

Position paper

Towards the Digital Fairness Act



Why it matters to consumers

In 2024, 88% of all consumers and 97% of young consumers aged 16 to 29 years used the internet daily.¹ 77% of consumer ordered products and services online, compared to 59% in 2014.² Digitalisation seems to give consumers easy access to an endless number of products and services. However, it also increases the asymmetry of information and bargaining power between businesses and consumers. Businesses control what consumers see and can influence their experiences and decisions in ways most consumers do not even realise. But in fact, unfair business practices towards consumers cause them an annual financial harm of at least 7.9 billion Euro.³ EU Policymakers should therefore increase the protection of consumers online.

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¹ Eurostat, 97% of young people in the EU use the internet daily, <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/edn-20250715-1>.

² Eurostat, Online shopping in the EU keeps growing, <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20250220-3>.

³ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 86, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

BEUC RECOMMENDATIONS

- 1** Update the definition of "average consumer" to reflect all consumers' potential vulnerability online.
- 2** Require fairness by design and by default as part of businesses' professional diligence.
- 3** Ensure that the UCPD applies to all unfair commercial practices, regardless of the type of harm they may cause.
- 4** Adjust the burden of proof for consumers.
- 5** Ban widely used dark patterns through UCPD Annex I and introduce a general ban on dark patterns.
- 6** Require businesses to switch off by default any design feature that may cause addiction-like behaviour.
- 7** Ban premium virtual currencies and paid loot boxes.
- 8** Require businesses to switch off by default any personalisation of offers.
- 9** Restrict personalised pricing.
- 10** Consider banning personalised advertising.
- 11** Ban influencer marketing for certain products and services for instance for unhealthy food, if targeted at children, or for risky financial products and services.

12

Introduce a cancellation button and give consumers the right to cancel their subscriptions with automatic renewals anytime with a notice period of one month.

13

Prohibit incentivised reviews.

14

Prohibit the resale of event tickets above their face value.

For more detailed recommendations, see the end of each chapter of the paper.

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1. Introduction

Twenty years ago, in 2005, the EU adopted the Unfair Commercial Practices Directive (UCPD)⁴ that prohibits unfair commercial practices in business-to-consumer (B2C) relations. Since then, B2C relations have increasingly moved online and new forms of unfair commercial practices have emerged, such as dark patterns, addictive design, or AI-enabled manipulation.

In recent years, the EU has adopted legislation, like the Digital Services Act (DSA)⁵ and the Artificial Intelligence Act (AI Act),⁶ to tackle specific issues in the digital environment. But the scope of these laws is limited. EU consumer law, particularly the UCPD, therefore remains a relevant ‘safety net’ for consumers, setting minimum requirements that apply in all sectors. But this safety net urgently needs to be reworked.

In 2024, the European Commission (Commission) published the results of Digital Fairness Fitness Check analysing the state of online protection that EU consumer law provides. It showed that unfair commercial practices online cause consumers an annual financial harm of at least 7.9 billion Euro.⁷ It also found that EU consumer law fails to protect consumers because of legal gaps and great uncertainty as to how EU consumer law applies to unfair commercial practices in the digital environment.

We therefore welcome the Commission’s intention to develop a Digital Fairness Act (DFA)⁸. This paper contains our main recommendations for this important initiative.

⁴ Unfair Commercial Practices Directive (UCPD), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>.

⁵ Digital Services Act (DSA), <https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng>.

⁶ Artificial Intelligence Act (AI Act), <https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng>.

⁷ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 86, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

⁸ Commission, Mission letter to Michael McGrath, Commissioner-designate for Democracy, Justice, and the Rule of Law, https://commission.europa.eu/document/download/907fd6b6-0474-47d7-99da-47007ca30d02_en?filename=Mission%20letter%20-%20McGRATH.pdf.

2. Horizontal topics

Consumers' lack of protection against unfair commercial practices online often relates to specific topics, such as dark patterns, addictive design, influencer marketing and unfair personalisation. However, to ensure digital fairness, policymakers also need to address a couple of horizontal topics.

2.1. Average consumer

The UCPD distinguishes between the “average consumer”, who is defined as being “reasonably well informed and reasonably observant and circumspect”⁹ and consumers that are “vulnerable” due to their mental or physical infirmity, age or credulity.¹⁰ However, this distinction fails to capture that in the digital environment, all consumers are potentially vulnerable due to external factors and internal factors.¹¹

Information asymmetry and bargaining power have always been at the heart of B2C relationships. In the digital environment, this asymmetry is particularly strong. Businesses not only control the information that is provided but the entire choice architecture. They can constantly test, adjust, personalise and optimise it based on ever larger tracking profiles and real-time consumer data. Businesses may exploit this digital asymmetry and consumers' preferences, needs, cognitive biases and vulnerabilities to nudge them into taking decisions that are favourable to themselves.

The Commission has acknowledged that there is a growing mismatch between the normative concept of the “average consumer” and the realities of consumer behaviour in the digital environment.¹² Already in 2021, the Commission had interpreted consumer vulnerability in a broad way including situational vulnerability.¹³ Similarly, the Consumer Protection Cooperation Network (CPC Network) recently pointed out that a person that would not generally qualify as a vulnerable consumer offline may nevertheless be vulnerable online.¹⁴ However, these interpretations are not legally binding and therefore do not ensure a consistent application of EU consumer law across the entire Single Market.

⁹ Recital 18 UCPD.

¹⁰ Article 5 (2) and 5 (3) UCPD.

¹¹ Sax/Helberger, Digital Vulnerability and Manipulation in the Emerging Digital Framework, in: Helberger/Kas/Micklitz/Namystowska/Naudts/Rott/Sax/Veale, Digital Fairness for Consumers, p. 11, <https://www.beuc.eu/reports/digital-fairness-consumers>.

¹² Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 46, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

¹³ Commission, Guidance on the interpretation and application of the UCPD, p. 100, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)).

¹⁴ CPC Network, Key principles on in-game virtual currencies, p. 7, https://commission.europa.eu/document/download/8af13e88-6540-436c-b137-9853e7fe866a_en?filename=Key+principles+on+in-game+virtual+currencies.pdf.

In 2024, the EU Court of Justice ruled that the definition of average consumer does not exclude that “an individual’s decision-making capacity may be impaired by constraints, such as cognitive biases”.¹⁵ However, while this ruling offers a flexible interpretation of the average consumer definition, it cannot establish a more differentiated understanding of the average consumer that captures the fact that all consumers may be vulnerable online due to various external and internal factors.

More recent EU legislation confirms that vulnerability may not only be the result of permanent factors, such as age or disability, but also temporary or even situational. For instance, the Artificial Intelligence Act (AI Act) indicates that consumers may be vulnerable due to a “specific social or economic situation”.¹⁶ Furthermore, the Political Advertising Regulation even acknowledges the existence of situational vulnerability by pointing out that “vulnerabilities [can be] exploited, for instance by disseminating the advertisements at *specific moments* and in *specific places*, designed to *take advantage of the instances* where they would be sensitive to a certain kind of information or a message”.¹⁷

BEUC Recommendations

Policymakers should update the definition of the “average consumer” in the UCPD to reflect the potential vulnerability of all consumers online and to align it with other EU legislation, in a way that allows the definition to evolve over time.

2.2. Professional diligence

The UCPD prohibits commercial practices that fail to meet “professional diligence”.¹⁸ This means businesses must show the skill, care and honesty expected in their field.¹⁹ However, it is up to the courts to decide what this standard actually requires in the digital environment.

The design of online interfaces plays a crucial role in shaping consumers’ decisions. The way options are presented may limit autonomous decisions by nudging consumers into certain choices. For example, research shows that consumers tend to accept default option rather than actively choose alternatives.²⁰

EU law already acknowledges the relevance of design and default setting. While some rules simply prohibit unfair design,²¹ others place clear duties on design and default

¹⁵ Court of Justice of the EU, Ruling in the case C-646/22 – Compass Banca, <https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-646/22>.

¹⁶ Article 5 (1) b Artificial Intelligence Act (AI Act), <https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng>.

¹⁷ Recital 74 Political Advertising Regulation, emphasis added, <https://eur-lex.europa.eu/eli/reg/2024/900/oj/eng>.

¹⁸ Article 5(2) a UCPD.

¹⁹ Article 2 h) UCPD.

²⁰ Famously: Thaler/Sunstein, Nudge, <https://openlibrary.org/books/OL10319463M/Nudge>.

²¹ See for instance Article 25(1) DSA and Article 13(6) Digital Markets Act (DMA), <https://eur-lex.europa.eu/eli/reg/2022/1925/oj/eng>.

settings. For instance, the General Data Protection Regulation (GDPR) requires ensuring data protection “by design and by default”.²² The AI Act requires developers to design high risk AI systems to ensure sufficient transparency.²³ And the DSA requires online platforms providers to design their interfaces with the highest level of privacy, safety and security for minors by default.²⁴

BEUC Recommendations

Policymakers should update the definition of “professional diligence” in the UCPD to align it with requirements in other EU legislation. They should clarify that, given the asymmetry between businesses and consumers and the potential vulnerability of all consumers online, professional diligence online requires businesses to ensure fairness by design and by default. This could include behavioural testing to ensure that online interfaces’ design, organisation and operation do not mislead consumers. Since online interfaces are often developed by third party services providers, professional diligence should apply to the entire value chain.

2.3. Scope and purpose of the Unfair Commercial Practices Directive

One of the UCPD’s main purposes is to protect consumers’ economic interests²⁵ by prohibiting practices likely to affect the transactional decisions they take. The term ‘transactional decision’ is defined in a broad sense, covering decisions made before and after the actual conclusion of a contract,²⁶ such as entering a shop or visiting a sales website. According to the Commission’s guidance on the UCPD, making a transactional decision also includes continuing to use a service (e.g. scrolling through a feed), to view advertising content or to click on a link.²⁷ This broad understanding is convincing because continuing to use a service has economic implications for businesses as it can generate further advertising revenue. However, as the UCPD guidance is not legally binding, it is up to courts to decide whether the UCPD applies to commercial practices that aim at capturing consumers’ attention, by using addictive design for instance.²⁸

In addition, the Digital Fairness Fitness Check clearly showed that unfair commercial practices can lead to multifaceted harms beyond financial detriment that directly or

²² Article 25 General Data Protection Regulation (GDPR), <https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng>.

