

# Digital Fairness Fitness Check report

**TL; DR:** The European Commission has [released](#) its highly anticipated "Digital Fairness Fitness Check" report, evaluating whether current EU consumer protection laws are fit for the digital age. Key takeaway: **while existing laws** (Unfair Commercial Practices Directive, Consumer Rights Directive, Unfair Contract Terms Directive) **remain valid, their effectiveness is diluted by insufficient enforcement mechanisms and fragmented national laws.** Most importantly, these **laws don't fully address new challenges that customers face online – from dark patterns, addictive design features, targeted advertising, influencer marketing, and difficult-to-manage subscriptions.** As a result of these findings, **we can expect new legislation (a "Digital Fairness Act") and updates to current laws** soon to close the pinpointed gaps in consumer protection online.

## What's in it?

### On Dark Patterns

- **Definition:** These are deceptive or manipulative online designs intended to nudge consumers into making choices they wouldn't normally make. Examples include misleading buttons, fake urgency (e.g., "only 1h left), or hiding the "opt-out" option.
- **Effect:** Consumers often feel misled, trapped, or confused about their decisions. These patterns can lead to unnecessary purchases or subscriptions, limiting consumer control.
- **Direction:** A broad definition or general principle of dark patterns won't be the primary focus of upcoming regulations. Instead, the key priority will likely involve **revising the Unfair Commercial Practices Directive's (UCPD) "blacklist"** of unfair practices to specifically address dark patterns. In parallel, **new legislation could require platforms and apps to implement specific changes to their interface designs**, targeting and eliminating the use of manipulative design tactics. The report also says that the Commission should better clarify dark patterns under the DSA (article 25).

### On Addictive design

- **Definition:** These features are designed by digital services, especially social media and gaming platforms, use design features (e.g., ephemerality, autoplay, infinite scrolling, or gamified rewards, loot boxes, snap streaks) to keep users engaged longer than intended.
- **Effect:** These features, designed for user retention, are now under scrutiny for their negative impact on mental health and well-being.
- **Direction:** These practices fall in a regulatory grey zone, with no specific rules applying to them. However, there are growing concerns about their mental health impacts and time loss, especially with young users. This aspect is likely to be addressed in the **EU-wide inquiry in the broader impact of social media.** A new law (most likely the **"Digital Fairness Act"**) **will include provisions to limit or ban these "addictive" design features**, particularly where they exploit vulnerable consumers or encourage excessive spending.

### On target advertisement

- **Definition:** Targeted ads use personal data to deliver highly personalised ads, which can exploit consumer vulnerabilities (e.g. ads targeting individuals based on their financial struggles or mental health challenges can manipulate consumer decisions).

- **Effect:** Consumers may be pushed into making impulsive purchases based on their vulnerabilities, leading to financial detriment or exacerbating personal issues.
- **Direction:** The Commission could adopt guidelines that restrict how businesses can use personal data for targeted ads, ensuring that vulnerable consumers are not exploited. These guidelines may tighten restrictions on data collection and usage, potentially aligning with existing GDPR provisions.

#### ***On digital subscriptions***

- **Definition:** Many companies make it difficult for consumers to cancel digital subscriptions, using tactics like hidden cancellation options, lengthy procedures, or automatic renewals without clear reminders.
- **Effect:** Consumers find themselves stuck in subscriptions they no longer want, often incurring additional charges due to unclear or manipulative cancellation processes.
- **Direction:** Future amendments to the Consumer Rights Directive may enforce simpler and clearer rules for subscription management, ensuring that unsubscribing is as easy as subscribing.

#### ***On social-media influencers***

- **Definition:** Social media influencers often promote products or services without clear disclosure of their commercial relationship with brands. This lack of transparency can mislead consumers, especially younger audiences, into making purchasing decisions based on perceived authenticity.
- **Effect:** Consumers trust influencers, and when the commercial nature of the content isn't disclosed, they may be swayed by biased opinions presented as personal recommendations.
- **Direction:** We can expect a stricter enforcement of transparency rules for influencer marketing, with potential amendments to existing EU consumer laws like the Unfair Commercial Practices Directive to explicitly cover these practices. In addition, new content requirements for influencers may be introduced in the AVMSD during its post-evaluation, expected by 19 December 2026. Regulating influencers should also be one of the pillars of the upcoming "Digital Fairness Act".

