

TARGETED CONSULTATION ON DIGITAL FAIRNESS

CCIA Europe's Response

September 2023

The European Commission launched a [targeted consultation on digital fairness](#), open until 25 September. Please find below the Computer & Communications Industry Association's (CCIA Europe) response to the questionnaire.

Section 1: Respondent profile information

*** 1. What type of stakeholder are you? (Please tick one option)**

Business association

*** 2. Please specify the name of your organisation:**

“Computer & Communications Industry Association (CCIA Europe)”

*** 5. Which country are you responding from? EU-level association**

*** 6. Please specify the levels at which your organisation operates:**

Please select all that apply

At the international level

At the EU level (including trading intra-EU)

*** 7. Does your enterprise (or for associations, enterprises belonging to your association) trade on a cross-border basis? Please select one option**

Trade on a cross-border basis in the EU and internationally

*** 8. Please specify the fields / economic sectors of activity on which your organisation focuses:**

“CCIA Europe is an international, not-for-profit association representing a broad cross-section of computer, communications, and internet industry firms.”

*** 9. Can the feedback in your responses be analysed in a way that identifies your organisation or would you prefer this is analysed confidentially – aggregated with other feedback of the relevant type of stakeholder, without being attributed to your organisation?**

Please note that, given sensitivities, all costs data will be kept confidential and anonymised.

Our feedback can be analysed in a way that attributes it to our organisation

Section 2: Review of digital fairness in EU consumer law and the application of the Modernisation Directive

Please note: References to the “EU consumer law Directives” in this survey relate to the three Directives within the Fitness Check's scope: (1) the Unfair Commercial Practices Directive 2005/29/EC (UCPD) (2) the Unfair Contract Terms Directive 93/13/EEC (UCTD) and (3) the

Consumer Rights Directive 2011/83/EU (CRD). These were recently amended through the Modernisation Directive (EU) 2019/2161.

Section 2.1 – Effectiveness

Effectiveness considers the extent of progress towards achieving the objectives of the EU’s consumer legislation, and whether the overall regulatory framework is delivering for consumers and traders.

2.1.1 General

*** 10. To what extent have the EU consumer law Directives contributed towards achieving the following objectives?** (Required)

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
Improved functioning of the EU digital single market.	X				
Facilitating e-commerce through uniform rules on information requirements in distance contracts.	X				
Facilitating e-commerce through uniform rules on unfair commercial practices.	X				
Facilitating e-commerce through uniform rules on the right to cancel online purchases within 14 days.	X				
Striking the right balance between ensuring high levels of consumer protection and facilitating e-commerce.		X			
Strengthening consumer protection and trust in purchasing online.					X
Ensuring that consumers are well-informed before they make online purchases.		X			
Ensuring the transparency and fairness of subscription contracts for digital content and services (including their cancellation).	X				
Preventing deceptive practices (dark patterns) in website/app design.	X				
Preventing misleading or aggressive marketing online.	X				
Preventing the unfair online targeting of consumer vulnerabilities for commercial purposes.	X				

Preventing unfair standard contract terms in online contracts.	X				
Protecting consumer rights when using ‘free’ services (involving commercial use of the consumers’ personal data).		X			
Ensuring the transparency and fairness of personalisation practices (e.g. personalised advertising, pricing, offers, ranking, recommendations).		X			
Ensuring transparency and fairness in the marketing of virtual items (including loot boxes) and virtual intermediate currencies.					X
Providing clear rules on the burden of proof / provision of evidence regarding the fairness of commercial practices.	X				

11. Do you have any comments on the impact of the following developments on the application of the EU consumer law framework in the digital environment?

- **Development of relevant case law of the Court of Justice of the European Union:**

N/A

- **Development of interpretative guidance (e.g. Commission’s Guidance on UCPD, CRD, UCTD):**

“The development of interpretative guidance should better coordinate the scaled implementation of consumer law with other areas of European law. Further guidance would help to make sure that any future proposals in consumer law 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.”

- **Application of the amendments to EU consumer legislation introduced by the Modernisation Directive:**

“The Modernisation Directive has only been in force for a year. Taking stock of the implementation and enforcement of these revised regulations is therefore key, before considering any further legislation, in order to avoid overlapping or conflicting laws which may reduce legal certainty for businesses.”

- **Application of new legislation in the digital area (e.g. the Digital Services Act, Digital Markets Act, General Data Protection Regulation, proposals for an Artificial Intelligence Act, Data Act):**

“Most of the digital legislation mentioned are either early in the implementation process or still under institutional scrutiny. Therefore, the evaluation of this legislation’s impact on the EU consumer law framework is premature. However, an overall simplification of existing rules, rather than introducing confusing overlaps, while preserving a high level of consumer protection, would be welcome. This simplification could support the articulation of the framework with recently adopted initiatives. Furthermore, it should be noted that duplication in consumer law of the provisions contained in this digital legislation would be unnecessary and inefficient at best, and confusing and counterproductive at worst.”

*** 12. Overall, to what extent have the EU consumer law Directives provided regulatory certainty in the digital environment?**

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
Regulatory certainty for <u>businesses</u> when trading online in their Member State		X			
Regulatory certainty for <u>businesses</u> when trading online cross-border/in another Member State		X			
Regulatory certainty for <u>consumers</u> when purchasing goods, digital content or services online in their Member State		X			
Regulatory certainty for <u>consumers</u> when purchasing goods, digital content or services online cross-border/in another Member State		X			

*** 13. To what extent have the EU consumer law Directives provided regulatory certainty about the applicable rules in the following specific areas?**

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
Online sale of physical products and services		X			
Online sale of digital content and services		X			
Provision of “free” digital services (in exchange for consumers’ data)		X			
Online advertising (including influencer marketing and personalised advertising)		X			
Use of AI systems in the context of B2C commercial practices (including AI chatbots)		X			

Personalised pricing		X			
Other personalisation practices (ranking, offers, recommendations etc.)		X			
Fairness requirements concerning the design of online interfaces (websites, apps)		X			
Virtual items (including loot boxes) and virtual intermediate currencies in digital services, such as video games					X
Standard contract terms	X				
Subscription contracts for digital content and services	X				
Rules on burden of proof in disputes/enforcement of fairness requirements	X				
Use of dropshipping (i.e. shop does not hold those products in stock)					X
Use of scalping (i.e. purchasing of products in high demand using automated tools with a view to resell them at higher price)					X

*** 14. Do you perceive that there are any outstanding legal gaps?**

- Yes
- No
- Don't know

(If yes to Q14) 15. Please provide examples of perceived legal gaps:

“The main legal gap is the fragmentation of the implementation of EU consumer law Directives across Member States, given the different interpretations and room of manoeuvre left to national legislators. This fragmentation creates unnecessary costs and legal uncertainty for businesses, which is an obstacle to the benefits of the Single Market.”

