

EuroISPA Position Paper on the Digital Fairness Act (DFA)

EuroISPA shares the European Commission's objective to protect and empower consumers. Nevertheless, we would like to emphasise that the EU already has the world's most comprehensive consumer protection framework, strengthened by recent major legislative updates, including the Omnibus Directive, DSA, DMA, Data Act, and AI Act. Should the Commission remain committed to proposing a Digital Fairness Act (DFA), such an initiative should fully reflect the overall aim of ensuring a simple, competitive, and innovation-friendly legal framework, which benefits both consumers and businesses. It should also enable effective and consistent enforcement of existing laws, addressing specific gaps without duplicating existing legislation. Hence, before considering any new rules, the Commission should conduct comprehensive impact assessments of existing legislation and its implementation. Only where genuine gaps are demonstrated should evidence-based, targeted, and technologically neutral measures be considered. Even then, the Commission should first assess whether the objectives can be achieved by amending existing instruments—such as the DSA—instead of adopting a new legislative act.

In view of the ongoing consultation process on the DFA, and after consulting with its members, EuroISPA would like to point out some more specific recommendations:

1. Guiding principles

Regulators as partners in compliance

We urge regulators and national authorities to act as engaged collaborators rather than solely as enforcers or rulemakers. By providing ongoing support and clear guidance to businesses in understanding and applying current laws, they can help build a strong culture of compliance. This partnership approach will enhance consumer protection by enabling businesses to operate confidently within a stable, principle-driven legal environment that upholds consumer rights.

Recognising the positive role of business

We believe the digital fairness initiative should acknowledge the constructive contributions businesses make, rather than portraying them as adversarial or exploitative. The Commission has a valuable opportunity to treat industry as an essential partner in strengthening consumer protection and trust, which in turn supports shared prosperity and economic growth. Before introducing new legislation, we encourage EU institutions to prioritize collaborative solutions with businesses operating in Europe, ensuring that all possibilities for partnership and meaningful engagement are fully explored.

2. Dark patterns

The current legal framework already provides the necessary tools to address manipulative or deceptive interface designs, for example through provisions in the Unfair Commercial Practices Directive (UCPD), the DSA, and the AI Act. The priority should be to ensure consistent enforcement and greater consumer awareness rather than to add new, overlapping provisions.

In addition, EuroISPA considers that the concept of “dark patterns” must be clearly defined by practical guidance and limited to practices that genuinely mislead or harm consumers. Poorly defined or overly broad notions could unintentionally restrict legitimate and beneficial design features, such as product recommendations or intuitive navigation aids that improve user experience.

3. Addictive design

Existing EU legislation already provides strong and comprehensive safeguards to address concerns related to addictive design, including through the DSA, the UCPD, the GDPR, and the AI Act. In particular, the DSA specifically addresses recommender systems and interface design, while the GDPR protects against excessive data collection and profiling. The UCPD's principle-based framework is sufficiently flexible to address any manipulative practices that could harm consumers, while the DSA guidelines on the protection of minors include principles to improve online protection, risk assessments, and methodology for age assurance implementation. In addition, Article 5(2) of the AI Act prohibits the use of an AI system that exploits the vulnerabilities of a person due to their age, disability or specific social or economic situation, in a way that is likely to cause them significant harm.

This demonstrates that existing frameworks can effectively address specific concerns without requiring new legislation, and any further action should focus only on clearly identified gaps rather than duplicating existing obligations. Instead of introducing new regulation, a more balanced approach focused on education, transparency, and voluntary industry standards, coupled with enforcement of existing rules, would help address digital addiction without stifling the potential of the European economy.

4. Unfair personalisation practices

Personalisation plays an essential role in organising online information. It enables users to access content and services aligned with their preferences, and supports small and medium-sized enterprises in reaching relevant audiences and competing with larger businesses. Personalisation is already regulated through numerous EU legislative instruments, including the GDPR, the DSA, the DMA, the ePrivacy Directive, and the AVMSD. These frameworks address various aspects including data privacy, user rights, ad transparency, online child protection, and restrictions on special categories of personal data for profiling. If it is proven that any additional measures are necessary and should be addressed through the DFA, they should only focus on addressing specific, well-defined gaps in the legal framework, in order to avoid duplication, uncertainty and increased compliance burdens.

In addition, we consider that consumers should not automatically be considered vulnerable, and that personalisation does not by default exploit consumer vulnerabilities. In many respects, the online environment offers consumers greater transparency and possibilities for verification than the offline world. Any new rules should therefore rely on clear and objective categories when defining vulnerability. Broad or subjective criteria — such as “emotional distress” or “negative mental states” — would create legal

EuroISPA

Rue de la Loi 38, 1000 Brussels

secretariat@euroispa.org

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uncertainty, make enforcement impractical, and risk over-blocking legitimate advertising, particularly harming SMEs.

5. Harmful practices by social media influencers

Influencer marketing is already well covered under EU law, notably through the UCPD, the AVMSD, the E-commerce Directive, and the DSA. Rather than new regulatory intervention, more effective enforcement, better guidance for influencers (for instance by leveraging the [Influencer Legal Hub](#)), and increased education for consumers, are needed.

6. Issues with digital contracts

Digital contracts and subscription services are already comprehensively regulated by the Consumer Rights Directive (CRD), UCPD, and Unfair Contract Terms Directive (UCTD), which ensure that consumers receive clear information, fair terms, and adequate withdrawal rights. These protections have been further reinforced by recent instruments such as the Omnibus Directive, the DSA, and national legislation. EuroISPA recommends focusing on consistent implementation of these rules rather than introducing new prescriptive requirements. Proposals such as a mandatory “cancellation button” or rigid renewal procedures risk creating unnecessary complexity and discouraging beneficial business models such as discounted long-term subscriptions or free trials. Any adjustments should instead be achieved through guidance and best practice recommendations, ensuring that consumer protection and business innovation remain balanced.

7. Simplification measures

Simplification should be a foundational principle underpinning the Commission's deliberation on the merits of any new legislative initiative, including the DFA, not merely an ancillary consideration. This commitment to simplification must permeate the entire 2024-2029 mandate, providing a constant benchmark against which the impact of new provisions on legal complexity is measured. To be effective and coherent, gains to be had from the simplification of EU consumer laws should be entirely integrated into the EU's broader omnibus packages of digital regulations.

EU consumer protection laws have proven effective in safeguarding consumer interests by setting clear standards and providing access to transparent information and remedies. However, the rapid increase in tech-focused EU laws has created a complex and fragmented legal landscape. Instead of introducing new, overlapping regulations, a focus on simplifying and harmonising existing frameworks is crucial.

The overall framework of information obligations, in particular, must be critically reviewed. Excessive requirements place a burden on businesses and make it harder for consumers to identify essential information.

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8. Horizontal issues

Age assurance/age verification

For EuroISPA members, providing age appropriate and safe experiences for minors is crucial. We support age assurance, in line with Article 28 of the DSA and its accompanying guidelines. Measures should ensure that minors receive appropriate protection and any mandatory verification requirements must be carefully considered to ensure they are not disproportionate nor create privacy risks without demonstrable benefits. Existing safeguards in the DSA and GDPR already provide robust protection, and any new obligations should avoid duplication.

Fairness by design

EuroISPA does not see a need for a new "fairness by design" principle. Existing consumer protection legislation, including the CRD and the UCPD, already embeds principles of fairness, transparency, and professional diligence throughout the design and delivery of digital services.

Burden of proof

EuroISPA does not support the idea to reverse the burden of proof. Placing traders under a presumption of non-compliance by reversing the burden of proof risks creating additional effort and costs for businesses, which could negatively impact consumer experience and even lead to increased costs that could hinder consumers' purchasing power. The current consumer regulatory framework already mandates transparency and effective disclosure of important information to consumers.

Definition of consumer

The existing "average consumer" standard provides a stable, consistent benchmark, having been consistently interpreted by the European Court of Justice for over two decades. Critically, this framework is already flexible enough to address specific segments, such as the "vulnerable consumer". Introducing new, vague benchmarks would risk eroding legal certainty for businesses and market operators, potentially compromising the effective application of consumer protection law.

Conclusion

EuroISPA urges the European Commission to pursue a balanced, coherent, and practical approach while considering how to realise its vision of digital fairness for consumers in the EU. The focus should remain on strengthening enforcement, improving coordination, guidance, and simplifying existing rules rather than creating new and potentially conflicting ones.

About EuroISPA

Established in 1997, EuroISPA is the world's largest association of Internet Services Providers Associations, representing over 3,300 Internet Service Providers (ISPs) across the EU and EFTA countries. EuroISPA is recognised as the voice of the EU ISP industry, reflecting the views of ISPs of all sizes from across its member base.

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