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ACM Position Paper on Digital Fairness

Align consumer law with developments in the digital economy and simplify digital legislation

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Markets that work for people and businesses

1. Introduction

The digital world has undergone significant change over the past two decades and continues to do so. Companies have access to increasing amounts of consumer data, prices and online environments can be personalised, and consumers' bounded rationality may be more easily exploited. In addition, artificial intelligence is developing rapidly. In this evolving world, it is essential that consumers continue to be well-protected. Also, for safety of Europe in a changing geopolitical world, Europe aims at more digital sovereignty and independence of for example China and the US.

To assess whether European consumer law continues to offer a high level of consumer protection in the digital landscape, the European Commission launched an evaluation in 2022, called the Fitness Check on EU consumer law on digital fairness.[1] This revealed that the current set of tools – consisting of the Unfair Commercial Practices Directive[2], the Consumer Rights Directive[3] and the Unfair Contract Terms Directive[4] – are in need of adaptation to face the challenges in the digital world.

The Netherlands Authority for Consumer and Markets (hereinafter "ACM") agrees that the current set of tools need adaptation. The ACM's mission and vision, as an enforcement authority, is to contribute to realizing a healthy economy by ensuring that markets work well for people and companies. Markets function well when market companies compete fairly with one another, and people and companies are not harmed by unfair practices, and underlying public interests are served. To achieve this, the ACM works to reduce market failures such as market power and asymmetric information. It is precisely these market failures that have increased due to the above developments in the digital domain and that require additional legislation such as the Digital Fairness Act to combat effectively. So that markets can work well to serve public interests and ultimately the welfare and wellbeing of citizens.

ACM sees two main reasons for adjustments:

I. Current consumer law must be brought in line with the changes in the digital world.
II. To contribute to digital safety the regulatory landscape needs to become easier for companies.

To start, the ACM notices three ways in which the current consumer law needs to be updated to fit the developments in the digital world. 1) Behavioural science shows that the current foundations of consumer law[5], no longer fit with findings of behavioural studies. 2) Consumer protection is typically centred around economic behaviour of consumers that may lead to a monetary transaction. In the digital economy, there are economic actors whose business model is focused on maximising consumer attention and time spent.[6] 3) The current consumer law provides enforcement authorities only limited possibilities to pre-emptively investigate internal business processes leading to design of online interfaces. This was already problematic in enforcement to effectively end market failures but becomes even more so one with the developments in (the application of) (generative) Artificial Intelligence (hereinafter "AI").

Then, the ACM proposes to strengthen consumer protection, yet at the same time proposes to make the regulatory landscape easier for companies. This will help companies comply and thus will contribute to less market failure. Also, this creates a better environment for European companies to start-up and innovate, which should contribute to more digital sovereignty and accordingly a safer Europe. 1) The ACM

[1] See, Commission Staff Working Document Fitness Check on EU consumer law on digital fairness (2024) (europa.eu)
[2] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance)
[3] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance
[4] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts
[5] The current foundation of consumer law is based on the assumption that consumers are rational decision-makers, and the emphasis on solving the information asymmetry between consumers and businesses by complete and correct information provision
[6] See, for example, Ofcom (2016) Review of how we use our persistent misuse powers: Focus on silent and abandoned calls, Annexes 7 & 8 'Estimating consumer harm'.

finds that companies experience challenges due to the many new digital European regulations and additional requirements on the national level. 2) Companies report extra regulatory burden added by diverging enforcement practices. 3) Companies address concerns about the volume and nature of information that traders must provide to consumers.

In this paper, the ACM aims to signal (potential) market failures, power asymmetry and information asymmetry, and proposes adjustments.

2. High level of consumer protection in a changing digital world

2.1. Bounded rationality and fair design

An important part of the traditional consumer protection approach, focussing on information provision and counteracting the information asymmetry between consumers and companies, is based on the idea that providing correct and all necessary information empowers consumers in making informed rational decisions. This concept has been elaborated in case law by the interpretation of the average consumer. However, behavioural science shows that actual consumer behaviour does often not match with the theory. Information provisions often are largely ineffective in influencing consumer decisions.[7] Consumers are no rational decision-makers, but are boundedly rational.[8] This makes them susceptible to influencing techniques, particularly in the digital markets.[9] Companies are developing and applying persuasive techniques in their online interfaces that typically make use of the bounded rationality of consumers, and can be unfair by abusing bounded rationality of consumers and exploiting consumers' vulnerabilities.

Companies are dedicating a lot of resources to testing online choice architectures in order to optimise them for sales (A/B-testing) and sometimes steering consumer behaviour on a granular level (personalisation). The optimizing is not necessarily in the interest of the consumer. Those practices can even be harmful to consumers. This development increases information asymmetry and the market power of companies. In addition, more than in the physical domain, digital commercial environments are highly controllable spaces in which it is easier to steer consumers towards specific behaviour or choices. These developments have significantly increased the need for a consumer protection response.

ACM proposes fair design of digital interfaces to be adopted as the purpose of the EU's future legislation on consumer protection. Furthermore, the legal yardstick of the 'average consumer' should be built on the empirically underpinned realistic view on consumer behaviour, which is characterised by bounded rationality. Doing so, will provide consumers with a high level of consumer protection, particularly in the digital environment.