#### ***On personalisation***

- **Definition:** Personalisation refers to the use of consumer data to tailor content, ads, and product recommendations. While this can improve user experience, it can also manipulate consumers into spending more or choosing options that may not be in their best interest.
- **Effect:** Personalised offers can push consumers toward higher-priced options or unnecessary purchases, all under the guise of relevance.
- **Direction:** The Commission may issue new guidelines to set clearer standards on what constitutes fair personalisation, ensuring that companies don't exploit consumers through excessive or misleading personalisation tactics.

### **So, what's next?**

- **Amendments to existing rules? Yes**, particularly for issues like targeted ads, subscriptions, and personalisation. These amendments aim to simplify and enforce clearer standards while ensuring that consumer protection keeps pace with technological developments.
- **New legislation? Yes.** A Digital Fairness Act is likely to be introduced, targeting manipulative online practices like dark patterns, addictive design, and influencer marketing, especially when they exploit consumer vulnerabilities.

**1. Upcoming Regulatory Revisions:** To close these gaps, revisions to existing directives are anticipated:

- **Unfair Commercial Practices Directive (UCPD):** This is expected to be expanded to include clearer prohibitions on digital-specific manipulative practices like dark patterns, misleading urgency claims, and unfair personalised advertising. The UCPD could be updated to explicitly ban or limit these harmful online practices, especially where vulnerable consumers are targeted.
- **Consumer Rights Directive (CRD):** Amendments are expected to simplify subscription management, requiring that cancelling subscriptions must be as easy as signing up. The CRD may also focus on increasing transparency in terms and conditions for digital products and services, ensuring that consumers are fully aware of any hidden costs or obligations.
- **Unfair Contract Terms Directive (UCTD):** This could see changes aimed at making contract terms for digital services clearer and more understandable for consumers, particularly in cases involving automated contracts or online platforms.
- **The Consumer Protection Cooperation (CPC) Network** may also see expanded powers to improve enforcement across borders, addressing the fragmented national approaches and ensuring consistent application of EU laws. Strengthened collective redress mechanisms could also ensure better enforcement of consumer rights.

**2. Upcoming New Laws:**

- **Digital Fairness Act:** This legislation could specifically target some of the practices listed above, namely dark patterns, addictive design features, exploitative targeted advertising, influencer marketing, and the misuse of AI-driven personalisation. The Digital Fairness Act is expected to complement existing regulations like the Digital Services Act (DSA) and Digital Markets Act (DMA), but it will fill in the gaps specifically related to consumer protection in the digital economy. While the DSA focuses on the responsibilities of platforms, the Digital Fairness Act will target manipulative practices and unethical business models.
  - **Dark Patterns:** Define and ban dark patterns outright, ensuring that online interfaces are designed in a fair and transparent manner.
  - **Addictive Designs:** Specific provisions against designs that are intentionally addictive, particularly in areas like gaming and social media.
  - **Targeted Advertising:** New rules could limit how personal data can be used for advertising, especially in cases where vulnerable individuals are targeted. Stricter controls on personalised ads and transparency requirements.
  - **Influencer Marketing:** Clearer rules to ensure influencers disclose all commercial relationships and sponsorships, preventing consumers from being misled by undisclosed endorsements.
  - **AI and Personalisation:** Define how AI systems personalise offers or recommendations, ensuring that they are transparent, fair, and do not exploit consumers.

### Dynamics:

- The Commission's consumer department is advocating for a legislative initiative, but it's still uncertain whether the Fitness Check will lead to a Digital Fairness Act or a broader package of measures.
- The upcoming Digital Fairness Act may result in dropping the e-Privacy Regulation and instead addressing cookies and digital advertising through the Digital Fairness Act.
- There appears to be **internal friction**, as DG Connect (responsible for digital policy) is pushing back against DG JUST (responsible for consumer policy) on dark patterns and addictive design, claiming these issues fall under its jurisdiction.
- Politically, there is **growing momentum for new legislation**. Commissioner-designate McGrath's mission letter from President von der Leyen specifically tasks him with advancing a Digital Fairness Act, and his upcoming hearing should provide further clarity on the direction this will take. His upcoming hearing (4-12 November) will provide additional guidance on the approach he plans to take for this legislation.

### Next Steps:

- **Q1 2025 (tentative):** Launch of the Public Consultation.
- **Q4 2025 (tentative):** Publication of the impact assessment.
- **Q1 2026 (tentative):** Publication of the DFA's proposal.