

Public consultation for the Fitness Check of EU consumer law on digital fairness

Fields marked with * are mandatory.

Introduction

The Commission announced in the [New Consumer Agenda](#) that it will analyse whether additional legislation or other action is needed in the medium-term in order to ensure equal fairness online and offline. In March 2022, the Commission launched a **Fitness Check of EU consumer law on digital fairness** in order to determine whether the existing key horizontal consumer law instruments remain adequate for ensuring a high level of consumer protection in the digital environment. The Fitness Check will evaluate three Directives:

- [Unfair Commercial Practices Directive 2005/29/EC](#);
- [Consumer Rights Directive 2011/83/EU](#);
- [Unfair Contract Terms Directive 93/13/EEC](#).

The recently adopted [Modernisation Directive](#) and [Digital Content Directive](#) address some of the digital challenges that consumers face, for example as regards the transparency of personalised pricing, consumer reviews, 'free' digital services, ranking of search results and obligations of online marketplaces. Additional protections are forthcoming within new EU legislation such as the [Digital Services Act](#), [Digital Markets Act](#), [Artificial Intelligence Act](#) and [Data Act](#). The Fitness Check will examine the adequacy of the existing EU rules in dealing with consumer protection issues such as, but not limited to, consumer vulnerabilities, dark patterns, personalisation practices, influencer marketing, contract cancellations, subscription service contracts, marketing of virtual items (e.g. in video games) and the addictive use of digital products. It will assess whether the existing legal framework would benefit from a targeted strengthening or streamlining, while taking into account and ensuring coherence with recently adopted and forthcoming EU legislation. It will also examine the scope for any burden reduction, cost savings and simplification.

From 17 May – 14 June 2022, the Commission conducted a [Call for Evidence](#), where it invited all interested parties to submit their initial feedback to the Fitness Check. With this public consultation, the Commission is continuing to gather feedback on the Fitness Check from all interested parties.

This public consultation will be open for 12 weeks.

You can reply in any EU official language.

The public consultation is directed at all stakeholders and the general public. It consists of a **short questionnaire** aimed at individual consumers and an **in-depth questionnaire** aimed at organisations (consumer and businesses associations, public authorities, companies etc.). The in-depth questionnaire is optional for consumers.

When answering a question, you will be asked to tick one of the provided multiple choice replies. You will also be able to add comments in response to certain questions, should you wish to do so. If you don't know to the answer to a question, please tick "I don't know".

Please make sure to save a draft of the questionnaire regularly as you fill it in, and to submit the questionnaire ("submit" button at the very end) before the end of the consultation period. You can download the questionnaire in PDF format before starting to help you with the preparations or discussions within your organisation. You will be able to download an electronic copy of your replies.

About you

* Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Irish
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

* I am giving my contribution as

☐

Academic/research institution

- ☒ Business association
- ☐ Company/business organisation
- ☐ Consumer organisation
- ☐ EU citizen
- ☐ Environmental organisation
- ☐ Non-EU citizen
- ☐ Non-governmental organisation (NGO)
- ☐ Public authority
- ☐ Trade union
- ☐ Other

* First name

Inés

* Surname

Talavera de la Esperanza

* Email (this won't be published)

talavera@iabeurope.eu

* Organisation name

255 character(s) maximum

IAB Europe (Interactive Advertising Bureau Europe)

* Organisation size

- ☐ Micro (1 to 9 employees)
- ☒ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☐ Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

*Country of origin

Please add your country of origin, or that of your organisation.

This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.

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| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> São Tomé and Príncipe |
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| <input type="radio"/> Bahamas | <input type="radio"/> French Guiana | <input type="radio"/> Mexico | <input type="radio"/> Somalia |
| <input type="radio"/> Bahrain | <input type="radio"/> French Polynesia | <input type="radio"/> Micronesia | <input type="radio"/> South Africa |
| <input type="radio"/> Bangladesh | <input type="radio"/> French Southern and Antarctic Lands | <input type="radio"/> Moldova | <input type="radio"/> South Georgia and the South Sandwich Islands |
| <input type="radio"/> Barbados | <input type="radio"/> Gabon | <input type="radio"/> Monaco | <input type="radio"/> South Korea |
| <input type="radio"/> Belarus | <input type="radio"/> Georgia | <input type="radio"/> Mongolia | <input type="radio"/> South Sudan |
| <input checked="" type="radio"/> Belgium | <input type="radio"/> Germany | <input type="radio"/> Montenegro | <input type="radio"/> Spain |

