

## Targeted consultation: Study to support the Fitness Check of EU

ID .....	332289-259	Responded .....	2023-09-22 12:43
Language .....	English	Reached end .....	Yes
Browser .....	Google Chrome	Completion time .....	199 min., 19 sec.
		Operating system .....	Windows 10

### Section 1: Respondent profile information

- 1 What type of stakeholder are you? (Please tick one option)  
**Business association**
- 2 Please specify the name of your organisation:  
**"IAB Europe"**
- 5 Which country are you responding from?  
**EU-level association**
- 6 Please specify the levels at which your organisation operates: Please select all that apply  
**At the EU level (including trading intra-EU)**
- 7 Does your enterprise (or for associations, enterprises belonging to your association) trade on a cross-border basis? Please select one option  
**Trade on a cross-border basis in the EU and internationally**
- 8 Please specify the fields / economic sectors of activity on which your organisation focuses:  
**"Digital marketing and advertising"**
- 9 Can the feedback in your responses be analysed in a way that identifies your organisation or would you prefer this is analysed confidentially – aggregated with other feedback of the relevant type of stakeholder, without being attributed to your organisation? Please note that, given sensitivities, all costs data will be kept confidential and anonymised.  
**Our feedback can be analysed in a way that attributes it to our organisation**

### Section 2: Review of digital fairness in EU consumer law and the application of the Modernisation Directive

**Please note:** References to the "EU consumer law Directives" in this survey relate to the three Directives within the Fitness Check's scope: (1) the Unfair Commercial Practices Directive 2005/29/EC (UCPD) (2) the Unfair Contract Terms Directive 93/13/EEC (UCTD) and (3) the Consumer Rights Directive 2011/83/EU (CRD). These were recently amended through the Modernisation Directive (EU) 2019/2161.

#### Section 2.1 – Effectiveness

Effectiveness considers the extent of progress towards achieving the objectives of the EU's consumer legislation, and whether the overall regulatory framework is delivering for consumers and traders.

##### 2.1.1 General questions

- 10 To what extent have the EU consumer law Directives contributed towards achieving the following objectives?
  - a Improved functioning of the EU digital single market.  
**Don't know** (1 - 5)
  - b Facilitating e-commerce through uniform rules on information requirements in distance contracts.  
**Don't know** (1 - 5)
  - Facilitating e-commerce through uniform rules on unfair commercial practices.

- c **Don't know** (1 - 5)
- d Facilitating e-commerce through uniform rules on the right to cancel online purchases within 14 days.  
**Don't know** (1 - 5)
- e Striking the right balance between ensuring high levels of consumer protection and facilitating e-commerce.  
**Don't know** (1 - 5)
- f Strengthening consumer protection and trust in purchasing online.  
**Don't know** (1 - 5)
- g Ensuring that consumers are well-informed before they make online purchases.  
**Don't know** (1 - 5)
- h Ensuring the transparency and fairness of subscription contracts for digital content and services (including their cancellation).  
**Don't know** (1 - 5)
- i Preventing deceptive practices (dark patterns) in website/app design.  
**To a great extent** (1 - 5)
- j Preventing misleading or aggressive marketing online.  
**Don't know** (1 - 5)
- k Preventing the unfair online targeting of consumer vulnerabilities for commercial purposes.  
**To a moderate extent** (1 - 5)
- l Preventing unfair standard contract terms in online contracts.  
**Don't know** (1 - 5)
- m Protecting consumer rights when using 'free' services (involving commercial use of the consumers' personal data).  
**To a moderate extent** (1 - 5)
- n Ensuring the transparency and fairness of personalisation practices (e.g. personalised advertising, pricing, offers, ranking, recommendations).  
**To a moderate extent** (1 - 5)
- o Ensuring transparency and fairness in the marketing of virtual items (including loot boxes) and virtual intermediate currencies.  
**Don't know** (1 - 5)
- p Providing clear rules on the burden of proof / provision of evidence regarding the fairness of commercial practices.  
**Don't know** (1 - 5)

- 11 Do you have any comments on the impact of the following developments on the application of the EU consumer law framework in the digital environment?

*Application of new legislation in the digital area (e.g. the Digital Services Act, Digital Markets Act, General Data Protection Regulation, proposals for a Artificial Intelligence Act, Data Act):* IAB Europe answered the first question with "to a moderate extent" because some issues, while not always directly addressed by the consumer law, are already regulated by the EU legal framework including under the DSA, GDPR and ePrivacy Directive and thus there is no regulatory 'gap' at EU level. IAB Europe emphasises the importance of effectively implementing existing EU legal frameworks to avoid redundant regulations that may end up hindering innovation in the EU. Concerning dark patterns, various regulations like GDPR, DSA, DMA, and the Data Act already safeguard consumers. Dark patterns are also directly covered under consumer law, under the UCPD, which covers practices that capture consumer attention, potentially violating it if dark patterns mislead. The EU's data protection laws directly combat the unfair targeting of consumer vulnerabilities for commercial gain. GDPR restricts the processing of special personal data, while the DSA prohibits targeted advertising based on profiling certain groups. Transparency and fairness in personalization practices are ensured through GDPR obligations on a legal basis and through transparency. The DSA adds transparency requirements for platforms, offering users real-time access to meaningful information. Regarding consumer rights when using 'free services', GDPR provides additional safeguards for personal data. Studies suggest that most Europeans prefer access to free services over paid subscriptions. A 2021 IAB Europe study indicates that less than half of Europeans (49%) are willing to pay for more than three subscriptions. In digital advertising, access to free services enables indiscriminate access to information.

