

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

Fields marked with * are mandatory.

Introduction

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.

In-depth questionnaire

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 strong legal framework 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 provide sufficient protection in the digital environment.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* There are some legal gaps and/or uncertainties in the existing EU consumer laws.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Traders generally comply well with the existing EU consumer laws in the digital environment.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Consumer protection in the digital environment should be regulated at EU level in a uniform manner.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* The existing EU consumer laws are coherent with other laws , 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 simplification and burden reduction in existing EU consumer laws.	<input type="radio"/>	<input checked="" 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 existing EU consumer laws should be compared to legislation that was adopted in recent years, especially the Digital Services Act and Digital Markets Act.

Other issues are described in the attached position paper.

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
* Amount & relevance of information available to consumers to compare and make informed purchasing choices.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* A level playing field amongst businesses addressing consumers in the EU.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Enforcement regarding cross-border infringements through EU coordination mechanisms (Consumer Protection Co-operation network)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Protection of consumers against unfair commercial practices .	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Protection of more vulnerable consumers (e.g. minors, elderly, persons with disabilities).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Availability and choice of products.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Prices of products.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Number of customers and revenues for businesses supplying consumers in the EU.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Increase of national e-commerce (i.e. within your EU country).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Increase of e-commerce across EU Member States .	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Competitiveness of EU businesses vis-à-vis non-EU businesses.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your reply.

More information is available in the attached position paper

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 unfairly influence consumer decision-making (e.g. manipulative website/app designs such as misleading presentation of 'yes' and 'no' choices; or creating multiple obstacles before reaching a cancellation /unsubscribe link).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Where traders require consumers to agree to terms and conditions (T&C), consumers should receive an easily understandable summary of the key T&C in an easily accessible manner.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* When cancelling contracts, a clear technical means (e.g. a prominent cancellation button) would help consumers to cancel more easily.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

* Receiving a confirmation (e.g. by e-mail) when a consumer terminates a contract would help consumers check that their contract has been successfully terminated.						
* Receiving a reminder before any automatic renewal of digital subscription contracts would help consumers to decide whether they want to renew a contract or not.						
* Reminders about their subscriptions after a period of inactivity could be beneficial for consumers who might otherwise have forgotten that their subscription exists						
* Signing up for a free trial should not require any payment details from consumers.						
* Requiring express consent when switching from a free trial to a paid service could be beneficial for consumers.						

<p>* Having the explicit option to receive non-personalised commercial offers (e.g. non-personalised advertising, non-personalised prices) instead of personalised ones could be beneficial in allowing consumers greater choice.</p>						
<p>* There is a need for more price transparency when buying virtual items with intermediate virtual currency (e.g. in-game currency in video games).</p>						
<p>* There is a need for more transparency regarding the probability of obtaining specific items from paid content that has a randomisation element (e.g. prize wheels, loot/mystery boxes in video games, card packs).</p>						
<p>* Allowing consumers to set limits to the amount of time and money they want to spend using digital services (e.g. in-app purchases in video games) could help to better protect consumers.</p>						

* Clarifying the concept of an 'influencer' (e.g. social media personalities) and the obligations of traders towards consumers would be beneficial.						
* Where automation/bots are used to deal with consumer complaints and other inquiries, consumers should have the possibility of contacting a human interlocutor upon request.						
* It should be possible to limit the possibility for resellers to buy sought-after consumer products using automated means (software bots) in order to resell them at a higher price.						
* More specific information obligations should apply when products such as event tickets are sold in the secondary market.						
* The concept of the trader's 'professional diligence' ^[1] towards consumers should be further clarified in the digital context.						

<p>* The burden of proof 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).</p>						
<p>* The concept of the 'average consumer' or 'vulnerable consumer' could be adapted or complemented by additional benchmarks or factors.[2]</p>						

[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.

Further improvements are needed on ensuring more responsibilities and transparency of online marketplaces. Attention should also be directed towards practices that gained importance during Covid-19 (i.e. dark kitchens).

More information is available in the attached position paper.

You can also upload an additional **policy paper** here.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed