

# Public consultation for the Fitness Check of EU consumer law on digital fairness

Fields marked with \* are mandatory.

## Introduction

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The Commission announced in the [New Consumer Agenda](#) that it will analyse whether additional legislation or other action is needed in the medium-term in order to ensure equal fairness online and offline. In March 2022, the Commission launched a **Fitness Check of EU consumer law on digital fairness** in order to determine whether the existing key horizontal consumer law instruments remain adequate for ensuring a high level of consumer protection in the digital environment. The Fitness Check will evaluate three Directives:

- [Unfair Commercial Practices Directive 2005/29/EC](#);
- [Consumer Rights Directive 2011/83/EU](#);
- [Unfair Contract Terms Directive 93/13/EEC](#).

The recently adopted [Modernisation Directive](#) and [Digital Content Directive](#) address some of the digital challenges that consumers face, for example as regards the transparency of personalised pricing, consumer reviews, 'free' digital services, ranking of search results and obligations of online marketplaces. Additional protections are forthcoming within new EU legislation such as the [Digital Services Act](#), [Digital Markets Act](#), [Artificial Intelligence Act](#) and [Data Act](#). The Fitness Check will examine the adequacy of the existing EU rules in dealing with consumer protection issues such as, but not limited to, consumer vulnerabilities, dark patterns, personalisation practices, influencer marketing, contract cancellations, subscription service contracts, marketing of virtual items (e.g. in video games) and the addictive use of digital products. It will assess whether the existing legal framework would benefit from a targeted strengthening or streamlining, while taking into account and ensuring coherence with recently adopted and forthcoming EU legislation. It will also examine the scope for any burden reduction, cost savings and simplification.

From 17 May – 14 June 2022, the Commission conducted a [Call for Evidence](#), where it invited all interested parties to submit their initial feedback to the Fitness Check. With this public consultation, the Commission is continuing to gather feedback on the Fitness Check from all interested parties.

This public consultation will be open for 12 weeks.

You can reply in any EU official language.

The public consultation is directed at all stakeholders and the general public. It consists of a **short questionnaire** aimed at individual consumers and an **in-depth questionnaire** aimed at organisations (consumer and businesses associations, public authorities, companies etc.). The in-depth questionnaire is optional for consumers.

When answering a question, you will be asked to tick one of the provided multiple choice replies. You will also be able to add comments in response to certain questions, should you wish to do so. If you don't know to the answer to a question, please tick "I don't know".

Please make sure to save a draft of the questionnaire regularly as you fill it in, and to submit the questionnaire ("submit" button at the very end) before the end of the consultation period. You can download the questionnaire in PDF format before starting to help you with the preparations or discussions within your organisation. You will be able to download an electronic copy of your replies.

## About you

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### \* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

### \* I am giving my contribution as

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Academic/research institution

- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* First name

Ilari

\* Surname

Kallio

\* Email (this won't be published)