- 12 Overall, to what extent have the EU consumer law Directives provided regulatory certainty in the digital environment?

- a Regulatory certainty for businesses when trading online in their Member State  
**Don't know** (1 - 5)
- b Regulatory certainty for businesses when trading online cross-border/in another Member State

**Don't know** (1 - 5)

- c Regulatory certainty for consumers when purchasing goods, digital content or services online in their Member State

**Don't know** (1 - 5)

- d Regulatory certainty for consumers when purchasing goods, digital content or services online cross-border/in another Member State

**Don't know** (1 - 5)

- 
- 13 To what extent have the EU consumer law Directives provided regulatory certainty about the applicable rules in the following specific areas?

- a Online sale of physical products and services

**Don't know** (1 - 5)

- b Online sale of digital content and services

**Don't know** (1 - 5)

- c Provision of "free" digital services (in exchange for consumers' data)

**To a great extent** (1 - 5)

- d Online advertising (including influencer marketing and personalised advertising)

**To a moderate extent** (1 - 5)

- e Use of AI systems in the context of B2C commercial practices (including AI chatbots)

**Don't know** (1 - 5)

- f Personalised pricing

**Don't know** (1 - 5)

- g Other personalisation practices (ranking, offers, recommendations etc.)

**Don't know** (1 - 5)

- h Fairness requirements concerning the design of online interfaces (websites, apps)

**Don't know** (1 - 5)

- i Virtual items (including loot boxes) and virtual intermediate currencies in digital services, such as video games

**Don't know** (1 - 5)

- j Standard contract terms

**Don't know** (1 - 5)

- k Subscription contracts for digital content and services

**Don't know** (1 - 5)

- l Rules on burden of proof in disputes/enforcement of fairness requirements

**Don't know** (1 - 5)

- m Use of dropshipping (i.e. shop does not hold those products in stock)

**Don't know** (1 - 5)

- n Use of scalping (i.e. purchasing of products in high demand using automated tools with a view to resell them at higher price)

**Don't know** (1 - 5)

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- 14 Do you perceive that there are any outstanding legal gaps?

**No**

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### 2.1.2 Questions about problematic practices

Whilst recognising that many traders spend resources ensuring that they invest in compliance with EU consumer law, some studies undertaken for the European Commission and wider research point to a range of practices by traders considered to be potentially problematic. This section seeks feedback on the extent to which such practices are prevalent, how far stakeholders agree there is a problem, and considers possible solutions. Some practices are already prohibited and/or addressed in EU law, raising questions around compliance levels and enforcement, whereas others may be pointing at regulatory gaps or uncertainty.

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- 16 To what extent do you agree or disagree that the following practices are problematic?

- a Presence of deceptive practices (dark patterns) in website/app design.  
**Disagree** (1 - 5)
- b Absence of transparency concerning paid promotions in social media.  
**Disagree** (1 - 5)
- c Problems concerning personalised advertising / commercial communications.  
**Disagree** (1 - 5)
- d Problems concerning personalised pricing.  
**Don't know** (1 - 5)
- e Problems concerning other personalisation practices (ranking, offers, recommendation etc.)  
**Don't know** (1 - 5)
- f Problems concerning the addictive use of digital products and services (e.g. social media, video games).  
**Don't know** (1 - 5)
- g Problems concerning the cancellation of subscriptions.  
**Don't know** (1 - 5)
- h Problems with price hikes in subscriptions, following initial promotional deals.  
**Don't know** (1 - 5)
- i Problems due to automatic conversion of free trials into paid subscriptions contracts.  
**Don't know** (1 - 5)
- j Problems due to lack of transparency about the actual value of virtual items offered in exchange for virtual intermediate currencies (in digital services such as video games).  
**Don't know** (1 - 5)
- k Use of loot boxes and addiction-inducing design features (in digital services such as video games).  
**Don't know** (1 - 5)
- l Scalping of products using automated software (except event tickets).  
**Don't know** (1 - 5)
- m Use of consumers' data that exploits specific vulnerabilities for commercial purposes (e.g. data indicating a gambling addiction).  
**Don't know** (1 - 5)
- n Use of AI systems that deploy subliminal techniques beyond a person's consciousness for commercial purposes.  
**Don't know** (1 - 5)
- o Absence of a clear and intelligible presentation of contractual information.  
**Don't know** (1 - 5)
- p Problems in communicating with traders due to the use of AI chatbots.  
**Don't know** (1 - 5)
- q Absence of transparency concerning the "dropshipping" business model (i.e. the fact that the shop does not hold those products in stock).  
**Don't know** (1 - 5)

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17 In the past five years, how far have the following potentially problematic B2C digital practices increased or decreased in frequency?

