



Position of the Chamber of Digital Economy Regarding Assumptions of the Digital Fairness Act Presented as Part of Public Consultations

Thank you for the opportunity to participate in the consultations on the Digital Fairness Act (hereinafter: the **DFA**). The Chamber of Digital Economy (hereinafter: the **e-Chamber**) presents below its position containing comments and suggestions regarding this initiative.

The e-Chamber supports the European Commission's efforts to ensure fairness in the digital economy and a high level of consumer protection. At the same time, we express our concern about the proposal to introduce another horizontal legal act that would overlap with the already existing, complex regulatory framework in the digital sector.

PRELIMINARY INFORMATION

Complexity of Regulations and Risk of Over-regulation

In recent years, the European Union has adopted a number of legal acts that introduce new, far-reaching obligations for businesses operating in the digital environment. The introduction of an additional DFA act may lead to over-regulation of the sector, increasing the risk of duplication of responsibilities, legal uncertainty, interpretation issues, and increased compliance costs, which will weaken Europe's competitiveness in the global market.

Key Challenge: More Effective Law Enforcement Rather Than New Legislation

It should be noted that the vast majority of negative phenomena described in the questionnaire have already been addressed in the existing regulations.

Consumer protection in the digital environment is regulated, among others, by the Unfair Commercial Practices Directive¹ (hereinafter: the **UCPD**), the Digital Services Act² (hereinafter: the **DSA**), the Consumer Rights Directive³ (hereinafter: the **CRD**) and reinforced

¹ Directive 2005/29/EC of the European Parliament and of the Council of May 11, 2005, concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC, and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

² Regulation (EU) 2022/2065 of the European Parliament and of the Council of October 19, 2022, on the Digital Single Market and amending Directive 2000/31/EC.

³ Directive 2011/83/EU of the European Parliament and of the Council of October 25, 2011, on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.



by Directive 2019/2161⁴. The implementation of DFA may therefore lead to duplication of regulations, problems with their interpretation in the context of double regulation, and a reduction in their flexibility (through the introduction of casuistic prohibitions), but it will not improve the effectiveness of their enforcement.

The main challenge is therefore not the lack of regulations, but the lack of consistent and effective enforcement. The DFA and actions taken in this area should focus on ensuring uniform and proportionate application of existing regulations.

Finally, excessive regulation disproportionately burdens smaller entities, start-ups, and companies in the early stages of development, which do not have extensive legal departments. In the area of digital innovation and scaling up business, Europe is already lagging behind the US and Asia. DFA may exacerbate this disparity.

The e-Chamber's Proposals Concerning the DFA

In light of the above, the planned regulations should:

1. Be consistent with the priority of simplifying legislation and the current policy of deregulation, so as to better serve the objectives of consumer protection while supporting a competitive and innovative digital economy.
2. Enable effective and consistent enforcement of existing rules, focusing on closing specific gaps without duplicating existing EU legislation.

POSITION ON SPECIFIC AREAS OF THE DFA PUBLIC CONSULTATION

Dark Patterns (Deceptive Interfaces)

The Current Regulations Are Sufficient

Current EU regulations, in particular the Unfair Commercial Practices Directive (UCPD), are sufficiently flexible and comprehensive to effectively counteract unfair practices in the area of interface design, including dark patterns.

The UCPD covers a wide range of unfair commercial practices, including practices resulting from the design of user interfaces (Articles 6 and 7)⁵. In addition, many forms of manipulation identified in the Commission's survey are already strictly prohibited (under the so-called blacklist in Annex I to the UCPD) - e.g., fake urgency or persistent, unwanted solicitation (nagging).

These conclusions are confirmed both by the Fitness Check study conducted by the European Commission and by the effective actions taken by the Consumer Protection Cooperation (CPC⁶) network and national authorities, including the President of the Office of Competition

⁴ Directive (EU) 2019/2161 of the European Parliament and of the Council of November 27, 2019, amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC, and 2011/83/EU as regards better enforcement and modernization of Union consumer protection rules.

⁵ Section "Data-driven practices and dark patterns" of the Commission Guidelines on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market.

⁶ See, for example, CPC coordinated actions in the area of on-line trading platforms and digital services: https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/market-places-and-digital-services_pl



and Consumer Protection in Poland (hereinafter: the **President of the Office of Competition and Consumer Protection (UOKiK)**⁷). These actions prove that the existing legal framework is sufficient and that its scope allows for the flexible and effective elimination of unfair design practices.

New Regulations Are Not Necessary

The introduction of additional provisions in this area is not justified. Every new legislative idea (a newly drafted ban or mandate) should be preceded by an in-depth analysis of the impact of the new legislation on consumer decisions.

