



Ministry of Finance

> Return address POSTBUS 20201 2500 EE 'S-GRAVENHAGE

European Commission
attn. Ms Mairead McGuinness
Rue de la Loi 200
1040 BRUXELLES
Belgium

Treasury
Financial Markets Directorate
Korte Voorhout 7
2511 CW 'S-GRAVENHAGE

Date **10 JUNI 2024**
Subject The power of authorities to use a cover identity

Our reference
2024-0000338731

Dear Ms McGuinness,

Dear Mairead

I would like to bring the following to your attention, also on behalf of the Minister of Economic Affairs and Climate Policy. Due to conflicting European legislation, Dutch consumer protection and market surveillance authorities are not always able to make online test purchases under a cover identity.

As is required by various EU regulations,¹ Dutch consumer protection and market surveillance authorities are authorised to make test purchases under a cover identity. However, it has been brought to our attention that they cannot exercise this power in practice.

The effectiveness of their supervision has been hampered by the fact that they cannot perform necessary online actions under a cover identity, such as financial transactions that include making online payments or creating accounts for which bank details are required. Therefore, when conducting surveillance operations, the authorities might be visible and identifiable when purchasing certain items or services. This could possibly undermine the outcome of their investigations. Since the e-commerce sector is growing, and an increasing number of consumers use online shops, this issue has become a serious impediment to the effectiveness of consumer protection supervision and market surveillance.

The interplay of the aforementioned regulations with the Regulation on information accompanying the transfer of funds (TFR)² seems to be the main cause of the difficulties encountered. Articles 4 and 5 of TFR oblige payment service providers to accompany a transfer of funds with the information about the payer. This information must be correct, pursuant to the client due diligence (CDD) obligations from the AML Directive.³ The TFR does not contain any exception on this obligation for consumer protection or market surveillance authorities. For this reason, the Dutch authorities are currently unable to make online purchases without the merchant knowing the identity of our authorities.

¹ The Market Surveillance Regulation (Regulation (EU) 2019/1020), the Consumer Protection Cooperation Regulation (Regulation (EU) 2017/2394), and the Official Controls Regulation on feed and food (Regulation (EU) 2017/625).

² Regulation (EU) 2015/847, to be superseded by Regulation (EU) 2023/1113.

³ Directive (EU) 2015/849.

Treasury
Financial Markets Directorate

Date
31 May 2024

our reference
2024-0000338731

We have explored alternative solutions, such as using gift cards or anonymous credit cards, using the personal bank accounts of employees or hiring third parties to purchase products. Unfortunately, these do not seem to offer a permanent solution to the problem.

In previous contact about this issue, representatives from DG FISMA, DG GROW and DG JUST have suggested to provide supervisors with fake passports or ID cards with the cover identity.⁴ We have investigated this option, but do not believe that it is a proportionate and feasible solution. Amending TFR would, in our view, be a more resilient way to solve this issue, and would bring the required legal clarity. We will share a more detailed analysis and a proposal to amend the relevant regulations with experts within the relevant DGs.

The Dutch consumer protection and market surveillance authorities would like to optimally contribute to a fair and safe European single market and to meet their legal obligations. This requires, however, that they have access to the right tools to appropriately exercise their powers. I therefore hope that you are willing to work with us to ensure that the EU legal framework is consistent. I would be happy to provide you with further explanation if needed.

Yours sincerely,

the Minister of Finance

✓

⁴ Please refer to the letter of 20 February 2024 by Isabelle Perignon (JUST.DOG), Ares(2024) 1488017.