- a Presence of deceptive practices (dark patterns) in website/app design.  
**Don't know** (1 - 6)
- b Absence of transparency concerning paid promotions in social media.  
**Don't know** (1 - 6)
- c Problems concerning personalised advertising / commercial communications.  
**Don't know** (1 - 6)
- d Problems concerning personalised pricing.  
**Don't know** (1 - 6)

- e Problems concerning other personalisation practices (ranking, offers, recommendation etc.)  
**Don't know** (1 - 6)
- f Problems concerning the addictive use of digital products and services (e.g. social media, video games).  
**Don't know** (1 - 6)
- g Problems concerning the cancellation of subscriptions.  
**Don't know** (1 - 6)
- h Problems with price hikes in subscriptions, following initial promotional deals.  
**Don't know** (1 - 6)
- i Problems due to automatic conversion of free trials into paid subscriptions contracts.  
**Don't know** (1 - 6)
- j Problems due to lack of transparency about the actual value of virtual items offered in exchange for virtual intermediate currencies (in digital services such as video games).  
**Don't know** (1 - 6)
- k Use of loot boxes and addiction-inducing design features (in digital services such as video games).  
**Don't know** (1 - 6)
- l Scalping of products using automated software (except event tickets).  
**Don't know** (1 - 6)
- m Use of consumers' data that exploits specific vulnerabilities for commercial purposes (e.g. data indicating a gambling addiction).  
**Don't know** (1 - 6)
- n Use of AI systems that deploy subliminal techniques beyond a person's consciousness for commercial purposes.  
**Don't know** (1 - 6)
- o Absence of a clear and intelligible presentation of contractual information.  
**Don't know** (1 - 6)
- p Problems in communicating with traders due to the use of AI chatbots.  
**Don't know** (1 - 6)
- q Absence of transparency concerning the "dropshipping" business model (i.e. the fact that the shop does not hold those products in stock).  
**Don't know** (1 - 6)
- r Other, please specify:  
**Don't know** (1 - 6)

18 Do you have any follow-up comments regarding the problematic practices and how prevalent they are?

*"IAB Europe disagreed with the question about whether certain practices are problematic, as they believe existing legislation already addresses them. We also found it challenging to measure the increase or decrease of these practices in the past five years and answered 'Don't know' to that question. Fighting against dark patterns has become a priority for the EU and it is important to take into account all the substantial steps that have already been taken by the EC to establish effective regulations to combat this issue. The implementation of a robust framework is already underway and there is no lacunae in the EU legal framework. The DSA, UCPD and GDPR, work together to ensure the elimination of regulatory loopholes that platforms might exploit to manipulate users. Instead of introducing new regulations, the key focus lies in the proficient enforcement of these established rules. Failing to do so would create legal confusion for businesses operating in the EU and confusion for consumers as to the appropriate and most effective recourse. Separately, on influencer marketing, at the EU level the European Advertising Standards Alliance (EASA), launched 2023 the "EASA Best Practice Recommendation on Influencer Marketing 2023", which provides recommendations for Self-Regulatory Organisations (SROs) to develop their own national guidance. At the National level, there are many EU countries where the SROs developed their own guidance. Including personalised advertising - a legally regulated practice - as a problematic practice in the survey makes it challenging to provide an answer. We consider it is important to take into account that when it comes to personalised advertising it is important to indicate that this is a legally permitted practice with relevant rules within the GDPR, ePrivacy Directive, and Digital Services Act, among others."*

19 To what extent have the three core EU consumer law Directives been effective in tackling perceived problematic digital B2C practices?

- a Presence of deceptive practices (dark patterns) in website/app design.  
**Quite effective** (1 - 5)
- b Absence of transparency concerning paid promotions in social media.  
**Quite effective** (1 - 5)

