination network (CPC-Network), the Consumer Safety Network (CSN) and market surveillance Authorities, and the European Data Protection Board.

# What is Temu?

Since its launch in Europe in early 2023, Temu has experienced what has been described as a “*meteoric rise in traffic and sales in Europe*”<sup>1</sup>. It is among the most downloaded apps in many European countries at the moment and among the most popular online marketplaces, today competing with other e-commerce giants such as Amazon or eBay.<sup>2</sup>

Temu is operated by the Chinese company PDD Holdings (also owner of Pinduoduo) and has its European office located in Ireland. Its business model is similar to other shopping platforms such as Shein or Alibaba. Most products sold on Temu are shipped to consumers directly from Chinese factories or warehouses. Its skyrocketing appeal is mainly built on three pillars:



(1) Heavily discounted consumer products



(2) Gamified experience for consumers



(3) Intensive advertising, including influencer marketing

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<sup>1</sup> Similarweb, ‘Temu: Analyzing Europe’s Ecommerce Rising Star’ (December 2023, accessed on 2 May 2024).

<sup>2</sup> ChannelEngine, ‘The top 14 European marketplaces in 2024’ (March 2024, accessed 2 May 2024).

**(1) Heavily discounted products and rapid delivery of its products in times of inflation**

In an inflationary context which has forced consumers to adapt their budgets and to reduce their expenses, Temu proposes heavily discounted consumer products with some products as low as a few cents, as shown on Temu's [landing webpage](#).

Temu also promises very fast shipping on most products at no extra cost, with delivery usually not exceeding 3-5 business days.



From €0.20

Toys & Games



From €0.25

Electronics



From €0.20

Kids Fashion



From €0.21

Business, Industry & Science



On top of already heavily discounted products, Temu also proposes additional discounts, coupons, and other gifts on a daily basis.



## (2) Gamified experience for consumers

Temu has been described as “an arena where shopping meets entertainment”.<sup>3</sup> The platform integrates interactive games and social shopping elements, and this has been recognized as one of the distinctive features of the online marketplace compared to its competitors. Games and entertainment also are likely to make Temu particularly attractive to younger consumers. Among other things:

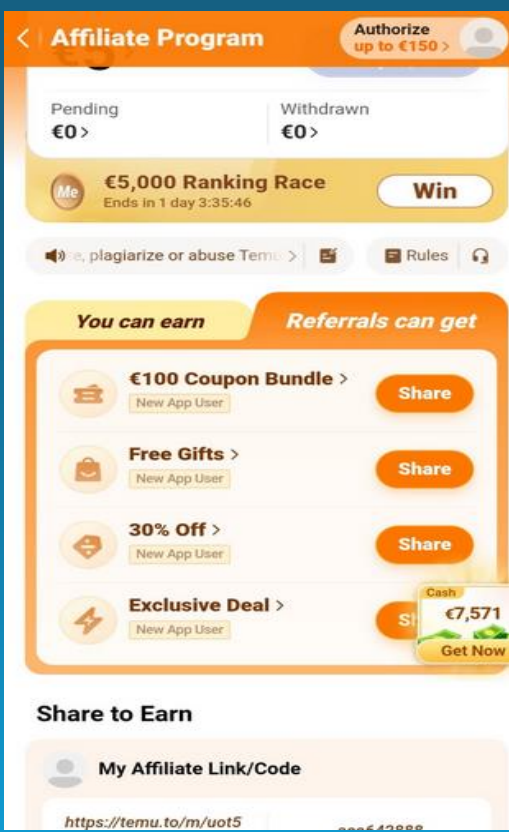
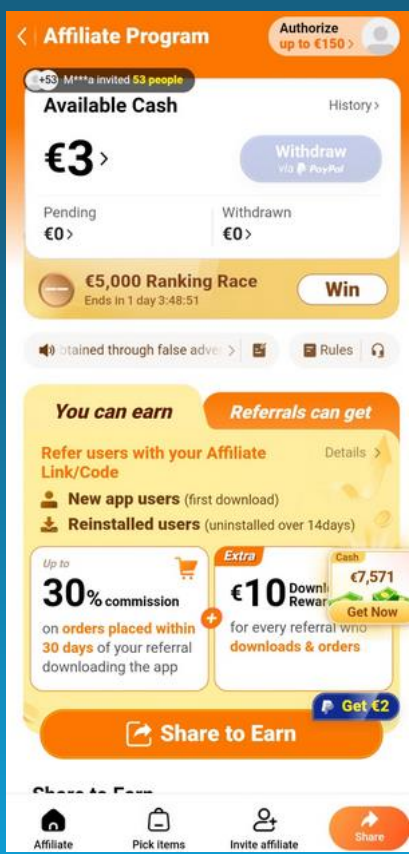
- Consumers are invited to play games to unlock additional coupons and discounts (such as spinning fortune wheels). Temu also proposes several games via the Temu app. Although some of these games may not be available (yet) in all European countries, there are serious reasons to believe that they soon will be across Europe (for example, the webpage presenting these games is already available in most European languages, see for instance below in French).



<sup>3</sup> Digital Crew, ‘Play to Pay: Unpacking Temu’s Gamified Shopping Odyssey’ (accessed 2 May 2024).



