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Digital Fairness Act: do we need new laws or simply better enforcement?

Executive summary

Europe already boasts one of the world's most comprehensive consumer protection frameworks, applying horizontally across all consumer-facing businesses. A new Digital Fairness Act would merely duplicate existing regulations, driven by the mistaken belief that 'tech companies' require special regulation.¹

EU consumer law is principles based and designed to adapt to new challenges without constant legislative revision. It already addresses deceptive practices, unfair contracts, manipulative design, transparency and accountability. This includes the Unfair Commercial Practices Directive (UCPD), the Consumer Rights Directive (CRD), the Unfair Contract Terms Directive (UCTD), the Digital Services Act (DSA) and the General Data Protection Regulation (GDPR).²

Common concerns, such as subscription traps, free trials or screen time management, are already regulated. For example, subscription traps are prohibited under the UCPD and CRD, whilst industry widely offers tools for managing screen time and spending limits. Personalised advertising is strictly regulated under the GDPR and DSA, covering transparency, user choice and opt-outs. AI-powered chatbots in high-risk areas are covered by the AI Act, and financial services remain protected by sector-specific rights to human interaction.³ Influencer marketing is equally regulated through horizontal consumer law, the DSA and the Audiovisual Media Services Directive (AVMSD), requiring transparency and prohibiting misleading endorsements.⁴

Rather than layering duplicative rules that only burden compliant businesses, the EU should focus on strengthening enforcement of existing laws. Stronger enforcement will have a deterrent effect whilst supporting Europe's competitiveness agenda.

¹ This was evident in the digital fairness fitness check, where some questions clearly suggested a predisposition towards regulation rather than a neutral evaluation of existing rules.

² Directive (EC) 2005/29, Directive (EU) 2011/83, Directive (EEC) 93/13, Regulation (EU) 2022/2065 and Regulation (EU) 2016/679, respectively.

³ Regulation (EU) 2024/1689, the Consumer Credit Directive (Directive (EU) 2023/2225) and the Distance Marketing of Financial Services Directive (Directive (EU) 2023/2673), respectively.

⁴ Directive (EU) 2018/1808.

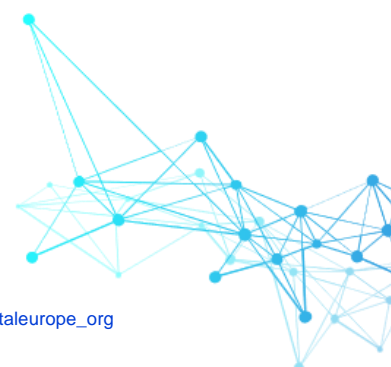




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Enforcement is critical

Europe must prioritise full enforcement of its existing consumer and digital laws before adding new regulatory layers that wouldn't bring any substantial benefits.

The challenges identified in the digital fairness fitness check stem not from gaps in the law, but from inconsistent and insufficient enforcement. To address these shortcomings, national consumer protection authorities must be equipped with the financial, technological and human resources needed to monitor fast-moving markets, investigate infringements and take decisive action. Stronger coordination across authorities and borders is equally essential.

Before contemplating a new Digital Fairness Act, the Commission should first present an updated enforcement strategy – improving coordination, resource allocation, information sharing and the use of technology in investigations. It should also recognise the role of public-private partnerships and promote greater cooperation with industry.

Mapping out existing rules

Europe already has a comprehensive body of consumer and digital laws capable of addressing harmful market practices, from manipulative design to misleading advertising. The focus should be on improving enforcement and raising awareness of existing rights. Strengthening the application of current law will deliver faster, more targeted benefits for consumers and businesses alike.

Interface design

Deceptive interface design

Deceptive interface design – including manipulative tactics such as sneaking baskets and confirm shaming – is already addressed under several existing legal frameworks.

The UCPD bans unfair business practices, including misleading and aggressive commercial tactics. Art. 5 UCPD bans deceptive practices, whilst Annex I lists prohibited manipulative commercial strategies, including deception, undue influence and psychological pressure.

