

Towards a digital fairness act

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Published: October 2026 | Document number: PE 791.529



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This European Parliamentary Research Service paper aims to inform Members on issues related to a forthcoming Commission initiative. It highlights the main choices which may shape the initiative and which Members may wish to explore ahead of formal Commission adoption. Based on documentary and other sources, it reflects the information available at the time of writing.

For further information on this topic, Members and staff of the European Parliament may contact the authors.

Issues at stake

- The 2024 fitness check of EU consumer law found that it remains broadly relevant and necessary, but identified shortcomings requiring further action. The European Commission is therefore preparing a proposal for a digital fairness act (DFA), expected in the fourth quarter of 2026.
- EU consumer protection law aims to preserve a balance of rights and obligations between traders and consumers. In the context of the DFA, fairness therefore means ensuring this balance in the modern digital environment.
- The Commission has consulted interested parties on practices such as dark patterns, misleading marketing by influencers, addictive design and unfair personalisation practices.
- Views are divided over whether better enforcement is sufficient or new binding rules are needed.
- The European Parliament has called for the DFA proposal to remain consistent with the existing legal framework, while closing legal loopholes where necessary.

Developments and insights – European Commission

On 3 October 2024, the European Commission published its [fitness check of EU consumer law on digital fairness](#), supported by an external [study](#), examining whether the [Unfair Contract Terms Directive](#) (UCTD), the [Consumer Rights Directive](#) (CRD) and the [Unfair Commercial Practices Directive](#) (UCPD) continue to provide a sufficient level of consumer protection in today's digital environment. The assessment covers the period 2017 to 2023.

Relevant consumer legislation

Going back four decades, the UCTD, CRD and UCPD form the core of EU consumer rights rules (*acquis*). The UCTD protects consumers against unfair terms in contracts that have not been individually negotiated; the CRD sets rules on information provision, withdrawal rights and certain other contractual issues, such as payment fees. The UCPD regulates traders' commercial practices towards consumers even where there is no contract, including misleading or aggressive practices. It contains a black list of prohibited practices, which was amended in 2019 by the [Modernisation Directive](#) to include practices relating to search results, automated ticket reselling and online reviews.

The fitness check concluded that the core EU consumer *acquis* remains relevant and necessary, but only partly effective in the digital environment. It identified difficulties in enforcement, risks of regulatory fragmentation and a range of problematic practices that may require further action, including [dark patterns](#), addictive design, unfair personalisation, undisclosed influencer marketing, difficulties with contract cancellation, unfair contract terms, and problems with several emerging practices such as automated contracting.¹

To address these issues, the Commission announced in its [2026 work programme](#) a proposal for a digital fairness act (DFA), expected in the fourth quarter of 2026, accompanied by an impact assessment. In her September 2026 [State of the Union](#) speech, the Commission President, Ursula von der Leyen, confirmed the DFA and announced it for autumn (current information has it scheduled for mid-November). The legal basis for the proposal is expected to be Article 114 of the Treaty on the Functioning of the European Union (TFEU), i.e. the legal basis for harmonisation of the internal market. The Commission (Directorate-General for Justice and Consumers, DG JUST) held a [call for evidence and a public consultation](#) between July and October 2025, which showed differing views on the need for additional EU rules. While consumer protection organisations called for tighter rules, business representatives favoured better enforcement of existing legislation.

The Commission also sought specific input from children, e.g. through a March-April 2026 [online survey](#) and a [special expert panel on child safety online](#), which published its recommendations in July 2026. The panel proposed, among other things, restricting access to social media and other digital services for children under 13, followed by progressively more independent access to age-appropriate and safe services. It called for introducing effective and proportionate age assurance, and placing responsibility on service providers to demonstrate that their products and services are safe for children.

The regulatory context has recently evolved, with the Commission proposal for an [EU kids act](#) published in September 2026. The proposal includes many safeguards for minors, including graduated

access to social media and video-sharing platforms, and safeguards against addictive design. The Commission is also working on other initiatives in this area, namely a [revision](#) of the [Audiovisual Media Services Directive](#) (AVMSD) and [guidelines on the protection of minors](#) under the [Digital Services Act](#) (DSA). Against this backdrop, the DFA would address wider digital fairness concerns.