Some of the examples given in the questionnaire refer to ambiguous situations that may restrict design freedom and generate excessive costs for businesses. For example, it is unclear:

- How many steps can be considered excessive (“click fatigue”)?
- Where is the line between acceptable and unacceptable emotionally charged language (“confirm-shaming”)?
- Under what circumstances will differentiation in the colour or font interface for selection options be considered manipulation (“leading choices”)?

The Need for Practical Guidelines

Despite the above, there is a significant gap in the form of a lack of a uniform, horizontal definition of deceptive interfaces (dark patterns). This phenomenon appears in various legal acts (the DSA, the UCPD, Directive 2023/2673⁸, the GDPR⁹, the DMA¹⁰, the AIA¹¹) in different contexts, creating a fragmented and inconsistent regulatory landscape and generating legal uncertainty for businesses.

Therefore, the e-Chamber recommends developing, in cooperation with stakeholders, practical and consistent guidelines (e.g., updating the Commission's guidelines for the UCPD) that will:

- Make it easier for businesses to assess the compliance of interfaces with applicable law.

⁷ See decision of September 1, 2023, No. RPZ 4/2023, decision regarding time counters, decision of December 20, 2023, No. DOZIK - 16/2023 concerning sneak into basket, binding decision of November 15, 2023, No. RWR 9/2023 concerning drip pricing.

⁸ Directive (EU) 2023/2673 of the European Parliament and of the Council of November 22, 2023, amending Directive 2011/83/EU with regard to distance contracts for financial services and repealing Directive 2002/65/EC.

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

¹⁰ Regulation (EU) 2022/1925 of the European Parliament and of the Council of September 14, 2022, on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

¹¹ Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024, on the establishment of harmonised rules on artificial intelligence and amending Regulations (EC) No. 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Act on Artificial Intelligence).



- Enable the distinction between manipulation and legitimate persuasion, which is a natural part of market activities.
- Identify the characteristics of ethical user-centred design.
- Help eliminate unfair practices ex ante.

Such guidelines could list and describe examples of unfair design practices identified in the questionnaire, indicating when they may be considered unfair commercial practices. The guidelines of the European Data Protection Board on deceptive design patterns in social media platform interfaces can serve as an example in this regard¹².

The need to issue the above guidelines is also indicated by the results of the Behavioural Study on Unfair Commercial Practices in the Digital Environment¹³.

Addictive Design

User-engaging design is the foundation of modern digital services and is not a negative phenomenon in itself. Only in cases where the design solutions used lead to aggressive manipulation or undue pressure should they be prohibited (which is the case under Article 8 et seq. of the UCPD).

In addition, recently enacted EU regulations contain additional provisions that can be used to combat the problem of addictive design:

- The DSA requires very large on-line platforms (VLOPs) to conduct an annual assessment of the risk of serious negative effects on users' mental health and requires the implementation of measures to protect under-age users (Article 34).
- Article 5(1)(b) of the AIA prohibits the use of AI systems that exploit people's vulnerabilities (due to age, disability, or particular social or economic situation) in a way that could seriously harm them, including in the context of addictive design¹⁴.

At the same time, further research is needed to identify the most problematic design features. New regulations should fill actual gaps and take into account the real needs of consumers.

In the opinion of the e-Chamber, it is crucial to adopt a risk-based approach and take into account the diversity of business models when formulating rules in this area.

Proposals arising from the European Commission's public consultation questionnaire emphasise the need to tighten controls on "design elements that promote addiction," suggesting that these elements may need to be disabled by default. However, the lack of a

¹² Guidelines 03/2022 on deceptive design patterns in social media platform interfaces: how to recognise and avoid them, available at: https://www.edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-032022-deceptive-design-patterns-social-media_pl (accessed October 13, 2025).

¹³ See p. 7 of the report Behavioural study on unfair commercial practices in the digital environment Dark patterns and manipulative personalization, available at: <https://op.europa.eu/en/publication-detail/-/publication/606365bc-d58b-11ec-a95f-01aa75ed71a1/language-en> (accessed October 13, 2025).

¹⁴ See Commission Communication - Commission Guidelines on prohibited practices in the field of artificial intelligence as set out in Regulation (EU) 2024/1689 (Act on Artificial Intelligence), p. 40.

clear and precise definition of what qualifies as “addictive design” complicates the implementation of such solutions. Without a specific definition, we see the risk of confusing manipulative design techniques that exploit user weaknesses with neutral or beneficial design elements that create positive user experiences (UX).