2.1.2 Questions about problematic practices

Whilst recognising that many traders spend resources ensuring that they invest in compliance with EU consumer law, some studies undertaken for the European Commission and wider research point to a range of practices by traders considered to be potentially problematic. This section seeks feedback on the extent to which such practices are prevalent, how far stakeholders agree there is a problem, and considers possible solutions. Some practices are already prohibited and/or addressed in EU law, raising questions around compliance levels and enforcement, whereas others may be pointing at regulatory gaps or uncertainty.

***16. To what extent do you agree or disagree that the following practices are problematic?**

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know
Presence of deceptive practices (dark patterns) in website/app design.		X			
Absence of transparency concerning paid promotions in social media.					X
Problems concerning personalised advertising / commercial communications.					X
Problems concerning personalised pricing.					X
Problems concerning other personalisation practices (ranking, offers, recommendation etc.)			X		
Problems concerning the addictive use of digital products and services (e.g. social media, video games).			X		
Problems concerning the cancellation of subscriptions.			X		
Problems with price hikes in subscriptions, following initial promotional deals.					X
Problems due to automatic conversion of free trials into paid subscriptions contracts.			X		
Problems due to lack of transparency about the actual value of virtual items offered in exchange for virtual intermediate currencies (in digital services such as video games).					X
Use of loot boxes and addiction-inducing design features (in digital services such as video games).					X
Scalping of products using automated software (except event tickets).					X
Use of consumers' data that exploits specific vulnerabilities for commercial purposes (e.g. data indicating a gambling addiction).		X			
Use of AI systems that deploy subliminal techniques beyond a person's consciousness for commercial purposes.			X		
Absence of a clear and intelligible presentation of contractual information.		X			
Problems in communicating with traders due to the use of AI chatbots.			X		

Absence of transparency concerning the “dropshipping” business model (i.e. the fact that the shop does not hold those products in stock).						X
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*** 17. In the past five years, how far have the following potentially problematic B2C digital practices increased or decreased in frequency?**

	Significant increase	Increase	No change	Decrease	Significant decrease	Don't know
Presence of deceptive practices (dark patterns) in website/app design.						X
Absence of transparency concerning paid promotions in social media.						X
Problems concerning personalised advertising / commercial communications.						X
Problems concerning personalised pricing.						X
Problems concerning other personalisation practices (ranking, offers, recommendation etc.)						X
Problems concerning the addictive use of digital products and services (e.g. social media, video games).						X
Problems concerning the cancellation of subscriptions.						X
Problems with price hikes in subscriptions, following initial promotional deals.						X
Problems due to automatic conversion of free trials into paid subscriptions contracts.						X
Problems due to lack of transparency about the actual value of virtual items offered in exchange for virtual intermediate currencies (in digital services such as video games).						X

Use of loot boxes and addiction-inducing design features (in digital services such as video games).						X
Scalping of products using automated software (except event tickets).						X
Use of consumers' data that exploits specific vulnerabilities for commercial purposes (e.g. data indicating a gambling addiction).						X
Use of AI systems that deploy subliminal techniques beyond a person's consciousness for commercial purposes.						X
Absence of a clear and intelligible presentation of contractual information.						X
Problems in communicating with traders due to the use of AI chatbots.						X
Absence of transparency concerning the "dropshipping" business model (i.e. the fact that the shop does not hold those products in stock).						X
Other, please specify:						X

18. Do you have any follow-up comments regarding the problematic practices and how prevalent they are?

“The list of potentially problematic practices identified is complex to assess given the diversity of issues and their vague framing. The bias in the methodology and the wording (e.g. problems about a certain practice are usually considered problematic) do not allow the proper identification of problematic aspects of practices nor their quantification. For example, “problems in communicating with traders due to the use of AI chatbots” are hard to evaluate as such. Indeed, the use of AI chatbots can also be positive, since they are available to consumers all day with quick and efficient answers. This can help traders who are aware of the most common questions, so their support teams can focus on other requests.

Most practices listed correspond to issues that have already been identified and tackled by recent digital legislation. Since this digital legislation is still new and its enforcement is still taking shape, assessing compliance issues or legal gaps is premature. The Modernisation Directive’s implementation, which addresses some of

these practices, is also relatively new. If any further action is considered, the European Commission should leave enough time to evaluate the new digital legislative framework first, while ensuring consumer law adopts an evidence-based approach and respects technological and channel neutrality.”

*** 19. To what extent have the three core EU consumer law Directives been effective in tackling perceived problematic digital B2C practices?**

	Very effective	Quite effective	Somewhat effective	Not effective at all	Don't know
Presence of deceptive practices (dark patterns) in website/app design.		X			
Absence of transparency concerning paid promotions in social media.	X				
Problems concerning personalised advertising / commercial communications.		X			
Problems concerning personalised pricing.		X			
Problems concerning other personalisation practices (ranking, offers, recommendation etc.)	X				
Problems concerning the addictive use of digital products and services (e.g. social media, video games).		X			
Problems concerning the cancellation of subscriptions.	X				
Problems due to price hikes in subscriptions, following initial promotion deals.	X				
Problems due to Automatic conversion of free trials into paid subscriptions contracts.	X				
Problems due to lack of transparency about the actual value of virtual items offered in exchange for virtual intermediate currencies (in digital services such as video games).					X
Use of loot boxes and addiction-inducing design features (in digital services such as video games).					X
Scalping of products using automated software (except event tickets).					X

Use of consumers' data that exploits specific vulnerabilities for commercial purposes (e.g. data indicating a gambling addiction).					X
Use of AI systems that deploy subliminal techniques beyond a person's consciousness for commercial purposes.		X			
Absence of a clear and intelligible presentation of contractual information.	X				
Problems in communicating with traders due to the use of AI chatbots.		X			
Absence of transparency concerning the "dropshipping" business model (i.e. the fact that the shop does not hold those products in stock).		X			
Other, please specify:					X

20. If you consider certain problematic practices to be already covered by EU consumer law, do you have any additional comments on the application of the laws in practice (e.g. are there specific regulatory gaps, a need for more regulatory clarity, guidance and/or more effective enforcement).

“This targeted consultation on digital fairness should take into account existing and upcoming legislation, 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.

The suggested problematic practices of this consultation pertain to many pieces of landmark EU legislation, such as the Digital Services Act (DSA), the Digital Markets Act (DMA), the General Data Protection Regulation (GDPR), and the Artificial Intelligence (AI) Act. Taking stock of the implementation and enforcement of these regulations is therefore key. This needs to be done before considering any further legislation, particularly in order to avoid overlapping or conflicting laws, which may reduce legal certainty for businesses and the effectiveness of the rules for consumers.

To have a good understanding of the effect of these new rules and their interaction with consumer law, the European Commission should allocate enough time for their implementation and enforcement. Asymmetric regulation, such as the DSA and the DMA, should not be carried over to EU consumer law. In the meantime, the Commission should focus on providing guidance on the scaled implementation of digital legislation with consumer law.

Finally, it should be noted that the EU consumer law Directives under evaluation in parallel are under revision via other ongoing initiatives, such as the proposals for a directive on empowering consumers for the green transition and the revision of the directive on distance marketing of consumer financial services. These latest developments should be properly assessed before adding new rules.”

2.1.3 The Modernisation Directive and its likely impacts on effectiveness and relevance of EU consumer law.

The Modernisation Directive (EU) 2019/2161 had to be applied from May 28th 2022, although several Member States were late in their transposition. It amends EU consumer law with additional rules regarding the digital environment, among other areas, and strengthens the overall enforcement of the existing rules through stronger requirements regarding penalties in case of infringements and providing rights for individual remedies for consumers harmed by unfair commercial practices.

21. To what extent, in your opinion, has the Modernisation Directive strengthened consumer protection in the following areas it covers?

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
More transparency in online search results (disclosure of ranking criteria and paid placements) when consumers search for products offered by different traders.					X
More transparency about whether the third party offering products through online marketplaces is a trader or consumer.					X
More transparency regarding the processing and verification of consumer reviews that traders collect and make available.					X
Better access to event tickets as a result of the prohibition of scalping by automated software.					X
More transparency concerning price reduction announcements.					X
Better consumer information about “free” digital content and services (provided in exchange for commercial use of personal data).					X
More transparency when the price is personalised as a result of automated decision-making.					X
Easier communication with the trader through the e-mail address and telephone number.			X		
More deterrence against infringements through stronger penalties.					X
Preventing the misleading presentation of goods (especially food) as being identical to those marketed in other EU countries when there are significant differences ('dual quality' of goods).					X

More deterrence against infringements through better redress for victims of unfair commercial practices.						X
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22. Do you consider that consumers suffer detriment due to unfair commercial practices (i.e. pressure selling, misleading information) in the context of the following selling techniques taking place outside the seller’s regular business premises:

	This selling method is not used in the EU country where our organisation is established/active	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
Doorstep selling (sellers’ visits to consumer’s home).	X					
Commercial excursions (leisure activities organised by a seller involving sale of products).	X					
Organised selling events at places like private homes, hotels, restaurants to which consumers are invited.	X					

(If great or moderate to Q22) 23. What measures are needed to protect consumers better in such cases?

	Better enforcement of existing rules	Stronger customised national rules	Stronger EU-wide rules (prohibitions)	Don't know
Doorstep selling (sellers’ visits to consumer’s home):				
Commercial excursions (leisure activities organised by a seller involving sale of products):				
Organised selling events at places like private homes, hotels, restaurants to which consumers are invited:				
Other approaches, please specify:				

*** 24. Do you consider that consumers suffer detriment due to traders’ practices of marketing goods (through their branding and presentation) as being identical to those goods in other EU countries notwithstanding their differences in composition and characteristics (‘dual quality’)?**

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know

25. Please explain your response to the above question should you wish to do so:

N/A

(If great/moderate to Q24) * 26. What is your opinion regarding measures to tackle such as 'dual quality' practices by traders? Please choose one option:

- The current EU rules based on case-by-case assessment of such marketing practices, taking into account their impact on consumers in individual Member State, are adequate and should be enforced
- Stronger legal rules are needed
- Do not know/question not relevant

(If "Stronger legal rules are needed" to Q26) * 27. In your opinion, which of the following rules would strengthen the legal framework on 'dual quality' practices? (Please tick all that apply – more than one option is possible)

- Banning such marketing practices in all circumstances and in all Member States affected, irrespective of their impact on consumers in individual countries.
- Restricting/specifying the scope of 'legitimate and objective' factors that could justify such marketing practices
- Additional rules about informing consumers when national product versions are differentiated due to 'legitimate and objective' factors.
- Don't know
- Other measures, please specify:

28. Do you have any additional feedback regarding the extent to which the Modernisation Directive is likely to strengthen the effectiveness of the three consumer law Directives in terms of: i) ensuring fitness for purpose for the digital age and ii) strengthening enforcement:

- **Ensuring fitness for purpose of consumer law for the digital age**

“As previously highlighted, the Modernisation Directive has only been in force for a year and its impact is yet to be fully evaluable. However, the Modernisation Directive seemed to have brought sufficient clarity to how consumer law is to cover digital content and services.

Again, it should also be noted that the Modernisation Directive has intertwined provisions with other legislation (the DSA, but also the General Product Safety Regulation or the undergoing revision of the Product Liability Directive). Giving sufficient time for the implementation and enforcement of these frameworks is key for any further evaluation of the Modernisation Directive.”

- **Strengthening enforcement through harmonised penalties in certain cases and rules on consumer remedies**

“The harmonisation of enforcement measures supports legal certainty and contributes to less fragmentation across Member States. However, strengthening enforcement should not solely focus on harmonising penalties and remedies, but also on empowering enforcement authorities through sufficient allocation of resources.”

*** 29. Were there any unforeseen or unexpected consequences of the Modernisation Directive’s amendments in the UCPD, CRD, UCTD and PID? For example, more use by traders of other methods to promote price advantages instead of the - now regulated - price reductions (such as price comparisons, loyalty programmes, personalised discounts etc.)**

- Yes
- No
- Don't know

~~(If yes to Q29) 30. Please identify and explain any unforeseen or unexpected consequences stemming from the Modernisation Directive's amendments in the UCPD, CRD, UCTD and PID below. Please specify which Directive the amendments relate to from among the above-mentioned Directives:~~

2.1.4 Enforcement and regulatory compliance

*** 31. How effective is the enforcement of EU consumer law in the digital environment?**

Please provide your overall perception concerning the enforcement of the Consumer Rights Directive, Unfair Commercial Practices Directive and Unfair Contract Terms Directive respectively in the digital area.

