POSITION PAPER

on the Call for Evidence for an Impact Assessment on the Digital Fairness Act

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On July 17, the European Commission has announced its intention to present a Digital Fairness Act (DFA) as part of its broader consumer protection agenda. Building on the findings of the 2024 Fitness Check on EU consumer law in the digital environment, the DFA aims to address identified gaps and areas of legal uncertainty regarding harmful online practices. The initiative responds to concerns about manipulative interface design, addictive product features, misleading marketing by influencers, unfair personalisation practices and difficulties in managing digital contracts. A particular focus is placed on safeguarding vulnerable consumers, especially minors, from practices that exploit their vulnerabilities.

The proposed initiative is scheduled within the Commission's 2025 - 2026 work programme, with a legislative proposal expected in the third quarter of 2026. It shall complement recent legislative instruments, including the Digital Services Act (DSA), the Digital Markets Act (DMA) and the Artificial Intelligence Act (AI Act), while seeking to simplify and streamline rules for both consumers and businesses across the single market.

The DFA aims to reinforce consumer trust, increase legal certainty and create fairer competitive conditions in the internal market. By addressing persistent harmful practices and closing regulatory gaps, it is intended to contribute to a more sustainable and balanced digital economy.

In addition to answering the questionnaire for the public consultation, eco would like to take this opportunity to comment on the consultation and respond to the debate with the following points:

General remarks:

1. Regulatory Burden and Risk of Overlapping Obligations

While the objectives of the DFA are well-intentioned, the creation of an additional layer of regulation risks increasing compliance burdens for businesses without necessarily improving consumer protection. Many of the practices identified, such as dark patterns, addictive design and unfair marketing, are already prohibited under existing EU rules. The priority should therefore be to strengthen enforcement

and provide clearer definitions within the current framework rather than establishing new obligations in case of any identified shortcomings.

The Commission has committed to reducing administrative burdens and simplifying EU law through regulatory "decluttering." Introducing a new regulation at this stage could contradict this objective. Instead, targeted updates to existing legislation would create greater legal certainty, ensure consistency and avoid unnecessary duplication of obligations across sectors.

2. Legal Certainty and Avoidance of Fragmentation

National implementations and enforcement of consumer protection law often vary significantly, creating a fragmented legal environment that poses risks to cross-border business. A further regulatory instrument risks intensifying these inconsistencies, particularly if Member States apply divergent interpretations. To avoid this, EU-level action should prioritise harmonisation and clarity.

The DFA should therefore focus on closing existing enforcement gaps while ensuring consistent interpretation across Member States. Clearer guidance, model provisions and streamlined definitions can help prevent further legal divergence and reduce compliance costs for companies operating in multiple jurisdictions. To further safeguard legal coherence and uniform application, we would recommend that, if pursued, the DFA should take the form of a Regulation rather than a Directive.

3. Proportionality and Targeted Regulation

Regulatory measures must be proportionate and tailored to address genuinely harmful practices. Many digital design features depend heavily on context and do not always lead to consumer detriment. A blanket prohibition of certain practices risks stifling innovation and restricting legitimate commercial behaviour.

The DFA should therefore distinguish between harmful and acceptable practices, for example by introducing risk-based criteria or sector-specific guidance. This approach would ensure protection of consumers without placing undue burdens on compliant businesses, particularly small and medium-sized enterprises.

4. Strengthening Enforcement over Creating New Obligations

A stronger focus on enforcement of existing legislation would provide significant consumer benefits without the need for additional regulatory layers. The costs of harmful online practices are considerable, yet enforcement remains uneven and insufficient. Equipping authorities with better resources and enhancing cooperation across borders would make existing rules more effective. In this context, providing

guidelines and recommendations for companies would help them to comply with existing obligations and thus would also help to enforce legislation.

Prioritising enforcement against non-EU companies that violate EU law would further strengthen fairness and consumer protection, ensuring that compliant European companies are not disproportionately burdened.