Specific Features in Digital Products, Such as in Video Games

Current regulations cover many aspects of digital products and games, including:

- Information requirements concerning virtual currencies (the UCPD).
- Rules on loot boxes in games (the UCPD and Commission guidelines on the UCPD).
- Protection of purchases in games and applications for money (the CRD).
- Regulations concerning addictive design (see item 2 of the position).

Regardless of this, in the opinion of the e-Chamber, it is necessary to take action in the areas indicated in the form (loot boxes, micro-transactions, pay-to-win mechanisms) to the extent that they resemble gambling or are based on addictive design techniques.

In particular, the e-Chamber draws attention to unfair practices used against European consumers by e-commerce platforms from third countries. These platforms make extensive use of gamification elements on their platforms, such as reward systems, countdown timers, or interactive tasks designed to encourage repeat interactions in order to increase consumer engagement¹⁵.

These practices can and should be enforced under current law, and the DFA's goal should be to increase the effectiveness of actions in this area. At the same time, the e-Chamber notes that there is currently a lack of coherent legal framework within EU law in the broadly understood area of gambling. A fragmented approach to regulating this area at the EU level, which remains governed by national legislators, may lead to significant ambiguities and interpretative difficulties arising from the failure to take into account the broader regulatory context.

Unfair Personalisation Practices

Personalisation is a desirable trend that allows content and offers to be better tailored to consumer needs. Its use, provided it is in accordance with applicable law, benefits both users and businesses:

- A study on digital advertising conducted by IAB Europe shows that consumers generally have a positive opinion of ads that are relevant (tailored)¹⁶.
- Personalised advertising is also important for businesses and the economy. A study commissioned by Google indicates that personalised advertising generates approximately €100 billion in sales and €25 billion in contribution to the EU's GDP,

¹⁵ See https://www.beuc.eu/sites/default/files/publications/BEUC-X-2025-053_FACTSHEET_Click_to_buy_more.pdf (accessed October 13, 2025).

¹⁶ See Kantar Media study commissioned by IAB Europe <https://iab europe.eu/wp-content/uploads/IAB-Ad-Funding-Online-Services-Report-2025-FINAL.pdf>, p. 14 et seq. (accessed October 13, 2025).



supporting approximately 570,000 jobs¹⁷. Personalised advertising helps SMEs in particular to effectively reach customers and thus compete with larger companies.

The UCPD, CRD, DSA, and GDPR regulations provide a sufficient framework for counteracting unfair personalization - including in the context of prices, rankings, recommendation systems, and advertising. Risks associated with the use of highly sensitive data are already subject to strict legal requirements and may be considered aggressive practices. In particular, the DSA prohibits on-line platforms from showing minors advertising based on profiling and requires VLOPs to provide a recommendation system that is not based on profiling. The requirement to apply the GDPR to personal data processing operations carried out for the purpose of displaying personalised advertisements or personalizing content ensures a high level of protection for fundamental rights in the form of the right to personal data protection and the right to privacy.

At the same time, the DFA should avoid overly broad or imprecise definitions of subjective aspects of the user (e.g., emotional distress), which could hinder enforcement. Restrictions, if indeed necessary, should be based on clear, objective criteria. The introduction of subjective criteria concerning negative mental states risks rendering the regulation ineffective and creating legal uncertainty. This may have a negative impact on businesses, especially SMEs, that base their marketing activities on digital advertising.

In the opinion of the e-Chamber, the DFA should focus solely on filling specific gaps in existing regulations that pose significant risks to the protection of fundamental rights, avoiding duplication of regulations, increasing legal uncertainty, and burdens on businesses.

No restrictions should be imposed that would in practice prevent the use of personalisation - an important tool for delivering relevant information. Excessive restrictions, such as the introduction of mandatory opt-in mechanisms for personalised advertising, would negatively impact the quality of the shopping experience and business models based on targeted advertising.

Harmful Practices by Social Media Influencers

Influencer marketing and social commerce are positive phenomena that support the development of e-commerce and enable effective communication between brands and consumers.

Concerns about crypto advertising or misleading content are already comprehensively addressed in the applicable regulations:

- The UCPD prohibits misleading omissions regarding the promotional nature of content (Article 7), surreptitious advertising, and the purchase of fake reviews (items 11 and 22 of Annex I).
- The DSA (Article 26(2)) requires platforms to introduce features that enable service recipients (e.g., influencers) to clearly label commercial communications.

¹⁷ Implement Consulting Group report commissioned by Google, p. 4
<https://implementconsultinggroup.com/article/personalised-advertising> (accessed October 13, 2025).