²³ Article 13 (1) AI Act.

²⁴ Recital 71 and Article 28(1) DSA.

²⁵ Article 1 UCPD.

²⁶ Article 2 k) UCPD.

²⁷ Commission, Guidance on the interpretation and application of the UCPD, p. 100, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)).

²⁸ On addictive design, see chapter below.

indirectly impact the economic interests of consumers.²⁹ The most striking example is probably addictive design which can lead to mental and physical harm.³⁰

BEUC Recommendations

The UCPD should codify the broad understanding of “transactional decision” presented by the Commission in its guidance on the UCPD. Additionally, to support consumer redress against unfair commercial practices,³¹ policymakers should clarify that the UCPD protects consumers from all unfair commercial practices, regardless of the type of harm it may cause to them.

2.4. Enforcement

EU consumer law only meets its objective of protecting consumers if it can be enforced in a swift, effective and deterrent way in case of non-compliance. However, the Digital Fairness Fitness Check found that the effectiveness of EU Consumer law is undermined by sub-optimal private and public enforcement.³² Policymakers should thus facilitate private and public enforcement.

2.4.1. Burden of proof

One of the main obstacles to consumer law enforcement is the burden of proof.³³ This is particularly true for unfair commercial practices online. It may be simple to prove some obviously unfair design features by taking screenshots. But how are consumers supposed to know, let alone prove, that a business indicated high demand for a product or service to create a false sense of urgency for instance? Since consumers do not have access to the information how businesses operate and possibly personalise their interfaces, it is impossible for them to prove unfair commercial practices in such cases. It is thus necessary to adjust the burden of proof in situations of digital asymmetry.

Currently, the UCPD allows courts to ease the burden of proof for consumers only in case of misleading factual claims, such as that a product has positive effects on health.³⁴ However, this does not apply to other possible unfair commercial practices. Other EU laws also ease the burden of proof for consumers or even place the burden of proof on

²⁹ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 29, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

³⁰ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 31, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

³¹ Article 11a UCPD.

³² Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 48, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

³³ Rott, Burden of proof, in: Helberger/Kas/Micklitz/Namysłowska/Naudts/Rott/Sax/Veale, Digital Fairness for Consumers, p. 243, <https://www.beuc.eu/reports/digital-fairness-consumers>.

³⁴ Article 12 UCPD.

businesses under certain circumstances.³⁵ The recently revised Product Liability Directive, for instance, eases the burden of proof when consumers struggle to prove their claims due to the technical complexity of the product.³⁶ The rationale of these provisions is that it would be unfair to place the burden of proof on consumers in cases where it is much easier for businesses to access relevant evidence.

BEUC Recommendations

If a consumer presents indications that a business has conducted an unfair commercial practice, the business should prove that the practice was compliant. This should apply in particular in case of unfair personalisation, dark patterns, and addictive design.

This should go hand in hand with an un rebuttable presumption that a practice is unfair if an authority or court in the same Member State³⁷ or the CPC Network has already found it illegal in a final decision or common position.

The same presumptions should apply if consumers seek redress for harm caused by unfair commercial practices.³⁸ In such cases, courts should also presume the causality between the unfair commercial practices and the harm.

2.4.2. Applicable law in cross border cases

Private International Law, which determines the applicable national law in cross-border cases, can also hinder the enforcement of EU consumer law. Rome I Regulation (Rome I)³⁹ governs contractual obligations, while Rome II Regulation (Rome II)⁴⁰ governs non-contractual obligations. Unfair commercial practices may fall under either: they can impair the exercise of contractual rights (Rome I) or, for example, involve aggressive sales practices (Rome II).

In today's highly digitalised economy, the same unlawful practice often harms consumers across several Member States. Consumers rarely litigate individually, particularly when damages are small, making collective actions brought by consumer organisations essential for access to justice and redress. However, Rome I and Rome II contain no specific provisions for collective claims. Under the current rules, a court must apply different laws for different represented consumers, depending on their habitual residence or where the damage occurred. While this rule aims to protect individual consumers by applying familiar national law, it significantly hampers cross-border claims led by consumer organisations.

³⁵ See Article 6(9) Consumer Rights Directive (CRD), <https://eur-lex.europa.eu/eli/dir/2011/83/oj/eng>, Article 12 Digital Content and Digital Services Directive (DCDS), <https://eur-lex.europa.eu/eli/dir/2019/770/oj/eng>.

³⁶ Article 10 (4) Product Liability Directive (PLD), <https://eur-lex.europa.eu/eli/dir/2024/2853/oj/eng>.

³⁷ This is already the case in Bulgaria; see Commission, Report on the on the implementation of the Modernisation Directive, p. 8, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024DC0258>.

³⁸ Article 11a UCPD.

³⁹ Rome I Regulation, <https://eur-lex.europa.eu/eli/reg/2008/593/oj/eng>.

⁴⁰ Rome II Regulation, <https://eur-lex.europa.eu/eli/reg/2007/864/oj/eng>.

Applying multiple national laws forces courts to commission expert studies on foreign laws, delaying proceedings and raising costs that consumer organisations may have to bear.⁴¹ To ensure effective access to justice, consumer organisations should be allowed to request the application of the law of the forum (i.e. the country where the court is seized) to an entire representative claim, regardless of where individual consumers are based. Lawmakers could introduce such an exception in EU law without amending Regulations Rome I and Rome II.⁴²

BEUC Recommendations

EU consumer law should deviate from Regulations Rome I and Rome II by enabling courts in representative actions to apply the law of the forum, instead of the law of each represented consumer's country of residence. This exception could be limited to cases that are brought in the defendant's country of establishment.

2.4.3. Public enforcement in cross border cases

To facilitate public enforcement in case of cross border infringements, the EU has adopted a Regulation on the cooperation between national consumer protection authorities (CPC Regulation).⁴³ However, lengthy procedures, limited resources and expertise, difficulties in acting against third country businesses and other issues limit the effectiveness of the CPC Regulation.⁴⁴

BEUC Recommendations

Policymakers should complement the DFA with an ambitious CPC Regulation revision. This should include: updating the coordination procedures; strengthening national consumer protection authorities; giving enforcement powers to the Commission; and fostering cooperation between consumer protection authorities and other enforcement authorities.⁴⁵

⁴¹ For instance, in 2022, a German court decided in a cross border collective lawsuit to apply Italian law and commissioned a comprehensive study on the relevant provisions of Italian law and related caselaw, <https://oberlandesgericht-braunschweig.niedersachsen.de/startseite/aktuelles/presseinformationen/musterfeststellungsklage-der-verbraucherzentrale-sudtirol-gegen-volkswagen-ag-208909.html>.

⁴² See Article 23 Rome I Regulation and Article 27 Rome II Regulation. For more details on this, see BEUC's position paper, Upgrading EU Private International Law for effective collective redress, <https://www.beuc.eu/position-paper/upgrading-eu-private-international-law-effective-collective-redress>.

⁴³ CPC Regulation, <https://eur-lex.europa.eu/eli/reg/2017/2394/oj/eng>.

⁴⁴ Commission, Report on the implementation of the CPC Regulation, p. 15, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024DC0311>.

⁴⁵ BEUC, Strengthening the coordinated enforcement of consumer protection rules: <https://www.beuc.eu/position-papers/strengthening-coordinated-enforcement-consumer-protection-rules>; BEUC, Modernising consumer protection enforcement in the EU, https://www.beuc.eu/sites/default/files/publications/BEUC-X-2025-106_checklist_Modernising_Consumer_Protection_Enforcement_in_the_EU.pdf.

3. Specific topics

The enforcement of EU consumer law urgently needs to be improved. But doing only this will not be enough to increase consumer protection because enforcement can only be as good as the quality of the law that should be enforced.

The Digital Fairness Fitness Check report clearly shows that there is a lot of legal uncertainty as to how EU consumer law applies to problematic commercial practices such as dark patterns, addictive design, influencer marketing or unfair personalisation. It also points out that legal uncertainty has a chilling effect on enforcement as it increases the risks that private or public enforcers must bear in the face of uncertain outcomes.⁴⁶ Therefore, policymakers should pursue two parallel tracks. Firstly, they should improve EU consumer law enforcement. Secondly, they should improve the quality of EU consumer law itself through the upcoming DFA. In addition to the horizontal topics mentioned above, policy makers should also address a range of specific topics.

3.1. Dark patterns

Dark patterns are tricks used in websites or apps to influence consumers' decision-making. They relate to the way businesses design, organise or operate their online interfaces. Presenting one option more prominently than another (e.g. highlighting the "accept all" button on a cookie banner), making it difficult to cancel a contract (e.g. a subscription for a video streaming service) or indicating high demand for certain products or services (e.g. when booking a hotel room) are well known examples of dark patterns.

In 2022, a study published by the Commission found that 97% of the most popular websites and apps used by EU consumers deployed at least one dark pattern.⁴⁷ According to a 2023 BEUC survey, 61% of consumers sometimes feel pressured by a website or app to make a purchase.⁴⁸ Additionally, our members have collected a lot of evidence on how e-commerce, streaming and online gaming services use dark patterns to mislead consumers.⁴⁹

Dark patterns cause harm in multiple ways. According to a Commission study, they have a negative impact on individual welfare (e.g. by causing economic harm, invasions of

⁴⁶ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 48, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

⁴⁷ Commission, Behavioural study on unfair commercial practices in the digital environment, p. 6, <https://op.europa.eu/en/publication-detail/-/publication/606365bc-d58b-11ec-a95f-01aa75ed71a1/language-en>.

⁴⁸ BEUC, Connected but unfairly treated, <https://www.beuc.eu/reports/consumer-survey-results-fairness-online-environment>.