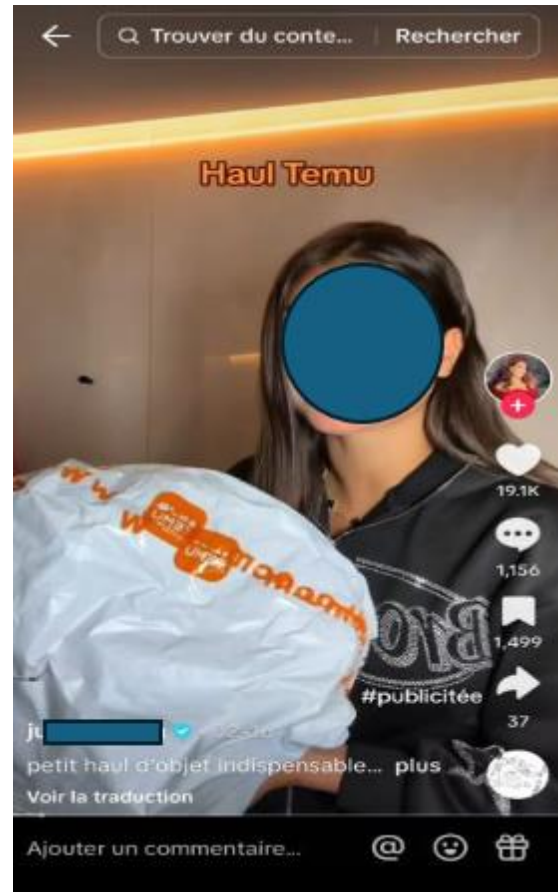
- Consumers are invited to participate in an “affiliate programme” (see below) where they can share (“share to earn”) their affiliate code with other users to obtain “free gifts”, discounts and other “exclusive deals”, with the possibility to take part in “races” against to earn additional bonuses.



### (3) Intensive advertising and use of influencer marketing

Temu spends millions of euros on advertising. During the third quarter of 2023, the Etsy's CEO pointed out to Shein and Temu saying “*I think those two players are almost single-handedly having an impact on the cost of advertising, particularly in some paid channels in Google and in Meta*”.<sup>4</sup> In the US in 2023, Temu spent approximately \$500m in advertising, increasing its marketing spending by 1000%<sup>5</sup>.

Temu also relies heavily on **influencers active on social media platforms (such as TikTok)**<sup>6</sup> who promote products sold on Temu (a simple search for “Temu” on YouTube yields many results from influencers sponsoring products sold on Temu)<sup>7</sup>.



<sup>4</sup> <https://s360digital.com/exploring-the-temu-phenomenon/> (accessed 2 May 2024).

<sup>5</sup> [www.forbes.com/sites/cmo/2024/02/21/why-temu-is-spending-on-marketing-like-a-billionaire/?sh=1f1c18432ae0](https://www.forbes.com/sites/cmo/2024/02/21/why-temu-is-spending-on-marketing-like-a-billionaire/?sh=1f1c18432ae0) (accessed on 2 May 2024).

<sup>6</sup> For example, Temu’s use of social influencers was stressed by the Hungarian Authority in charge of unfair market practices (*Gazdasági Versenyhivatal* - GVH) in March 2024. The Authority stressed that “TEMU promotes its products through Hungarian influencers with large followings on various social media platforms” ([www.gvh.hu/en/press\\_room/press\\_releases/press-releases-2024/gvh-takes-action-competition-supervision-proceeding-launched-against-TEMU](https://www.gvh.hu/en/press_room/press_releases/press-releases-2024/gvh-takes-action-competition-supervision-proceeding-launched-against-TEMU)).

<sup>7</sup> YouTube, paid content by Temu (accessed 2 May 2024):

[www.youtube.com/results?search\\_query=TEMU&sp=EgUIAoACAQ%253D%253D&sv=1](https://www.youtube.com/results?search_query=TEMU&sp=EgUIAoACAQ%253D%253D&sv=1) YouTube, paid content by Temu: [www.youtube.com/results?search\\_query=TEMU&sp=EgUIAoACAQ%253D%253D&sv=1](https://www.youtube.com/results?search_query=TEMU&sp=EgUIAoACAQ%253D%253D&sv=1)

# Temu failing to comply with the EU Digital Services Act

## *Designation of Temu under the DSA*

Temu has its European office in Dublin and proposes its service to European consumers. As such, it is beyond doubt that EU Regulation 2022/2065 (the Digital Services Act) **fully applies to Temu's activities**.<sup>8</sup>

Under the DSA, Temu:

- First, qualifies as an **online platform** (Art. 3 (i) DSA) as it operates as a hosting service that stores and disseminates information to the public, and this activity is neither a minor nor a purely ancillary feature of another service or a minor functionality of the principal service. In addition, Temu allows consumers to conclude distance contracts with traders.
- Second, Temu meets the conditions to be designated as a **Very Large Online Platform** (hereinafter 'VLOP') under Art. 33 DSA. This is because Temu reported<sup>9</sup> in April 2024 having reached the threshold of more than 45 million average monthly active users with approximately 75m monthly active users in the EU for the period between 1 October 2023 and 31 March 2024. The formal designation of Temu by the European Commission as a VLOP is therefore expected to happen at any time soon (it is noteworthy that Shein was designated as a VLOP by the European Commission in April 2024 after making public in late January 2024 that they are above the VLOP designation threshold)<sup>10</sup>. Importantly, this designation will trigger a new set of obligations for Temu. Our complaint focuses on Temu's obligations as an online platform which were applicable as of February 2024.

## *Temu's obligations under the DSA*

Temu must first comply with the obligations falling on online platforms (Chapter III Section 3 DSA) and obligations falling on online platforms that allow consumers to conclude distance contracts with traders (Chapter III Section 4 DSA). As obligations under the DSA are cumulative, Temu must also comply with the obligations applying to hosting services (Chapter III, Section 2 DSA) and intermediary services (Chapter III, Section 1 DSA).

