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Ensuring digital fairness in EU consumer law: roadmap response



Executive summary

New technologies and data-driven practices have helped to empower consumers and improve their experiences online. At the same time, they have created new challenges. DIGITALEUROPE supports the European Commission's goal to ensure that EU consumer law remains fit for purpose in the context of the digital transition.¹ Ensuring that European consumers are adequately protected helps maintain trust, and benefits consumers and industry alike. At the same time, it is important that European businesses can offer innovative products and services to their customers.

DIGITALEUROPE encourages policymakers to take stock and make use of existing rules before proposing new ones. Any new rules must be based on clear evidence that current practices harm consumers or society as a whole.

Should genuine concerns be identified, they must be tackled online and offline so that consumers are protected regardless of the service they use. An open dialogue with industry will help address specific concerns effectively and timely. The COVID-19 crisis has proved that such partnerships work, ensuring European consumers were better protected from bad actors trying to take advantage of the crisis.

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13413-Digital-fairness-fitness-check-on-EU-consumer-law_en



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Evidenced-based approach

Europeans are the best-protected consumers in the world thanks to a robust EU consumer *acquis* built up over decades. DIGITALEUROPE supports the ambition to ensure that EU consumer law keeps pace with emerging trends and remains fit for purpose in the context of the digital transition.

Ensuring that European consumers are adequately protected helps maintain trust, and benefits consumers and industry alike. In this context, we welcome the EU ‘fitness check’ on digital fairness and the evidence-based approach designed to identify potential gaps and challenges to the enforcement of existing rules.

Whilst consumer trends and technologies are evolving rapidly, we do not believe that, at this time, there are practices that cannot be addressed through existing rules.

The current consumer framework applies across the entire consumer journey online, ensuring no gaps in protection. Consumers are protected by extensive rights covering pre-contractual information obligations for traders.

There are rules granting consumers the right to withdraw from contracts should they find their purchases do not meet their expectations. There are also rules regarding the fairness of contract terms, and extensive case law and decisions for those instances where unfair contract terms were used.



Enforcement of existing legislation

DIGITALEUROPE encourages policymakers to make full use of existing rules before proposing new ones. The Omnibus Directive,² which was adopted to modernise and better enforce consumer protection rules, and the Consumer Protection Cooperation (CPC) Regulation,³ which was designed to improve cooperation between consumer protection authorities in Europe, have yet to be evaluated.

The current legal framework covers the potential unfair commercial practices highlighted by the Commission roadmap. The Unfair Commercial Practices Directive,⁴ the Consumer Rights Directive⁵ and the Unfair Contract Terms Directive⁶ provide ample ground for enforcement against any commercial

² Directive 2019/2161/EU.

³ Regulation 2017/2394/EU.

⁴ Directive 2005/29/EC.

⁵ Directive 2011/83/EU.

⁶ Directive 93/13/EEC.

practice which is deemed misleading, unfair, aggressive or that includes undue influence on customers' economic decisions (subscription or cancellation flows), implemented by sellers or third parties acting on behalf of sellers, e.g. influencers, review brokers or others. This is further strengthened by the soon-to-be-adopted Digital Services Act (DSA),⁷ which delves further into dark patterns and transparency.

The roadmap seems to assume that personalisation of offerings and marketing overall are harmful to consumers, and that consumers are unaware of such practices. This assumption is contradicted by a 2018 study conducted by the European Commission, which highlighted that close to two-thirds (67 per cent) of consumers choose to use services in the knowledge that they are personalised.⁸ The personalisation of offerings for consumers can be beneficial when consumers understand and have agency over the services they use, which is required under the existing data protection⁹ and DSA frameworks.

We are strongly opposed to a restructuring of the current legal framework based on such erroneous assumptions. Reversing the burden of proof, leading to additional information provision obligations for companies or introducing a 'neutral choice' approach are not proportional to an alleged lack of consumer awareness.



Technology neutrality

While we do not see gaps in the current consumer framework, should genuinely new concerns be identified, they must be tackled online and offline so that consumers are protected regardless of the service they use. Many of the challenges highlighted in the European Commission's roadmap are equally relevant to the offline world. To avoid fragmentation, consumer confidence and legal certainty rules should be technology neutral and principle based.



Dialogue with industry

We encourage policymakers, authorities and consumer groups to engage in dialogue with industry on how to address specific concerns effectively and timely. Such discussions could lead to partnerships or self-regulatory initiatives to

⁷ COM/2020/825 final.

⁸ European Commission, *Consumer market study on online market segmentation through personalised pricing/offers in the European Union* (2018), available at https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights/aid_and_development_by_topic/documents/synthesis_report_online_personalisation_study_final_0.pdf.

⁹ Regulation (EU) 2016/679.

ensure consumers are better protected and informed of their rights in the constantly evolving digital economy.

During the early days of the COVID-19 crisis, our members worked swiftly with EU and national authorities to combat emerging COVID-related scams, fraud, and disinformation, which proliferated online as in the offline world. This positive collaboration with the Commission and the CPC network created tangible results.¹⁰ The intelligence sharing between all relevant actors on emerging trends resulted in millions of product listings and posts being removed, helping to protect European consumers from bad actors trying to take advantage of the crisis.

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¹⁰ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/scams-related-covid-19_en

About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

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National Trade Associations

Austria: IOÖ

Belgium: AGORIA

Croatia: Croatian Chamber of Economy

Cyprus: CITEA

Czech Republic: AAVIT

Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, SECIMAVI, numeum

Germany: bitkom, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: Infobalt

Luxembourg: APSI

Moldova: ATIC

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS

Slovakia: ITAS

Slovenia: ICT Association of Slovenia at CCIS

Spain: Adigital, AMETIC

Sweden: TechSverige, Teknikföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform, ECID

Ukraine: IT Ukraine

United Kingdom: techUK