- c Problems concerning personalised advertising / commercial communications.  
**Quite effective** (1 - 5)
- d Problems concerning personalised pricing.  
**Don't know** (1 - 5)
- e Problems concerning other personalisation practices (ranking, offers, recommendation etc.)  
**Don't know** (1 - 5)
- f Problems concerning the addictive use of digital products and services (e.g. social media, video games).  
**Don't know** (1 - 5)
- g Problems concerning the cancellation of subscriptions.  
**Don't know** (1 - 5)
- h Problems due to price hikes in subscriptions, following initial promotion deals.  
**Don't know** (1 - 5)
- i Problems due to Automatic conversion of free trials into paid subscriptions contracts.  
**Don't know** (1 - 5)
- j Problems due to lack of transparency about the actual value of virtual items offered in exchange for virtual intermediate currencies (in digital services such as video games).  
**Don't know** (1 - 5)
- k Use of loot boxes and addiction-inducing design features (in digital services such as video games).  
**Don't know** (1 - 5)
- l Scalping of products using automated software (except event tickets).  
**Don't know** (1 - 5)
- m Use of consumers' data that exploits specific vulnerabilities for commercial purposes (e.g. data indicating a gambling addiction).  
**Don't know** (1 - 5)
- n Use of AI systems that deploy subliminal techniques beyond a person's consciousness for commercial purposes.  
**Don't know** (1 - 5)
- o Absence of a clear and intelligible presentation of contractual information.  
**Don't know** (1 - 5)
- p Problems in communicating with traders due to the use of AI chatbots.  
**Don't know** (1 - 5)
- q Absence of transparency concerning the "dropshipping" business model (i.e. the fact that the shop does not hold those products in stock).  
**Don't know** (1 - 5)
- r Other, please specify:  
**Don't know** (1 - 5)

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### 2.1.3 The Modernisation Directive and its likely impacts on effectiveness and relevance of EU consumer law.

The Modernisation Directive (EU) 2019/2161 had to be applied from May 28th 2022, although several Member States were late in their transposition. It amends EU consumer law with additional rules regarding the digital environment, among other areas, and strengthens the overall enforcement of the existing rules through stronger requirements regarding penalties in case of infringements and providing rights for individual remedies for consumers harmed by unfair commercial practices.

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- 21 To what extent, in your opinion, has the Modernisation Directive strengthened consumer protection in the following areas it covers?
- a More transparency in online search results (disclosure of ranking criteria and paid placements) when consumers search for products offered by different traders.  
**Don't know** (1 - 5)
  - b More transparency about whether the third party offering products through online marketplaces is a trader or consumer.  
**Don't know** (1 - 5)
  - c More transparency regarding the processing and verification of consumer reviews that traders collect and make available.

**Don't know** (1 - 5)

- d Better access to event tickets as a result of the prohibition of scalping by automated software.

**Don't know** (1 - 5)

- e More transparency concerning price reduction announcements.

**Don't know** (1 - 5)

- f Better consumer information about "free" digital content and services (provided in exchange for commercial use of personal data).

**To a great extent** (1 - 5)

- g More transparency when the price is personalised as a result of automated decision-making.

**Don't know** (1 - 5)

- h Easier communication with the trader through the e-mail address and telephone number.

**Don't know** (1 - 5)

- i More deterrence against infringements through stronger penalties.

**Don't know** (1 - 5)

- j Preventing the misleading presentation of goods (especially food) as being identical to those marketed in other EU countries when there are significant differences ('dual quality' of goods).

**Don't know** (1 - 5)

- k More deterrence against infringements through better redress for victims of unfair commercial practices.

**Don't know** (1 - 5)

- 
- 22 Do you consider that consumers suffer detriment due to unfair commercial practices (i.e. pressure selling, misleading information) in the context of the following selling techniques taking place outside the seller's regular business premises:

- a Doorstep selling (sellers' visits to consumer's home).

**Don't know** (1 - 6)

- b Commercial excursions (leisure activities organised by a seller involving sale of products).

**Don't know** (1 - 6)

- c Organised selling events at places like private homes, hotels, restaurants to which consumers are invited.

**Don't know** (1 - 6)

- 
- 24 Do you consider that consumers suffer detriment due to traders' practices of marketing goods (through their branding and presentation) as being identical to those goods in other EU countries notwithstanding their differences in composition and characteristics ('dual quality')?

**Don't know**

- 
- 28 Do you have any additional feedback regarding the extent to which the Modernisation Directive is likely to strengthen the effectiveness of the three consumer law Directives in terms of: i) ensuring fitness for purpose for the digital age and ii) strengthening enforcement:

*Ensuring fitness for purpose of consumer law for the digital age:* **Despite the presence of horizontal legislation aimed at safeguarding consumers in the digital realm, such as the Digital Services Act (DSA), along with regulations governing personal data protection, like the General Data Protection Regulation (GDPR) and ePrivacy directive, the Modernisation Directive introduced a significant enhancement in Article 6a. This amendment explicitly states that traders must adhere to the obligations set forth in Regulation (EU) 2016/679 concerning the consumer's personal data. Consequently, traders are now unequivocally bound to comply with transparency and legal requirements as mandated by the GDPR for data processing. This strengthened provision ensures a higher level of accountability and protection for consumers when engaging in digital services.**

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- 29 Were there any unforeseen or unexpected consequences of the Modernisation Directive's amendments in the UCPD, CRD, UCTD and PID? For example, more use by traders of other methods to promote price advantages instead of the - now regulated - price reductions (such as price comparisons, loyalty programmes, personalised discounts etc.)