ilari.kallio@kauppa.fi

\* Organisation name

*255 character(s) maximum*

Finnish Commerce Federation

\* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

## \*Country of origin

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

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|---|---|--|--|
| <input type="radio"/> Afghanistan         | <input type="radio"/> Djibouti                            | <input type="radio"/> Libya            | <input type="radio"/> Saint Martin                                 |
| <input type="radio"/> Åland Islands       | <input type="radio"/> Dominica                            | <input type="radio"/> Liechtenstein    | <input type="radio"/> Saint Pierre and Miquelon                    |
| <input type="radio"/> Albania             | <input type="radio"/> Dominican Republic                  | <input type="radio"/> Lithuania        | <input type="radio"/> Saint Vincent and the Grenadines             |
| <input type="radio"/> Algeria             | <input type="radio"/> Ecuador                             | <input type="radio"/> Luxembourg       | <input type="radio"/> Samoa  |
| <input type="radio"/> American Samoa      | <input type="radio"/> Egypt                               | <input type="radio"/> Macau            | <input type="radio"/> San Marino                                   |
| <input type="radio"/> Andorra             | <input type="radio"/> El Salvador                         | <input type="radio"/> Madagascar       | <input type="radio"/> São Tomé and Príncipe                        |
| <input type="radio"/> Angola              | <input type="radio"/> Equatorial Guinea                   | <input type="radio"/> Malawi           | <input type="radio"/> Saudi Arabia                                 |
| <input type="radio"/> Anguilla            | <input type="radio"/> Eritrea                             | <input type="radio"/> Malaysia         | <input type="radio"/> Senegal                                      |
| <input type="radio"/> Antarctica          | <input type="radio"/> Estonia                             | <input type="radio"/> Maldives         | <input type="radio"/> Serbia                                       |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini                            | <input type="radio"/> Mali             | <input type="radio"/> Seychelles                                   |
| <input type="radio"/> Argentina           | <input type="radio"/> Ethiopia                            | <input type="radio"/> Malta            | <input type="radio"/> Sierra Leone                                 |
| <input type="radio"/> Armenia             | <input type="radio"/> Falkland Islands                    | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore                                    |
| <input type="radio"/> Aruba               | <input type="radio"/> Faroe Islands                       | <input type="radio"/> Martinique       | <input type="radio"/> Sint Maarten                                 |
| <input type="radio"/> Australia           | <input type="radio"/> Fiji                                | <input type="radio"/> Mauritania       | <input type="radio"/> Slovakia                                     |
| <input type="radio"/> Austria             | <input checked="" type="radio"/> Finland                  | <input type="radio"/> Mauritius        | <input type="radio"/> Slovenia                                     |
| <input type="radio"/> Azerbaijan          | <input type="radio"/> France                              | <input type="radio"/> Mayotte          | <input type="radio"/> Solomon Islands                              |
| <input type="radio"/> Bahamas             | <input type="radio"/> French Guiana                       | <input type="radio"/> Mexico           | <input type="radio"/> Somalia                                      |
| <input type="radio"/> Bahrain             | <input type="radio"/> French Polynesia                    | <input type="radio"/> Micronesia       | <input type="radio"/> South Africa                                 |
| <input type="radio"/> Bangladesh          | <input type="radio"/> French Southern and Antarctic Lands | <input type="radio"/> Moldova          | <input type="radio"/> South Georgia and the South Sandwich Islands |
| <input type="radio"/> Barbados            | <input type="radio"/> Gabon                               | <input type="radio"/> Monaco           | <input type="radio"/> South Korea                                  |
| <input type="radio"/> Belarus             | <input type="radio"/> Georgia                             | <input type="radio"/> Mongolia         | <input type="radio"/> South Sudan                                  |
| <input type="radio"/> Belgium             | <input type="radio"/> Germany                             | <input type="radio"/> Montenegro       | <input type="radio"/> Spain  |

- Belize
- Benin
- Bermuda
- Bhutan
  
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
  
- Burkina Faso
- Burundi
  
- Cambodia
  
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
  
- Central African Republic
- Chad
- Chile
- 
  
- Ghana
- Gibraltar
- Greece
- Greenland
  
- Grenada
- Guadeloupe
  
- Guam
  
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
  
- Guyana
  
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
  
- Hungary
  
- Iceland
- India
- Indonesia
- Iran
  
- Iraq
  
- Ireland
- Isle of Man
- 
  
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
  
- Namibia
- Nauru
  
- Nepal
  
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
  
- Niger
  
- Nigeria
- Niue
  
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
  
- Palau
  
- Palestine
- Panama
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- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
  