⁴⁹ See for instance: Arbeiterkammer (Austria):

https://www.arbeiterkammer.at/beratung/konsument/HandyundInternet/Internet/Dark_Patterns.pdf, Forbrukerrådet (Norway):

<https://www.forbrukerradet.no/dark-patterns/>, Sveriges Konsumenter (Sweden):

<https://www.sverigeskonsumenter.se/media/mgkdpb3g/are-you-sure-you-want-to-leave-us.pdf>, UFC-Que Choisir (France):

<https://www.quechoisir.org/action-ufc-que-choisir-dark-patterns-sur-les-sites-d-e-commerce-l-ufc-que-choisir-appelle-les-autorites-a-sanctionner-les-interfaces-trompeuses-n125978/>, vzbv (Germany): <https://www.vzbv.de/meldungen/dark-patterns-designtricks-im-internet-bereiten-probleme>; <https://www.vzbv.de/pressemitteilungen/game-over-wie-gaming-anbieter-nutzerinnen-manipulieren>.

privacy and cognitive burden) and collective welfare (e.g. by presenting a form of unfair competition, reducing price transparency and weakening trust in the market).⁵⁰

EU law does not sufficiently protect consumers against dark patterns because there is no general prohibition of dark patterns in all B2C relations. Several EU laws address the issue of dark patterns, but either have a limited scope or only prohibit a few types of dark patterns.⁵¹ For instance, Article 25 DSA contains a general prohibition of dark patterns. However, the DSA only applies to intermediary services, but it does not apply for example to web shops that only offer their own products and services, or to video games.⁵² Even if the DSA applies because a business qualifies as intermediary service, Article 25(2) DSA states that the ban on dark patterns in Article 25(1) DSA does not apply when the UCPD already covers the practice in question. Since the UCPD applies to all B2C commercial practices, it is unclear whether Article 25(1) DSA applies to B2C relations on intermediary services at all, and if it does, how.

UCPD Annex I only bans a few dark patterns explicitly. For instance, it prohibits to falsely stating that a product will only be available for a very limited time,⁵³ which can be used to address the use of fake countdown timers. However, it does not address widely used dark patterns such as presenting two options in an unequal way, high demand indications or using emotional language or trick questions to steer consumers towards certain decisions.

If UCPD Annex I does not explicitly prohibit a commercial practice, the Directive's principles apply to assess its legality. These principles are meant to cover unfair commercial practices in general and are therefore formulated in very broad terms without referring to the design, organisation and operation of online interfaces. Therefore, these principles do not allow to say with certainty whether and to what extent other types of dark patterns that are not listed in UCPD Annex I are prohibited or not. The Commission's guidance on the UCPD is also of little help as it is not legally binding.⁵⁴ Courts therefore have to decide whether a practice is unfair and thus prohibited or not, which makes the enforcement of the UCPD time consuming and burdensome.

To increase legal certainty and to simply enforcement, policymakers should add widely used dark patterns to UCPD Annex I. However, since the use of dark patterns is evolving, it is necessary to ensure that consumers are comprehensively protected against them. Therefore, policymakers should also add a general prohibition of dark patterns modelled after Article 25 DSA to the UCPD. This would provide more legal clarity than the existing general prohibitions of unfair commercial practices, and it would create a level playing

⁵⁰ Commission, Behavioural study on unfair commercial practices in the digital environment, p. 89, <https://op.europa.eu/en/publication-detail/-/publication/606365bc-d58b-11ec-a95f-01aa75ed71a1/language-en>; from a competition perspective see also UK Competition and Markets Authority, Online choice architecture, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1066524/Online_choice_architecture_discussion_paper.pdf.

⁵¹ See for instance Article 25 DSA, Article 13(6) DMA, and Article 5(1)(a) GDPR.

⁵² Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 151, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

⁵³ UCPD Annex I, No 7.

⁵⁴ Commission, Guidance on the interpretation and application of the UCPD, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05))

field for online platforms that are covered by Article 25 DSA and businesses that are not covered by the DSA.

BEUC Recommendations

Policymakers should add the following dark patterns to UCPD Annex I:

- Giving more prominence to certain options when requesting consumers to choose.
- Creating the false impression that the consumer has no other choice than the one the business presents prominently.
- Repeatedly requesting consumers to make or reconsider a choice that they have already made.
- Requiring consumers to click through many steps if they want to make certain choices (e.g. to change default settings).
- Pressuring consumers towards certain choices by using urgency, scarcity or high demand claims, or by using emotional language or shaming.
- Confusing consumers by using ambiguous language when asking for a choice, or by using counterintuitive design elements when asking for a choice (e.g. green for ‘no’ and red for ‘yes’).
- Adding products or services to the shopping basket without consent.
- Hiding mandatory costs upfront and indicating them only during the purchase process.⁵⁵
- Splitting the price into several parts without indicating the total price.
- Steering consumers into making purchases on credit or into using payment options that come with additional costs.
- Indicating prices only in a virtual currency but not in the national currencies.⁵⁶
- Offering virtual currencies only in bundles.⁵⁷
- Making the termination of a service more difficult than subscribing to it.⁵⁸
- Making the cancellation of a transaction more difficult than launching it.

In addition, policymakers should introduce a general prohibition of dark patterns modelled after Article 25 DSA to the UCPD.

For more information, please refer to our position paper
[‘Dark patterns and the EU consumer law acquis’](#).

⁵⁵ See also chapter below on unfair pricing.

⁵⁶ See also chapter below on virtual currencies.

⁵⁷ See also chapter below on virtual currencies.

⁵⁸ See also chapter below on subscriptions.

3.2. Addictive design

In the attention economy, many businesses design their interfaces to keep users online for as long as possible to maximise data collection, consumer spending and advertising revenues. Widely used techniques to keep consumers engaged include infinite scroll, video autoplay, excessive notifications, gamification, ephemeral content, rewards for continued use or penalties for inactivity.⁵⁹ Engagement-based recommender systems play also an important role in addictive design.⁶⁰

Research indicates that the use of addictive design can lead to addiction-like behaviour by taking advantage of the dopamine cycle in the human brain.⁶¹ Dopamine is a neurotransmitter that causes positive feelings like excitement, happiness or satisfaction. Our brain releases it when we are eating tasty food, doing sports or having positive social interactions,⁶² but also when we anticipate rewarding events,⁶³ for instance when we are gambling. Therefore, our brain also releases dopamine when new content appears at the bottom of our phone screens while scrolling, when videos start to autoplay, or when we get notifications. Dopamine gives us a natural “high” but also makes us crave for more.⁶⁴ Over time, a tolerance may develop which means that users need even more stimulation to feel the same level of reward.⁶⁵ Algorithms that learn individual users’ schedules and habits stimulate this addiction-like behaviour even more effectively.⁶⁶ We check our phones at the slightest feeling of boredom, simply because we hope for the next little kick.⁶⁷

In 2017, Facebook’s former president Sean Parker, admitted that the social media platform’s design deliberately exploited the dopamine cycle.⁶⁸ Today, not only social

⁵⁹ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 154, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

⁶⁰ European Parliament, resolution on addictive design of online services and consumer protection in the EU single market, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0459_EN.html.

⁶¹ Bhargava/Velasquez, Ethics of the Attention Economy: The Problem of Social Media Addiction, <https://www.cambridge.org/core/journals/business-ethics-quarterly/article/ethics-of-the-attention-economy-the-problem-of-social-media-addiction/1CC67609A12E9A912BB8A291FDFFE799>; Esposito/Cathoud Ferreira, Addictive Design as an Unfair Commercial Practice: The Case of Hyper-Engaging Dark Patterns, <https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/addictive-design-as-an-unfair-commercial-practice-the-case-of-hyperengaging-dark-patterns/038CED800E0CAD86EC5B5216E0AA88DD>.

⁶² Haynes/Clements, Dopamine, Smartphones & You: A battle for your time, <https://sites.harvard.edu/sitn/2018/05/01/dopamine-smartphones-battle-time/>.

⁶³ Haynes/Clements, Dopamine, Smartphones & You: A battle for your time, <https://sites.harvard.edu/sitn/2018/05/01/dopamine-smartphones-battle-time/>.

⁶⁴ Esposito/Cathoud Ferreira, Addictive Design as an Unfair Commercial Practice: The Case of Hyper-Engaging Dark Patterns, <https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/addictive-design-as-an-unfair-commercial-practice-the-case-of-hyperengaging-dark-patterns/038CED800E0CAD86EC5B5216E0AA88DD>.

⁶⁵ Burhan/Moradzadeh, Neurotransmitter dopamine and its role in the development of social media addiction, <https://www.iomcworld.org/open-access/neurotransmitter-dopamine-da-and-its-role-in-the-development-of-social-media-addiction.pdf>.

⁶⁶ Chianella, Addictive digital experiences: the influence of artificial intelligence and more-than-human design, https://www.researchgate.net/publication/357190539_Addictive_digital_experiences_the_influence_of_artificial_intelligence_and_more-than-human_design.

⁶⁷ Haynes/Clements, Dopamine, Smartphones & You: A battle for your time, <https://sites.harvard.edu/sitn/2018/05/01/dopamine-smartphones-battle-time/>.

⁶⁸ Parkin, Has dopamine got us hooked on tech?, <https://www.theguardian.com/technology/2018/mar/04/has-dopamine-got-us-hooked-on-tech-facebook-apps-addiction#:~:text=To%20achieve%20this%20goal%2C%20Facebook%E2%BF%A2%E2%BE%80%E2%BE%99s,then%2C%20built%20upon%20a%20molecule>

media, but also online marketplaces,⁶⁹ online games,⁷⁰ streaming services⁷¹ AI chatbots⁷² and other online services⁷³ use addictive design. Web designers openly advertise their abilities to exploit the mechanisms in the human brain that keep users coming back.⁷⁴

Addictive design affects all users but shows particular impact on minors and young consumers. In a survey conducted in the context of the Digital Fairness Fitness Check, 31% of consumers stated they spend more time or money than planned on certain websites and apps due to addictive design features, such as the auto play of videos or rewards for continuous use.⁷⁵ According to a European Parliament report, children and young people between 16 and 24 spend on average 7 hours online per day and 1 in 4 of them show problematic smartphone use in the sense of behavioural patterns mirroring addiction.⁷⁶

Seeking to capture the attention of consumers has always been the objective of marketing and cannot be considered unfair per se. But addictive design may lead to mental harms like anxiety and depression, obsessive-compulsive behaviours such as compulsive buying, and physical harms resulting from lack of sleep and sedentary behaviour, which include a potential increased risk of early neurodegeneration.⁷⁷ Children and adolescents are particularly vulnerable in this regard as their brains are still developing, which limits their self-control and critical reflection.