	Very effective	Effective	Neutral/ Neither effective nor ineffective	Ineffective	Very ineffective	Don't know
Public enforcement by administrative authorities.		X				
Private enforcement by qualified entities, such as consumer or business organisations.						X
Resolution of disputes between consumers and traders <u>through court action</u> .				X		

Resolution of disputes between consumers and traders through <u>out-of-court dispute resolution mechanisms</u> .						X
Development of soft law measures (e.g. guidance; compliance sweeps by the CPC Network; voluntary pledges).		X				
Ensuring consumer redress, such as compensation, price reduction, ending the contract.		X				

32. Please explain your response to the above question:

“The current EU legal framework for consumer law is already well-established thanks to the three Directives. Diverging requirements due to implementation that differs from one Member State to the other creates barriers for companies wishing to operate across borders. These discrepancies are particularly harmful to digital services and the data economy, as they are global by nature. Indeed, this framework can be complex for companies and citizens to navigate. A simplification of the existing rules, rather than introducing confusing overlap, while preserving a high level of consumer protection, would be welcome.”

*** 33. To what extent do you agree with the following statements concerning the functioning of the EU consumer law Directives in the digital environment?**

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
There are divergences in national interpretation of EU consumer law <u>across different Member States</u> .		X			
There are divergences in national interpretation of EU consumer law by <u>different competent bodies in the same Member State</u> .			X		
Traders are able to bypass certain obligations in EU consumer law using <u>contractual, technical or behavioural measures</u> .					X

34. If you responded 'to a great extent' or 'to a moderate extent', please explain your answer below, provide any specific examples, and mention what impact this has had:

- **Examples of divergence in national application of EU law (if any interpretation differences)**

“Several provisions of the EU consumer law Directives open room of manoeuvre for divergent implementation by Member States, such as guarantees or price reduction.”

- **Impacts of divergence in application (e.g. on single market)**

“Divergence in applications of EU consumer law Directives can lead to legal uncertainty, higher compliance costs and unintended barriers to the single market.”

*** 35. What are your perceptions regarding the level of compliance among traders in relation to the following main requirements of the EU consumer law Directives?**

	High compliance levels	Medium compliance levels	Low compliance levels	Don't know
Avoiding misleading or aggressive commercial practices (Unfair Commercial Practices Directive)				X
Providing precontractual information (Consumer Rights Directive)				X
Adhering to the 14-day right of withdrawal (Consumer Rights Directive)				X
Avoiding non-transparent and unfair standard contract terms (Unfair Contract Terms Directive)				X
Adhering to requirements concerning price reductions (Price Indication Directive as amended by the Modernisation Directive).				X

Section 2.2 - Efficiency - The costs and benefits of EU consumer law

Efficiency considers the relationship between the costs and benefits of EU consumer law in the digital area. The following questions seek feedback on the costs of complying with EU consumer law for traders and the administrative burdens of implementing the legislation for enforcers. Both quantitative estimates of costs and qualitative feedback would be useful.

Guidance for traders (e-commerce enterprises, platforms, digital service providers etc.) and industry associations:

- We first ask about the compliance costs you incur as a trader (or costs of your members if a trader representative association) in complying with the three pieces of EU consumer legislation within scope (the UCTD, the UCPD and the CRD). The

specific additional costs of compliance in the digital area, to the extent these can be distinguished, are also sought.

- The costs of any changes due to regulatory amendments in the Modernisation Directive are then sought (as these led to changes in the three Directives within scope).
- Enterprises selling cross-border are asked about any one-off costs incurred when entering another EU country's market for the first time to sell / market products/services online, due to national regulatory differences e.g. a cancellation button in Germany, rules on social media influencers in France).

*** 36. To what extent has compliance with EU consumer law requirements in the digital environment resulted in any additional types of general compliance costs for your business? Please answer in respect of the following:**

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
<u>Familiarisation with consumer protection rules for online sales</u> (e.g. developing compliance strategies, allocating compliance responsibilities, reviewing guidance documents on digital sales)					X
<u>Checking compliance with legal requirements to ensure that digital commercial practices</u> (and contract terms) are not unfair or misleading (e.g. checking that website design is not unfair)					X
<u>Adjusting business practices</u> (e.g. changing a website design where deceptive practices are identified, using different standard contract terms if considered unfair, etc.)					X
<u>Cost of external services</u> (e.g. consultants / lawyers hired to support compliance process).					X

37. If costs have increased to a great extent or to a moderate extent, please comment on how significant these additional costs were:

	Significant costs (>20%)	Moderate costs (10-20%)	Low costs (5-9.9%)	Very low costs (<5%)	No additional costs	Don't know
<u>Familiarisation with consumer protection rules for online sales</u> (e.g. developing compliance strategies, allocating compliance responsibilities, reviewing guidance documents on digital sales)						

Checking compliance with legal requirements to ensure that digital commercial practices (and contract terms) are not unfair or misleading (e.g. checking that website design is not unfair)						
Adjusting business practices (e.g. changing a website design where deceptive practices are identified, using different standard contract terms if considered unfair, etc.)						
Cost of external services (e.g. consultants / lawyers hired to support compliance process).						

*** 38. To what extent has compliance with EU consumer law requirements in the digital area resulted in the following additional types of costs relating to information obligations for your business?**

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
Pre-contractual information requirements about the products you sell		X			
Disclosure requirements for platforms on aspects such as search rankings and the processing of consumer reviews.		X			
Cost of complying with the right of withdrawal (products, services)		X			

39. If possible, please provide any examples of estimated one-off and recurring compliance costs, such as staff time, and the costs of external services:

If unable to quantify these costs, please click next to move to next section.

	One-off costs: No. of days of staff time	One-off costs: Cash costs (EUR)	Recurring costs: No. of days staff time	Recurring costs: Cash costs (EUR)
Direct labour costs (e.g., staff time devoted to completing compliance activities)				
Cost of external services (e.g., consultants / lawyers hired to				

support compliance, website redesign)				
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40. Please provide any details or supporting information about relevant costs below:

*** 41. In recent years, how frequently have you checked that you still comply with EU legislation (as transposed into national legislation)? Please tick one option**

- Once a month or more often
- Once every three months
- Once every six months
- Once a year
- Once every two years
- Less than once every two years
- Never

42. Please identify examples of the different costs stemming from the EU consumer law provisions related to the digital environment:

- ~~• Please provide any examples of different types of costs (qualitative):~~
- ~~• If you can quantify these costs, (or at least comment on their size/ magnitude), please do so here (otherwise, leave blank):~~

*** 43. Does your firm (or your industry association members) also trade cross-border?**

- Yes
- No
- Don't know

(If yes to Q43) 44. When you entered another EU country's market, did you incur any additional costs to check compliance with the legal requirements of the other Member State regarding precontractual information, advertising/marketing and standard contract terms?

- Yes
- No
- Don't know

(If yes to Q44) * 45. To what extent when trading cross-border has compliance with consumer law requirements resulted in the following additional types of costs for your business in the digital area due to differences in national transposition and interpretation?

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
Familiarisation with national specific consumer protection rules for online sales and initial		X			

compliance planning (e.g. developing compliance strategies, allocating compliance responsibilities)					
Checking compliance with additional national legal requirements for online sales regarding commercial practices and contract terms (e.g. check website is not unfair by design; ensure that a contract cancellation button exists, if specifically required by national law)		X			
Information obligations for online sales (e.g. additional national precontractual and other information requirements).		X			
Adjusting business practices (e.g. changing a website design where unfair, deceptive practices are identified, using different standard contract terms if considered unfair, etc.)	X				
Cost of external services (e.g. consultants / lawyers hired to support compliance process).		X			

46. Please provide any examples of estimates of the additional costs of complying with consumer law when trading cross-border. If unable to quantify these costs, please click next to move to next section.

	No. of days staff time	Cash costs (EUR)	No. of days staff time	Cash costs (EUR)
<u>Direct labour costs</u> (e.g., staff time devoted to completing compliance activities)				
<u>Cost of external services</u> (e.g., consultants / lawyers hired to support compliance, website redesign). <u>Please do not consider translation costs.</u>				

47. Are there any indirect costs of compliance due to EU consumer law? For instance, are there any opportunity costs or negative impacts on market functioning (e.g. reduced competition or market access)?

*** 48. To what extent have the regulatory amendments stemming from the Modernisation Directive's adoption resulted in new or increased costs in the following areas?**

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know

<u>Familiarisation with the new rules</u> (e.g. developing compliance strategies, allocating compliance responsibilities)		X			
<u>Complying with the new information obligations</u> (for platforms)		X			
<u>Costs of external services</u> (e.g., consultants / lawyers hired to support compliance, website redesign).		X			

(If great/moderate in Q48) * 49. If you responded that compliance costs have either increased to a ‘great or moderate’ extent due to the Modernisation Directive, please provide an indication of the scale of increase in different types of costs in respect of the following new requirements:

	Significant costs (>20%)	Moderate costs (10-20%)	Low costs (5-9.9%)	Very low costs (<5%)	No additional costs	Don't know
Disclosure of ranking criteria and paid placements/advertisements when offering consumers the online facility to search for products offered by different traders.						X
Informing consumers about the processing and verification of consumer reviews						X
Enabling consumers to communicate with the trader via e-mail address and telephone number						X
Indicating ‘prior’ price in price reduction announcements.						X
Informing consumers when the offered price is personalised as a result of automated decision-making.						X
Adjusting the presentation						X

(branding/packaging) of goods or aligning their composition/characteristics in different Member States, in view of the new provisions concerning “dual quality”.						
Strengthening of the rules applicable to “free” digital services provided against commercial processing of the consumer’s personal data (as regards information obligations, the right of withdrawal)						X

51. Please identify and explain the nature and magnitude of the different costs of the Modernisation Directive’s provisions related to the digital environment:

- **Please provide any examples of different types of costs (qualitative)**

“The main costs vary depending on the changes required to achieve compliance, e.g. changes impacting products directly, legal compliance, or human resources.”

- **Can you quantify these costs (or comment on their size/ magnitude)?**

“Quantifying compliance cost per provision, directive or law area is complex for businesses in the tech sector. While we can estimate that the cost of compliance over the last years has increased due to the volume of legislation impacting the sector, it is not possible to clearly attribute it as requirements can sometimes overlap or be fragmented across Member States.”

*** 52. To what extent do the costs of regulatory compliance with the three core EU consumer law Directives (i.e. CRD, UCTD, UCPD) in the digital area differ between SMEs and large businesses? (tick one only)**

- Regulatory compliance is significantly more costly for SMEs than large traders
- Regulatory compliance is more costly for SMEs than large traders
- Costs of regulatory compliance are the same or similar for SMEs and large traders
- Regulatory compliance is less costly for SMEs than large traders
- Regulatory compliance is significantly less costly for SMEs than large traders
- Don’t know

Regulatory simplification & burden reduction

*** 57. To what extent are there opportunities to simplify the legislation or reduce unnecessary regulatory costs without undermining the objectives of the three EU consumer law Directives (i.e. CRD, UCTD, UCPD) in the digital area?**

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know

58. Please explain if you see any opportunities to simplify the legal framework for traders or burden reduction for enforcement authorities? If yes, which? (if you don't know or prefer to skip, please click next)

- ~~• Simplification measures for reducing compliance costs for traders:~~
- ~~• Burden reduction for enforcement authorities:~~

Section 2.2.2 – The benefits of EU consumer law

*** 59. To what extent does your company (or for industry associations, your member companies) agree that the harmonisation of consumer protection rules at EU level has led to the following benefits in the digital area?**

	Strongly agree	Agree	Disagree	Strongly disagree	Don't know
Improved regulatory certainty for businesses.	X				
Creating a level playing field across the EU for businesses through prohibition of unfair commercial practices.		X			
Creating a level playing field by ensuring that standard contract terms are fair.		X			
Single market benefits (harmonised legislation making it easier to sell cross-border to consumers in other EU countries).	X				
Ensuring fairness for consumers in the digital environment.		X			
Improved consumer trust due to better information for consumers in making purchases of goods, services or digital content online.		X			
Striking the right balance between consumer protection, whilst not overburdening traders.		X			
Other benefits – please specify					X

60. Please identify the benefits from the harmonisation of EU consumer law in the digital area and, where possible, explain their nature and scale.

- **Benefits (qualitative)**

“CCIA Europe supports the regulation of consumer protection at the European level to ensure a consistent and harmonised legal framework across Member States. The EU legal framework for consumer law aims to enhance consumer protection, but at the same time also creates an additional (high) burden for businesses. Companies’ compliance efforts to meet these requirements do not always result in higher levels of consumer protection. For example, transparency requirements to inform consumers are not always helpful and could be improved. Information may not always be necessary or relevant, depending on the specific business, products, or services, and lead to information overload for consumers. The combination of unnecessary burdens and uneven implementation negatively impacts e-commerce and digital products to the detriment of EU consumers’ choice, as well as businesses’ ability to operate in the Union.”

- **Benefits (quantitative if possible):** N/A

61. Are there any benefits stemming from the Modernisation Directive’s entry into application? If so, please identify the benefits and, where possible, explain their nature and scale.

- **Benefits (qualitative)**

“The Modernisation Directive has provided a high degree of uniformity and high standards in the single market. However, as previously explained, more time to assess its implementation and enforcement is required.”