The Commission has placed the DFA within its broader simplification and enforcement agenda. The 2030 consumer agenda presents the DFA as complementing better enforcement. Commissioner Michael McGrath has [said](#) that the DFA will avoid duplication with the EU's digital regulations. The DFA could in particular complement the DSA by addressing consumer protection gaps that fall outside its scope, and clarify how the two laws interact in areas such as dark patterns, recommender systems² and online interface design. The Commission is also reviewing the [Consumer Protection Cooperation \(CPC\) Regulation](#), with a proposal expected in the fourth quarter of 2026. That revision might look at strengthening the Commission's role in enforcing EU consumer law. Ensuring regulatory coherence between all these instruments is challenging, not least because the DFA is being developed alongside other legislative initiatives whose final scope and content will also evolve during the legislative process.

Why is the initiative important?

The fitness check concluded that EU consumer law is only partially effective in the digital environment. Although it provides a necessary safety net, there is considerable room for improvement in [compliance](#), legal certainty and enforcement. This is increasingly critical as consumers purchase more products and services online. The fitness check estimated consumer harm from problematic digital commercial practices at €7.9 billion per year,³ describing this as 'a conservative estimate'.

The DFA is essential to addressing various power imbalances between consumers and traders. Technologies and data-driven business models can be used to influence consumer choices and exploit vulnerabilities, leading consumers to pay too much or buy harmful products. Consumers may have limited understanding of data collection and algorithmic processes, limited bargaining power, and difficulties navigating the information overload. Questions also exist over whether consumers can meet the burden of proving violations of consumer law in the complex digital environment.

Existing legal concepts may insufficiently reflect consumer vulnerability online. The fitness check questions whether the UCPD concepts of the average and vulnerable consumer remain adequate. The concept of the vulnerable consumer under the UCPD may not cover temporary vulnerabilities due to contextual or psychological factors. Several stakeholders believe that there has also been insufficient focus on the vulnerabilities of minors.

Effective enforcement is another challenge. Coordinated enforcement through the CPC network can be slow and cumbersome. National authorities differ in their resources, powers and access to effective tools, and sanctions vary across Member States. Enforcing EU consumer rules against non-EU traders not having any establishment or assets in the EU is particularly difficult, among other things, because of limited cooperation with third countries. [Academics](#) have therefore argued that the DFA would provide an opportunity to enhance coordination between EU and national authorities, as well as to introduce selective centralised enforcement.

Personalisation

Consumers' trust in the digital environment is increasingly being undermined by personalisation practices. The large volume of data collected online enables traders to build detailed consumer profiles and personalise products and services. The [2025 consumer conditions scoreboard](#) found that 71 % of European consumers were worried about the collection of personal data without consent, 67 % about excessive online advertising, and 63 % about unavoidable personalised advertising. Personalisation is not as such illegal under EU law, but may raise concerns when used to exploit vulnerabilities. Existing EU law already sets some limits. Although the DSA prohibits providers of online platforms from presenting targeted advertisements for minors, this prohibition does not apply to all traders. The proposed EU kids act goes further, restricting recommender systems for minors, and personalisation based on tracking.

Dark patterns

According to the fitness check, current EU laws only partly address dark patterns, which it describes as unfair commercial practices 'that can influence consumers to make decisions they would not have taken otherwise', such as making them second-guess their decisions. Although the UCPD neither specifically addresses digital interfaces nor uses the term 'dark pattern', its rules still apply to commercial practices carried out through digital interfaces. Some dark patterns may therefore already qualify as misleading or aggressive commercial practices. However, they have to be assessed on a case-by-case basis, which can be difficult for dynamic, complex and personalised interfaces. The DSA also prohibits online interfaces from deceiving or manipulating users, or materially distorting or impairing their ability to make free and informed decisions. However, this prohibition does not apply to small and micro-enterprises, search engines, certain traders, and digital services such as some video games.

Addictive design and gaming

There are [concerns](#) about design features that may encourage excessive use of digital services and products, such as autoplay, infinite scroll, notifications and rewards for continued use. While the UCPD covers practices that exploit a known vulnerability, such as age, it is more difficult to apply the UCPD to harms linked to excessive use or mental harms. The DSA provides additional protection by requiring very large online platforms and very large online search engines to assess and mitigate systemic risks stemming from the design or functioning of their services. Online platforms must also ensure a high level of privacy, safety, and security for minors. However, these provisions do not cover all traders or digital services. The EU kids act would also prohibit design features that encourage compulsive or excessive use by minors.