EU law does not set clear limits for the use of addictive design. The DSA requires Very Large Online Platforms (VLOPs) and Very Large Search Engines (VLOSEs) to assess and mitigate systemic risks related to interface design which may cause addictive behaviour.⁷⁸ But the DSA does not specify under which circumstances interface design may amount to a systemic risk and leaves it to VLOPs and VLOSEs to decide how to mitigate the risk. Additionally, the Commission has published guidelines on Article 28 DSA which require all online platforms to not expose children to addictive design.⁷⁹ But these guidelines are not legally binding and, like the rest of the DSA, apply only to actors that qualify as online intermediaries. Since the UCPD does not contain any explicit provisions on addictive design, only the UCPD principles such as the prohibition of misleading or aggressive practices apply. The question whether certain features of

⁶⁹ Vzbv, From Amazon to Tiktok to Temu: Manipulative designs remain a problem, <https://www.vzbv.de/en/amazon-tiktok-temu-manipulative-designs-remain-problem>.

⁷⁰ Andersen, Designing Addictive Gameplay: Psychological techniques and player retention, <https://moldstud.com/articles/p-designing-addictive-gameplay-psychological-techniques-and-player-retention>.

⁷¹ Hassan, Design Like Netflix: How to Create Addictive User Experiences, <https://medium.com/design-bootcamp/design-like-netflix-how-to-create-addictive-user-experiences-a8cece336a67>.

⁷² Iyer, What Research Says About AI Chatbots and Addiction, <https://www.techpolicy.press/ai-chatbots-and-addiction-what-does-the-research-say/>.

⁷³ Clinehens, How Duolingo used psychology to make learning addictive, <https://www.choicehacking.com/2023/05/25/how-duolingo-used-psychology-to-make-learning-addictive/>.

⁷⁴ See for instance <https://www.tlgmarketing.com/website-addictive-design-patterns/>.

⁷⁵ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 153, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

⁷⁶ European Parliament, resolution on addictive design of online services and consumer protection in the EU single market, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0459_EN.html.

⁷⁷ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 31, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

⁷⁸ See Recitals 81 and 83 DSA, which are connected to Articles 34 and 35 DSA and hence only relevant for VLOPs and VLOSEs.

⁷⁹ Commission, Guidelines on Article 28 DSA, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C_202505519.

addictive design are illegal or not therefore depends on a case-by-case assessment by courts.

BEUC Recommendations

Businesses should switch off by default any feature that may cause addiction-like behaviour, such as engagement-based recommender systems,⁸⁰ infinite scroll, video autoplay, excessive use of notifications, ephemeral content, gamification elements outside video games, rewards for continued use or penalties for inactivity.

If consumers opt-in to the use of engagement-based recommender systems, businesses should disclose in a granular way the parameters used for the recommender systems and the criteria to determine the parameters and should allow consumers to modify these parameters.

Policymakers should prohibit the exposure of minors to engagement-based recommender systems and any other forms of addictive design.

3.3. Virtual currencies and in-app purchases

Virtual currencies have become a widespread feature online. They are particular common in video games⁸¹ but also increasingly used by social media, online marketplaces,⁸² online shops⁸³ and other online services.⁸⁴ Virtual currencies can be either directly purchased with real money (premium virtual currencies) or earned through in-app activities (earned virtual currencies) and may take the form of “coins”, “points”, “tokens”, “skins” or other items. The use of earned virtual currencies is normally left to the discretion of consumers. However, if apps contain premium virtual currencies, their use is usually mandatory to make in-app purchases.

According to a BEUC survey, 59% of consumers play online games or use apps in which they can buy virtual items (e.g. virtual gadgets or premium virtual currencies) in exchange for real money and 80% of them received prompts to spend money on such items.⁸⁵ Since the exchange rate between the national currency and a premium virtual currency is never 1 to 1, the mandatory use of premium virtual currency confuses consumers about the real cost of their in-app purchases, and over time makes them lose track of how much they have spent online. Additionally, premium virtual currencies are mostly available in

⁸⁰ Recommender systems that are based on “observed” and “interfered data” as defined in the EDPB Guidelines 8/2020, version 2.0, https://www.edpb.europa.eu/system/files/2021-04/edpb_guidelines_082020_on_the_targeting_of_social_media_users_en.pdf.

⁸¹ BEUC, Monetising Play: Regulating in-game and in-app premium currencies, <https://www.beuc.eu/position-papers/monetising-play-regulating-game-and-app-premium-currencies>.

⁸² Vzbv, From Amazon to Tiktok to Temu: Manipulative designs remain a problem, <https://www.vzbv.de/en/amazon-tiktok-temu-manipulative-designs-remain-problem>.

⁸³ Forbrukerrådet, En gjennomgang av markedsføring i nyhetsbrev, <https://storage02.forbrukerradet.no/media/2024/10/markedsforing-i-nyhetsbrev-klaer-og-mote-2024-22.okt-1.pdf>.

⁸⁴ Turchenko, How do virtual currencies in apps and games work, <https://corefy.com/blog/how-do-virtual-currencies-in-apps-and-games-work>.

⁸⁵ BEUC, Connected but unfairly treated, <https://www.beuc.eu/reports/consumer-survey-results-fairness-online-environment>.

bundles of fixed amounts only. Since the value of these bundles is usually higher than the average price of the items that consumers can buy with the premium virtual currency, they must spend more than what they actually need. Furthermore, since in most cases premium virtual currencies cannot be converted back into money, businesses incentivise consumers to use the remaining amount of the premium virtual currency for additional purchases which increases the risk of overspending.

According to the Digital Fairness Fitness Check, 29% of consumers have experienced a situation where the real price of an item they bought online was not clear because it was only indicated in the app's virtual currency.⁸⁶ This practice is not in line with the CRD, which requires businesses to provide consumers with the total price of the goods or services before a contract is concluded.⁸⁷ However, the gaming industry argues that in-app purchases with virtual currencies do not qualify as contracts to which EU consumer law would apply.⁸⁸ In their view, virtual currencies are digital content in the sense of the DCDS and only the acquisition of the virtual currency needs to comply with EU consumer law. Consequently, EU consumer law would not apply to in-app purchases made with virtual currencies, meaning for instance that consumers would not have a right of withdrawal.

The Commission, on the other side, has made clear in its UCPD guidance that EU consumer law applies to in-app purchases. For instance, the guidance explicitly states that businesses must also display the price of virtual items in real currency.⁸⁹ In March 2025, the CPC Network issued a statement, in which it also states that both the purchase of premium virtual currencies and their subsequent use is subject to EU consumer law.⁹⁰ However, since the Commission's guidance and the CPC Network's statement are not legally binding, it will depend on courts to rule on a case-by-case basis whether and how EU consumer law applies to in app purchases.

In addition to premium virtual currencies, the use of loot boxes and pay-to-win mechanism is an important part of the monetisation strategy of video games. Loot boxes are virtual 'mystery boxes' which contain randomised virtual items that may help players to advance in the game. In 2022, our Norwegian member Forbrukerrådet showed that providers of video games can personalise the content and odds of loot boxes in real time based on player's data,⁹¹ making it impossible for consumers to know what they are paying for. In 2020, the European Parliament published a study on loot boxes, which points out that they can lead to excessive screen time and are a "gateway from gaming to

⁸⁶ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 156, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

⁸⁷ Article 6(1)e CRD.

⁸⁸ European Games Developer Federation, In-app purchases and in-game currencies, <https://www.egdf.eu/documentation/7-balanced-protection-of-vulnerable-players/consumer-protection/in-game-currencies-2023/>.

⁸⁹ Commission, Guidance on the interpretation and application of the UCPD, p. 104, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)).

⁹⁰ CPC Network, Key principles on in-game virtual currencies, https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-online-games-and-search-engines_en.

⁹¹ Forbrukerrådet, Insert Coin, <https://storage02.forbrukerradet.no/media/2022/05/2022-05-31-insert-coin-publish.pdf>.

gambling”.⁹² Therefore, loot boxes can also serve as an example of addictive design.⁹³ Pay-to-win mechanisms are in-game purchases that consumers need to make to progress and win in video games. Like for loot boxes, the purpose of pay-to-win mechanisms is to incentivise more in-game spending, making them particularly problematic in games that are likely to be played by minors.

BEUC Recommendations

Policymakers should clarify in a legally binding manner that EU consumer law applies to in-app purchases, meaning for instance that businesses must always display the price of in-app purchases in real currency and that the rules on the right of withdrawal apply. The EU should ban premium virtual currencies,⁹⁴ paid lot boxes and pay-to-win mechanisms.

Video game providers should deactivate in-app purchases by default to reduce the risk of overspending, especially in video games that minors are likely to play. If players decide to switch on in-app purchases, the credit card or bank account holder should define spending limits (e.g. per day, week or month).

For more information, please refer to our position paper
[‘Monetising Play: Regulating in-game and in-app premium currencies’](#).

3.4. Unfair personalisation

When consumers are online, their behaviour is comprehensively tracked across websites, apps and devices. Even offline activities are tracked for instance via apps that permanently track the location, or if consumers use credit or loyalty cards when shopping offline.⁹⁵ Companies trade the data among themselves and compile it into increasingly detailed profiles that they categorise for commercial purposes.⁹⁶ They can combine these profiles with real-time data, based on emotional recognition for instance,⁹⁷ to personalise the offers, prices and advertising consumers see online.

In 2018, a Commission study already found that 61% of e-commerce websites displayed personalised offers, for instance by providing different results including different ranking

⁹² European Parliament, Loot boxes in online games and their effect on consumers in particular young consumers, p. 10, [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf).

⁹³ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 31, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

⁹⁴ Virtual currencies that consumers have to purchase with real currency.

⁹⁵ International Working Group on Data Protection in Technology: Working Paper on the Risks emerging from the Tracking and Targeting Ecosystem in the Digital Advertising Market, p. 3, https://www.bfdi.bund.de/SharedDocs/Downloads/EN/Berlin-Group/20210424_WP_Risks-emerging-Tracking.pdf?__blob=publicationFile&v=3.