**Don't know**

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#### 2.1.4 Enforcement and regulatory compliance

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- 31 How effective is the enforcement of EU consumer law in the digital environment? Please provide your overall perception concerning the enforcement of the Consumer Rights Directive, Unfair Commercial Practices Directive and Unfair Contract Terms Directive respectively in the digital area.

- a Public enforcement by administrative authorities.  
**Don't know** (1 - 6)
- b Private enforcement by qualified entities, such as consumer or business organisations.  
**Don't know** (1 - 6)
- c Resolution of disputes between consumers and traders through court action.  
**Don't know** (1 - 6)
- d Resolution of disputes between consumers and traders through out-of-court dispute resolution mechanisms.  
**Don't know** (1 - 6)
- e Development of soft law measures (e.g. guidance; compliance sweeps by the CPC Network; voluntary pledges).  
**Don't know** (1 - 6)
- f Ensuring consumer redress, such as compensation, price reduction, ending the contract.  
**Don't know** (1 - 6)

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33 To what extent do you agree with the following statements concerning the functioning of the EU consumer law Directives in the digital environment?

- a There are divergences in national interpretation of EU consumer law across different Member States.  
**Don't know** (1 - 5)
- b There are divergences in national interpretation of EU consumer law by different competent bodies in the same Member State.  
**Don't know** (1 - 5)
- c Traders are able to bypass certain obligations in EU consumer law using contractual, technical or behavioural measures.  
**Don't know** (1 - 5)

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35 What are your perceptions regarding the level of compliance among traders in relation to the following main requirements of the EU consumer law Directives?

- a Avoiding misleading or aggressive commercial practices (Unfair Commercial Practices Directive)  
**Don't know** (1 - 4)
- b Providing precontractual information (Consumer Rights Directive)  
**Don't know** (1 - 4)
- c Adhering to the 14-day right of withdrawal (Consumer Rights Directive)  
**Don't know** (1 - 4)
- d Avoiding non-transparent and unfair standard contract terms (Unfair Contract Terms Directive)  
**Don't know** (1 - 4)
- e Adhering to requirements concerning price reductions (Price Indication Directive as amended by the Modernisation Directive).  
**Don't know** (1 - 4)

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36 To what extent has compliance with EU consumer law requirements in the digital environment resulted in any additional types of general compliance costs for your business? Please answer in respect of the following:

- a Familiarisation with consumer protection rules for online sales (e.g. developing compliance strategies, allocating compliance responsibilities, reviewing guidance documents on digital sales)  
**Don't know** (1 - 5)
- b Checking compliance with legal requirements to ensure that digital commercial practices (and contract terms) are not unfair or misleading (e.g. checking that website design is not unfair)  
**Don't know** (1 - 5)
- c Adjusting business practices (e.g. changing a website design where deceptive practices are identified, using different standard contract terms if considered unfair, etc.)  
**Don't know** (1 - 5)
- d Cost of external services (e.g. consultants / lawyers hired to support compliance process).



**Don't know** (1 - 5)

38 To what extent has compliance with EU consumer law requirements in the digital area resulted in the following additional types of costs relating to information obligations for your business?

a Pre-contractual information requirements about the products you sell

**Don't know** (1 - 5)

b Disclosure requirements for platforms on aspects such as search rankings and the processing of consumer reviews.

**Don't know** (1 - 5)

c Cost of complying with the right of withdrawal (products, services)

**Don't know** (1 - 5)

41 In recent years, how frequently have you checked that you still comply with EU legislation (as transposed into national legislation)? Please tick one option

**Once every three months**

43 Does your firm (or your industry association members) also trade cross-border?

**Don't know**

48 To what extent have the regulatory amendments stemming from the Modernisation Directive's adoption resulted in new or increased costs in the following areas?

a Familiarisation with the new rules (e.g. developing compliance strategies, allocating compliance responsibilities)

**Don't know** (1 - 5)

b Complying with the new information obligations (for platforms)

**Don't know** (1 - 5)

c Costs of external services (e.g., consultants / lawyers hired to support compliance, website redesign).

**Don't know** (1 - 5)

52 To what extent do the costs of regulatory compliance with the three core EU consumer law Directives (i.e. CRD, UCTD, UCPD) in the digital area differ between SMEs and large businesses? (tick one only)

**Don't know**

### Regulatory simplification & burden reduction

57 To what extent are there opportunities to simplify the legislation or reduce unnecessary regulatory costs without undermining the objectives of the three EU consumer law Directives (i.e. CRD, UCTD, UCPD) in the digital area?

**Don't know**

### Section 2.2.2 – The benefits of EU consumer law

59 To what extent does your company (or for industry associations, your member companies) agree that the harmonisation of consumer protection rules at EU level has led to the following benefits in the digital area?

a Improved regulatory certainty for businesses.

**Don't know** (1 - 5)

b Creating a level playing field across the EU for businesses through prohibition of unfair commercial practices.

**Don't know** (1 - 5)

c Creating a level playing field by ensuring that standard contract terms are fair.