- **Benefits (quantitative if possible):** N/A

Overarching efficiency assessment

*** 62. At the societal level, to what extent do the provisions of the three EU consumer law Directives (i.e. CRD, UCTD, UCPD) achieve an adequate balance between regulatory costs for traders and benefits for consumers and other stakeholders? (tick one only)**

- Benefits greatly outweigh the costs of regulatory compliance
- Benefits outweigh the costs of regulatory compliance
- Benefits and costs of regulatory compliance are well-balanced
- Regulatory compliance costs outweigh the benefits
- Regulatory compliance costs greatly outweigh the benefits
- Don’t know

Section 2.3 - Relevance and fitness for purpose

Relevance considers the extent to which the three Directives are fit for purpose, considering how the legislation and its application has evolved over time (e.g. through case law, interpretative guidance). The ongoing relevance of the legislation in addressing new technologies and changes in digital markets, as well as in tackling problematic practices is also considered.

*** 63. Overall, to what extent do the provisions of the three EU consumer law Directives adequately address digital market trends?**

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know

*** 64. To what extent do the three EU consumer law Directives keep up with the following specific evolving developments in digital markets and new technologies?**

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know
Changes in digital services and markets (e.g. the increased role of marketplaces and platforms, subscription service models).		X			
Development of technologies to facilitate transactions by consumers (e.g. smart contracts).		X			
Increased use of connected products (e.g. Internet of Things) to make purchases and carry out everyday tasks (e.g. personal assistants).		X			
Increased use of Artificial Intelligence (AI), including in profiling and personalisation practices.		X			
Increased use of automation (e.g. in consumer services – AI chatbots; businesses using scalping bots).		X			
Growing role of data/Internet of Behaviours (including data held by platforms) in personalisation practices (advertising / marketing and pricing).		X			
Growing use of “free” digital services involving commercial processing of users’ personal data.		X			
Changes in how consumers purchase goods and services (e.g. buying via mobile phone and social media platforms).		X			
New virtual/augmented reality environments (metaverse/immersive technologies).		X			
Increased use of blockchain technology.		X			

Other, please specify:					X
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65. If you have specific comments on whether the Directives adequately address (or conversely, do not sufficiently address) the needs of the EU and key stakeholder groups in light of evolving developments in digital markets, please enter below:

“The three Directives sufficiently address the listed developments in digital markets and new technologies, insofar as they provide general rules applicable to consumer law. Indeed, specific legislation previously mentioned (e.g. GDPR, DSA, DMA, AI Act, GPSR, Data Act) are intertwined with the consumer law framework when it comes to regulating digital practices and technologies.

As a general principle, EU consumer law should remain general, non-prescriptive, and aligned with existing rules. Any changes to the current rules should not take the form of rigid regulation that fails to take specific online practices into account. Similarly, focusing on practices already widely adopted by companies online might end up producing a distorted view of the challenges encountered by European consumers.

General rules that are applicable on a case-by-case basis, on the other hand, more accurately tackle consumers’ concerns. Such general rules also help to ensure channel and technological neutrality, and thus avoid hindering legitimate (or specific) digital business practices. This approach would effectively help avoid creating unintended consequences and impracticalities for market participants.”

*** 66. How far has the application of the Modernisation Directive strengthened the ‘fitness for purpose’ and relevance of the underlying EU consumer law Directives concerned with addressing problematic practices?**

- Significant positive difference
- Some positive difference
- Neutral / No difference
- A negative difference
- A very negative difference

*** 67. To what extent do you agree with the following statements regarding the extent to which vulnerable consumers are appropriately addressed in the three EU consumer law Directives (i.e. CRD, UCTD, UCPD):**

**Note - ‘Situational vulnerability’ is a situation whereby consumers may be vulnerable only in particular circumstances, even if they do not fall under any classic vulnerability category – all consumers could be vulnerable online.*

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don’t know

The concept of an 'average consumer' is adequate in the digital area.		X				
The concept of 'vulnerability' is sufficiently broad to cover all relevant vulnerable groups in the digital area, including situational vulnerability.		X				
The Directives place sufficient focus on accessibility issues for certain types of users (e.g. people without basic digital skills, people with disabilities, partially sighted users).		X				

The burden of proof

68. What are the rules on burden of proof in your national legal system regarding EU consumer law Directives (i.e. UCPD, CRD, UCTD)?

N/A

* 69. To what extent do you agree or disagree with the following statements:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
It is proportionate to keep the burden of proof on consumers to provide evidence of an infringement.		X				
The burden of proof of compliance with legal requirements should be shifted to the business in certain circumstances (e.g. if there is reasonable suspicion of an infringement)				X		
The burden of proof should be reversed and put on traders to demonstrate fairness in cases of major digital asymmetries (e.g. algorithms that consumers cannot understand)				X		

70. If there were adaptations to the current rules on burden of proof, what would be the specific challenges? Do you have suggestions on how these might be overcome? Could there be any unintended consequences?

“The Digital Content Directive and the Sale of Goods Directive have been in application for a year and a half and contain adaptations to the burden of proof. Any further alleviations of the burden of proof should be carefully considered and substantiated. An evidence-based approach should be followed, starting by

collecting data on how the current state of the burden of proof prevents consumers from proving non-conformity. The need for further adaptations is difficult to evaluate and should be avoided at this time.

Indeed, there are no benefits in imposing more requirements on businesses to prove their compliance with consumer law. Further putting the burden of proof on businesses could lead to disproportionate costs, which will eventually be borne by the consumers.”

*** 71. What would be the most likely consequences if there is no further strengthening of the Directives with respect to consumer protection in the digital environment? Indicate the extent to which you agree or disagree.**

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
No consequences, as the current state of consumer protection is adequate.		X				
Limited consequences, as the legislation is already updated directly and indirectly (e.g. through the Modernisation Directive, other digital legislation) and it is sufficiently technology neutral		X				
Risk of adverse consequences, as there would remain legal gaps or legal uncertainty, which cannot be overcome by enforcement or soft measures.				X		

Section 2.4 - Coherence

Coherence considers the internal clarity of the three Directives concerned and also their interaction with other relevant EU legislation concerning digital markets and services, data protection law, product safety law etc.