⁹⁶ Dachwitz, Das sind 650.000 Kategorien, in die uns die Online-Werbeindustrie einsortiert, <https://netzpolitik.org/2023/microsofts-datenmarktplatz-xandr-das-sind-650-000-kategorien-in-die-uns-die-online-werbeindustrie-einsortiert/>

⁹⁷ For example offered by this provider: <https://www.affectiva.com/emotion-ai/>.

orders when consumers searched for products.⁹⁸ Over the last years, our members have gathered a lot of evidence that prices are also being personalised online.⁹⁹ In early 2025, the US Federal Trade Commission found that retailers frequently use consumer data from location and demographics to their mouse movements on a webpage to personalise prices for goods and services.¹⁰⁰ Online advertising is also mostly personalised, based on available information about the targeted person.¹⁰¹

The personalisation of offers can be convenient for consumers, for instance if it helps them to find products and services that match their interest. But businesses can also misuse personalised offers either to hide some offers from certain consumers or to steer consumers towards more expensive offers within the range of offers that they are likely willing to pay for. Personalised pricing could lead to lower prices, but since businesses have little incentive to do so, it usually means that consumer, who have a higher willingness to pay according to their profiles, see higher prices.¹⁰² This is particularly unfair, if consumers depend on certain products or services because of their personal circumstances. Regarding personalised advertising, our Norwegian member Forbrukerrådet and our German member vzbv have pointed out that the massive tracking, profiling and categorisation of consumers using thousands of keywords such as “eating disorder”, “speculative investments” and “fragile senior” can be used by businesses to target individual vulnerabilities and to discriminate certain individuals, which may cause individual harm and societal risks as illustrated by the Cambridge Analytica scandal.¹⁰³ In fact, a study conducted as part of the Digital Fairness Fitness Check covering 53 dating and gambling apps and websites found that 42% of the advertising seemed to be linked to consumers’ vulnerabilities.¹⁰⁴

Consumer’s perception of personalised offers, prices and advertising based on tracking and profiling is rather negative. In 2023, a BEUC survey found that 60% of consumers consider personal data analysis and monetisation to be unfair whereas only 16% considered it to be fair.¹⁰⁵ In a public consultation conducted as part of the Digital Fairness Fitness Check, 74% of consumers thought businesses were misusing their personal data or used it unfairly to personalise commercial offers.¹⁰⁶ 37% of consumers

⁹⁸ Commission, Consumer market study on online market segmentation through personalised pricing/offers in the European Union, p. 175, https://commission.europa.eu/publications/consumer-market-study-online-market-segmentation-through-personalised-pricingoffers-european-union_en.

⁹⁹ See for instance the work of Arbeiterkammer (Austria), Forbrukerrådet (Norway), Sveriges Konsumenter (Sweden), VZ Brandenburg (Germany) and Which? (UK) referenced in: BEUC, Each consumer a separate market?, p. 10-12, <https://www.beuc.eu/position-papers/each-consumer-separate-market-beuc-position-paper-personalised-pricing>.

¹⁰⁰ US Federal Trade Commission, FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices, <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer>.

¹⁰¹ For an overview of how online advertising has developed since the 1990s, see Commission, Study on the impact of recent developments in digital advertising on privacy, publishers and advertisers, p. 16, <https://op.europa.eu/en/publication-detail/-/publication/8b950a43-a141-11ed-b508-01aa75ed71a1/>.

¹⁰² European Parliament, Personalised Pricing, p. 17, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL_STU\(2022\)734008_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL_STU(2022)734008_EN.pdf).

¹⁰³ Forbrukerrådet, Out of control, <https://www.forbrukerradet.no/rapporter/out-of-control/>; Vzbv, Perspectives for the regulation of personalised advertising, <https://www.vzbv.de/pressemitteilungen/personalisierte-werbung-regulierung-ueberfaellig>.

¹⁰⁴ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 164, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

¹⁰⁵ BEUC, Connected but unfairly treated, <https://www.beuc.eu/reports/consumer-survey-results-fairness-online-environment>.

¹⁰⁶ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 162, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

even had the impression that a company had knowledge about their vulnerabilities and used it for commercial purposes.¹⁰⁷ In a survey conducted as part of the 2018 Commission study on personalisation, 62% of consumers said they would be more positive about online personalised practices if there were an easy option to refuse these personalisation practices.¹⁰⁸ In 2022, a European Parliament study pointed out that many consumers found personalised prices unfair and were concerned about the collection and processing of their personal data for price personalisation.¹⁰⁹ According to the 2025 Consumer Conditions Scoreboard, 67% of consumers are concerned about the excessive use of advertising online, 63% of consumers are concerned about the unavoidable personalisation of advertising and only 6% of consumers had no concerns about online advertising.¹¹⁰

Even industry surveys confirm consumers' negative perception of personalised advertising. For instance, in a survey conducted by the European Interactive Digital Advertising Alliance in 2022, 68% of consumers were concerned that businesses could misuse their data or exploit their vulnerabilities.¹¹¹ In a survey conducted by the German Association for the Digital Economy in 2022, 64% of consumers declared that they felt uncomfortable and spied on by advertising that is too closely tailored to them.¹¹²

EU law does not prohibit the personalisation of offers, prices or advertising and only sets a few limits. Obviously, the collection and processing of the data on which personalisation is based, must comply with EU data protection and privacy rules. The underlying data processing must be lawful, transparently communicated to users, and in line with the data processing principles set forth in Article 5 GDPR.¹¹³ Apart from this, there are only a couple of provisions that protect consumers against unfair personalisation. For instance, the DSA requires online platforms to disclose the main parameters used for their recommender systems and to allow consumers to select and modify their preferred option if several options exist.¹¹⁴ Additionally, the DSA prohibits the use of sensitive data for personalised advertising,¹¹⁵ and, in the case of minors, prohibits personalised advertising based on tracking in general.¹¹⁶ However, these rules only apply to online platforms. Outside the scope of the DSA, businesses need to comply with the requirement in the CRD to inform consumer if prices are personalised, but they are not

¹⁰⁷ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 163, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

¹⁰⁸ Commission, Consumer market study on online market segmentation through personalised pricing/offers in the European Union, p. 266, https://commission.europa.eu/publications/consumer-market-study-online-market-segmentation-through-personalised-pricingoffers-european-union_en.

¹⁰⁹ European Parliament, Personalised Pricing, p. 20, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL_STU\(2022\)734008_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL_STU(2022)734008_EN.pdf).

¹¹⁰ Commission, 2025 Consumer conditions scoreboard, p. 14, https://commission.europa.eu/document/2816337b-4fd1-4db2-a71c-d14a206a5a93_en.

¹¹¹ European Interactive Digital Advertising Alliance, What consumers told us about their perceptions, needs, hopes, and expectations of data-driven advertising, p. 7, https://edaa.eu/wp-content/uploads/YOV_external-report_27.06.pdf.

¹¹² Bundesverband Digitale Wirtschaft, OVK-Trendstudie Werbung im Internet, p. 8, <https://www.bvdw.org/news-und-publikationen/ovk-trendstudie-werbung-im-internet-1/>.

¹¹³ BEUC, Each consumer a separate market?, p. 16, <https://www.beuc.eu/position-papers/each-consumer-separate-market-beuc-position-paper-personalised-pricing>.

¹¹⁴ Article 27(1) DSA.

¹¹⁵ Article 26(3) DSA.

¹¹⁶ Article 28(2) DSA.

required to disclose the parameters used for prices personalisation.¹¹⁷ Otherwise, the principles in the UCPD are the only general safeguards against unfair personalisation.

BEUC Recommendations

Apps and websites should not be personalised by default.¹¹⁸ If consumers opt-in to personalisation, businesses should disclose the parameters used for the personalisation and should allow consumers to modify them.

The EU should prohibit any form of personalisation that exploits a consumer's situational or permanent vulnerability.

Policymakers should also prohibit pricing based on tracking and/or profiling, except for price reductions. Businesses should inform consumers of any personalised discounts in a clearly visible way and disclose the parameters used for the discount personalisation.

Policymakers should also consider a general ban of advertising based on tracking and/or profiling to incentivise the development of alternative business models in the advertising market.¹¹⁹

If a consumer presents indications that a business has breached the before mentioned requirements, the burden of proof regarding the compliance with these requirements should be on the business.

For more information, please refer to our position paper
[‘Each consumer a separate market? - BEUC position paper on personalised pricing’](#).

3.5. Influencer marketing

Influencer marketing has become one of the most important forms of marketing. Between 2015 and 2025 the global value of influencer marketing has grown from 1.7 billion to more than 32 billion US Dollar.¹²⁰ According to a BEUC survey, 73% of consumers have seen influencer marketing online and 53% of consumers have bought products or services influencers have recommended.¹²¹ However, influencer marketing comes with many problems for consumers.¹²²

¹¹⁷ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 165, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

¹¹⁸ Except for personalisation based on technical storage which is strictly necessary for the conveyance of a communication without prejudice to the principle of confidentiality.

¹¹⁹ Forbrukerrådet, Out of control, p. 16 <https://www.forbrukerradet.no/rapporter/out-of-control/>; Vzbv, Perspectives for the regulation of personalised advertising, p. 16 <https://www.vzbv.de/pressemitteilungen/personalisierte-werbung-regulierung-ueberfaellig>.

¹²⁰ Statista, Influencer marketing market size worldwide from 2015 to 2025, https://www.statista.com/statistics/1092819/global-influencer-market-size/?utm_source=chatgpt.com.

¹²¹ BEUC, Connected but unfairly treated, <https://www.beuc.eu/reports/consumer-survey-results-fairness-online-environment>.

¹²² See for instance the position paper of our Portuguese member DECO, Influencer marketing and Digital Media Advertising, <https://deco.pt/wp-content/uploads/2025/10/Influencer-marketing-and-Digital-Media-Advertising.pdf>, and the report of our Norwegian member Forbrukerrådet, <https://storage02.forbrukerradet.no/media/2024/10/use-of-dietary-supplements-among-young-consumers-.pdf>.

Influencer marketing is so effective because it relies on the parasocial relationship between influencers and consumers. This parasocial relationship has been proved to increase consumers' willingness to make purchases.¹²³ Additionally, influencer marketing blurs the lines between entertainment and marketing by presenting products or services in an entertaining and seemingly authentic way without clearly informing about the commercial intent behind this activity. According to a study of the Danish Competition and Consumer Authority both adults (56%) and children (38%) struggle to distinguish paid promotions from organic content on social media.¹²⁴ According to the Digital Fairness Fitness Check, 74% of consumers reported a lack of transparency about the paid promotions of products by social media influencers.¹²⁵ The lack of transparency and unclear disclosure are the most common consumer complaints together with lack of separation between advertising and editorial content.¹²⁶

The UCPD requires businesses to disclose commercial communication,¹²⁷ but since the UCPD does not define influencer marketing, influencer's obligation to comply with the directive is unclear. Furthermore, the UCPD does not specify when and how influencers must disclose the commercial nature of their content. The same is true for other EU rules that contain obligations to disclose commercial communication.¹²⁸ This lack of legal certainty has led to inconsistent and even partly contradictory enforcement at national level, resulting in unequal consumer protection and Single Market fragmentation.

