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Insights

THE EU'S DRAFT DIGITAL FAIRNESS ACT: OVERHAULING CONSUMER PROTECTION FOR THE DIGITAL AGE

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On 11 November 2026, the European Commission published its long-awaited proposal for the Digital Fairness Act (DFA), a wide-ranging reform of EU consumer protection law covering both online and offline commercial practices, with a particular focus on the digital environment. The proposal forms part of a package that also includes proposed changes to the EU's enforcement of EU consumer law (via the Consumer Protection Cooperation (CPC) Regulation) a separate Simplification Directive and a standalone proposal for the online safety of children (the EU KIDS Act).

It follows the Commission's 2024 Digital Fairness Fitness Check, which identified gaps and legal uncertainties in existing consumer law and concluded that the current framework is only partially effective in protecting consumers in the digital environment, as it predated the sophistication of today's online interactions and relied on differing EU Member State implementations of consumer rules set out in a series of directives. The DFA seeks to address these shortcomings through specific rules on dark patterns, drip pricing, environmental claims, influencer marketing, personalized advertising and pricing, fake reviews, event ticketing practices, practices encouraging overspending, addictive design and digital subscriptions.

Replacing the Unfair Commercial Practices Directive

The DFA would replace the Unfair Commercial Practices Directive (UCPD) with a directly applicable regulation, thereby harmonizing consumer protection standards across the EU while retaining the UCPD's broad scope and core prohibitions. It would apply to business-to-consumer commercial practices before, during and after a transaction, and would continue to prohibit misleading and aggressive practices, where a practice materially distorts the economic behavior of the average consumer.

Alongside these general prohibitions, it includes a list, in Annex I, of commercial practices which will be considered unfair in all circumstances, including publication of fake consumer reviews and false claims about a product's availability or popularity. This list retains the UCPD list, but adds express prohibitions on practices such as advertising prices without disclosing foreseeable

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unavoidable charges from the outset (“drip pricing”), persistently displaying availability or scarcity messages during checkout to pressure consumers, and presenting a consumer’s decision not to buy or renew as the wrong choice (“confirmshaming”). The proposal also introduces specific requirements for digital practices in Chapter III.

As a regulation rather than a directive, the DFA would apply directly across Member States without requiring transposition into national legislation. Member States would, however, retain the ability to impose stricter requirements in certain areas, including financial services and immovable property. At present, the EU is proposing a one year transition period before the new rules come into force.

Dark patterns and addictive design

The new dark patterns rules would target the way businesses present choices through their online interfaces. Traders would be prohibited from designing, organizing or operating interfaces in ways likely to deceive or manipulate consumers, or otherwise materially distort their economic behavior. The DFA sets out a specific list of dark patterns prohibited in all circumstances. These include false claims about a product's availability or popularity, default options that imply consent to additional purchases (such as pre-ticked boxes), notifications that falsely suggest someone has contacted the consumer or that a matter requires their attention, and unnecessarily complex or time-consuming steps to refuse, withdraw or change a choice.

The issue of addictive design and its impact on consumer behavior would be addressed through controls enabling consumers to switch off specified features, rather than a general prohibition. Where digital products are intended, or can reasonably be foreseen, to encourage compulsive or excessive use, traders would need to provide easily accessible, effective tools to disable features individually or all at once. The rules would cover features such as autoplay functions (the so-called ‘infinite scroll’) that promote continuous consumption without affording consumers regular opportunities to pause and decide whether to continue, notifications unrelated to the consumer’s activity, and rewards or penalties that encourage users to return regularly. They would also address features that simulate personal relationships to keep users engaged, such as persistent prompts to continue interacting with an automated system.

Applying these requirements will require traders to distinguish between an engaging product and one that encourages compulsive or excessive use. A briefing prepared ahead of the proposal for the European Parliament’s Internal Market and Consumer Protection (IMCO) Committee cautions that excessive use is not the same as clinical addiction, highlighting the difficulty of defining when use becomes “compulsive” or “excessive”, while recognising that legislation can give “addictive design” a meaning independent of clinical diagnostic criteria.

Marketing and monetization: protecting minors and vulnerable consumers

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The use of influencer marketing will be subject to express disclosure requirements. Each commercial communication would need to be clearly, prominently and unambiguously identified using the terms “advertisement” or “commercial collaboration”. The DFA would also prohibit direct exhortations to minors to buy products or to persuade adults to buy them, as well as communications suggesting that unsuitable products are appropriate for minors. Businesses commissioning influencer marketing would need to ensure compliance contractually or, where there is no contract, through other appropriate means.

The restrictions on personalization would distinguish between advertising and pricing. Profiling-based advertising is to be prohibited where it uses special category personal data or the personal data of a consumer whom the trader knows with reasonable certainty to be a minor.

Personalized pricing would not be prohibited outright, given concerns about preserving pricing aimed at specific demographics, such as students or the elderly. Restrictions would however apply where pricing is based on profiling, is reasonably likely to cause harm, and concerns a consumer known with reasonable certainty to be a minor or to be vulnerable on specified grounds. Neither the advertising nor the pricing rules would oblige traders to process additional personal data to establish age or vulnerability.