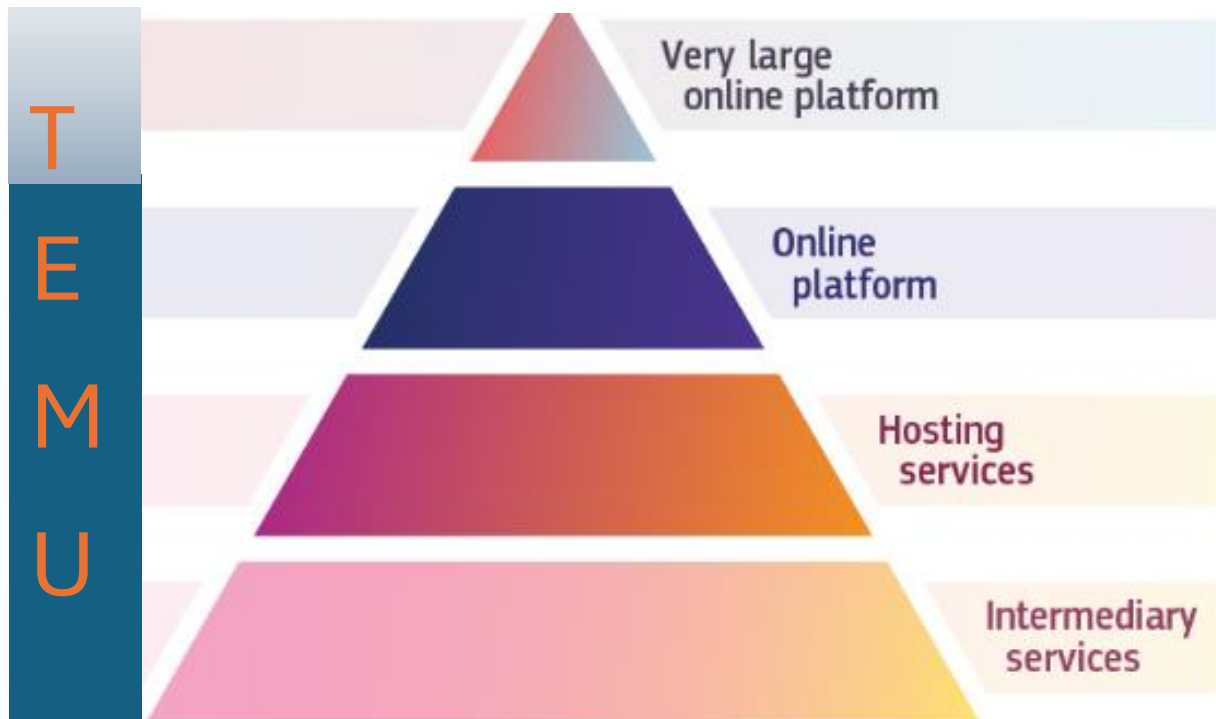
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<sup>8</sup> Recital 7 DSA provides that the rules should apply to providers of intermediary services irrespective of their place of establishment or their location, in so far as they offer services in the Union, as evidenced by a substantial connection to the Union.

<sup>9</sup> Temu, 'Digital Services Act' (accessed 2 May 2024)

<sup>10</sup> EU Commission, 'Commission designates Shein as Very Large Online Platform under the Digital Services Act' (April 2024, accessed 2 May 2024).

Although the requirements applying to providers of VLOPs (Chapter III, Section 5 DSA) are only applicable four months after the notification by the European Commission to the provider, **they remain relevant to the European Commission and the competent DSA Coordinator.** The latter should therefore be fully considered as Temu is already today a *de facto* VLOP and its activities have an impact today on millions of European consumers. This is particularly important as different provisions in Chapter III Sections 5 DSA build upon and expand the obligations that online platforms are subject to and that Temu infringed as our analysis below shows.<sup>11</sup>



Graph built from the visual representation of cumulative obligations and actors subject to DSA obligations<sup>12</sup>

<sup>11</sup> E.g., Art. 38 DSA expands the obligations on the deployment of recommender systems that online platforms as subject to as per Art 27 DSA. Art. 34(1)(d) and 35(1)(j) DSA build on the obligations laid down in Art. 28(1) DSA.

<sup>12</sup> EU Commission, 'The Digital Services Act' (accessed 2 May 2024).

# Temu's **infringements** of the Digital Services Act

We believe that Temu fails to comply with its obligations as an online platform that relate to:

1. Traceability of traders (Art. 30)
2. Compliance by design (Art. 31)
3. Transparency of recommender systems (Art. 27)
4. Manipulative practices (Art. 25)
5. Protection of minors (Art. 28)
6. Terms & Conditions (Art. 14)
7. Information about out-of-court dispute resolution (Art. 21)

In addition, we have serious concerns about Temu's ability to be in a position to comply with its obligations as a Very Large Online Platform when designated.

## 1. Lacking traceability of traders

### ○ *What the law says*

Art. 30 DSA provides that online platforms allowing consumers to conclude distance contracts with traders must make the following information available to consumers in a clear, easily accessible and comprehensive manner. This must include in particular:

- The name, address, telephone number and email address of the trader.
- When applicable, the trader register.
- Self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law.

### ○ *Application to Temu*

Temu fails to comply with the obligations laid down in Art. 30 (7) DSA. Specifically:

- **The information about traders' traceability and identification is often incomplete.** For example, in several cases, the only information available is the name of the trader (see screenshot below, and also additional example listed in the Annex under pts 2.1, 2.2., 2.3, 2.4, among many others found on Temu). In other instances, other pieces of requested information (email address, self-certification, or others) are missing (see Annex, pt 2.5).