- Syria
  
- Taiwan
- Tajikistan
- Tanzania
- Thailand
  
- The Gambia
  
- Timor-Leste
- Togo
  
- Tokelau
- Tonga
  
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
  
- Uganda
- Ukraine
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| <input type="radio"/> China                            | <input type="radio"/> Israel     | <input type="radio"/> Papua New Guinea                                  | <input type="radio"/> United Arab Emirates                 |
| <input type="radio"/> Christmas Island                 | <input type="radio"/> Italy      | <input type="radio"/> Paraguay  | <input type="radio"/> United Kingdom                       |
| <input type="radio"/> Clipperton                       | <input type="radio"/> Jamaica    | <input type="radio"/> Peru  | <input type="radio"/> United States                        |
| <input type="radio"/> Cocos (Keeling) Islands          | <input type="radio"/> Japan      | <input type="radio"/> Philippines                                       | <input type="radio"/> United States Minor Outlying Islands |
| <input type="radio"/> Colombia                         | <input type="radio"/> Jersey     | <input type="radio"/> Pitcairn Islands                                  | <input type="radio"/> Uruguay                              |
| <input type="radio"/> Comoros                          | <input type="radio"/> Jordan     | <input type="radio"/> Poland  | <input type="radio"/> US Virgin Islands                    |
| <input type="radio"/> Congo                            | <input type="radio"/> Kazakhstan | <input type="radio"/> Portugal  | <input type="radio"/> Uzbekistan                           |
| <input type="radio"/> Cook Islands                     | <input type="radio"/> Kenya      | <input type="radio"/> Puerto Rico                                       | <input type="radio"/> Vanuatu                              |
| <input type="radio"/> Costa Rica                       | <input type="radio"/> Kiribati   | <input type="radio"/> Qatar   | <input type="radio"/> Vatican City                         |
| <input type="radio"/> Côte d'Ivoire                    | <input type="radio"/> Kosovo     | <input type="radio"/> Réunion   | <input type="radio"/> Venezuela                            |
| <input type="radio"/> Croatia                          | <input type="radio"/> Kuwait     | <input type="radio"/> Romania   | <input type="radio"/> Vietnam                              |
| <input type="radio"/> Cuba                             | <input type="radio"/> Kyrgyzstan | <input type="radio"/> Russia  | <input type="radio"/> Wallis and Futuna                    |
| <input type="radio"/> Curaçao                          | <input type="radio"/> Laos       | <input type="radio"/> Rwanda  | <input type="radio"/> Western Sahara                       |
| <input type="radio"/> Cyprus                           | <input type="radio"/> Latvia     | <input type="radio"/> Saint Barthélemy                                  | <input type="radio"/> Yemen                                |
| <input type="radio"/> Czechia                          | <input type="radio"/> Lebanon    | <input type="radio"/> Saint Helena<br>Ascension and<br>Tristan da Cunha | <input type="radio"/> Zambia                               |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho    | <input type="radio"/> Saint Kitts and Nevis                             | <input type="radio"/> Zimbabwe                             |
| <input type="radio"/> Denmark                          | <input type="radio"/> Liberia    | <input type="radio"/> Saint Lucia                                       |  |

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

### \* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.



## Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

## Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

## In-depth questionnaire

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To what extent do you agree or disagree with the following statements?

|  | Strongly agree                   | Agree                            | Neutral                          | Disagree              | Strongly disagree     | Don't know            |
|--|----------------------------------|----------------------------------|----------------------------------|-----------------------|-----------------------|-----------------------|
| * Consumers require a <b>strong legal framework</b> to protect their interests in the digital environment.   | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| * The existing EU consumer laws <b>provide sufficient protection</b> in the digital environment.             | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| * There are some <b>legal gaps and/or uncertainties</b> in the existing EU consumer laws.                    | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| * Traders generally <b>comply</b> well with the existing EU consumer laws in the digital environment.        | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| * Consumer protection in the digital environment should be <b>regulated at EU level</b> in a uniform manner. | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| *  |                                  |                                  |                                  |                       |                       |                       |

|  |                                  |                       |                       |                                  |                       |                       |
|--|----------------------------------|-----------------------|-----------------------|----------------------------------|-----------------------|-----------------------|
| The existing EU consumer laws are <b>coherent with other laws</b> , such as on data protection, new rules applicable to online platforms, artificial intelligence etc. | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| * There is some scope for <b>simplification and burden reduction</b> in existing EU consumer laws.   | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> |

Please explain your replies, including any other statements you wish to highlight.