Internal coherence

*** 72. To what extent are there internal inconsistencies, overlaps or gaps between the provisions of the three EU consumer law Directives in the digital environment?**

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know

(If great, moderate or small in Q72) 73. Please identify and explain any inconsistencies, overlaps or gaps between the different provisions of the three EU consumer law Directives:

N/A

External coherence

*** 74. To what extent is there coherence between the provisions of key EU consumer legislation (i.e. CRD, UCTD, UCPD) and the following existing and proposed EU legislation as regards regulating consumer protection in the digital environment?**

	Strong coherence	Some coherence	No coherence at all	Don't know
Digital Services Act – Regulation (EU) 2022/2065		X		
Digital Markets Act – Regulation (EU) 2022/1925		X		
Digital Content & Services Directive (EU) 2019/770		X		
Audiovisual Media Services Directive 2010/13/EU		X		
Proposal for an Artificial Intelligence Act		X		
GDPR – General Data Protection Regulation (EU) 2016/679		X		
Proposal for a Data Act		X		
ePrivacy Directive / future ePrivacy Regulation		X		
General Product Safety Regulation (GPSR)		X		
Accessibility Act / Web Accessibility Directive				X
Competition law		X		
Other, please specify				X

75. If you identified incoherences (e.g. inconsistencies or duplication) between EU consumer legislation (i.e. CRD, UCTD, UCPD) and other existing or proposed EU laws, please describe these below:

“As previously explained, EU legislation concerning digital markets and services (e.g. DSA, DMA, AI Act, GPSR, Data Act) is still under negotiation or very early in its implementation, which would make evaluation premature. To avoid the creation of a

patchwork of overlapping and/or conflicting rules, EU consumer law Directives should remain unchanged for the time being.

However, several overlaps are already noticeable. For instance, the so-called “dark patterns” are already mentioned in multiple initiatives, such as the DSA, GDPR, guidance of the Modernisation Directive, and European Data Protection Board guidelines. Further evidence would be needed from both online and offline channels to justify additional regulatory intervention and avoid impacting legitimate marketing practices.

In addition, other directives have strayed into consumer protection, already causing overlap, confusion, and duplication. For example, the revision of the Directive on distance marketing of consumer financial services ended up including a provision for a mandatory withdrawal function, after debating that all consumer contracts concluded at a distance should have a one-click cancellation process.”

76. If you identified any legal gaps in the legal instruments mentioned in the previous question in terms of consumer protection in the digital area, please describe them below:

N/A

Section 2.5 - EU Added Value

EU added value considers how much value an EU-wide legal regime has had and what would be the situation were there to be no such legislation in place.

*** 77. To what extent has the EU consumer law framework achieved better outcomes than could have been achieved by Member States regulating these areas themselves?**

	Significantly better outcomes through EU action	Moderately better outcomes through EU action	Moderately better outcomes through Member State action	Significantly better outcomes through Member State action	Don't know
High levels of consumer trust and empowerment in the digital environment.	X				
Effective functioning of the (digital) single market through harmonised rules/ avoidance of fragmentation.	X				
Addressing problematic cross-border commercial practices.	X				

Addressing problematic cross-border standard contract terms.	X				
Facilitating e-commerce through clear rules on distance contracts.	X				
Facilitating cross-border e-commerce.	X				

Section 3: Possible strengthening of the consumer law framework

Whilst this study is not an impact assessment, some previous research has pointed to potential legal gaps or uncertainties in addressing problematic practices in the digital environment. This section seeks views as to whether any further improvements are needed and if yes, whether this should be through regulatory changes, soft law mechanisms or other approaches.

*** 78. How far do you agree that the EU consumer law framework and its application should be strengthened to address existing and/or anticipated future challenges through soft law mechanisms, such as guidance?**

Please indicate the extent to which you agree or disagree with the following statements:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
No changes are necessary.		X				
Update guidance documents periodically.		X				
Clarify any implications of new digital practices, developments / trends in digital markets and services through guidance to reduce legal uncertainty.		X				
Industry initiatives and self-regulation (e.g. codes of conduct, incorporating good business practices into website design, time-outs to prevent over-use / digital addiction).		X				

*** 79. How far do you agree that the EU consumer law framework and its application should be strengthened to address existing and/or anticipated future challenges through legal mechanisms?**

Please indicate the extent to which you agree or disagree with the following statements:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
Introduce new legal provisions to address specific gaps and uncertainties (see follow-up question with examples).				X		
More Court of Justice rulings and national case law to clarify the law over time.					X	

***80. How far do you agree that the EU consumer law framework and its application should be strengthened to address existing and/or anticipated future challenges in the area of enforcement?**

Please indicate the extent to which you agree or disagree with the following statements:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
More harmonised enforcement across the EU-27 (including through coordinated actions and penalties).		X				
More 'soft' enforcement e.g. to raise awareness about existing rules and new rules, working together with traders to address non-compliance.	X					
Other, please specify:						X

81. Do you have any specific comments regarding the measures referred to above? If yes, enter below, if no, go to next question.

- **Soft law mechanisms**

N/A

- **Industry self-regulation**

“Industry self-regulation is a widely developed measure across the tech sector to tackle new issues or share best practices. This self-regulation has already been in place through various European voluntary commitments. This format is fostered by the DSA, which foresees the creation of Codes of conduct. This self-regulatory framework allows for the collaboration of stakeholders. Besides, this type of regulation can help adapt general rules to emerging issues.”

- **Regulatory amendments to address particular misleading or unfair commercial practices or contract terms**

“Any amendments to the current consumer law framework should be evidence-based and aligned with digital legislation. This approach would ensure that overlaps are avoided and that rules remain harmonised across Member States. Evaluation of gaps is difficult at the moment given that both consumer and digital legislation are either recently in application or in the process of adoption.”

- **Enforcement**

“Proper enforcement of existing rules should be the first step to strengthen. Gaps are often related to fragmented enforcement or incomplete implementation of existing rules, and further legislation is not a solution.”

*** 82. What are your views on specific possible changes to the existing EU legal framework which could be considered to strengthen consumer protection and to address problematic practices and/ or legal gaps?**

	Strongly support	Support	Neutral	Don't support	Don't support at all	Don't know
Introduce additional transparency obligations about personalised commercial practices at the moment they are deployed.				X		
Require additional transparency about the dropshipping business model (i.e. the fact that the shop does not hold those products in stock).						X
Prohibit the exploitation of consumer vulnerabilities for commercial purposes (e.g. using			X			

psychographic profiling to target commercial messages to specific groups of consumers).						
Prohibit the deployment of subliminal techniques beyond a person's consciousness for commercial purposes (e.g. AI system that distorts consumer decisions and causes economic harm).				X		
Prohibit traders from using contractual, technical or behavioural measures to bypass obligations in consumer law.						X
Introduce specific rules concerning the length of B2C contracts in the digital environment.				X		
Introduce specific rules to mitigate the negative effects on consumers of addiction-inducing commercial practices in digital products and services (e.g. social media, video games).				X		
Change the indicative nature of the Annex to the UCTD (defining a number of standard contract terms likely to be unfair) and adopt a harmonised approach (a list of standard contract terms that are always unfair or a list of terms that are presumed to be unfair).			X			
Address in the UCTD the imbalances detrimental to consumers resulting from contract terms based on data-driven personalisation practices by traders.				X		
Increase the fairness of the online interface for making consumer complaints, claiming remedies, and enforcing other consumer rights.				X		
Protect consumers against price hikes in subscription contracts following the end of the initial						X

promotional or free subscription period.						
Protect consumers against unwanted automatic renewal of subscriptions.			X			
Limit registration/account creation requirement when consumers want to make a purchase.				X		
Require indication of the real price (e.g. EUR) of virtual items in digital products (e.g. social media, video games) when offered against intermediate currency that the user must purchase in the first step.			X			

83. Do you have any specific comments on the suggestions in the previous question? How far is further regulation likely to be effective, and are there any alternatives?