**Don't know** (1 - 5)

d Single market benefits (harmonised legislation making it easier to sell cross-border to consumers in other EU countries).

**Don't know** (1 - 5)

e Ensuring fairness for consumers in the digital environment.

**Don't know** (1 - 5)

- f Improved consumer trust due to better information for consumers in making purchases of goods, services or digital content online.  
**Don't know** (1 - 5)
- g Striking the right balance between consumer protection, whilst not overburdening traders.  
**Don't know** (1 - 5)
- h Other benefits – please specify  
**Don't know** (1 - 5)

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### Overarching efficiency assessment

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- 62 At the societal level, to what extent do the provisions of the three EU consumer law Directives (i.e. CRD, UCTD, UCPD) achieve an adequate balance between regulatory costs for traders and benefits for consumers and other stakeholders? (tick one only)  
**Don't know**

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### Section 2.3 - Relevance and fitness for purpose

Relevance considers the extent to which the three Directives are fit for purpose, considering how the legislation and its application has evolved over time (e.g. through case law, interpretative guidance). The ongoing relevance of the legislation in addressing new technologies and changes in digital markets, as well as in tackling problematic practices is also considered.

- 63 Overall, to what extent do the provisions of the three EU consumer law Directives adequately address digital market trends?  
**To a great extent**
- 
- 64 To what extent do the three EU consumer law Directives keep up with the following specific evolving developments in digital markets and new technologies?
- a Changes in digital services and markets (e.g. the increased role of marketplaces and platforms, subscription service models).  
**Don't know** (1 - 5)
  - b Development of technologies to facilitate transactions by consumers (e.g. smart contracts).  
**Don't know** (1 - 5)
  - c Increased use of connected products (e.g. Internet of Things) to make purchases and carry out everyday tasks (e.g. personal assistants).  
**Don't know** (1 - 5)
  - d Increased use of Artificial Intelligence (AI), including in profiling and personalisation practices.  
**To a moderate extent** (1 - 5)
  - e Increased use of automation (e.g. in consumer services – AI chatbots; businesses using scalping bots).  
**Don't know** (1 - 5)
  - f Growing role of data/Internet of Behaviours (including data held by platforms) in personalisation practices (advertising / marketing and pricing).  
**To a moderate extent** (1 - 5)
  - g Growing use of “free” digital services involving commercial processing of users’ personal data.  
**To a moderate extent** (1 - 5)
  - h Changes in how consumers purchase goods and services (e.g. buying via mobile phone and social media platforms).  
**Don't know** (1 - 5)
  - i New virtual/augmented reality environments (metaverse/immersive technologies).  
**Don't know** (1 - 5)
  - j Increased use of blockchain technology.  
**Don't know** (1 - 5)
  - k Other, please specify:  
**Don't know** (1 - 5)

- 
- 65 If you have specific comments on whether the Directives adequately address (or conversely, do not sufficiently address) the needs of the EU and key stakeholder groups in light of evolving developments in digital markets, please enter below:

*"Any potential future amendments to the UCPD should preserve the EU consumer law framework's horizontal and principle-based approach. This approach is capable of encompassing the dynamic changes in the digital industry."*

- 66 How far has the application of the Modernisation Directive strengthened the 'fitness for purpose' and relevance of the underlying EU consumer law Directives concerned with addressing problematic practices?

**Neutral / No difference**

- 67 To what extent do you agree with the following statements regarding the extent to which vulnerable consumers are appropriately addressed in the three EU consumer law Directives (i.e. CRD, UCTD, UCPD):\*Note - 'Situational vulnerability' is a situation whereby consumers may be vulnerable only in particular circumstances, even if they do not fall under any classic vulnerability category – all consumers could be vulnerable online.

- a The concept of an 'average consumer' is adequate in the digital area.

**Don't know** (1 - 6)

- b The concept of 'vulnerability' is sufficiently broad to cover all relevant vulnerable groups in the digital area, including situational vulnerability.

**Don't know** (1 - 6)

- c The Directives place sufficient focus on accessibility issues for certain types of users (e.g. people without basic digital skills, people with disabilities, partially sighted users).

**Don't know** (1 - 6)

#### The burden of proof

- 69 To what extent do you agree or disagree with the following statements:

- a It is proportionate to keep the burden of proof on consumers to provide evidence of an infringement.

**Don't know** (1 - 6)

- b The burden of proof of compliance with legal requirements should be shifted to the business in certain circumstances (e.g. if there is reasonable suspicion of an infringement)

**Don't know** (1 - 6)

- c The burden of proof should be reversed and put on traders to demonstrate fairness in cases of major digital asymmetries (e.g. algorithms that consumers cannot understand)

**Don't know** (1 - 6)

- 71 What would be the most likely consequences if there is no further strengthening of the Directives with respect to consumer protection in the digital environment? Indicate the extent to which you agree or disagree.

- a No consequences, as the current state of consumer protection is adequate.