Another problem related to influencer marketing is the promotion of risky products and services. According to a BEUC survey, almost half of consumers (44%) who have come across influencers on social media have seen them promoting possible scams or potentially dangerous products.¹²⁹ Additionally, BEUC has shown that businesses use influencer marketing to advertise unhealthy food and drinks (i.e. high in fats, salt or sugar - HFSS) to children,¹³⁰ whereas according to the World Health Organisation (WHO) evidence is 'unequivocal' that marketing of unhealthy food and drinks is related to childhood obesity.¹³¹ Furthermore, BEUC has pointed out that influencers increasingly advertise risky financial products and services.¹³² Drawing inspiration from the new

¹²³ European Parliament, The impact of influencers on advertising and consumer protection in the Single Market, p. 43, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU\(2022\)703350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf).

¹²⁴ Danish Competition and Consumer Authority, Consumers benefit from visually salient standardized commercial disclosures on social media, p. 2, <https://kfst.dk/media/z3lmycgw/20210617-consumers-benefit-from-visually-salient-standardized-commercial-disclosures-on-social-media.pdf>.

¹²⁵ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 130, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

¹²⁶ European Parliament, The impact of influencers on advertising and consumer protection in the Single Market, p. 53, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU\(2022\)703350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf).

¹²⁷ Article 7(2) UCPD and No 22 Annex I UCPD.

¹²⁸ See for instance Article 26 (2) DSA, Article 6 a) E-commerce Directive, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>, and Article 9(1) a) Audiovisual Media Services Directive (AVMSD), <https://eur-lex.europa.eu/eli/dir/2018/1808/oj/eng>.

¹²⁹ BEUC, Connected but unfairly treated, <https://www.beuc.eu/reports/consumer-survey-results-fairness-online-environment>.

¹³⁰ BEUC, Food marketing to children needs rules with teeth, https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-084_food_marketing_to_children_needs_rules_with_teeth.pdf.

¹³¹ World Health Organisation, Report of the commission on ending childhood obesity, p.18, <https://www.who.int/publications/i/item/9789241510066>.

¹³² BEUC, Hype or Harm? The great social media crypto con, <https://www.beuc.eu/enforcement/hype-or-harm-great-social-media-crypto-con>.

French law on influencer marketing,¹³³ the EU should prohibit influencer marketing for certain products and services.

Influencers are part of an ecosystem that includes brands and agencies. Brands should be aware of the risks associated with their products or services and related regulation. Agencies should be aware of the rules that apply to influencers. However, according to a study published by the European Parliament, only 53% of agencies require influencers to mention their commercial cooperation in a transparent manner.¹³⁴ To incentivise brands and agencies to ensure that their influencers are compliant, all three should be jointly and severally liable in case their influencers breach the law.

BEUC Recommendations

- Policymakers should:
 - ▶ introduce a definition of influencer marketing,
 - ▶ introduce clearer requirements on how to label influencer marketing in a prominent way as advertising,
 - ▶ prohibit influencer marketing for:
 - unhealthy food and drinks if targeted at children,
 - alcohol, tobacco gambling and sports betting,
 - medical products and procedures not in line with the intended use,
 - cosmetic procedures,
 - food supplements,
 - weight-loss products or services,
 - risky financial products or services, such as cryptocurrencies,
 - ▶ make influencers, their brands and their agencies jointly and severally liable for breaches of the law,
 - ▶ create a presumption that a person qualifies as influencer if they carry out promotional activities towards consumers, to facilitate enforcement,
 - ▶ require influencers
 - meeting certain criteria (e.g. regarding their reach or annual revenue) to disclose the names of the companies they work with,
 - to disclose the use of visual filters and tools with similar effects.
- Member States should introduce publicly accessible registers for influencers meeting certain criteria (e.g. regarding their reach or annual revenue).
- Persons under the age of 15 should not be allowed to act as influencers or to appear in influencer marketing.

For more information, please refer to our position paper
[‘From influence to responsibility - Time to regulate influencer marketing’](#).

¹³³ Loi n° 2023-451 du 9 juin 2023 visant à encadrer l'influence commerciale et à lutter contre les dérives des influenceurs sur les réseaux sociaux, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000047663185>.

¹³⁴ European Parliament, The impact of influencers on advertising and consumer protection in the Single Market, p. 54, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU\(2022\)703350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf).

3.6. Unfair pricing

Clear and accurate pricing information is essential for consumers. Without it, they cannot identify the best offers and control their spending. Any unfair pricing strategy can cause them financial harm but also reduce their trust and confidence in the market. In this regard, pricing practices such as dynamic pricing, drip pricing and comparison pricing raise several concerns.

Dynamic pricing is a real-time pricing strategy where prices for products or services change quickly in response to market conditions, such as supply and demand, competitor pricing, market trends, and consumer behaviour. Sectors such as air travel, hospitality, ride-hailing apps or e-commerce commonly use it and the practice is expected to grow importantly due to the fast development of AI systems. While dynamic pricing may have certain benefits like lower prices outside of the high season, reduced food waste by allowing quick price drops on items close to expiry date, or balanced supply and demand in the energy sector,¹³⁵ it may also have negative implications for consumers. Constant price changes make it difficult for consumers to compare prices. Rapid price increases may encourage impulsive behaviour and pressure consumers into quick purchasing decisions they regret later. They may even lose access to certain products and services (e.g. buying tickets to attend live concerts or travelling during school holidays) if prices reach beyond their means. According to a 2025 study of our UK member Which?, consumers have nuanced views on when dynamic pricing is fair.¹³⁶ Transparency regarding the use of dynamic pricing, price predictability, choice between dynamic and non-dynamic pricing, and the distribution of benefits between businesses and consumers are key factors that affect consumers' perception. However, participants in the study indicated a deep sense of unfairness when prices changed after they had joined a queue or thought that they had secured a price for a service. In fact, many consumers have recently had similar frustrating experiences in the live entertainment sector.¹³⁷

Drip pricing, also known as 'junk fees', is a deceptive pricing technique where the advertised price does not match the total cost of a product or a service due to mandatory additional fees, taxes or charges added during the purchase process. This practice aims at encouraging consumers to commit to a purchase at a lower price, potentially leading them to spend more than they intended. Our members detected many examples in the

¹³⁵ As shown by BEUCs report "The missing link: Why dynamic pricing is essential in the switch to clean heating", https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-043_Why_Dynamic_Pricing_is_Essential_in_the_Switch_to_Clean_Heating.pdf.

¹³⁶ Which?, "By Fair Means or Foul? Consumer Attitudes towards dynamic pricing", <https://media.product.which.co.uk/prod/files/file/gm-fb4472c0-58e0-4964-99b8-a422a7c1582b-dynamic-pricing-report-final-1.pdf>.

¹³⁷ See the work of Altroconsumo (Italy), OCU (Spain) and Testachats/Testaankoop (Belgium): <https://www.euroconsumers.org/wp-content/uploads/2024/11/Dynamic-Pricing-Definitely-Maybe.pdf>, <https://www.euroconsumers.org/wp-content/uploads/2025/10/Letter-to-European-Commission-Joint-Call-to-Ban-Dynamic-Pricing-in-Live-Events.pdf>.

areas of live entertainment¹³⁸ or hotels.¹³⁹ Several countries outside the EU, including the UK¹⁴⁰ and the US,¹⁴¹ have adopted legislation to better protect consumers against this practice.

Comparison pricing means to compare the current price with a benchmark price such as the recommended retail price, average price, or a competitor's price. However, the meaning of the benchmark price is often not clearly indicated, making it difficult for consumers to verify the accurateness of price comparison. Comparison pricing became widely used since the Modernisation Directive introduced new transparency requirements for the price reductions to the Price Indication Directive (PID) in 2022.¹⁴² In two consecutive studies in 2023¹⁴³ and 2025,¹⁴⁴ our French member UFC-Que Choisir found that in almost 9 out of 10 cases, crossed out prices displayed reference prices instead of the lowest price during the last 30 days as required by the PID. This trend was confirmed by a consumer survey conducted by the Commission for its report on implementation of the Modernisation Directive, according to which 52% consumers had encountered price comparisons in the last 12 months.¹⁴⁵ This shows that businesses circumvent the new price indication rules by replacing price reductions with price comparisons. This is very problematic because price reductions and price comparisons usually look exactly the same way.

Several pieces of EU legislation apply to pricing practices. While businesses can set their prices freely, the CRD requires them to properly inform consumers about the total price, including taxes and charges, or how they will calculate it.¹⁴⁶ In case of price reductions, the latest revision of the PID also imposed to indicate the lowest price in the last 30 days.¹⁴⁷ However, according to the Commission's guidance on the UCPD, the PID does not apply to price comparisons, only the UCPD.¹⁴⁸ In the Digital Fairness Fitness Check report, the Commission stated that commercial practices related to dynamic pricing could in some circumstances breach the UCPD, for instance, if prices go up after

¹³⁸ On the 12 May 2025, OCU (Spain) has filed a complaint against Ticketmaster, citing abusive and non-transparent pricing practices for Bad Bunny's concerts in Barcelona and Madrid, <https://www.ocu.org/organizacion/prensa/notas-de-prensa/2025/ticketmaster120525>.

¹³⁹ In 2024, Consumentenbond (Netherlands) revealed that some booking platforms use deceptive practices, such as fake discounts, incomplete pricing, and false claims of scarcity. For instance, Booking.com advertised a hotel room in New York at "€211 per night" excluding €75 in mandatory taxes and service fees, contrary to consumer protection rules, <https://www.consumentenbond.nl/nieuws/2024/booking.com-blijft-consumenten-misleiden>.

¹⁴⁰ In the UK, the Digital Markets, Competition and Consumers Act 2024 (DMCCA), introduces a direct ban on drip pricing practices that involve concealing unavoidable fees until late in the purchase process, <https://www.legislation.gov.uk/ukpga/2024/13/contents>.