The GDPR reinforces consumer protections through Art. 7, which mandates clear and informed consent mechanisms, and Art. 25, which requires privacy by design to safeguard user autonomy against manipulative uses of personal data. The European Data Protection Board has also issued dedicated guidance to support enforcement against deceptive design patterns, particularly in the context of social media and online services.⁵

In addition, the DSA specifically targets so-called 'dark patterns' on online platforms. Art. 25(1) prohibits interface designs that distort consumer choices through misleading wording, coercive prompts or pressure tactics like confirm shaming. In addition, Art. 34 requires very large online platforms and search engines to conduct systemic risk assessments and mitigate any risks stemming from the design or functioning of their services, including those related to algorithmic systems.

⁵ Guidelines 03/2022.



False urgency claims

False urgency claims involve creating a deceptive sense of scarcity or time pressure to push consumers into making hasty decisions. This tactic typically relies on false countdown timers, or misleading 'low stock' or 'high demand' messages that do not reflect a product's real availability.

The UCPD already clearly prohibits false urgency claims. Art. 6 forbids misleading statements about a product's availability, whilst Annex I explicitly bans fabricated claims of limited stock or time-sensitive offers. Businesses found using false urgency tactics can face penalties, including fines and corrective measures such as mandatory clarifications.

Spending and time-use limits

Whilst creating engaging and enjoyable products and services to win and maintain customers is an essential business practice in both the offline and online world, we support discussions on promoting healthy usage habits and remain open to exploring the best practices that empower users.

A wide range of tools are available at the device and app level for users to monitor their screen time or spending. These include screen time reminders, notification controls, autoplay settings and read receipt options. Many services also allow users to filter or adjust the types of content they see, down to blocking individual words they may find unpleasant or irrelevant. In addition, default settings, age-appropriate configurations and parental controls provide effective safeguards to promote healthy digital engagement, particularly for children.

The existing regulatory framework – primarily the UCPD and the DSA – already addresses concerns related to addictive design. Under the DSA, very large online platforms must conduct risk assessments that explicitly consider risks to young people and adjust their services accordingly. The DSA also requires platforms to offer alternative recommender systems not based on profiling.⁶ The DSA framework has already led to positive changes in platform design, demonstrating that existing regulation is both effective and adaptable.⁷

Subscriptions


Subscription traps

Subscription traps arise when signing up for a digital service is easy, but unsubscribing is made deliberately complicated, requiring multiple steps, forms or even phone calls to deter users from cancelling.

EU consumer law fully applies to digital contracts and subscriptions concluded online. Since 2023, Art. 11a CRD requires businesses to provide a prominent and easily legible withdrawal function for all online contracts. Businesses must also acknowledge receipt of a consumer's withdrawal request.

⁶ Art. 38 DSA.

⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4161.



Additionally, Art. 9(d) UCPD considers barriers to contract termination an aggressive commercial practice, providing a clear legal basis to address subscription traps. This principle is reinforced in the Commission's 2021 UCPD guidance, which stresses that unsubscribing must be as straightforward as subscribing.⁸

The DSA also strengthens protections against subscription traps in the context of online platforms. Art. 25(1) prohibits misleading interface designs that make termination more difficult than subscription, and empowers the Commission to issue additional guidance if needed.

Free trials

Free trials allow consumers to test products or services before committing to a purchase. They are a valuable, yet costly, marketing tool, particularly for small businesses seeking to attract new customers.

Free trials are already regulated under the CRD and the UCPD, which impose clear pre-contractual information requirements and have been further clarified through detailed guidance.⁹ More restrictive rules would reduce the availability of free trials, forcing consumers to pay for services without the opportunity to try them first.

There is no need to separate trial periods from the main contract, as trials are, by definition, part of a broader paid agreement. When consumers sign up, businesses must ensure that consumers explicitly acknowledge their payment obligations and are clearly informed about trial terms, expiration dates and the moment when charges will apply.¹⁰

Requiring payment details at the outset serves several important purposes: it prevents abuse (such as repeated sign-ups under different identities), verifies customer age and reinforces consumer awareness of the payment obligation following the trial. Delaying the collection of payment information or introducing additional confirmation steps would mischaracterise the nature of a free trial and create the misleading impression of a completely free service.

Personalised advertising

Personalised advertising is subject to a dense set of rules. The GDPR sets conditions for the lawful processing of personal data, including for advertising purposes.¹¹ The ePrivacy Directive complements these obligations by regulating unsolicited communications and cookies.¹² In addition, the DSA introduces sector-specific restrictions: Art. 26 prohibits the use of sensitive personal data for targeted advertising, whilst Art. 28 prohibits targeting advertising to children. The Commission is also exploring a code of practice for online advertising to strengthen compliance.¹³

⁸ 2021/C 526/01.


