

PUBLIC CONSULTATION ON DIGITAL FAIRNESS FITNESS CHECK ON EU CONSUMER LAW

Digital Fairness: CCIA Europe Position Paper

Introduction

The Computer & Communications Industry Association (CCIA Europe) welcomes the opportunity to participate in the European Commission consultation on digital fairness, the so-called “Fitness Check on EU Consumer Law”. The current EU legal framework for consumer law is already comprehensive, including the three Directives (and their guidance) that this Fitness Check evaluates.¹ CCIA Europe supports the overall goal of defining and harmonising consumer law at the European level, provided it avoids creating new barriers for companies that wish to operate across borders.

The evaluation of, and potential improvements to, European consumer law should be weighed against guiding principles to ensure it benefits both European consumers and businesses operating in the European Union. There are three key guiding principles that CCIA Europe recommends the European Commission to consider as part of its Fitness Check:

1. Adopt an evidence-based approach
2. Prioritise simplification and harmonisation to ensure consistency with existing and future legal frameworks
3. Respect technological and channel neutrality

Adopt an evidence-based approach

The current Fitness Check should adopt an evidence-based approach. The three Directives currently in force have already expanded the scope of EU consumer law significantly to such an extent that consumer safeguards now apply broadly to all goods and services provided online. Therefore, any upcoming initiative needs to be carefully considered, targeted accordingly, and supported by a robust evidence base.

As the online ecosystem consists of a wide range of players with different business models, it is necessary that any suggestions to further improve EU consumer law should be based on substantiated and quantified consumer needs. While CCIA Europe welcomes the fact that the suggestions in the consultation are specific and targeted, such proposals also need to be justified and workable – i.e. recognising the capabilities and practicalities of companies. In this respect, when weighing new suggestions, it is necessary to take into account that additional regulation would increase the costs of participating in the single market, which is particularly detrimental for smaller companies and those operating low-margin lines of business.

The proposed “cancellation button” to terminate a subscription, for example, shows that there is a clear need to conduct thorough research on consumer behaviour before considering such ideas. As consumers can already return goods they purchased online

¹ Directive of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, available [here](#); Directive of 25 October 2011 on consumer rights, available [here](#); Council Directive of 5 April 1993 on unfair terms in consumer contracts, available [here](#).

within 14 days without any justification, identifying problems encountered by consumers in that process would be necessary to justify the idea of a cancellation button.

Likewise, the proposal to limit the use of automation/bots to deal with consumer complaints and inquiries should better reflect consumers' needs. Starting by surveying consumers on the use of automation for dealing with complaints and inquiries, would also allow for making more precise and workable proposals. An evidence-based approach to the Fitness Check would indeed result in better problem-solving and improve the identification of effective and necessary interventions.

Prioritise simplification and harmonisation to ensure consistency with existing and future legal frameworks

The Fitness Check on digital fairness should take into account existing and upcoming legal frameworks in order to avoid the creation of a patchwork of overlapping and/or conflicting rules. Safeguarding the coherence of the overall EU framework will ensure legal certainty for both consumers and businesses alike.

Coordinating the scaled implementation of consumer law with other areas of European law would help to make sure that any future proposals are proportionate and do not create unnecessary red tape. To that end, it might also be worth considering whether guidance on how existing laws apply to new situations in digital markets and/or interventions outside of consumer protection law will already create the intended effects for consumers. Think, for example, of existing rules that help to promote competition and diversity in digital markets – which directly affect prices, increase consumer choice, and ensure a level playing field among businesses in the EU single market – and thus do not require duplication in consumer law.

The suggestions of this consultation pertain to many pieces of EU legislation, such as the Digital Services Act (DSA) and the General Data Protection Regulation (GDPR).² The Omnibus Directive, which revised the three laws that will be evaluated during the Fitness Check, has also only been in force for under a year.³ Taking stock of the implementation and enforcement of these regulations is therefore key, before considering any further legislation, in order to avoid overlapping or conflicting laws which may reduce legal certainty for businesses.

For instance, the so-called “dark patterns” are already mentioned in multiple initiatives, including the GDPR and while the relevant DSA provision is yet to be implemented.⁴ The DSA also requires additional information in online platforms' terms and conditions (T&Cs), while asking for transparency in their recommender systems, which does not seem to be aligned with this consultation's suggestions on simplified T&Cs or non-personalised commercial offers.

² Regulation of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), available [here](#); Regulation 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 (General Data Protection Regulation), available [here](#).

³ Directive of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, available [here](#).

⁴ DisCo - Disruptive Competition Project, Dark Patterns: Four Key Principles the EU Must Get Right, 25 May 2022, available [here](#).

Respect technological and channel neutrality

The European Commission should strive to respect technological and channel neutrality. In other words, in order to ensure technological neutrality, any of the proposed improvements should be defined by objectives without prescribing a single, specific solution. For example, the suggestion to introduce a cancellation button is a technological solution that is not fit for all situations. An online marketplace allowing contracts concluded between consumers and traders, without the platform itself being a party to that contract, simply may not be able to provide such a button. Similarly, removing the need for consumers to provide their payment details in order to access a free trial ignores that this information is needed to protect the service's functioning and the security of consumers. Instead of prescribing technological solutions, the Commission should think about setting clear objectives it wishes to achieve.

As the consultation focuses on digital practices, the Commission should also ensure that the current EU legal framework for consumer law respects channel neutrality, so as not to put digital business models at a disadvantage compared to offline businesses. Focussing on practices widely adopted by companies online might end up producing a distorted view of the challenges encountered by European consumers. Some companies are simply too small, or too big, to be able to implement such suggestions. Suggestions to introduce specific information obligations for certain sectors, such as event ticketing, would also further complicate the existing EU consumer protection framework, as well as singling out certain industries without adequate justification.

Finally, the proposals regarding automatic renewal and subscriptions without activity should take into account that most digital services and online platforms already offer easy options to unsubscribe. Some more traditional businesses do not always offer easy unsubscription or purposely make unsubscribing more complex than subscribing (e.g. requiring consumers to send letters in writing or imposing penalties). For instance, some European telecommunications companies recently increased their retail prices by more than the official inflation rate, but do not allow their subscribers to withdraw from their contracts without penalty.⁵

Conclusion

CCIA Europe believes that the current EU framework for consumer law, supported by existing and upcoming legislation, already ensures strong consumer protection. We encourage the European Commission to consider the Fitness Check an opportunity to simplify and clarify the existing framework, rather than introducing duplicate provisions. CCIA stands ready to engage in further discussion with the European Commission regarding these recommendations.

⁵ Court of Justice of the European Union, Press Release No 142/15 on Judgment in Case C-326/14 Verein für Konsumenteninformation v A1 Telekom Austria AG, 26 November 2015, available [here](#). Independent.ie, *Competition Watchdog to Probe Phone Providers' Price Guidance*, 16 June 2022, available [here](#).

About CCIA Europe

- The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross section of computer, communications, and Internet industry firms.
 - As an advocate for a thriving European digital economy, CCIA Europe has been actively contributing to EU policy making since 2009.
 - CCIA's Brussels-based team seeks to improve understanding of our industry and share the tech sector's collective expertise, with a view to fostering balanced and well-informed policy making in Europe.
- For more information, visit: twitter.com/CCIAEurope or www.ccianet.org