<input type="radio"/> Belize	<input type="radio"/> Ghana	<input type="radio"/> Montserrat	<input type="radio"/> Sri Lanka
<input type="radio"/> Benin	<input type="radio"/> Gibraltar	<input type="radio"/> Morocco	<input type="radio"/> Sudan
<input type="radio"/> Bermuda	<input type="radio"/> Greece	<input type="radio"/> Mozambique	<input type="radio"/> Suriname
<input type="radio"/> Bhutan	<input type="radio"/> Greenland	<input type="radio"/> Myanmar/Burma	<input type="radio"/> Svalbard and Jan Mayen
<input type="radio"/> Bolivia	<input type="radio"/> Grenada	<input type="radio"/> Namibia	<input type="radio"/> Sweden
<input type="radio"/> Bonaire Saint Eustatius and Saba	<input type="radio"/> Guadeloupe	<input type="radio"/> Nauru	<input type="radio"/> Switzerland
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<input type="radio"/> British Indian Ocean Territory	<input type="radio"/> Guinea-Bissau	<input type="radio"/> Nicaragua	<input type="radio"/> Thailand
<input type="radio"/> British Virgin Islands	<input type="radio"/> Guyana	<input type="radio"/> Niger	<input type="radio"/> The Gambia
<input type="radio"/> Brunei	<input type="radio"/> Haiti	<input type="radio"/> Nigeria	<input type="radio"/> Timor-Leste
<input type="radio"/> Bulgaria	<input type="radio"/> Heard Island and McDonald Islands	<input type="radio"/> Niue	<input type="radio"/> Togo
<input type="radio"/> Burkina Faso	<input type="radio"/> Honduras	<input type="radio"/> Norfolk Island	<input type="radio"/> Tokelau
<input type="radio"/> Burundi	<input type="radio"/> Hong Kong	<input type="radio"/> Northern Mariana Islands	<input type="radio"/> Tonga
<input type="radio"/> Cambodia	<input type="radio"/> Hungary	<input type="radio"/> North Korea	<input type="radio"/> Trinidad and Tobago
<input type="radio"/> Cameroon	<input type="radio"/> Iceland	<input type="radio"/> North Macedonia	<input type="radio"/> Tunisia
<input type="radio"/> Canada	<input type="radio"/> India	<input type="radio"/> Norway	<input type="radio"/> Turkey
<input type="radio"/> Cape Verde	<input type="radio"/> Indonesia	<input type="radio"/> Oman	<input type="radio"/> Turkmenistan
<input type="radio"/> Cayman Islands	<input type="radio"/> Iran	<input type="radio"/> Pakistan	<input type="radio"/> Turks and Caicos Islands
<input type="radio"/> Central African Republic	<input type="radio"/> Iraq	<input type="radio"/> Palau	<input type="radio"/> Tuvalu
<input type="radio"/> Chad	<input type="radio"/> Ireland	<input type="radio"/> Palestine	<input type="radio"/> Uganda
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|--------------------------------------------------------|----------------------------------|-------------------------------------------------------------------------|------------------------------------------------------------|
| <input type="radio"/> China | <input type="radio"/> Israel | <input type="radio"/> Papua New Guinea | <input type="radio"/> United Arab Emirates |
| <input type="radio"/> Christmas Island | <input type="radio"/> Italy | <input type="radio"/> Paraguay | <input type="radio"/> United Kingdom |
| <input type="radio"/> Clipperton | <input type="radio"/> Jamaica | <input type="radio"/> Peru | <input type="radio"/> United States |
| <input type="radio"/> Cocos (Keeling) Islands | <input type="radio"/> Japan | <input type="radio"/> Philippines | <input type="radio"/> United States Minor Outlying Islands |
| <input type="radio"/> Colombia | <input type="radio"/> Jersey | <input type="radio"/> Pitcairn Islands | <input type="radio"/> Uruguay |
| <input type="radio"/> Comoros | <input type="radio"/> Jordan | <input type="radio"/> Poland | <input type="radio"/> US Virgin Islands |
| <input type="radio"/> Congo | <input type="radio"/> Kazakhstan | <input type="radio"/> Portugal | <input type="radio"/> Uzbekistan |
| <input type="radio"/> Cook Islands | <input type="radio"/> Kenya | <input type="radio"/> Puerto Rico | <input type="radio"/> Vanuatu |
| <input type="radio"/> Costa Rica | <input type="radio"/> Kiribati | <input type="radio"/> Qatar | <input type="radio"/> Vatican City |
| <input type="radio"/> Côte d'Ivoire | <input type="radio"/> Kosovo | <input type="radio"/> Réunion | <input type="radio"/> Venezuela |
| <input type="radio"/> Croatia | <input type="radio"/> Kuwait | <input type="radio"/> Romania | <input type="radio"/> Vietnam |
| <input type="radio"/> Cuba | <input type="radio"/> Kyrgyzstan | <input type="radio"/> Russia | <input type="radio"/> Wallis and Futuna |
| <input type="radio"/> Curaçao | <input type="radio"/> Laos | <input type="radio"/> Rwanda | <input type="radio"/> Western Sahara |
| <input type="radio"/> Cyprus | <input type="radio"/> Latvia | <input type="radio"/> Saint Barthélemy | <input type="radio"/> Yemen |
| <input type="radio"/> Czechia | <input type="radio"/> Lebanon | <input type="radio"/> Saint Helena
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Tristan da Cunha | <input type="radio"/> Zambia |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.



Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

☒ Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☒ I agree with the [personal data protection provisions](#)

In-depth questionnaire

To what extent do you agree or disagree with the following statements?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know
* Consumers require a strong legal framework to protect their interests in the digital environment.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* The existing EU consumer laws provide sufficient protection in the digital environment.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* There are some legal gaps and/or uncertainties in the existing EU consumer laws.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Traders generally comply well with the existing EU consumer laws in the digital environment.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Consumer protection in the digital environment should be regulated at EU level in a uniform manner.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*						

The existing EU consumer laws are coherent with other laws , such as on data protection, new rules applicable to online platforms, artificial intelligence etc.						
* There is some scope for simplification and burden reduction in existing EU consumer laws.						

Please explain your replies, including any other statements you wish to highlight.

IAB Europe agrees with the fact that consumers, but also businesses, require a strong legal framework to protect their interests in the digital environment. However, we disagree with the rhetorical nature of the question regarding if consumers require a strong legal framework. It would be strange to see respondents replying that they disagree.

The already existing EU consumer law provides sufficient protection in the digital environment and there is no need to cover gaps or uncertainties in the legal framework. In fact, this legal framework has been recently acknowledged by the European Commission (EC). The EC published the results of a screening ("sweeps") of retail websites, which focused on manipulative online practices the European Commission, in its accompanying press release (link: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_418). This press release includes quotes from Commissioner of Justice, Didier Reynders "Today we already have binding tools to help tackle such issues and I call on national authorities to make use of their enforcement capacities to take relevant action and fight these practices" and he confirmed that "thanks to the updated Consumer Protection Cooperation Regulation, they [national authorities] now have stronger powers to detect irregularities and take speedy action against rogue traders." The Commissioner added that "the new Digital Services Act (DSA) will prohibit dark patterns on online platforms. It will complement rules such as the Unfair Commercial Practices Directive (UCPD) or the General Data Protection Regulation (GDPR), ensuring that no regulatory gap is left for platforms to manipulate users." One could interpret this as the acknowledgement of the European Commission of the well-functioning framework in place and/or complementary rules that are about to be put into force (DSA).

There are rules already in place or about to come into force that look at the online environment in specific. Such as the Directive 2000/31/EC (eCommerce Directive) on certain legal aspects of information society services and the DSA Regulation (EU) 2022/2065, which, among other things, includes specific provisions on advertising transparency. Rather than putting additional rules in place, the question is about enforcing these rules effectively. Otherwise, we run the risk of double regulation of the issues.

Additionally, the Omnibus Directive has only been in force for less than a year Directive 2019/2161/EU, the Consumer Rights Directive (CRD) and UCPD are both undergoing revision right now (cf Directive amending Directive 2011/83/EU CRD) concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC and the Directive amending UCPD Directive 2005/29/EC and CRD 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information.