⁹ Ibid.

¹⁰ Art. 6 CRD.

¹¹ This includes Arts 5 and 6 regulating data processing principles, Arts 12 and 13 ensuring transparency obligations, and Art. 21 granting individuals the right to object to marketing.

¹² Art. 13 Directive (EC) 2002/58.

¹³ <https://digital-strategy.ec.europa.eu/en/news/european-commission-launches-workshops-explore-voluntary-codes-conduct-online-advertising>.



Taken together, these instruments impose significant obligations on businesses engaging in personalised advertising, including platform accountability requirements. There is no clear evidence of a legislative gap, and consistent enforcement of existing rules would be sufficient to serve the objectives of consumer protection.

Use of AI-powered chatbots

AI-powered chatbots are increasingly used by businesses to communicate with consumers more efficiently and to provide targeted support. In many cases, businesses offer users the option to interact with a human upon request.

AI-powered chatbots are not automatically classified as high-risk under the AI Act. However, when deployed as part of a high-risk AI system, they fall within its scope. In such cases, Art. 14 mandates that systems be designed to allow effective human oversight throughout their operational lifecycle. Successful implementation and enforcement of the AI Act will be central to ensuring transparency and accountability in consumer interactions with AI systems, including addressing manipulative or deceptive practices.

In financial services, sector-specific rules already guarantee meaningful human intervention. The recent revision of the Distance Marketing of Financial Services Directive introduced a right for customers to request and obtain human intervention both at the pre-contractual stage and, in some cases, after the conclusion of a contract.¹⁴ Similarly, Art. 18(8) of the revised Consumer Credit Directive provides for a right to human review where creditworthiness assessments rely on automated data processing.

Additionally, Art 22 GDPR grants individuals the right to request human intervention in decisions based solely on automated processing, where such decisions produce legal or similarly significant effects.

Beyond these specific regulated contexts, imposing a blanket requirement for human involvement in all chatbot interactions would fail to reflect the growing performance and reliability of automated tools. Well-designed automated systems can deliver high levels of customer satisfaction without the need for direct human involvement.

Terms and conditions

Terms and conditions (T&Cs) should be transparent, accessible and easy for consumers to understand. Many businesses already invest significant resources in minimising the length of T&Cs and presenting them in a user-friendly format, including the use of plain language and clickable summaries to assist consumer navigation.

Despite these efforts, simplifying T&Cs remains a challenge due to the extensive volume of legally required information that must be included. Mandatory disclosures often cover the right of withdrawal, complaint procedures, dispute resolution mechanisms and data protection obligations, much of which is stipulated by law.

To enhance consumer understanding, particularly as contracts are increasingly concluded on mobile devices, we support initiatives aimed at reducing and simplifying mandatory information requirements. However, mandating the provision of simplified summaries alone would not be sufficient and could even prove counterproductive. Summaries, by their nature, cannot capture the full complexity or nuance of legal

¹⁴ Introducing Art. 16(c) CRD.

agreements, and could expose businesses to additional liability in the event of discrepancies between the summary and the full text.

Influencer marketing

The legal framework governing influencer marketing is comprehensive, but requires consistent enforcement. Under the UCPD, influencers are required to clearly disclose commercial relationships, ensuring transparency for consumers. The DSA and the AVMSD establish advertising standards for influencers.¹⁵ Practices such as hidden advertising, misleading claims and the purchasing of fake likes or followers are explicitly prohibited.¹⁶ Targeting children with advertising, or pressuring parents into making purchases on their children's behalf, is also expressly prohibited.

The 2021 UCPD guidance clarified the application of EU rules to influencers, requiring that paid promotions be clearly and directly labelled, without relying on vague hashtags, requiring consumers to take additional steps to find disclosures or ambiguous language. The Commission's Influencer Legal Hub also provides practical support for compliance.¹⁷ These initiatives demonstrate that the EU framework can address evolving practices, provided enforcement is prioritised and guidance continues to adapt.

Despite this regulatory foundation, concerns about undisclosed commercial content, misleading endorsements and the targeting of vulnerable groups persist. Rather than regulating these behaviours again, efforts should focus on strengthening enforcement mechanisms, fostering coordination across Member States and educating influencers and brands about existing obligations.