Online vulnerability may arise not only from personal characteristics, but also from the design of digital services. A separate recent briefing prepared for the EU Parliament highlights how profiling, personalization and interface design can create or reinforce consumers’ susceptibility to manipulation. For traders using personalized pricing, a key question will be when they can be regarded as knowing with reasonable certainty that a consumer is vulnerable, so as to trigger the proposed restriction on practices reasonably likely to cause harm.

Virtual currencies and gaming purchases would be subject to separate safeguards. Traders offering paid-for virtual currencies for purchases of their own products would need to display the corresponding monetary value, or estimated value, of those products within the game. Paid-for variable reward systems, such as loot boxes, would require disclosure of the available rewards and the probability of obtaining them, as well as effective tools enabling consumers to disable such systems.

Stricter rules would apply where products are directed at minors or the trader knows with reasonable certainty that minors use them. Paid-for virtual currencies would need to be disabled by default for minors and activated only with the approval of a parent or guardian. Traders would also be prohibited from offering minors paid-for variable reward systems and pay-to-win or pay-to-progress mechanisms.

Pricing, subscriptions and customer services

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The new rules on pricing would impose enhanced transparency requirements, but not a general ban on dynamic pricing. Advertisements for event tickets whose prices may increase through the trader's actions or automated / algorithmic processes would need to disclose how many tickets in the relevant category are available at the advertised price and the maximum price payable. Ticket resellers would also need to show the organizer's original total price and, where applicable, the ticket category, row and seat number. Consumers waiting in virtual queues for tickets would also need to be shown the current price, updated in real time if it changes, whether it may vary during their wait, and, if so, the maximum price payable.

Free trials and automatic renewals are to be subject to specific reminder requirements. For digitally concluded contracts with a free trial, traders will need to remind consumers before the trial ends and obtain their express agreement before expiry to continue on a paid basis. Without the required reminder or agreement, the consumer would not be bound.

Automatic contract renewals will still be permitted, but reminders would be required before specified extensions of digitally concluded continuous supply contracts. The timing would depend on the contract's duration and renewal history. Failure to provide the required reminder would give consumers additional termination rights, including termination without notice or charge during the relevant period.

Businesses offering online contracting would need to provide a prominently displayed and easily accessible online termination function, regardless of how the contract was concluded. Traders would also need to provide a withdrawal function enabling consumers to exercise their withdrawal rights for distance contracts concluded through an online interface. Where post-contract customer service is provided online, communication with a human would need to be available on request where other means prove ineffective, subject to an exclusion for investment services.

Enforcement and next steps

The DFA would also strengthen the enforcement of EU consumer protection rules. Alongside the DFA's substantive requirements, the revised enforcement framework would empower the Commission to investigate widespread infringements with an EU dimension directly and to impose fines of up to 6% of a trader's worldwide annual turnover. Where penalties are imposed by national authorities or courts under the CPC coordinated-enforcement framework, Member States would be required to provide for maximum fines of at least 4% of the trader's annual turnover in the Member States concerned.

National enforcement of consumer protection laws would continue alongside these EU-level powers. Responsibility for enforcing the addictive-design requirements would rest with Digital Services Act authorities in respect of online-platform providers, and with EU AI Act authorities in respect of providers or deployers of AI systems falling within that Act's scope. Enforcement of the minors-specific rules on virtual currencies, paid-for variable reward systems and pay-to-win or pay-

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to-progress mechanisms would be assigned to authorities designated under the proposed EU KIDS Act, for traders within its scope.

Consumers harmed by unfair commercial practices would have access to compensation and, where relevant, a price reduction or termination of the contract. Member States would be able to determine the conditions governing those remedies.

Courts and administrative authorities would also gain powers to require evidence concerning the design, operation and behavioral impact of online practices on consumers, subject to evidential thresholds and safeguards for proportionality and trade secrets. A failure to disclose such evidence could attract penalties and be taken into account in the assessment of unfairness.

The proposals will now be considered by the European Parliament and the Council. The current DFA draft envisages application 12 months after entry into force, although both the text and the timetable remain subject to negotiation.

How BCLP can help

BCLP's integrated global Consumer Practice brings together lawyers across commercial, consumer protection, technology, competition and regulatory compliance. The team can help businesses understand the implications of the DFA proposal, assess its interaction with existing consumer and digital law obligations, and identify changes needed to marketing, pricing, digital products and subscription processes as the DFA proposal is brought into force. We also advise on the UK's consumer regime, as this has begun to diverge from the EU's approach.

Our US colleagues provide advice on federal and state consumer protection requirements relating to subscription and automatic-renewal programs, pricing transparency, influencer marketing, and consumer reviews and testimonials, as well as on FTC investigations and enforcement. See our US team's recent publications on consumer developments here.

Drawing on our combined expertise across the UK, EU and US, we help businesses take a coordinated approach to consumer protection compliance and manage regulatory risk across multiple jurisdictions.

Related capabilities

- Retail & Consumer Products
- Technology Transactions

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