Specific remarks on specific/individual points of the consultations' survey:

Dark patterns

eco would like to suggest re-considering the need for further provisions concerning dark patterns as there is already a fundamental ruling for dark patterns in the Digital Services Act (DSA).

According to Article 25 DSA, providers of online platforms shall not design, organise or operate their online interfaces in a way that deceives or manipulates their users, or in a way that otherwise materially distorts or impairs the ability of their users to make free and informed decisions. According to DSA-Recital 67, this regulation shall encompass manifold practices, e.g.:

- Designing interfaces in a way that deceives, nudges, or otherwise manipulates users into unwanted or detrimental decisions.
- Structuring or presenting choices in a non-neutral way, such as giving undue prominence to certain options or making cancellation, sign-out, or discontinuation of purchases significantly more cumbersome than sign-up or continuation.
- Repeated or exploitative design practices, such as persistently requesting decisions that have already been made, setting defaults that are very difficult to change, or steering users towards actions that primarily benefit the provider at the expense of user interests.

Besides, some practices are covered under the Unfair Commercial Practices Directive (UCPD; 2005/29/EC) or General Data Protection Regulation (GDPR; (EU) 2016/679).

Considering this already existing and comprehensive regulations at EU level, in eco's view, there is no need to add new prohibitions in the context of the DFA

concerning dark patters. This also applies for the examples given in the consultations survey.

Creating an additional layer of regulation would just make things even more complex and could lead to confusion or misunderstandings at the companies' side instead of better protecting users/consumers. In addition, it would create the risk of overlapping and/or fragmented and/or doubled obligations concerning the ruling of dark patterns. Consequently, in case of any identified shortcomings, eco suggests to rather amend existing frameworks than to put new or adjusted obligations in a different legislation.

Addictive design, particularly with regard to the protection of minors

Due to the already existing obligations concerning the protection of minors in Article 28 DSA (incl. the corresponding Guidelines) and in Article 34 and 35 DSA, eco suggests refraining from further/additional/new obligations when drafting the DFA.

Article 28 DSA contains the fundamental and pivotal obligation for providers of online platforms accessible to minors to put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors. To support the companies complying with this obligation, and to have a benchmark for enforcement, in July 2025 the European Commission launched Guidelines for the protection of minors online. These guidelines also cover the topic of addictive designs and specify that providers of online platforms should ensure that minors are not exposed to

- excessive total volumes, frequency and recommendation of commercial content, that can lead to addictive behaviours and have detrimental effects on their privacy, safety and security.

- practices that can lead to overuse of the platform or compulsive or addictive behaviours, by ensuring that minors are not exposed to virtual items such as paid loot boxes, or other products, where they offer random or unpredictable outcomes or gambling-like features.

- manipulative design techniques, such as scarcity, intermittent or random rewards, or persuasive design techniques, that can lead to addictive behaviours.

According to Article 34 and 35 DSA, providers of very large online platforms have to take additional measures to mitigate the risk of any (actual or foreseeable) negative effects in relation to the protection of public health and minors and serious negative consequences to the person's physical and mental well-being. Related measures in Article 35 DSA already include

- adapting the design, features or functioning of the services, including online interfaces;
- testing and adapting algorithmic systems, including recommender systems;
- taking targeted measures to protect the rights of the child.

Considering this already existing and comprehensive set of rules at EU level, in eco's view, there is no need to add new prohibitions in the context of the DFA concerning addictive designs, particularly with regard to the protection of minors.

More concrete, default settings for minors and tools for gradians/parental control, as included in the consultations' survey, are covered or can be subsumed under Article 28 DSA. The obligations concerning the person's physical and mental well-being apply to both, minors and adults.

Creating an additional layer of regulation would just make things even more complex and could lead to confusion or misunderstandings at the companies' side instead of better protecting minors. In addition, it would create the risk of overlapping and/or fragmented and/or doubled obligations concerning the ruling of addictive designs.

One should also have in mind, that the Article 28 DSA Guidelines just entered into force. It would make sense to give some time to platform providers to adjust their measures in accordance with the guidelines and to evaluate in a year or so the effect of implemented measures. In case such an evaluation would show shortcomings, it would be preferable to amend the existing regulations instead of putting new obligations into a different regulation/legislation.