The current consumer acquis guarantees strong protection and extensive rights for consumers and is largely fit-for-purpose also in the digital environment. The UCPD can effectively be applied also to e.g., practices which aim at misleading consumers regardless of their classification as dark patterns. In order to support the Single Market, the goal of any future legislative action should be simplification and full harmonisation of rules while maintaining high level of consumer protection. It should also be future-proof and reflect the fact that the distinction between “physical” and digital trade of goods and services is blurred as omnichannel sales and new forms of business, such as live shopping and autonomous stores, become more common.

How **positive / negative is the impact** of the existing EU consumer law framework on the following aspects in the digital environment?

|   | Very positive impact             | Rather positive impact | Neutral                          | Rather negative impact           | Very negative impact  | I don't know                     |
|---|----------------------------------|------------------------|----------------------------------|----------------------------------|-----------------------|----------------------------------|
| * <b>Amount &amp; relevance of information</b> available to consumers to compare and make informed purchasing choices.                  | <input type="radio"/>            | <input type="radio"/>  | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| * <b>A level playing field</b> amongst businesses addressing consumers in the EU.   | <input type="radio"/>            | <input type="radio"/>  | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            |
| * <b>Enforcement regarding cross-border infringements</b> through EU coordination mechanisms (Consumer Protection Co-operation network) | <input type="radio"/>            | <input type="radio"/>  | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| * Protection of consumers against <b>unfair commercial practices</b> .  | <input checked="" type="radio"/> | <input type="radio"/>  | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            |
|   |                                  |                        |                                  |                                  |                       |                                  |



|   |                                  |                       |                                  |                                  |                                  |                                  |
|---|----------------------------------|-----------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| * Protection of more <b>vulnerable consumers</b> (e.g. minors, elderly, persons with disabilities). | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            |
| * <b>Availability and choice</b> of products.   | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * <b>Prices</b> of products.  | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| * Number of <b>customers and revenues</b> for businesses supplying consumers in the EU.             | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            |
| * Increase of <b>national e-commerce</b> (i.e. within your EU country).                             | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            |
| * Increase of <b>e-commerce across EU Member States</b> .   | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| * <b>Competitiveness of EU businesses</b> vis-à-vis non-EU businesses.                              | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |

Please explain your reply.

If anything, the current rules are putting too much burden on businesses involved in digital trade e.g., due to excessive information obligations – which are also at risk of becoming insignificant due to information overload on consumers – and the recent avalanche of legislation affecting digital consumer sales (SGD, DCD, Omnibus, DSA to name a few). At the same time, different obligations for businesses established in and outside the EU, both on paper and in practice due to lacking enforcement, are creating unfair competitive advantage for third country traders and by accession to global online marketplaces. The Commission should be cautious with any new legislative proposals and instead invest in enforcing existing consumer law, removing barriers for trade in the Single Market, and gathering evidence on the functioning of new rules.

How strongly do you agree or disagree with each of the following statements about **potential suggestions to improve EU consumer law** for the benefit of consumers?