**Lightning Deal** ✓ Free shipping for you Limited-time offer

New Rugged Smart Watch Men Wireless Call IP68 Waterproof Sport Fitness AI Voice Outdoor 100+ Sports Modes Outdoor Smartwatch

11K+ sold | Provided by (15K+ sold) > 4.6 ★★★★★

Today ⚡ €23.59 Loss of final hours RRP €65.99

**Lightning deal** | Final hours!

Items:

-64% Black silicone Gray silicone Black Mesh Tape



- **Where the information is complete, it is not disclosed in an easily accessible and intelligible way.** In several instances, consumers must go through several steps to access the relevant information, starting by clicking on a minuscule avatar featuring the trader's Temu account (appearing below the name of the product). Consumers will then access a first page containing very limited information about the trader, and then have to click on the (bigger) logo of the trader to access more information on a second page.

Step 1:

**Lightning Deal** ✓ Free shipping on all orders

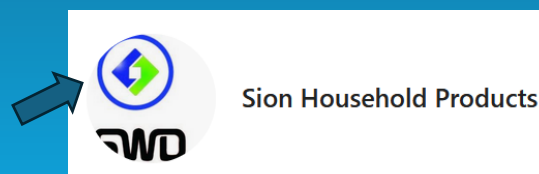
1pc Hot Sandwich Maker, For Both Gas And Non-Stick Plates, Stovetop Toasted Sandwich Flip Pan For Home Kitchen, Black, Outdoor, Accessories

475 sold | Provided by (1.5K+ sold) >

Today ⚡ €16.08 -63% final hours RRP €43.99

**Lightning deal** | Final hours!

Step 2:



### Step 3:

**Store Information**

Name  
Shenzhenshixinwodeshiye Co., Ltd.

Address  
7B, No. 4, Baimenqian Industrial Zone, No. 215, Busha Road,  
Nanlong Community, Nanwan Street, Longgang District, Shenzhen  
Longgang District  
518172  
Guangdong Province, Shenzhen City

Self Certification  
This provider has represented that it will comply with all applicable laws, including offering only products and services that comply with Temu's policies and applicable rules of EU law.

Translation  
Provider warrants that the above information is accurate and up to date. Provider's business information is in the official language where the provider is registered. Please be aware that the English version is provided via automatic translation tools and for reference only. Temu does not guarantee the accuracy of the English translation.

[OK](#)

We therefore consider that Temu fails to know the traders selling on its platform and may not be in a position to ensure that all the products sold by those traders comply with EU standards. Consumers are left in the dark as to the identity of the traders selling on Temu and whether they are reliable. This goes against the aim of the DSA which is to ensure a trustworthy and safe digital environment by imposing an obligation on online marketplaces to know who their business customers are.<sup>13</sup>

## 2. No compliance by design

### ○ *What the law says*

Art. 31(1) DSA requires that online platforms allowing consumers to conclude distance contracts with traders ensure that their online interface is designed and organised in a way that enables traders to comply with their obligations regarding pre-contractual information, compliance, and product safety information under EU law. Moreover, Art. 31(3) DSA also provides that these online platforms must undertake best efforts to assess whether traders have provided information on their compliance with Union law prior to allowing them to offer their products or services via the platform.

### ○ *Application to Temu*

A close examination of Temu's online interface show serious concerns about Temu's compliance with Art. 31 DSA as several products are made available to consumers without being accompanied by the legally required information (see the Annex, pts 2.1 to 2.5).

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<sup>13</sup> EU Commission, 'Q&A on the EU Digital Services Act', 23 February 2024 (accessed 2 May 2024).

Where the information listed under Art. 31 (1) DSA (i.e. pre-contractual information, information relating to compliance, product safety or traders) is not made available to consumers in the relevant section of the online platform, we believe that this may be a consequence of Temu failing to comply with its obligations under the DSA. More specifically, this can be either because Temu does not comply with its obligations to undertake best efforts to assess whether the traders operating on its platform have provided the information referred to in Art 31 (1) DSA prior to allowing them to sell their products on the platform. Or, alternatively, this can be because Temu's interface is designed in such a way that even where traders provide the required information, the information is not made available to consumers.

Put differently, two reasons jointly explain why consumers are not presented with the required traders' information: either the trader has not provided the information to Temu or the trader has provided the information to Temu but Temu did not make this information available on the relevant section of the online interface. In the first case, Temu is in breach of Article 31 (3) DSA while in the second Temu is in breach of Article 31 (1) DSA. Ultimately, it is not possible for us to ascertain whether the breach of Article 31 DSA results from Temu's failure to design and structure its online interface in a manner that allows traders to comply with their obligations or whether this is due to Temu's failure to undertake best efforts to check whether the concerned traders have indeed provided the mandatory information required.

### 3. Untransparent recommender systems

#### ○ *What the law says*

Art. 27 (1) DSA provides that online platforms using recommender systems must indicate in plain and intelligible language in their terms and conditions the main parameters used by their recommender systems.

Art. 27 (2) DSA further specifies that online platforms must explain why certain information is suggested to users and, in particular, disclose information on (i) the criteria that are the most significant to determine the information presented to consumers and (ii) the reasons for the relative importance of those parameters.

#### ○ *Application to Temu*

Temu's DSA Help page indicates the following (see also Annex (1)):

#### *HOW TEMU RECOMMENDS CONTENT?*

*We recommend content to you so that you can see products which would be of interest to you. We use various criteria for recommending content and products to you, including:*

- Your account profile (such as your country and gender if recorded in your account profile) and - preferences you have expressed on TEMU such as saving a product to your wish list;*
- Your browsing, searching and purchasing history on TEMU;*
- Your approximate location based on your technical information (e.g. IP address)*



- The popularity of products on TEMU;
- Ratings you have given to products on TEMU;
- Time you spend viewing specific product listings on TEMU;
- Current sales campaigns; and
- Product price

**Modifying/influencing the content recommended to you**

You can change the content recommended to you by refreshing the page. The content that we recommend changes over time in accordance with the above criteria. For example, the content we recommend will change based on your purchase of different products, browsing for new products and similar activities by other users. You can also change the layout of product listings by sorting them in accordance with:

- Relevance
- Top Sales
- Most Recent
- Price low to high
- Price high to low

For specific product searches, you can also filter the results by features of the products, for example by colour, by review ratings, by price and by specific product details.