Specific features in digital products, such as in video games, particularly for minors

In eco's view, there is also no need for additional rules concerning specific features in digital products, such as video games, as there are already comprehensive obligations in Article 28 DSA and the corresponding guidelines. To be more concrete, the guidelines cover

- Practices that can lead to excessive or unwanted spending, by ensuring that minors are not exposed to virtual items such as paid loot boxes, other products, where they offer random or unpredictable outcomes or gambling-like features, and by introducing separation or friction between content and the purchasing of related products

- Techniques which can have the effect of reducing transparency of economic transactions and may be misleading for minors, such as certain virtual currencies, and other tokens or coins, that can be exchanged with real money (or, where applicable, for the purchase of another virtual currency) and used to purchase virtual items, thus also cause unwanted spending.

- in-app or in-game purchases that are or appear to be necessary to access or use the service when the online platforms or parts and features thereof are presented or appear as being free

- The pricing in national currency if minors are exposed to any other in app or in-game purchases.

Again, creating an additional layer of regulation would just make things even more complex and could lead to confusion or misunderstandings at the companies' side instead of better protecting minors. In addition, it would create the risk of overlapping and/or fragmented and/or doubled obligations.

Simplification measures

In our view, simplification of consumer law should primarily focus on systematically reducing duplication and overlaps between horizontal and sector-specific legislation. Such streamlining would not only ease compliance burdens for businesses, but also enhance transparency and legal clarity for consumers regarding their rights. At the same time, information requirements should be modernised in

line with digital practices. The baseline should be that all mandatory information is provided digitally, either by email or to a secure digital mailbox. This should be a binding obligation for providers at least in cases where the customer has ordered online or where internet access forms part of the service, while in all other cases the form of provision could be left to agreement between provider and consumer. This approach would avoid unnecessary administrative burdens while safeguarding a high level of consumer protection.

Horizontal issues/ mandatory use of age verification or age estimation tools for digital products accessible to minors that contain certain commercial practices

eco observes that the mandatory use of age verification or age estimation tools is often perceived as a kind of silver bullet for protecting minors. In this context, eco would like to recall that the rights of a child also include the right to participation. Some practices might be harmful to minors under the age of e.g. 12 or 16 but not harmful to older minors. Minors who are not at risk mut not be excluded from using specific services or products. At the same time minors can often not verify their age with the existing tools. When calling for additional mandatory age-checks this must not lead to excluding minors who are not at risk but have limited age-verification capabilities.

Notwithstanding, the option to use the internet/online services anonymously must remain. Putting this option at risk would have significant negative implications – on the one hand for individual users who are potentially losing necessary protection of their personality and society as a whole, and on the other hand for companies potentially losing customers.

However, if implementing additional obligations, having one set of rules at EU level would be beneficial for the affected companies and could ease being compliant.

Conclusion

While the intention to strengthen consumer protection in the digital environment is legitimate, the proposed Digital Fairness Act risks undermining the Commission's own promise to reduce bureaucracy by introducing yet another regulatory layer. Instead of adding new obligations, the EU should prioritise closing gaps in existing frameworks, improving legal clarity and empowering authorities to enforce the rules that already apply.

The overarching objective should be to simplify and harmonise consumer protection law, not to complicate it further. Consistency across Member States is key to avoiding fragmentation and ensuring that businesses can operate with legal

certainty in the internal market. By focusing on enforcement and better use of existing legislation, the EU can effectively protect consumers while safeguarding competitiveness and reducing unnecessary burdens on compliant companies.

About eco: With approximately 1,000 member companies, eco (international.eco.de) is the leading Association of the Internet Industry in Europe. Since 1995, eco has been highly instrumental in shaping the Internet, fostering new technologies, forming framework conditions and representing the interests of its members in politics and international forums. eco has offices based in Cologne, Berlin and Brussels. In its work, eco primarily advocates for a high-performance, reliable and trustworthy ecosystem of digital infrastructures and services.