¹⁴¹ In the United States, the Federal Trade Commission issued a final Junk Fees Rule in December 2024 targeting deceptive drip pricing in the live-event ticketing and short-term lodging industries. The rule, effective from May 12, 2025, requires all mandatory charges to be clearly and conspicuously disclosed as part of the total price whenever a product or service is advertised, <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-rule-unfair-or-deceptive-fees-take-effect-may-12-2025>.

¹⁴² Article 6a Price Indication Directive (PID), <https://eur-lex.europa.eu/eli/dir/1998/6/oj/eng>.

¹⁴³ UFC-Que Choisir, L'UFC-Que Choisir dépose plainte contre 8 sites de commerce en ligne, [Fausses promotions - L'UFC-Que Choisir dépose plainte contre 8 sites de commerce en ligne - Action UFC-Que Choisir - UFC-Que Choisir](#).

¹⁴⁴ UFC-Que Choisir, Près de 9 sur 10 sont des fausses promotions, [Prix barrés sur les sites d'e-commerce - Près de 9 sur 10 sont des fausses promotions - Action UFC-Que Choisir - UFC-Que Choisir](#).

¹⁴⁵ Commission, Report on the implementation of the Modernisation Directive, p. 23, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024DC0258>.

¹⁴⁶ Articles 5(1) c and 6(1) e CRD.

¹⁴⁷ Article 6a PID.

¹⁴⁸ Commission, Guidance on the interpretation and application of the UCPD, p. 16, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)).

consumers have put an item into their shopping basket.¹⁴⁹ Similarly, according to the Commission's guidance on the UCPD, drip pricing may also qualify as an unfair commercial practice depending on the circumstances.¹⁵⁰ However, these documents are not legally binding. The application of the UCPD principles in the area of pricing therefore depends on a case-by-case assessment which leads to divergent interpretations and legal uncertainty.

BEUC Recommendations

Policymakers should prohibit the following pricing practices in UCPD Annex I:

- Using dynamic pricing to increase the price of a product or service after a consumer has selected it.
- Using any other discount indications or price comparisons than those foreseen in Article 6a PID.
- Adding mandatory fees and charges during the purchase process (drip pricing).

The EU should consider introducing further restrictions to dynamic pricing in the live entertainment sector.

Businesses should have to inform consumers if they use dynamic pricing and of the parameters used for it.

3.7. Issues related to contracts

3.7.1. Subscriptions

According to a 2024 survey conducted in France, Germany, Italy, Spain and the UK, consumers have on average 3,2 subscriptions for which they spent 696 Euro per year on average.¹⁵¹ The widespread use of subscriptions is unsurprising given how easy it usually is to enter them. According to a survey conducted as part of the Digital Fairness Fitness Check, 29% of consumers' free trials often automatically turned into a paid subscription, without them being aware that this would happen.¹⁵² Furthermore, 62% of consumers did not receive a reminder when subscriptions, which they had not used in a while, were automatically renewed.¹⁵³

¹⁴⁹ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 202, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

¹⁵⁰ Commission, Guidance on the interpretation and application of the UCPD, p. 102, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)).

¹⁵¹ Tongue, The state of subscriptions in Europe 2024: Key trends, challenges — and opportunities, <https://bango.com/the-state-of-subscriptions-in-europe-2024/>.

¹⁵² Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 177, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

¹⁵³ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 177, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

If consumers want to end their subscriptions, they often realise that cancelling is much more difficult than entering a subscription. According to the Digital Fairness Fitness Check, 69% of consumers found it technically difficult to cancel their contracts.¹⁵⁴ A 2022 study by our Dutch member Consumentenbond on more than 120 companies from various sectors found that 26% of the companies made it difficult to cancel contracts online.¹⁵⁵ In 2024, our Swedish member Sveriges Konsumenter screened 20 providers of digital services like video streaming and audio books and found that all of them used dark patterns to make cancellations difficult.¹⁵⁶

EU law only addresses some consumer issues related to subscriptions. The CRD requires businesses to inform consumers about their obligation to pay immediately before a contract is concluded.¹⁵⁷ However, EU law does not require businesses to inform consumers before a free trial turns into a paid subscription. The European Electronic Communications Code (EECC) allows consumers to terminate their telecommunication contracts anytime with a notice period of one month. In case consumers choose fixed-term contracts with automatic renewal, it also requires businesses to inform consumers of the upcoming renewal and how to terminate it.¹⁵⁸ Article 25(3) DSA stipulates that terminating a service must not be more difficult than subscribing to it, but this only applies to online platforms. Similarly, Articles 8 and 9(d) UCPD prohibit businesses from imposing obstacles if consumers want to terminate a contract. However, courts must assess compliance on a case-by-case basis, like in case of other UCPD principles, which limits the rules' effectiveness.

To remedy the lack of clear and effective rules on subscriptions in EU consumer law, some EU Member States have taken legislative measures. For instance, France has introduced a provision that, similar to the EECC but with a horizontal scope, requires businesses to inform consumers at the latest one month before an automatic contract renewal of the possibility to cancel the contract.¹⁵⁹ Germany has introduced a provision that requires businesses to provide consumers with an online cancellation button that is permanently available and easily accessible.¹⁶⁰ To increase protection across the Single Market, EU law itself should strengthen consumers' subscription rights.

¹⁵⁴ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 130, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

¹⁵⁵ Consumentenbond, Online abonnement opzeggen nog te vaak te moeilijk, <https://www.consumentenbond.nl/nieuws/2022/online-abonnement-opzeggen-nog-te-vaak-te-moeilijk>.

¹⁵⁶ Sveriges Konsumenter, Are you sure you want to leave us?, <https://www.sverigeskonsumenter.se/media/mgkdpb3g/are-you-sure-you-want-to-leave-us.pdf>.

¹⁵⁷ Article 8(2) CRD.

¹⁵⁸ Article 105(3) European Electronic Communications Code (EECC), <https://eur-lex.europa.eu/eli/dir/2018/1972/oj>.

¹⁵⁹ Article L-215-1 French Consumer Code, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000034072591/.

¹⁶⁰ Article 312k German Civil Code, https://www.gesetze-im-internet.de/bgb/_312k.html.

BEUC Recommendations

- Businesses should not be allowed to request any payment details from consumers when offering free trials.
- Businesses should ask consumers for their explicit consent before turning free trials into paid subscriptions and before turning low-cost trials into subscriptions at a higher price.
- The EU should introduce a cancellation button with clear design requirements to ensure consumers can cancel their subscriptions and delete their accounts as easily as possible.
- Consumers should have the right to cancel their subscriptions with automatic renewals anytime with a notice period of one month.
- If a consumer presents indications that a business has breached the before mentioned requirements, the burden of proof regarding the compliance with these requirements should be on the business.

3.7.2. Right to a human interlocuter

Businesses increasingly deploy chatbots to answer consumer questions. However, consumers are often not satisfied with their services. According to the Digital Fairness Fitness Check, 44% of consumers have already experienced a situation where they found it difficult to solve a problem with a business because they only had access to an automated chatbot and could not speak or exchange messages with an employee.¹⁶¹ Furthermore, 65% of stakeholders responding to the public consultation conducted for the Digital Fairness Fitness Check called for the right to always be able to contact a human interlocuter upon request when businesses use AI chatbots to deal with consumer complaints and other inquiries.¹⁶²

BEUC recommendation

Consumers should have the right to speak to a human person representing a business, at least if they have already concluded a contract with that business. Businesses should thus provide an easily accessible telephone number on their interface through which consumers can reach a human customer service representative.

¹⁶¹ Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 200, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

¹⁶² Commission, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness, p. 132, https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en.

3.7.3. AI contracting

In recent years, many new AI systems have appeared on consumer interfaces, for instance as self-standing apps,¹⁶³ integrated into existing apps¹⁶⁴ or even into the operating system of smart devices.¹⁶⁵ So far, AI systems available to consumers are often limited in their autonomy. For instance, a major printer company offers a subscription service that sends replacement cartridges as soon as the printer detects that it is running low on ink.¹⁶⁶ Other businesses offer AI driven services that help consumers manage their subscriptions,¹⁶⁷ or switch energy contracts on their behalf.¹⁶⁸ However, given the rapid development of AI, it is likely that AI systems that are able to autonomously conclude, modify or terminate contracts on behalf of consumers will soon be widely available.¹⁶⁹

While these AI systems may be beneficial for consumers, it is key that EU consumer law remains fully applicable if AI systems act on behalf of consumers in B2C relations to avoid weakening current protection levels. However, given that EU consumer law is built on the assumption that a human is interacting with a business, policymakers must clarify its application when AI takes over contracting. For instance, policymakers should clarify how precontractual information requirements, and the prohibitions of unfair contract terms and of unfair commercial practices apply. Furthermore, it is important to protect consumers against the risk of unexpected actions of AI systems. If an AI system concludes a contract online that is not in line with a consumer's interests, they will in many cases be protected by the right of withdrawal. But consumers also need protection against unexpected actions or omissions of AI systems beyond the current scope of the right of withdrawal, for instance if AI renegotiates or terminates a contract to a consumers' detriment.

BEUC recommendations

Policymakers should carry out a careful assessment of how existing EU consumer law applies if AI systems autonomously conclude, modify or terminate contracts on behalf of consumers and address eventual legal gaps and uncertainties.

The EU must not weaken existing consumer rights, such as the right to receive precontractual information, even though the particular circumstances of AI contracting may require a specific implementation of these rights.

Consumers should be protected against unexpected actions or omissions of the AI systems they use for contracting.

¹⁶³ For instance, ChatGPT.

¹⁶⁴ For instance, the chatbot in WhatsApp.

¹⁶⁵ Reuters, Deutsche Telekom showcases app-less AI smartphone concept, <https://www.reuters.com/technology/deutsche-telekom-showcases-app-less-ai-smartphone-concept-2024-02-26/>.

¹⁶⁶ HP, <https://instantink.hpconnected.com/us/en/l/v2>.

¹⁶⁷ Pine, <https://www.19pine.ai/cancel-subscription>.

¹⁶⁸ Switchd, <https://switchd.co.uk/>.

¹⁶⁹ Marr, Forget ChatGPT: Why Agentic AI Is The Next Big Retail Disruption, <https://www.forbes.com/sites/bernardmarr/2025/02/24/forget-chatgpt-why-agentic-ai-is-the-next-big-retail-disruption/>.

3.8. Online Reviews

Because it is difficult for consumers to assess the quality of products and services online, they pay attention to consumer reviews and ratings. According to a study, 93% of consumers read online reviews before making a purchase and 86% of consumers hesitate to purchase from businesses that have too many negative reviews.¹⁷⁰ In 2018, a Commission study already found that prominently displaying positive reviews or ratings almost doubles the likelihood that consumers will choose a product.¹⁷¹ However, despite their importance for consumers, reviews and ratings may be unreliable.

Fake reviews are a big problem for consumers. In 2022, our German member Stiftung Warentest's published a study which shows how agencies acting on behalf of businesses pay or compensate consumers to leave positive reviews.¹⁷² Alternatively, businesses can use bots to generate reviews artificially. Also in 2022, our British member Which? conducted an investigation showing how simple it was to infiltrate online platforms with fake reviews provided by fake review brokers.¹⁷³ Which? also found that groups on the same platforms even offered fake reviews.¹⁷⁴ In response to the spread of fake reviews, the Modernisation Directive amended UCPD Annex I by forbidding businesses to commission another legal or natural person to submit false consumer reviews or endorsements or to present consumer reviews without taking proportionate steps to check whether they have been submitted by consumers who have actually used or purchased the product.¹⁷⁵ Although national rules transposing the Directive apply since 2022, the 2025 Consumer Conditions Scoreboard found that 66% of respondents had found fake reviews in the last 12 months.¹⁷⁶

Another unfair commercial practice is that businesses incentivise leaving positive reviews and hinder the submission of negative ones. Most consumers do not leave reviews after their purchases unless they have had particularly positive or negative experiences. Companies therefore offer incentives for reviews such as discounts, refunds, vouchers. In 2021, our Dutch member Consumentenbond found that reviews tend to be more positive when individuals receive products or services for free in exchange.¹⁷⁷ The German Competition Authority confirmed this trend in a study which found that incentivised reviews are often more positive than those that are not

¹⁷⁰ Sahut/Laroche/Braune, Antecedents and consequences of fake reviews in a marketing approach: An overview and synthesis, <https://www.sciencedirect.com/science/article/abs/pii/S0148296324000766?via%3Dihub>.

¹⁷¹ Commission, Behavioural study on the transparency of online platforms, p. 44, https://commission.europa.eu/publications/behavioural-study-transparency-online-platforms-2018_en.

¹⁷² Stiftung Warentest, Wie Verkäufer mit gekauftem Lob Kunden manipulieren, <https://www.test.de/Fake-Bewertungen-Wie-Verkaeuer-mit-gekauftem-Lob-Kunden-manipulieren-5401497-0/>.

¹⁷³ Which?, Facebook, Google and Trustpilot fail to filter out fake reviews, Which? finds, <https://www.which.co.uk/policy-and-insight/article/facebook-google-and-trustpilot-fail-to-filter-out-fake-reviews-which-finds-aqNh93X0WxCW>.

¹⁷⁴ Which?, Facebook fake review groups targeting Amazon, Google and Trustpilot, <https://www.which.co.uk/news/article/facebook-still-infiltrated-by-fake-review-factories-aTTJ24L5vYyJ>.

¹⁷⁵ UCPD Annex I, No 23b and 23c.

¹⁷⁶ Commission, 2025 Consumer Conditions Scoreboard, p. 13, https://commission.europa.eu/document/2816337b-4fd1-4db2-a71c-d14a206a5a93_en.

¹⁷⁷ Consumentenbond, Reviews op websites: waar moet je op letten?, <https://www.consumentenbond.nl/online-kopen/reviews-op-websites>.

incentivised.¹⁷⁸ In 2023 our UK member Which? found that 1 in 10 customers of a well known e-commerce platform were offered different forms of incentives to leave positive feedback or to turn negative reviews into positive ones.¹⁷⁹ Additionally, our German member vzbv found in 2022, that businesses facilitate the submission of positive reviews, while negative reviews were deleted or their submission obstructed.¹⁸⁰

Another problem is the misleading nature of star ratings. In 2019, a study conducted by our German member Stiftung Warentest showed that consumers tend to associate star ratings directly with the quality of a product or service and believe they are calculated as an average of all reviews.¹⁸¹ In fact, star ratings often mix reviews of product quality with reviews of business quality such as customer service and delivery. Additionally, factors like the date of a review, the perceived usefulness of a review and its authenticity also influence star ratings. The Modernisation Directive prohibited under UCPD Annex I to misrepresent consumer reviews in order to promote products.¹⁸² However, even after the new provisions became applicable, our German member vzbv found that star ratings still often mix reviews of products and reviews of the business.¹⁸³

The DSA requires platforms to remove fake reviews upon notice by authorities or trusted flaggers. VLOPs and VLOSEs must go a step further by including the risks associated with fake reviews in their risk assessment and risk mitigation measures. However, unfair commercial practices related to online reviews go beyond the scope of the DSA. In its UCPD guidance, the Commission states that the new prohibitions that the Modernisation Directive introduced to UCPD Annex I¹⁸⁴ also prohibit engaging consumers who purchased a product and granting them remuneration for posting positive reviews, or obtaining the withdrawal of negative reviews.¹⁸⁵ The guidance document further states that the new prohibition apply to reviews of products and reviews of businesses. However, since the UCPD guidance is not legally binding, courts will have to rule about the legality of the practices mentioned above on a case-by-case basis.

¹⁷⁸ Bundeskartellamt, Sektoruntersuchung Nutzerbewertungen, p. 78, https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Sektoruntersuchungen/Sektoruntersuchung_Nutzerbewertungen_Bericht.pdf?__blob=publicationFile&v=4.

¹⁷⁹ Which?, One in 10 Amazon customers offered 'bribes' for positive reviews, <https://www.which.co.uk/news/article/one-in-10-amazon-customers-offered-bribes-for-positive-reviews-aUARn0z1qLUu>.

¹⁸⁰ Vzbv, Kein Verlass auf Online-Bewertungen, <https://www.vzbv.de/pressemitteilungen/kein-verlass-auf-online-bewertungen>.

¹⁸¹ Stiftung Warentest, Das steht in den Sternen, <https://www.test.de/Fake-Bewertungen-Wie-Verkaeuer-mit-gekauftem-Lob-Kunden-manipulieren-5401497-5624942/>.

¹⁸² UCPD Annex I, No 23c.

¹⁸³ Vzbv, Bewertungen im Netz, p. 2, https://www.vzbv.de/sites/default/files/2023-07/2023-07-06_%20Kurzpapier%20Bewertungen_Evaluation%20UWG_barrierefrei.pdf.

¹⁸⁴ UCPD Annex I, No 23b and 23c.

¹⁸⁵ Commission, Guidance on the interpretation and application of the UCPD, p. 94, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)).

BEUC Recommendations

- Only verified users, with accounts, purchase history, or which have real interaction with the business, should be able to post reviews, to further limit the risk of fake reviews.
- Policymakers should prohibit to incentivise reviews and prevent businesses from refusing or to delete negative reviews.
- Businesses should provide information about the meaning of star ratings, including the factors they are taking into account. This information should be available in a clear and transparent way, directly next to the rating scheme.

For more information, please refer to our position paper
[‘Turning stars into trust: how to make online reviews more reliable’](#).

3.9. Resale of event tickets

Consumers often struggle to buy event tickets from primary sellers at face value as tickets are sold out quickly. One reason for this is the use of bots which buy high amounts of tickets in order to resale them at higher prices.¹⁸⁶ The Modernisation Directive introduced a prohibition to UCPD Annex I for the resale of tickets bought using bots.¹⁸⁷ However, as it is difficult to prove the use of bots,¹⁸⁸ the effectiveness of these rules is limited. Consequently, and despite the new rules, tickets still often sell out within minutes and reappear on resale platforms at highly inflated prices.¹⁸⁹ According to a Commission study, 33% of consumers indicated that they had already experienced a situation where they wanted to purchase a ticket for an event but only saw tickets from secondary sellers available at a higher price.¹⁹⁰ Instead of addressing the problems of bots, policymakers should tackle the issue of inflated prices, as some Member States already do or plan to like in the UK.¹⁹¹

Consumers who are lucky enough to get tickets on the primary market, may nevertheless not be able to use it due to unforeseen circumstances. Ticket sellers often take advantage of this risk by prohibiting the resale of tickets in their terms and conditions and offering ticket insurance in addition to the ticket. Of course, there is nothing wrong with offering an insurance to limit financial damage caused by unforeseeable circumstances.

¹⁸⁶ Stone, Up to 40 percent of traffic on ticket sites is automated. Here’s why that’s bad for security, https://cyberscoop.com/ticket-bots-distil-networks-2019-research/?utm_source=chatgpt.com.

¹⁸⁷ UCPD Annex I, No 23a.

¹⁸⁸ UK Parliament, Problems in the ticketing market,

https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/733/73306.htm?utm_source=chatgpt.com.

¹⁸⁹ Izundu, Price of resale tickets to be capped under plans to tackle touts, <https://www.bbc.com/news/articles/cdx9x8v8p04o>.

¹⁹⁰ Commission, Report on the implementation of the Modernisation Directive, p. 33, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024DC0258>.

¹⁹¹ The resale of tickets above face value is prohibited in Belgium, Denmark,

https://www.beuc.eu/sites/default/files/publications/beuc-x-2019-034_resale_of_tickets_-_questions_and_answers.pdf, and Ireland, <https://www.gov.ie/en/department-of-enterprise-tourism-and-employment/press-releases/new-law-banning-ticket-touting-comes-into-force/>, and the UK is planning to do the same: <https://www.bbc.com/news/articles/c77z2l3yzl8o>.

But it is unfair, if businesses create this financial damage themselves by prohibiting the resale of ticket. Other sellers allow the resale of tickets but only on their own resale platforms. Our Dutch member Consumentenbond pointed out that they can then impose resale conditions that disadvantage consumers, for instance that tickets can only be resold for high service fees or only if the event is sold out.¹⁹²

BEUC Recommendations

- Policymakers should prohibit the resale of event tickets above their face value.
- Ticket sellers should not be allowed to prohibit the private resale of tickets.
- Professional and private resellers should indicate the following information: the face value of the ticket, the seat, row or section to which the ticket gives access and any restrictions regarding the use of the ticket set by the primary seller.

END

¹⁹² Consumentenbond, Je ticket doorverkopen? Dat is steeds moeilijker, <https://www.consumentenbond.nl/acties-claims/nieuws/2024/ticketdoorverkoop>.