When it comes to self-regulation, there is already a framework in place for (online) advertising, including a network of so-called self-regulatory organisations (SROs), which ensure that the content of primarily commercial advertising is legal, decent, honest and truthful.

To the question of whether the existing EU consumer laws are coherent with other laws, it is quite difficult to provide an answer since it pre-empts the adoption and unduly anticipates legislative procedure adding the fact that there are other laws that have only recently come into force and there are no use/application /enforcement cases such as the DSA. Still, at this same point of the writing, there is ample debate about current proposed legislation not being coherent with existing legislation Data Act vs. GDPR (link: <https://iabeurope.eu/all-news/industry-coalition-calls-for-a-better-alignment-of-the-data-act-with-the-current-data-protection-legal-framework/>). There is not always a visible effort to bring the new legislation in line with existing legislation. While it should be avoided the situation where policies are piling up on the same issues, policymakers need to see the big picture regarding all the already existing policies.

To the question of if there is some scope for simplification and burden reduction in existing consumer laws, it is assumed in this answer that with “burden reduction” the European Commission refers to reducing the burden for companies. In that case, IAB Europe agrees that in line with the European Commission’s Better Regulation Agenda, this should be an integral part of all policy- and law-making. Not only should there be an assessment of whether (new) law is needed and its potential impact, but there should also be a coherence test to make sure that new proposed law or provisions are coherent with existing legislation, especially when it comes to terminology, and neither offsets the other nor blurs the lines.

How **positive / negative is the impact** of the existing EU consumer law framework on the following aspects in the digital environment?

	Very positive impact	Rather positive impact	Neutral	Rather negative impact	Very negative impact	I don't know
* Amount & relevance of information available to consumers to compare and make informed purchasing choices.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* A level playing field amongst businesses addressing consumers in the EU.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Enforcement regarding cross-border infringements through EU coordination mechanisms (Consumer Protection Co-operation network)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Protection of consumers against unfair commercial practices .	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*						

Protection of more vulnerable consumers (e.g. minors, elderly, persons with disabilities).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Availability and choice of products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Prices of products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Number of customers and revenues for businesses supplying consumers in the EU.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Increase of national e-commerce (i.e. within your EU country).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Increase of e-commerce across EU Member States.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Competitiveness of EU businesses vis-à-vis non-EU businesses.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please explain your reply.

The set of questions contained in this part that address how positive or negative the impact of the existing EU consumer law framework on the following aspects of the digital environment, pose several ambiguities. It is unclear to us why the European Commission tries to link EU consumer law to issues like competition (that are dealt with in other laws) or issues that are influenced by demand and supply (e.g., availability and choice of products, or prices of products). In doing so, the European Commission gives a false impression that EU consumer law can have an impact where it should not. Consumer law should only regulate the relationship between businesses and consumers and not branch out to regulate other issues.

It is in everyone's interest not to have a too broad reach since consumer law can also impede on other fundamental rights, such as the right to conduct a business or freedom of speech or the right to information. The online system is a complex one that cannot only be seen exclusively through the lens of consumer protection.

How strongly do you agree or disagree with each of the following statements about **potential suggestions to improve EU consumer law** for the benefit of consumers?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know
* There is a need for stronger protection against digital practices that unfairly influence consumer decision-making (e.g. manipulative website/app designs such as misleading presentation of 'yes' and 'no' choices; or creating multiple obstacles before reaching a cancellation/unsubscribing link).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Where traders require consumers to agree to terms and conditions (T&C), consumers should receive an easily understandable summary of the key T&C in an easily accessible manner.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* When cancelling contracts, a clear technical means (e.g. a prominent cancellation button) would help consumers to cancel more easily.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Receiving a confirmation (e.g. by e-mail) when a consumer terminates a contract would help consumers check that their contract has been successfully terminated.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Receiving a reminder before any automatic renewal of digital subscription contracts would help consumers to decide whether they want to renew a contract or not.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Reminders about their subscriptions after a period of inactivity could be beneficial for consumers who might otherwise have forgotten that their subscription exists	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Signing up for a free trial should not require any payment details from consumers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Requiring express consent when switching from a free trial to a paid service could be beneficial for consumers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*						