Concerns have also grown around in-app currencies and virtual items in video games or social media, particularly paid uncertainty-based rewards known as [loot boxes](#). Although loot boxes are an important source of income for game developers, they raise concerns about their resemblance to gambling mechanisms and potential exploitation of vulnerable users, particularly minors. The EU kids act would prohibit social networking services and video-sharing platforms from 'exposing minors to variable reward systems', including for purchases with virtual currencies. However, this prohibition would not apply to online games. This differing approach may create [confusion](#). It remains to be seen whether loot boxes will face further restrictions through amendments to the EU kids act proposal or through the DFA.

Influencer marketing

The fitness check also identified problems with [influencer marketing](#), such as non-compliance with requirements to clearly disclose commercial communications. The UCPD already prohibits undisclosed paid promotions and falsely presenting oneself as consumer; the [e-Commerce Directive](#) requires commercial information to be clearly identifiable; and the DSA requires online platforms to provide their users with functionalities to declare commercial communications. However, the division of responsibilities between all actors involved (influencers, brands, agencies and online platforms) is not always clear. Concerns also exist around some products and services promoted by influencers. Although the AVMSD prohibits certain audiovisual commercial communications⁴ and guidelines, codes of conduct and [Member State](#) rules provide some safeguards, concerns remain; in particular, that the existence of various instruments could lead to diverging interpretations of the same commercial practices.

Pricing practices

Moreover, the fitness check identified concerns around dynamic and personalised pricing. Dynamic pricing means the adjustment of prices rapidly and flexibly in response to market demands. According to a [study](#) by the European Parliament's Policy Department for Economic, Scientific and Quality of Life Policies at the request of the Committee on Internal Market and Consumer Protection (IMCO), personalised pricing means adapting pricing based on information about individual consumers, quantity of products, or membership to a particular group or market segment (e.g. students). Some research shows that personalised pricing can result in consumer benefit.⁵

Although neither dynamic nor personalised pricing is prohibited as such by EU law, specific restrictions and transparency requirements apply. For example, the CRD obliges traders to inform consumers where 'the price was personalised on the basis of automated decision-making'. However, it remains unclear how general consumer protection rules apply to some pricing practices. For example, the [Commission](#) has indicated that dynamic pricing may breach the UCPD when a trader changes the price during the booking process after the payment process has started.

Problems with digital contracts

Consumers also face problems with digital contracts. In the fitness-check public consultation, 69 % of respondents reported difficulties cancelling an online contract, and 62 % had their online subscription renewed without receiving a reminder. The CRD gives consumers a 14-day withdrawal right for distance and off-premises contracts, and requires traders to provide a clear withdrawal function. The UCTD may apply to unfair renewal or cancellation terms. However, these directives do not establish a general right to cancel an online subscription as easily as it was concluded.

Automated contracting may create additional challenges, although, in the fitness check, the Commission found insufficient evidence to draw firm conclusions. The fitness check views automated contracting, broadly, as the conclusion and performance of contracts without the need for human intervention. Model rules for automated contracting have been developed in academia. For instance, the European Law Institute has proposed eight [guiding principles](#) for adapting consumer law to the use of digital assistants.

Member State positions and interested parties' opinions

Member States generally support stronger consumer protection in the digital environment, particularly for vulnerable consumers; at the same time, they warn against duplication and incoherence. In the [D9+ ministerial declaration](#) of June 2026, 14 ministers called for 'an evidence-based and targeted approach', focusing on genuine regulatory gaps, without duplicating existing rules.⁶

Similarly, in its [conclusions](#) on the 2030 consumer agenda, the Council welcomed the planned initiative, yet underlined that it should be 'in synergy' with the existing legal framework, including EU digital legislation. Furthermore, the Council called for particular attention to be paid to the protection of minors, while avoiding regulatory overlaps.

Interested parties' views diverge on whether the identified problems require better enforcement or new binding rules. In a [joint industry statement](#) of March 2026, numerous industry associations urged the Commission 'to pause and reset the DFA's trajectory', arguing that effective and more consistent enforcement of existing EU legislation should take priority over new requirements. They recalled that the Commission has committed to simplification and competitiveness. [EurolSPA](#) – the association of internet service providers – has also called for clearer guidance for businesses.