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¹⁵ Art. 26(2) DSA requires platforms to provide users with a functionality to declare whether the content they upload contains commercial communications. Platforms must also ensure that other users are able to identify, in a clear and unambiguous manner and in real time, including through prominent markings, when content contains commercial communications. Similarly, Art. 28b(2) AVMSD applies specifically to video-sharing platforms. It requires providers to clearly inform users when programmes or user-generated videos contain commercial communications, and to provide uploaders with the means to declare whether their content includes commercial communications.

¹⁶ Purchasing of fake likes and followers is a prohibited practice in point 22 of the UCPD blacklist.

¹⁷ https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/influencer-legal-hub_en.

Annex – Legal mapping

Issue	Legal status
Deceptive interface design	The UCPD prohibits misleading and aggressive practices (Art. 5), with Annex I listing banned manipulative strategies, including deception and undue influence. The GDPR reinforces these protections by mandating clear consent (Art. 7) and privacy by design (Art. 25). The DSA bans ‘dark patterns’ on online platforms (Art. 25) and obliges very large online platforms to conduct systemic risk assessments and mitigate design-related risks (Art. 34). Enforcement is carried out by consumer and data protection authorities, the Commission, national digital services coordinators and the EDPB, which has issued guidance on deceptive design patterns on social media.
False urgency claims	The UCPD bans false urgency claims (Art. 6) and Annex I explicitly bans false claims about limited stock or time-sensitive offers when urgency is fabricated. Enforcement includes penalties such as fines and corrective advertising.
Spending and time-use limits	Tools at the app/device level (e.g. screen time controls, parental controls) are widely available to allow users to manage screen time and usage. The DSA addresses ‘addictive design’ by requiring risk assessments for large platforms (Art. 34), the provision of non-profiling recommender systems (Art. 38) and impact analysis on young users (Arts 28 and 34). UCPD provisions and evolving platform practices under the DSA already provide a solid regulatory base.
Subscription traps	Consumer law regulates digital subscriptions. The CRD (Art. 11a) mandates an easy withdrawal function. The UCPD (Art. 9(d)) prohibits making unsubscribing unnecessarily difficult and this is reinforced by 2021 UCPD guidance. In addition, the DSA (Art. 25(1)) bans subscription traps on online platforms and empowers the Commission to issue further guidance if needed.
Free trials	Consumer law mandates explicit acknowledgment of payment obligations. The CRD (Art. 6) ensures clear information on trial terms, expiration dates and reminders. Free trials are also subject to UCPD guidance, which prevents abusive practices whilst allowing businesses to offer trials.
Personalised advertising	The GDPR regulates lawful data processing (Arts 5-6) and transparency (Arts 12-13) and provides a right to object to direct marketing (Art. 21). The DSA also bans targeted ads for children (Art. 28) and use of sensitive data (Art. 26) on online platforms. To further support implementation, the Commission is exploring a code of practice for online advertising.
Use of AI-powered chatbots	Under Art. 14 AI Act, chatbots used in high-risk AI systems must include human oversight. Additionally, for financial services, consumers have a right to a human interlocutor under Art.16(c) CRD and Art. 18(8) Consumer Credit Directive. In addition, the GDPR (Art. 22) provides a right to request human review where decisions based solely on automated processing, including profiling, produce legal effects.
Influencer marketing	The UCPD (Art. 6) mandates disclosure of commercial communications and Annex I (point 11) explicitly bans hidden advertising by influencers. 2021 UCPD guidance requires clear labelling of paid promotions. The AVMSD (Art. 28(b)) reinforces ad transparency on video-sharing platforms and the DSA (Art. 30) requires clear labelling of advertisements and endorsements on online platforms.



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DIGITALEUROPE is the leading trade association representing digitally transforming industries in Europe. We stand for a regulatory environment that enables European businesses and citizens to prosper from digital technologies. We wish Europe to grow, attract and sustain the world's best digital talents and technology companies. Together with our members, we shape the industry policy positions on all relevant legislative matters and contribute to the development and implementation of relevant EU policies. Our membership represents over 45,000 businesses who operate and invest in Europe. It includes corporations which are global leaders in their field of activity, as well as national trade associations from across Europe.

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