**Don't know** (1 - 6)

- b Limited consequences, as the legislation is already updated directly and indirectly (e.g. through the Modernisation Directive, other digital legislation) and it is sufficiently technology neutral

**Don't know** (1 - 6)

- c Risk of adverse consequences, as there would remain legal gaps or legal uncertainty, which cannot be overcome by enforcement or soft measures.

**Don't know** (1 - 6)

#### Section 2.4 - Coherence

Coherence considers the internal clarity of the three Directives concerned and also their interaction with other relevant EU legislation concerning digital markets and services, data protection law, product safety law etc.

##### Internal coherence

- 72 To what extent are there internal inconsistencies, overlaps or gaps between the provisions of the three EU consumer law Directives in the digital environment?

**Not at all**

##### External coherence

- 74 To what extent is there coherence between the provisions of key EU consumer legislation (i.e. CRD, UCTD, UCPD) and the following existing and proposed EU legislation as regards regulating consumer protection in the digital environment?

- a Digital Services Act – Regulation (EU) 2022/2065  
**Strong coherence** (1 - 4)
- b Digital Markets Act – Regulation (EU) 2022/1925  
**Strong coherence** (1 - 4)
- c Digital Content & Services Directive (EU) 2019/770  
**Don't know** (1 - 4)
- d Audiovisual Media Services Directive 2010/13/EU  
**Don't know** (1 - 4)
- e Proposal for an Artificial Intelligence Act  
**Don't know** (1 - 4)
- f GDPR – General Data Protection Regulation (EU) 2016/679  
**Strong coherence** (1 - 4)
- g Proposal for a Data Act  
**Don't know** (1 - 4)
- h ePrivacy Directive / future ePrivacy Regulation  
**Don't know** (1 - 4)
- i General Product Safety Regulation (GPSR)  
**Don't know** (1 - 4)
- j Accessibility Act / Web Accessibility Directive  
**Don't know** (1 - 4)
- k Competition law  
**Don't know** (1 - 4)
- l Other, please specify  
**Don't know** (1 - 4)

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### Section 2.5 - EU Added Value

EU added value considers how much value an EU-wide legal regime has had and what would be the situation were there to be no such legislation in place.

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- 77 To what extent has the EU consumer law framework achieved better outcomes than could have been achieved by Member States regulating these areas themselves?
- a High levels of consumer trust and empowerment in the digital environment.  
**Don't know** (1 - 5)
  - b Effective functioning of the (digital) single market through harmonised rules/ avoidance of fragmentation.  
**Don't know** (1 - 5)
  - c Addressing problematic cross-border commercial practices.  
**Don't know** (1 - 5)
  - d Addressing problematic cross-border standard contract terms.  
**Don't know** (1 - 5)
  - e Facilitating e-commerce through clear rules on distance contracts.  
**Don't know** (1 - 5)
  - f Facilitating cross-border e-commerce.  
**Don't know** (1 - 5)

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### Section 3: Possible strengthening of the consumer law framework

Whilst this study is not an impact assessment, some previous research has pointed to potential legal gaps or uncertainties in addressing problematic practices in the digital environment. This section seeks views as to whether any further improvements are needed and if yes, whether this should be through regulatory changes, soft law mechanisms or other approaches.

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- 78 How far do you agree that the EU consumer law framework and its application should be strengthened to address existing and/or anticipated future challenges through soft law mechanisms, such as guidance? Please indicate the extent to which you agree or disagree with the following statements:
- a No changes are necessary.  
**Strongly agree** (1 - 6)
  - b Update guidance documents periodically.  
**Disagree** (1 - 6)
  - c Clarify any implications of new digital practices, developments / trends in digital markets and services through guidance to reduce legal uncertainty.  
**Agree** (1 - 6)
  - d Industry initiatives and self-regulation (e.g. codes of conduct, incorporating good business practices into website design, time-outs to prevent over-use / digital addiction).  
**Agree** (1 - 6)
- 
- 79 How far do you agree that the EU consumer law framework and its application should be strengthened to address existing and/or anticipated future challenges through legal mechanisms? Please indicate the extent to which you agree or disagree with the following statements:
- a Introduce new legal provisions to address specific gaps and uncertainties (see follow-up question with examples).  
**Don't know** (1 - 6)
  - b More Court of Justice rulings and national case law to clarify the law over time.  
**Don't know** (1 - 6)
- 
- 80 How far do you agree that the EU consumer law framework and its application should be strengthened to address existing and/or anticipated future challenges in the area of enforcement? Please indicate the extent to which you agree or disagree with the following statements:
- a More harmonised enforcement across the EU-27 (including through coordinated actions and penalties).  
**Don't know** (1 - 6)
  - b More 'soft' enforcement e.g. to raise awareness about existing rules and new rules, working together with traders to address non-compliance.  
**Don't know** (1 - 6)
  - c Other, please specify: Implementation and oversight of these rules would be enhanced by upskilling of relevant regulators, an annual plan regarding priority areas of work and targeted guidance in these areas where compliance may need strengthening by particular traders.  
**Strongly agree** (1 - 6)
- 
- 81 Do you have any specific comments regarding the measures referred to above? If yes, enter below, if no, go to next question.
- Industry self-regulation:: It is important to take into account that in the fast-paced digital environment when developing and setting practices based on EU regulation, self-regulation is often an effective option particularly when a trader relies on a complex supply chain. This approach is more flexible and will mean a faster adaptation to the latest trends and new technologies. In fast-paced industries like digital services, self-regulation will mean a faster implementation addressing concerns related to new technologies promptly assuring an early response to emerging issues.**
- 
- 82 What are your views on specific possible changes to the existing EU legal framework which could be considered to strengthen consumer protection and to address problematic practices and/ or legal gaps?
- a Introduce additional transparency obligations about personalised commercial practices at the moment they are deployed.  
**Don't know** (1 - 6)
  - b Require additional transparency about the dropshipping business model (i.e. the fact that the shop does not hold those products in stock).  
**Don't know** (1 - 6)
  - c Prohibit the exploitation of consumer vulnerabilities for commercial purposes (e.g. using psychographic profiling to target commercial messages to specific groups of consumers).  
**Don't support at all** (1 - 6)