As recital 70 DSA highlights<sup>14</sup>, recommender systems are key components of online platforms since they can have a significant impact on consumer purchasing behaviour.<sup>15</sup> For these reasons, the information that they use and the way they are designed should be clear and transparent. Yet, Temu fails to mention the reasons for the relative importance of the parameters as provided for under Art. 27(2)(b) DSA. Consumers are therefore kept in the dark and may fall prey to manipulative practices by opaque recommender systems.

## 4. Manipulative practices

### ○ What the law says

Art. 25 DSA provides that online platforms must not design, organise, or operate their online interfaces in a way that deceives or manipulates consumers or in a way that otherwise materially distorts or impairs the ability of consumers to make free and informed decisions (such practices are also commonly referred to as ‘dark patterns’).

The DSA further specifies that this prohibition should not apply to practices already covered by EU Directive 2005/29/EC (the Unfair Commercial Practices Directive – UCPD) and EU Regulation 2016/679 (the General Data Protection Regulation – GDPR). Some examples of manipulative

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<sup>14</sup> Recital 70 DSA: [Recommender systems] also play an important role in the amplification of certain messages, the viral dissemination of information and the stimulation of online behaviour.

<sup>15</sup> See (e.g.) S. Sivapalan, A. Sadeghian, H. Rahnama and A. M. Madni, ‘Recommender systems in e-commerce,’ 2014 World Automation Congress (WAC), Waikoloa, HI, USA, 2014, pp. 179-184, doi: 10.1109/WAC.2014.6935763.

practices falling within the scope of the DSA are listed in Recital 67 and Art. 25(3) DSA. The latter refers to:

- (1) The fact of giving more prominence to certain choices when asking the recipient of the service for a decision.
- (2) Repeatedly requesting that the recipient of the service make a choice where that choice has already been made, especially by presenting pops-up that interfere with the user experience.
- (3) Making the procedure for terminating a service more difficult than subscribing to it.

Because the DSA specifically refers to those practices, one may infer that they fall within the scope of the DSA.

### ○ *Application to Temu*

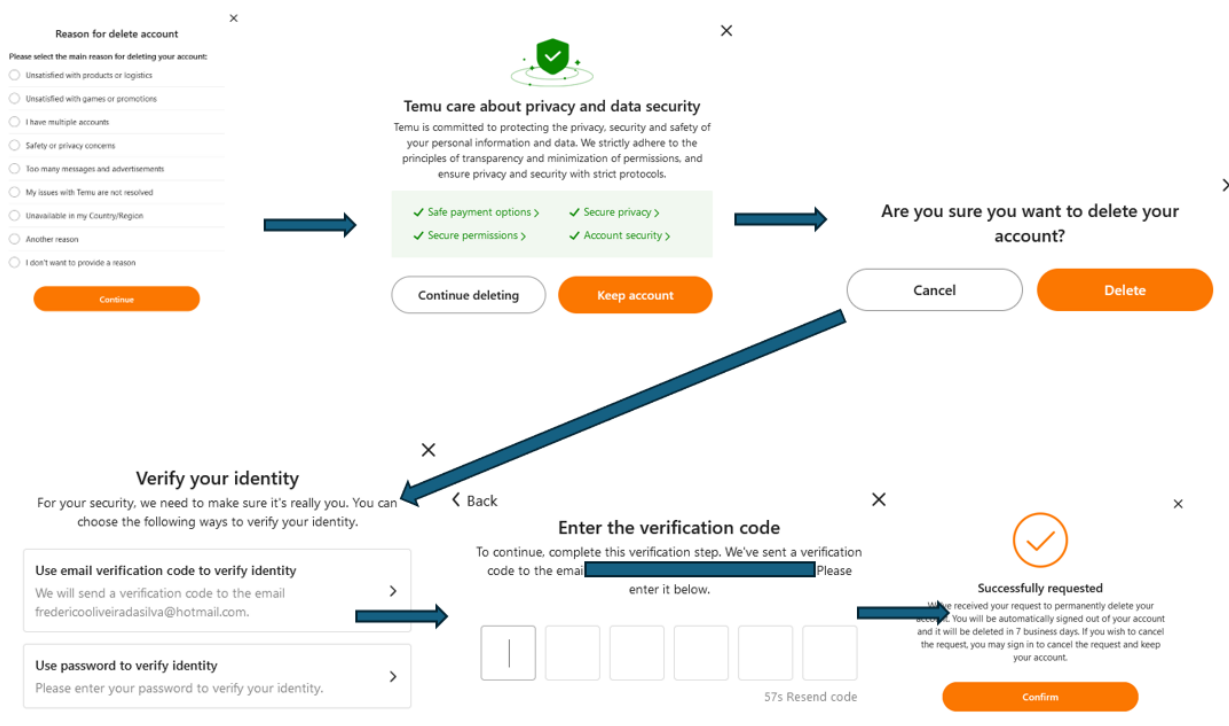
Several examples of manipulative practices described under Art. 25(3) DSA can be found on Temu. For example:

- *Manipulative practice applying to the manner prices and products:* Temu provides ambiguous and misleading information about prices and products (see Annex, examples 3.1.1., 3.1.2., 3.1.3).
  - *Example (see Annex, example 3.1.1):* Temu proposes cello tape at a certain price (€0.87). When consumers click on the product, this opens a new section in the online interface and consumers can add the product to their basket. They are then proposed with three products. But only one truly corresponds to the original product that they initially selected and at the price mentioned originally (€0.87). The other alternatives are more expensive (almost twice and thrice respectively) and one (the most expensive one) is presented in a non-neutral manner (with a ‘thumbs up emoji’ displayed in a shiny colour and indicating that the product is the “highest rated”, which is hard to justify considering that Temu does not propose a rating per product, but merely per trader). It can also give more prominence to certain choices through visual components when asking the consumer to decide.
  - *Example (see Annex, example 3.1.3):* consumers interested in a set of pans are presented with a picture of a set of six pans for a price of €10.11. Yet when they click on the product, three different options are presented on the screen: (1) the possibility to buy a single pan with the same characteristics as the original set of six but for the same price; (2) the possibility to buy a set of six pans for almost three times the original price (€29.91); and (3) the possibility to buy a set of four pans that have different characteristics from the product originally presented and for a price which is almost three times more expensive than the original one (€27.71). This last option is also presented in a non-neutral way with a “a fire emoji” and an indication that the product has been subject to a 47% discount.
- *Manipulative practices with regards to the termination of the service:* Temu makes the procedure for terminating the service much more difficult than to register (see Annex, (3.2)). This practice is similar to a well-known dark pattern called “roach motel” where signing up to a service is easy, while cancelling subscriptions remains very cumbersome.

Whereas creating an account on Temu is simple and straightforward (the recipients can add their phone number, email address or use the social plug-in from services like Facebook, Google, Apple or Twitter, there is no email verification nor age control mechanism), consumers have to go through multiple steps to delete their accounts. Specifically, as shown in the Annex (3.2), consumers wishing to delete their account must:

1. First, once logged in, click on the “account security” section of the online interface and select the option to delete the TEMU account.
2. Then, read four paragraphs of text, where the content nudges the consumer into a transaction (consumers are advised to use any available coupons and credits before deleting their account).
3. After reading this text, click for the second time on a button to “permanently delete their TEMU account” (this is the second time the consumer is asked whether they want to delete their account and they have already confirmed it twice after clicking on “continue”).
4. Select the main reason for deleting their account out of seven possible options.
5. Then, consumers are presented with text and other visual elements presenting the advantages of Temu as a service, including the possibility to make safe payments, to have their privacy protected, and other pieces of information. Below this, consumers are given a choice between continuing to delete their account or keeping their account (this is the third time the consumer is asked whether they want to delete their account). The choice of colours of the display is misleading as visual prominence is given to the “keep account” option compared to the “continue deleting” option.
6. Then, consumers are asked again to confirm whether they want to delete their account. Temu inverts the colour coding, assigning the colour display given in the previous stage of the “continue deleting option” now to the option to cancel the deletion, whereas the “delete” option in this stage is displayed using the same visual prompts assigned to the “keep account” in the previous stage.
7. Ask to verify their identify, either by entering their verification code sent by email or using their password (Temu justifies the verification of the account for security reasons). However, this claim is ill-founded as Temu does not require any account verification when signing up.
8. Finally, consumers receive a notification that the request has been successful and that the account will be deleted within seven days.

Consumers' difficult path to close their TEMU accounts (see also Annex, (3.2))



## 5. Insufficient online protection of minors

### ○ What the law says

Art. 28 (1) DSA provides that online platforms accessible to minors must put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors on their services.

### ○ Application to Temu

Temu claims that its services are not accessible to users below 18. If this were true, TEMU would not need to put in place measures to ensure a high level of privacy, safety, and security of minors. However, inasmuch as there is **no self-declaration of age** when accessing Temu<sup>16</sup>, children do not even know that the website is not intended for them. We therefore believe that Temu's online interface is accessible to minors and, as a result, Temu must put in place measures to ensure a high level of privacy, safety, and security of minors on its services. Furthermore, the gamification aspects stressed earlier, and the low prices of products are also likely to be attractive for minors.

<sup>16</sup> See Annex (3.2).

Ultimately, the high number of dangerous products sold on Temu by untraceable traders, through manipulative practices and opaque recommender systems are ingredients of a **toxic cocktail** likely to impair minors' privacy, safety, and security.

## 6. Unclear terms & conditions

### ○ *What the law says*

Art. 14 DSA provides that providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service, in their terms and conditions. That information shall include information on any policies, procedures, measures, and tools used for the purpose of content moderation, including algorithmic decision-making and human review, as well as the rules of procedure of their internal complaint handling system. It must be set out in clear, plain, intelligible, user-friendly and unambiguous language, and be publicly available in an easily accessible and machine-readable format.

### ○ *Application to TEMU*

We understand that Temu's terms and conditions<sup>17</sup> fail to comply with Art. 14 DSA as some pieces of information are missing and/or not disclosed in a sufficiently clear and intelligible manner.

Among other things, there is no clear information about the rules of procedure of Temu's internal complaint-handling mechanism. The only reference to Temu's internal complaint-handling mechanism is on its DSA Help Page where only the following is indicated (emphasis added):

*“After reviewing your report, Temu will notify you of its decision in respect of the content to which the report relates and, where TEMU has decided not to act upon the report, provide you with information on the possibilities for redress, including the option to appeal internally”.*

Since there is no clear information about Temu's internal complaint-handling mechanism, there is also no possibility to check whether it truly complies with the requirements set out in Art. 20 DSA, which provides that the internal complaint-handling mechanism should be easy to access, user-friendly and that complaints should be handled in a timely, non-discriminatory, diligent, and non-arbitrary manner. Also, the decisions should be taken under the supervision of duly qualified staff and not solely on the basis of automated means – but there is no indication in Temu's terms and conditions that this is the case.