“Changes to the existing EU consumer law framework should be based on evidence. Indeed, any changes need to respond to actual problems encountered by European consumers, which cannot be resolved by the implementation of existing digital legislation or stronger enforcement.

The three EU consumer law Directives undergoing this evaluation should be assessed jointly with the recently adopted digital regulations. If evidence suggests that action is required, improving enforcement of existing rules and the creation of industry codes of conduct should be first considered. Moreover, these suggestions should refrain from prescribing precise solutions, and instead provide general rules to be applied on a case-by-case basis.

This approach would ensure that the rules are future-proof and do not need an adaptation each time a new technology emerges. Finally, concentrating solely on strategies extensively embraced by online companies could result in a distorted perception of the actual issues faced by European consumers.”

Please find below CCIA Europe’s comments on specific suggestions:

“Introduce additional transparency obligations about personalised commercial practices at the moment they are deployed.”

“This suggestion would benefit from clarifying how it would complement existing rules on online content personalisation, i.e., the GDPR and e-Privacy Directive, without undermining the oversight and enforcement framework of such laws. In addition, the European Commission should avoid requiring companies to present consumers with an overwhelming amount of information which would inevitably

cause more confusion. The concept of ‘personalised commercial practice’ would also need to be clearly delineated.”

“Prohibit the exploitation of consumer vulnerabilities for commercial purposes (e.g. using psychographic profiling to target commercial messages to specific groups of consumers).”

“The DSA already forbids under Article 26 to present advertisements to users based on profiling using special categories of personal data, based on the definition of the GDPR. Article 28 DSA also prohibits profiling of minors based on personal data. Therefore, this suggestion would benefit from better framing its goal and how it completes existing obligations.”

“Prohibit the deployment of subliminal techniques beyond a person’s consciousness for commercial purposes (e.g. AI system that distorts consumer decisions and causes economic harm).”

“Several EU laws already prohibit the use of so-called ‘dark patterns’ and deceptive designs, such as the GDPR, EDPB guidelines, the DSA, the DMA, and the Data Act. The AI Act - still under negotiation - is also set to tackle the question of subliminal techniques. In particular, Article 5 prohibits AI systems that use “subliminal techniques beyond a person’s consciousness in order to materially distort a person’s behaviour in a manner that causes or is likely to cause that person or another person physical or psychological harm”. Any such prohibition would need to only target most harmful practices, and should exempt low-risk, legitimate practices, such as advertising. Further action would have to be based on clear gaps which are not already covered by these five different EU regulations. However, coordination between stakeholders to ensure the articulation of these texts and to better define deceptive designs across online businesses and services would be welcomed.”

“Prohibit traders from using contractual, technical or behavioural measures to bypass obligations in consumer law.”

“Further enforcement across all online businesses, whether for online marketplaces and independent trader websites, would ensure that the current EU consumer law framework is fairly applied.”

“Increase the fairness of the online interface for making consumer complaints, claiming remedies, and enforcing other consumer rights.”

“What constitutes the ‘fairness of an online interface’ should be explained to better understand this suggestion and what issues it aims to address. In any case, legislators should refrain from giving detailed rules on how online interfaces should be organised given their diversity and that one solution does not fit all.”

“Protect consumers against price hikes in subscription contracts following the end of the initial promotional or free subscription period.”

“Free trials represent a costly marketing measure for companies to attract new customers which takes different forms (for example demos, free temporary

subscriptions, or other perks). Payment details are necessary to ensure this system is not abused by consumers, but also for security reasons (e.g. prevention of illegal activity or verifying the required minimum age). Consumers are informed about, and give their consent for, payment at a later moment when giving their payment details. As free trials empower companies to expand their consumer base, these suggestions should refrain from effectively rendering this commercial technique ineffective.”

“Limit registration/account creation requirement when consumers want to make a purchase.”

“In order for the purchase to happen and for the consumer to access certain rights, some data is required when purchasing online. The limitation of such information is already tackled by the GDPR. This proposal would need further clarification as to what it aims to achieve. This suggestion could also risk creating gaps with existing legislation, e.g., anti-money laundering.”

*** 84. Are there any national consumer laws that have emerged to tackle problematic digital practices?**

- Yes
- No
- Don't know

(If yes to Q84) 85. Please provide examples of relevant national consumer laws that aim to tackle problematic digital practices:

“France published in 2023 a Law to regulate commercial influence and combat abuses by so-called “influencers” on social media networks (Loi n° 2023-451). Partially notified to the European Commission (TRIS 2023/0237/F), the Law contains several provisions which:

- Prohibit the promotion by influencers of certain types of products (e.g. financial products, healthcare products, etc.);
- Regulate the promotion by influencers of other types of products (e.g. gambling, labelling, and transparency requirements);
- Seek to implement, or go beyond, the DSA.

Several other national laws can be mentioned: Gesetz für faire Verbraucherverträge (Germany, right to withdrawal), Loi n°2022-1158 (France, right to withdrawal), and Beleidsregel kwalificatie commerciële mediadiensten op aanvraag 2022 (Netherlands, influencers).”

86. If you identified any examples of national legislation, how far would EU level regulatory action help to establish a level playing field? Note – to ensure clarity in the analysis, please answer in respect of the specific national legislation you identified in the previous question.

“The example of the French Law to regulate commercial influence and combat abuses by so-called “influencers” on social media networks goes to the point that the EU should primarily focus on the implementation and enforcement of its current

framework - both EU consumer law and digital legislation. The French Law shows how duplication of provisions can hurt the ongoing implementation of the DSA, with little improvement for consumers. The French Law is also a good example that these general rules are more appropriately adopted at the EU level, on the condition that implementation is harmonised.”

Section 4: Closing remarks

*** 87. Would you be willing to be contacted again to discuss your responses?**

- Yes
- No

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

For more information, please contact:

CCIA Europe's Head of Communications, Kasper Peters: kpeters@ccianet.org