Creating new, separate regulations for influencers or advertising agencies could lead to market fragmentation and increased compliance costs. A better solution is to strengthen the education of influencers and advertisers and promote existing tools, such as the Influencer Legal Hub¹⁸, or national guidelines, e.g., the recommendations of the President of the Office of Competition and Consumer Protection (UOKiK) regarding the labelling of advertising content by influencers on social media¹⁹ or the guidelines issued by the Polish Financial Supervision Authority (KNF) as part of the “Finfluencer – Good Practices and Risks” campaign. Moreover, the KNF requires supervised entities to ensure that advertising messages are presented in a clear and transparent manner so as not to mislead consumers²⁰.

As a result, the e-Chamber proposes the introduction of measures that will increase the effectiveness of enforcing existing - and sufficient - regulations.

Unfair Marketing Related to Pricing

The applicable law clearly regulates issues related to price transparency:

- Adding unavoidable fees or concealing hidden costs may be classified as misleading omissions or actions (Articles 6 and 7 of the UCPD).
- The practice of “sneak into basket” has been directly prohibited (item 29 of Annex I to the UCPD).
- The CRD imposes an obligation to obtain explicit consent for any additional fees beyond the agreed main remuneration.

Therefore, the current regulations provide consumers with an adequate level of protection, and further changes are not necessary. In the opinion of the e-Chamber, activities in this area should focus on the effective enforcement of existing regulations.

Issues With Digital Contracts

In the opinion of the e-Chamber, the current regulations provide effective and adequate protection for consumers in the area of digital contracts by providing them with relevant information before and after the contract is concluded.

The e-Chamber opposes the proposal to make it mandatory to allow subscriptions to be cancelled at any time with a short notice period. This would discourage companies from offering promotional, long-term subscriptions and would ultimately lead to an increase in service costs.

There should also be no requirement for explicit consent for each subscription renewal or conversion of a free trial period to a paid subscription. Such a requirement would be

¹⁸ Information available on the website: https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/influencer-legal-hub_en (accessed October 13, 2025).

¹⁹ Recommendations available in English on the website: <https://uokik.gov.pl/en/influencer-marketing> (accessed October 13, 2025).

²⁰ See [Dobre praktyki dla finfluencerów - Komisja Nadzoru Finansowego](#) (accessed October 17, 2025).

burdensome for users and would discourage businesses (in particular start-ups and SMEs) from offering free trial periods.

Possible implementation of solutions concerning the “cancel button” for contracts should be based on research and provide flexibility for businesses. Directive 2023/2673 introduced a mandatory withdrawal button into the CRD. The conclusions drawn from the implementation of this regulation could be helpful in assessing planned actions in the area of subscription termination.

Simplification Measures

The e-Chamber strongly supports measures aimed at simplifying EU consumer law.

We recommend that the European Commission conduct a thorough assessment of the legitimacy of introducing specific solutions within the framework of the DFA, in particular with regard to whether the intended objectives cannot be achieved through more effective uniform enforcement of existing regulations. Any new legislative initiative should clearly demonstrate its added value and avoid duplication of responsibilities. It is also essential to ensure that the rules are proportionate, particularly for SMEs, and to strike a balance between protecting consumers and promoting the competitiveness of the European digital sector.

In addition, the e-Chamber recommends that, in the spirit of simplifying the law, efforts should focus on the most significant risks (in terms of harmfulness and scale of occurrence) that cannot be eliminated by enforcing existing legal regulations.

The current legal framework addressing consumer-harmful practices in the digital environment comprises multiple acts (the DSA, the GDPR, the CRD, the UCPD, the DMA, the AIA), leading to overlapping obligations, interpretative difficulties, and inconsistent enforcement at the national level.

The e-Chamber takes the view that the European Union's consumer policy should focus on the effective enforcement of existing regulations in order to ensure a high level of consumer protection and to guarantee legal certainty and a level playing field for all participants in the single market.

Strengthening consumer law enforcement mechanisms in the public law dimension may include reforming the CPC (the Consumer Protection Cooperation Regulation²¹) or issuing guidelines. In terms of private law, strengthening the position and protection of consumers could involve changes to the directives on ADR²² and representative actions²³.

Horizontal Issues

No Need to Raise the Standard of the Average Consumer Model

²¹ Regulation (EU) 2017/2394 of the European Parliament and of the Council of December 12, 2017, on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No. 2006/2004.

²² Directive 2013/11/EU of the European Parliament and of the Council of May 21, 2013, on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC.

²³ Directive (EU) 2020/1828 of the European Parliament and of the Council of November 25, 2020, on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.