## 7. No information about out-of-court dispute settlement

### ○ *What the law says*

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<sup>17</sup> Terms and conditions here is meant as defined in Art. 3(u) DSA, it includes all terms, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the service.

Art. 21 DSA provides that consumers are entitled to select any out-of-court dispute settlement body certified in accordance with Art. 21(3) DSA to solve disputes that have not been resolved through the internal complaint handling system of the trader. Furthermore, the online platform must ensure that the information about the out-of-court dispute settlement is provided in an easily accessible, clear, and user-friendly way. This provision is important as the objective is to ensure that consumers can have an effective access to redress in the event something went wrong.

### ○ *Application to Temu*

Temu DSA Help Page highlights (emphasis added):

#### *“Appeals*

*If you have submitted a report and received a decision that TEMU has decided not to act upon the report, or you have received a SOR (statements of reasons), you may submit an appeal within 6 months after receiving that decision or SOR. You may submit your appeal free of charge, using the link provided within the decision / SOR. The form will allow you to submit a sufficiently precise and adequately substantiated appeal. TEMU will reverse its decision / the SOR where a complaint contains:*

- *sufficient grounds for TEMU to consider that its decision not to act upon a notice is unfounded;*
- *sufficient grounds for TEMU to consider that the information to which the complaint relates is not Prohibited Content; or*
- *information indicating that the complainant’s conduct does not warrant the measure taken,*

*TEMU will inform you of its decision in respect of your appeal and, as appropriate, of the possibility of out-of-court dispute settlement provided for in Article 21 DSA and other available possibilities for redress.”*

We believe that Temu is in breach of Art. 21 for two reasons:

First, the information displayed about the possibility to refer claims to the out-of-court dispute resolution entity is not disclosed in a clear and easily accessible way. Temu does not provide any information other than its own commitment to inform the user “*as appropriate*” about the possibility to use out-of-court dispute settlement. In other words, Temu will unilaterally inform consumers about the possibility of using the out-of-court settlement procedure only after a decision on the complaint has been taken or when the trader decides not to consider the complaint.<sup>18</sup>

Second, consumers are not informed about the possibility of an out-of-court solution in the event that Temu does not handle their complaint diligently. As Temu’s term and conditions indicate, this information is only presented to consumers when Temu has reached a decision on the complaint (including the decision not to consider it), but not when Temu does not handle the complaint by working towards evaluating its merits and taking an eventual decision. In this scenario,

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<sup>18</sup> Temu’s use of the term *appeal* seems to correspond with the term *complaint* in Art. 20 DSA.

consumers are left uninformed about the availability of out-of-court dispute resolution mechanisms in a situation where these would be particularly relevant to them.

## **8. Additional concerns as regards Temu's ability to comply with its obligation as a Very Large Online Platform ("VLOP")**

We believe that the concerns expressed above are even more worrying considering that Temu is already today a *de facto* VLOP with an impact on more than 45 million European consumers.<sup>19</sup> Since Temu already fails to comply with fundamental DSA obligations as an online platform, we have serious doubts that Temu will be in a position to comply with the new requirements as a VLOP within four months of its designation. Specifically:

- Under Art. 34 and 35 DSA, VLOPs are required to assess the risks that their services may pose (including to minors) and must consequently put in place adequate risk mitigation measures. These obligations build on and expand the obligations laid out in Art. 28 DSA. However, we believe it unlikely that Temu will set up sufficient measures for protecting minors as they likely assume that their services are (theoretically) not intended for minors. Such an assumption might result in Temu unsatisfactorily assessing and mitigating the risks to minors once it has been designated as a VLOP.
- Under Art. 34 and 35 DSA, VLOPs must assess the risks that their services may cause, in particular with regards to consumer protection, safety and public health. Where necessary, adequate mitigation measures should be organised. However, we take the view that Temu is not in a position to implement the relevant and necessary risk mitigation measures unless the issues that were raised previously - in particular the issue related to traders' traceability (Art. 30 DSA) and compliance by design (Art. 31 DSA) - are fully addressed.
- Under Art. 38 DSA, VLOPs have an obligation to offer an opt-out option from profiling-based recommender systems. Art. 38 DSA builds upon the provisions ensuring the transparency of recommender systems. However, consumers' ability to decide in an informed way whether to opt out from Temu's profiling-based algorithms is hindered by Temu's failure to disclose the reasons for the relative importance of the different parameters used by its recommender systems.
- Considering the overlap between Art. 25, Art. 34(1)(b) and Art. 35(1)(a) DSA, we believe that Temu must adapt and correct its interface to ensure that consumers are not misled or manipulated when they make their purchases.
- Under Art. 14 DSA, VLOPs must provide users of the service with a concise, easily accessible, and machine-readable summary of the terms and conditions, including available remedies and redress mechanisms in a clear and unambiguous language when something goes wrong. We believe that Temu will have to adapt its terms and conditions to address the issues raised earlier.

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<sup>19</sup> See above on p.10.