- d Prohibit the deployment of subliminal techniques beyond a person's consciousness for commercial purposes (e.g. AI system that distorts consumer decisions and causes economic harm).  
**Don't know** (1 - 6)
- e Prohibit traders from using contractual, technical or behavioural measures to bypass obligations in consumer law.  
**Don't know** (1 - 6)
- f Introduce specific rules concerning the length of B2C contracts in the digital environment.  
**Don't know** (1 - 6)
- g Introduce specific rules to mitigate the negative effects on consumers of addiction-inducing commercial practices in digital products and services (e.g. social media, video games).  
**Don't know** (1 - 6)
- h Change the indicative nature of the Annex to the UCTD (defining a number of standard contract terms likely to be unfair) and adopt a harmonised approach (a list of standard contract terms that are always unfair or a list of terms that are presumed to be unfair).  
**Don't know** (1 - 6)
- i Address in the UCTD the imbalances detrimental to consumers resulting from contract terms based on data-driven personalisation practices by traders.  
**Don't know** (1 - 6)
- j Increase the fairness of the online interface for making consumer complaints, claiming remedies, and enforcing other consumer rights.  
**Don't know** (1 - 6)
- k Protect consumers against price hikes in subscription contracts following the end of the initial promotional or free subscription period.  
**Don't know** (1 - 6)
- l Protect consumers against unwanted automatic renewal of subscriptions.  
**Don't know** (1 - 6)
- m Limit registration/account creation requirement when consumers want to make a purchase.  
**Don't know** (1 - 6)
- n Require indication of the real price (e.g. EUR) of virtual items in digital products (e.g. social media, video games) when offered against intermediate currency that the user must purchase in the first step.  
**Don't know** (1 - 6)

- 83 Do you have any specific comments on the suggestions in the previous question? How far is further regulation likely to be effective, and are there any alternatives?  
*"IAB Europe answered to most of the questions "Don't know" due to the unclarity thrown into the question "What are your views on specific possible changes to the existing EU legal framework which could be considered to strengthen consumer protection and to address problematic practices and/or legal gaps?", specifically to the section that talks about "fairness" of an online interface without really defining "fairness" in this context. Regarding prohibiting the exploitation of consumer vulnerabilities for commercial purposes (e.g. using profiling to target commercial messages to specific groups of consumers), IAB Europe answered, "Don't support at all". IAB Europe supports effective consumer protection to protect their interests when interacting with traders in the digital environment. However, we believe that when it comes to personalised advertising, which funds the online services they use, those concerns are already addressed under the consumer protection legal framework and under legislation specific to the digital space that includes the Digital Services Act, the General Data Protection Regulation, and ePrivacy. Rather than putting additional rules in place, the question should be about ensuring that these existing rules are implemented effectively. Otherwise, we run the risk of double regulation of the issues and this would result in confusion for both traders and consumers."*

- 84 Are there any national consumer laws that have emerged to tackle problematic digital practices?  
**Don't know**

#### Section 4: Closing remarks

- 87 Should you wish to submit a position paper in response to the targeted consultation, please do so below.  
*If required, please upload an additional document here.: FINAL-IAB-EU-response-Digital-Fariness-Targeted-Survey-docx-1--20230922114243-Ink3.pdf (<https://s.chkmkt.com/quest-upload/332289/344/FINAL-IAB-EU-response-Digital-Fariness-Targeted-Survey-docx-1--20230922114243-Ink3.pdf>)*
- 88 Would you be willing to be contacted again to discuss your responses?  
**Yes**

**If you respond 'No' to this question, you will exit the survey.**

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89 Please provide contact details:

*First name and surname::* **Ines Talavera de la Esperanza**

*Email address::* **talavera@iabeurope.eu**

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