The institutional model of the average consumer is a key, well-established model in EU consumer protection law. This model, which characterises consumers as sufficiently well-informed, observant, and circumspect, was adopted to ensure a balance between the need to protect consumers and the promotion of free trade in a competitive market. This model serves as a reference point for assessing consumer characteristics (including e-consumers) that may guide their knowledge and behaviour in the market. The aim of this approach is to strike a balance between what can reasonably be expected from consumers and businesses, including in the digital environment.

The UCPD is therefore based on the assumption that provisions prohibiting actions that could only mislead a very gullible, naive consumer are disproportionate and create an unjustified barrier to trade.

The e-Chamber is critical of the proposal to raise the standard for consumers operating in the digital environment. By adopting this standard for evaluation, virtually any persuasive design action could be considered a dark pattern that misleads vulnerable consumers. This would open the way for claims to be pursued and legitimate actions by entrepreneurs to be challenged.

Regulations that would consider every consumer on-line to be vulnerable (more susceptible) would lead to disproportionate burdens on businesses and would also discriminate against businesses operating in the on-line environment.

In light of the above, we believe that the UCPD, based on the average consumer model, is sufficient and flexible enough to effectively enforce unfair market practices in interface design, including dark patterns.

Fairness by Design

According to the e-Chamber, there is no need to introduce a new, explicit principle of fairness by design. Existing regulations already require the integration of principles of integrity and transparency at an early stage of design. A more effective approach is to clarify the current regulations through court rulings or official guidelines.

Age Verification

The e-Chamber is critical of the establishment of a verification requirement, regardless of the nature of the services offered to minors and the identified levels of risk. Such a requirement would be unjustified and would place a disproportionate burden on businesses. The DFA should promote a risk-based approach, in line with the Commission's guidelines on Article 28 of the DSA²⁴.

²⁴ Commission Communication - Guidelines on measures to ensure a high level of privacy, security, and protection of minors on-line pursuant to Article 28(4) of the DSA.



CHAMBER OF DIGITAL ECONOMY

The Chamber of Digital Economy
Łucka 18/76,
00-845 Warsaw

KRS: 0000474028
NIP: 701-039-19-22
REGON: 146832492

Phone: +48 506 577 824
biuro@eizba.pl
www.eizba.pl

poświadczenie złożenia podpisów i pieczęci elektronicznych

Certyfikat dla dokumentu o Autenti ID: 14d87263-41b3-4d10-a077-f516fe034861
utworzonego: 2025-10-21 16:00 (GMT+02:00)

Dokument przekazany do podpisu przez Izba Gospodarki Elektronicznej biuro@eizba.pl, został zabezpieczony pieczęcią elektroniczną Autenti przed wprowadzeniem nieautoryzowanych zmian.



2025-10-21 16:00 (GMT+02:00)

Patrycja Staniszevska

patrycja.staniszevska@eizba.pl



**Podpis elektroniczny
zabezpieczony pieczęcią Autenti**

Uwierzytelnienie: e-mail

Powód: Podpisanie dokumentu

Adres IP: 109.206.213.204

2025-10-21 16:01 (GMT+02:00)

Autentyczność oraz integralność podpisanego dokumentu przed wprowadzeniem nieautoryzowanych zmian została zabezpieczona pieczęcią elektroniczną Autenti.



2025-10-21 16:01 (GMT+02:00)

Niniejszy dokument stanowi poświadczenie wykonania usługi zaufania, w tym złożenia podpisów elektronicznych, zgodnie z zasadami opisanymi w Polityce.

Osoby podpisujące dokument złożyły podpisy elektroniczne zgodnie z zasadami opisanymi w Polityce Usług Zaufania Autenti dla podpisów elektronicznych Autenti oraz obsługi podpisywania dokumentów (dostępnej na: <https://autenti.com/pl/regulaminy>) oraz oświadczyły, że znają i akceptują treść podpisywanego dokumentu a także potwierdziły poprawność i prawdziwość danych służących do złożenia podpisu elektronicznego.

W ramach składania podpisów elektronicznych przeprowadzono uwierzytelnienie podpisujących.

Usługa została wykonana zgodnie z Rozporządzeniem Parlamentu Europejskiego i Rady (UE) nr 910/2014 z dnia 23 lipca 2014 r. w sprawie identyfikacji elektronicznej i usług zaufania w odniesieniu do transakcji elektronicznych na rynku wewnętrznym oraz uchylające dyrektywę 1999/93/WE (Rozporządzenie eIDAS).

Karta podpisów stanowi poświadczenie Autenti w zakresie realizacji poszczególnych usług zaufania, zgodnie z zasadami ich świadczenia oraz definicjami zawartymi w Polityce.