Having the explicit option to receive non-personalised commercial offers (e.g. non-personalised advertising, non-personalised prices) instead of personalised ones could be beneficial in allowing consumers greater choice.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* There is a need for more price transparency when buying virtual items with intermediate virtual currency (e.g. in-game currency in video games).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* There is a need for more transparency regarding the probability of obtaining specific items from paid content that has a randomisation element (e.g. prize wheels, loot/mystery boxes in video games, card packs).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Allowing consumers to set limits to the amount of time and money they want to spend using digital services (e.g. in-app purchases in video games) could help to better protect consumers.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Clarifying the concept of an 'influencer' (e.g. social media personalities) and the obligations of traders towards consumers would be beneficial.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Where automation/bots are used to deal with consumer complaints and other inquiries, consumers should have the possibility of contacting a human interlocutor upon request.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* It should be possible to limit the possibility for resellers to buy sought-after consumer products using automated means (software bots) in order to resell them at a higher price.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* More specific information obligations should apply when products such as event tickets are sold in the secondary market.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The concept of the trader's 'professional diligence' ^[1] towards consumers should be further clarified in the digital context.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The burden of proof of compliance with legal requirements should be shifted to the trader in certain circumstances (e.g. when only the company knows the complexities of how their digital service works).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* The concept of the 'average consumer' or 'vulnerable consumer' could be adapted or complemented by additional benchmarks or factors. ^[2]	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

[1] *[In general, 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers - honest market practice and/or the general principle of good faith in the trader's field of activity.]*

[2] *[According to the case law of the EU Court of Justice, the average consumer is defined as reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors. Under current EU law, vulnerable consumers are those that are particularly vulnerable to unfair commercial practices, for example because of their mental or physical infirmity, age or credulity.]*

Please explain your replies, including suggestion(s) for these or other area(s) where the current EU consumer law could be improved.

Addressing the question of if there is a need for stronger protection against digital practices that unfairly influence consumer decision-making, consumers are already legally protected against such practices. Consumers in the EU benefit from strong protection offline and online, against digital practices EU consumers are protected:

(1) Via the GDPR, if personal data is being processed during the decision-making process: "The GDPR requires data controllers to make information disclosures on the basis of which users make choices and to render a set of data subject rights, all within the context of privacy by design and default, and the data processing principles laid down in Art. 5" [from IAB Europe's response to the EDPB public consultation]. Fairness is one of the core principles of the GDPR (see article 5 (1)(a) that governs all data processing activities.

(2) Via the Digital Services Act (Art. 25, 1): "Providers of online platforms shall not design, organise or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions."

(3) Via the UCPD: In the same article (Art. 25, 2), it reads that "The prohibition in paragraph 1 shall not apply to practices covered by Directive 2005/29/EC or Regulation (EU) 2016/679", unequivocally that some of the practices that could be referred to in the question are already covered by the UCPD and/or the GDPR.

(4) Via industry initiatives, such as the Transparency and Consent Framework, which supports the practical implementation of and compliance with requirements laid out in the GDPR, specify that any call to action "must not be invisible, illegible, or appear disabled". Also, "they must have matching text treatment (font, font size, font style)" and a minimum contrast ratio of 5 to. (link: <https://iab europe.eu/iab-europe-transparency-consent-framework-policies/>)

To the question of having the explicit option to receive non-personalised commercial offers instead of personalised ones, this question that has been addressed in the already existing data protection legal framework. Personalisation by nature would require the processing of personal data, regulated in the GDPR, and where it is required to make information disclosures on the basis of which users make choices, including on personalised ads, prior to the process of personal data. In compliance with ePrivacy, also if a site uses cookies for the purpose of, for example, personalising content, it needs to disclose this in compliance with the ePrivacy Directive. Personalised offers provide consumers with a greater choice in the same range of products and exposure to actual relevant advertising to the specific user.

Regarding the burden of proof of compliance with legal requirements and the question of whether it should be shifted to the trader in certain circumstances, it is challenging to interpret what "certain circumstances"

and “complexities” are and how these would be assessed and measured. Regardless of this, the question has been already addressed by the European Commission through its proposal of revising the Product Liability Directive (2022/0302) which will update the existing product liability rules and that is actually addressing the question of the burden of proof of complex products and services.

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