# Beyond the DSA: consumer, digital, safety issues with Temu

Several civil society organisations have voiced concerns about Temu failing to comply with EU consumer, safety and data protection laws. Specifically:

- **Temu is unlikely to comply with the EU consumer law acquis.** Our German member vzbv has showed that Temu is suspected to infringe Directive 98/6/EC on Price Indications as information about price decreases is frequently presented in a misleading way.<sup>20</sup> Moreover, Temu may also infringe Directive 2005/29/EC prohibiting Unfair Commercial Practices Directive as it displays misleading product reviews,<sup>21</sup> makes misleading claims about the environmental impact of its services<sup>22</sup>, and use aggressive techniques to unfairly push consumers to buy on the platform.<sup>23</sup> For these reasons, Temu’s activities are already monitored by some European consumer protection authorities (e.g. in Poland).<sup>24</sup>
- **There is ample evidence that Temu enables the distribution in Europe of dangerous products infringing EU product safety requirements.**<sup>25</sup> To list a few examples:
  - In October 2023, our Italian member Altroconsumo purchased 28 products on the platform and found several, serious non-compliance issues: 9 out of 13 cosmetics that were tested didn’t include the list of ingredients (or when available, the information was only partial).<sup>26</sup> Furthermore, at least one safety issue had been identified in all the other 15 products, including toys and stationery, e.g. lack of CE marking or presence of small parts.

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<sup>20</sup> Discounted prices do not meet the requirement of the Price Indication Directive which requires that, when informing consumers about price reductions, the trader must include the lowest price of the goods applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction.

<sup>21</sup> 5-stars rating may be indicated for a product, but this rating does not correspond to the product in question. Furthermore, concerns have been voiced considering that some products may have a negative comment but still displaying a 5-stars rating. Finally, almost all products sold on Temu have 5 stars review. This situation has raised additional several suspicions (<https://s360digital.com/exploring-the-temu-phenomenon/>, accessed 2 May 2024).

<sup>22</sup> When finalising a purchase, consumers are informed about Temu’s commitments to support the environment (Temu finances the planting of trees in sub-Saharan Africa and claims that these “trees have had a transformative effect on the earth and the local communities in this region”).

<sup>23</sup> Such as countdown timers, low stock/low availability messages and other behavioural tricks (“almost sold out”) to push consumers to buy.

<sup>24</sup> Rzeczpospolita, ‘Skargi na platformę TEMU. UOKiK przyznaje, że mogą być słuszne’ (February 2024, accessed on 2 May 2024)

<sup>25</sup> In particular, EU Directive 2001/95/EC (the “General Product Safety Directive”), soon to be replaced by EU Regulation 2023/988 (“General Product Safety Regulation”).

<sup>26</sup> [www.altroconsumo.it/hi-tech/internet-telefono/news/temu](http://www.altroconsumo.it/hi-tech/internet-telefono/news/temu) (accessed 2 May 2024).



- In February 2024, Toy Industries of Europe tested 19 toys bought online marketplace Temu. None of them complied with EU legislation and 18 posed safety risks for children.<sup>27</sup>
  - In the UK, a testing by Which? revealed illegal weapons and age-restricted<sup>28</sup> items sold on Temu without checks and issues with electric heaters<sup>29</sup>.
  - In France, investigative journalists for a documentary on the French TV channel France 2 tested a speaker bought on Temu which was presented as waterproof. After ten seconds of use, the products proved to be defective and unsafe.<sup>30</sup>
- **Third, there are concerns about Temu’s compliance with privacy and data protection laws.**<sup>31</sup> Among other things, Temu’s privacy policy<sup>32</sup> provides that users data can be very extensively shared, including with corporate parent and affiliate companies. The privacy policy in the EU also fails to indicate Temu’s Data Protection Officer (DPO), which constitutes a breach of the GDPR and prevents data subjects from exercising several of their data protection rights. Temu’s website cookie banner featured dark patterns to nudge consumers to accept processing of their personal data and categorises non-strictly necessary cookies as strictly necessary ones, breaching the right of the consumer to reject those cookies. Temu intensively employs some forms of tracking other than cookies such as URL tracking, which fall within the scope of Article 5(3) of EU Directive 2002/58/EC (ePrivacy Directive) as per the guidelines of the European Data Protection Board (EDPB)<sup>33</sup>. Overall, the privacy policy remains vague and unspecific.

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<sup>27</sup> Toy Industries of Europe, ‘95% of toys bought from new online platform break EU safety rules’ (20 February 2024, accessed 2 May 2024).

<sup>28</sup> [www.which.co.uk/news/article/illegal-weapons-on-temu-a7khi1t5nP65](http://www.which.co.uk/news/article/illegal-weapons-on-temu-a7khi1t5nP65) (accessed 2 May 2024)

<sup>29</sup> [www.which.co.uk/news/article/electric-heaters-temu-tiktok-shop-a6c744h4Olcl](http://www.which.co.uk/news/article/electric-heaters-temu-tiktok-shop-a6c744h4Olcl) (accessed 2 May 2024)

<sup>30</sup> France TV, ‘Envoyé spécial’ (14 March 2024, accessed 2 May 2024°).

<sup>31</sup> [www.which.co.uk/news/article/what-is-temu-and-is-it-safe-to-buy-from-a7BUb4k5fBFH](http://www.which.co.uk/news/article/what-is-temu-and-is-it-safe-to-buy-from-a7BUb4k5fBFH) ; Euronews, Data Protection fears raised over shopping giant TEMU's cash giveaway

<sup>32</sup> Temu’s, Privacy Policy, (last updated 2 April 2024 and accessed 29 April 2024).

<sup>33</sup> EDPB Guidelines 2/2023 on the technical Scope of Art. 5(3) of ePrivacy Directive ([www.edpb.europa.eu/our-work-tools/documents/public-consultations/2023/guidelines-22023-technical-scope-art-53-eprivacy\\_en](http://www.edpb.europa.eu/our-work-tools/documents/public-consultations/2023/guidelines-22023-technical-scope-art-53-eprivacy_en)), accessed 2 May 2024.