Consumer and civil-society organisations, by contrast, argue that enforcement alone is not enough. In a [joint call](#) of March 2026, they asked for new binding rules. [BEUC](#) and [eDRI](#), for example, support updating concepts such as 'average consumer', disabling addictive design by default, and prohibiting dark patterns and personalisation that exploits vulnerabilities. BEUC also advocates clearer labelling requirements on influencer marketing, and greater transparency around dynamic pricing. [Euroconsumers](#) has called for a ban on dynamic pricing in non-competitive markets, such as live entertainment events.

These differences feed into the debate over the form of the DFA. The Commission 2026 work programme identifies the DFA as a legislative initiative. Although [commentators](#) have said that the DFA could be a regulation, directive or part of an [omnibus](#) legislative package, it is not yet known which form it will take. The choice will affect both the degree of harmonisation across Member States and the level of ambition.

The choice of form is also linked to a broader debate⁷ on the regulatory approach. EU consumer law has traditionally relied on broadly formulated principles that can be applied to evolving market practices. However, more recently, it has moved towards more specific provisions targeting particular situations. If this trend continues, a regulation with more tightly drawn dispositions might be proposed. However, this would depart from the traditional design of the EU consumer *acquis*, and could complicate integration with the existing legal framework.

European Parliament views

In its May 2025 [resolution](#) on challenges and commercial practices in the internal market, Parliament welcomed the fitness check, and called for the DFA to address issues such as digital addiction, online gambling, protection of minors online, targeted advertising, influencers and dark patterns. It stressed that the DFA should be 'consistent' with the existing legal framework, 'close legal loopholes', and be effectively enforced. The need for coherence was reiterated in Parliament's July 2025 [resolution](#)

on product safety and regulatory compliance in e-commerce and non-EU imports, as well as in a September 2025 [resolution](#) on the implementation and streamlining of EU internal market rules. The latter called for EU consumer protection law to 'remain mainly principle-based', but also advocated targeted rules 'when necessary' to ensure legal certainty and avoid 'excessive or redundant' information obligations.

In December 2023, Parliament adopted a dedicated [resolution](#) on addictive design, in which it called for a review of core concepts such as 'consumer', 'vulnerable consumer' and 'trader', and urged the Commission to foster ethical design of online services by default. It also suggested introducing a digital 'right not to be disturbed'.

In its November 2025 [resolution](#) on the protection of minors online, Parliament called for ambitious measures in the DFA, addressing targeted advertising, influencer marketing, addictive design, loot boxes, in-app currencies in video games, and dark patterns, while ensuring consistency with existing legislation and avoiding unnecessary regulatory burdens. In its September 2026 [resolution](#) on the impact of social media and the online environment on young people, Parliament also called for an EU code of conduct for influencers.

In its latest annual competition-policy [resolution](#) of July 2026, Parliament called on the Commission and the Member States 'to consider all regulatory options, including prohibiting dynamic pricing at live sports and cultural events' in the DFA. This is a development of its May 2025 resolution mentioned above, which had called for transparency around dynamic pricing.

Endnotes

- ¹ Smart contracts are a type of automated contract. The [Data Act](#) defines a smart contract as 'a computer program used for the automated execution of an agreement or part thereof'.
- ² The DSA defines a recommender system as 'a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service or prioritise that information'.
- ³ Highest levels of detriment are among younger consumer groups.
- ⁴ Commercial communications using subliminal techniques encouraging unhealthy or unsafe habits, or those communications that may cause physical, mental or moral detriment to minors.
- ⁵ In addition to the IMCO study, see, for example, J.-P. Dubé and S. Misra, '[Personalized Pricing and Consumer Welfare](#)', *Journal of Political Economy*, Vol. 131(1), January 2023, pp. 131-189.
- ⁶ The [D9+](#) is an informal group consisting of the 13 most digitally advanced EU Member States, namely Sweden, Finland, Denmark, Belgium, the Netherlands, Spain, Portugal, Poland, Czechia, Slovenia, Estonia, Ireland and Luxembourg. The European Commission and the rotating Council presidency take part in the D9+ ministerial meetings.
- ⁷ See the German Spirits Industry and Importers Association's [contribution](#) to the stakeholder debate.

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