|  | Strongly agree        | Agree                            | Neutral                          | Disagree                         | Strongly disagree                | I don't know                     |
|--|-----------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| * There is a need for stronger protection against digital practices that <b>unfairly influence consumer decision-making</b> (e.g. manipulative website/app designs such as misleading presentation of 'yes' and 'no' choices; or creating multiple obstacles before reaching a cancellation/unsubscribing link). | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| * Where traders require consumers to agree to terms and conditions (T&C), consumers should receive an easily understandable <b>summary of the key T&amp;C</b> in an easily accessible manner.  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| * When cancelling contracts, a clear technical means (e.g. a prominent <b>cancellation button</b> ) would help consumers to cancel more easily.  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| * Receiving a <b>confirmation</b> (e.g. by e-mail) <b>when a consumer terminates</b> a contract would help consumers check that their contract has been successfully terminated.   | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            |
| * Receiving a <b>reminder before any automatic renewal</b> of digital subscription contracts would help consumers to decide whether they want to renew a contract or not.  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * <b>Reminders</b> about their <b>subscriptions after a period of inactivity</b> could be beneficial for consumers who might otherwise have forgotten that their subscription exists   | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * <b>Signing up for a free trial</b> should not require any payment details from consumers.  | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| * Requiring express consent when <b>switching from a free trial to a paid service</b> could be beneficial for consumers.   | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            |
| *  |                       |                                  |                                  |                                  |                                  |                                  |

|   |                       |                       |                                  |                                  |                                  |                                  |
|---|-----------------------|-----------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| Having the <b>explicit option to receive non-personalised commercial offers</b> (e.g. non-personalised advertising, non-personalised prices) instead of personalised ones could be beneficial in allowing consumers greater choice. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| * There is a need for <b>more price transparency when buying virtual items</b> with intermediate virtual currency (e.g. in-game currency in video games).   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * There is a need for <b>more transparency regarding the probability of obtaining specific items from paid content</b> that has a randomisation element (e.g. prize wheels, loot/mystery boxes in video games, card packs).         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * Allowing consumers to <b>set limits to the amount of time and money</b> they want to spend using digital services (e.g. in-app purchases in video games) could help to better protect consumers.                                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * Clarifying the concept of an <b>'influencer'</b> (e.g. social media personalities) and the obligations of traders towards consumers would be beneficial.  | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            |
| * Where automation/bots are used to deal with consumer complaints and other inquiries, consumers should have the possibility of <b>contacting a human interlocutor</b> upon request.  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| * It should be possible to limit the possibility for resellers to buy sought-after consumer <b>products using automated means (software bots)</b> in order to resell them at a higher price.  | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            |
| * More specific information obligations should apply when products such as <b>event tickets are sold in the secondary market.</b>   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * The concept of the trader's <b>'professional diligence'</b> [1] towards consumers should be further clarified in the digital context.   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| * The <b>burden of proof</b> of compliance with legal requirements should be shifted to the trader in certain circumstances (e.g. when only the company knows the complexities of how their digital service works).                 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| * The concept of the <b>'average consumer'</b> or <b>'vulnerable consumer'</b> could be adapted or complemented by additional benchmarks or factors.[2]   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |

*[1] [In general, 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers - honest market practice and/or the general principle of good faith in the trader's field of activity.]*

*[2] [According to the case law of the EU Court of Justice, the average consumer is defined as reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors. Under current EU law, vulnerable consumers are those that are particularly vulnerable to unfair commercial practices, for example because of their mental or physical infirmity, age or credulity.]*

Please explain your replies, including suggestion(s) for these or other area(s) where the current EU consumer law could be improved.

In our view, the level of consumer protection has not been compromised by new practices used by traders online, but more can be done to ensure effective and uniform enforcement of the current rules. Equally important would be bringing rules for offline and online trade closer to each other instead of separating them further, which would better meet the needs of digital and omnichannel sales.

If some practices are not preferred by all consumers, this doesn't mean they are misleading or otherwise unfair without further evidence. There's no shared view on e.g., which so-called dark patterns are actually harmful for consumers, and which are only perceived to be such. The same applies to non-personalised commercial offers – for some business models and products, services or content personalised offers are vital. While some targeted updates on UCPD based on careful analysis could be considered, general requirements or bans on the use of so-called dark patterns or the obligation to allow an opt-out from personalised offers can cause as much harm as benefits for digital commerce. Finally, our view is that the concepts for average and vulnerable consumers are balanced and well-functioning, and don't require revision apart from possibly consolidating the interpretations of CJEU to improve legal certainty.

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## Contact

JUST-E2-COMMUNICATION@ec.europa.eu