2.1.1. Fair design

As mentioned previously, consumer decision-making is not simply driven by the information available, but it also heavily depends on the design and presentation of information in digital interfaces. The UK Competition and Markets Authority (hereinafter "CMA") refers to this as the 'choice architecture'. It investigated various design elements, and it studied the available research on the effects on consumer behaviour.[10] For instance, making information more or less saliant, or using pre-selected options have a significant impact on consumers' decisions. Another frequent example is obstruction, for instance by

[7] Ben-Shahar, O., & Schneider, C. E. (2017). The failure of mandated disclosure. *Russian Journal of Economics and Law*, (4 (44)), 146-169.; Behavioural economics, competition and remedy design - Oxera; Loewenstein, G., Sunstein, C. R., & Golman, R. (2014). Disclosure: Psychology changes everything. *Annu. Rev. Econ.*, *6*(1), 391-419.
[8] Kahneman, D. Thinking, Fast and Slow. New York: Farrar, Straus and Giroux, 2011.
[9] BEUC, Helberger, N., Lynskey, O., Micklitz, H.-W., Rott, P., Sax M. & Strycharz, J. (2021). EU Consumer Protection 2.0: Structural asymmetries in digital consumer markets.
[10] Online Choice Architecture: How digital design can harm competition and consumers 2022 (CMA) - GOV.UK

making it difficult for consumers to end a subscription and asking consumers to take several steps before being able to cancel.

Therefore, the ACM advocates the establishment of a general open legal norm requiring fairness by design of digital choice architectures in the Unfair Commercial Practices Directive (hereinafter "UCPD"). This one could be similar as the norm in the Digital Services Act[11] (hereinafter "DSA") in article 25: [traders] “shall not design, organise or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions.” However, the ACM would propose not to restrict the scope of the provision to dark patterns that are interface related, since increasingly consumer behaviour is influenced by using systemic dark patterns that are not present in the consumer interface[12]

We further propose that this open norm will be supplemented by specific rule-based prohibitions, similar to the current system black listed prohibitions in the UCPD. The black listed prohibitions should evidence-based.

The blacklist will contain behavioural persuasive techniques that will be presumed to be unfair under all circumstances. One could for instance think of the:

- Obstruction of cancellation of a subscription[13];
- Pre-selected boxes that result in
    - extra options consumers need to pay for
    - permission to contact consumers; for instance, for telemarketing, advertisement or newsletters
    - automatically sharing the consumers location
    - automatically subscribing into or renewing a subscription
- Adding unsolicited items in basket prior to payment by the consumer (sneak in basket).

Other influencing techniques will not be unfair perse. Whether their effects are harmful will depend on various factors such as: the consumer group involved, the nature of the product or service offered, the sales channel or device used. To make enforcement more efficient, European consumer law could provide a presumption of proof for techniques prescribed in a grey list. These practices will be presumed to be materially distort consumer behaviour until proven otherwise by the companies. Possible grey list practices could be:

- use of defaults or pre-selected choices to nudge consumers toward these choices;
- drip pricing, the price needs to be complete and clear upfront unless the final price depends on the customer’s order quantity or on other unconfirmed choices in the ordering process. Then it needs to be clearly indicated what the additional costs will be, by using an example[14];
- gamification of marketing[15];
- Nagging practices;
- Confirm shaming practices.

2.1.2. Update the definition of the average (digital) consumer

Under current EU consumer law, the legal assessment of whether “a commercial practice leads, causes, or could cause, consumers to make decisions that they otherwise would not have made, and which may

[11] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance)
[12] Leiser, Mark R. *Dark Patterns, Deceptive Design, and the Law: AI’s Hidden Influence on Our Digital Experience*. Oxford; Hart, 2025. Print.
[13] Like the CPC Amazon case
[14] See ACM Leidraad Bescherming Online Consument. Grenzen aan online beïnvloeding: voorkom misleiding in een online omgeving, 2024 (only available in Dutch).
[15] Like the CPC Temu case

therefore be unfair" is based on the legal standard of the 'average consumer'. Case law from the European Courts, in which the definition of the average consumer has been established, defines the average consumer to be "reasonably well informed and reasonably observant and circumspect"[16]. Recently in ruling in the Compass Banca case, the Court has created the possibility for rebuttal of the standard in specific cases based on evidence on actual consumer behaviour. In doing so they have introduced a new burden of proof for the entity claiming a violation[17].

The ACM welcomes this new opening concerning interpretation of the average consumer, because in reality, few or no consumers possess the abilities formerly attributed to them by the Court's previous definition. However, the ACM is of the opinion that a more fundamental shift is needed. Although the Court has opened an option to introduce behavioural evidence, the definition still departs from the idea that the average consumer is rational. By providing the opening for behavioural evidence, the Court has also introduced a burden on enforcement authorities (or civil plaintiffs) to produce the evidence that shows that the actual consumer behaviour deviates from that assumed by the basic definition. The ACM would proposes that the European legislator redefines and codifies the "average consumer" standard to more accurately reflect the current state of scientific understanding as well as to reinstate the high level of consumer protection as envisaged by consumer law. To kickstart the redefining effort, the ACM offers a first and not necessarily final draft definition which it puts up for discussion:

"The average consumer has a limited amount of time and cognitive band with for information processing and decision making. This means that the average consumer is often led by rules of thumb (heuristics) and other psychological processes."

2.2. Attention economy and consumer wellbeing

Consumer law, in its current form, is mainly focused on utility: on economic outcomes and monetary transactional decisions. It does not explicitly apply to wellbeing and decisions about spending time and attention. The lack of protection for consumers against unfair use of their time and attention is increasingly problematic in the light of the numbers of business models and choice designs, which are not simply aimed at optimisation of sales, but also at maximizing and habitualising consumer engagement.[18] Similar to financial means, time and attention are scarce resources. Companies can monetise time retention practices through additional data gathering and brokering, additional advertising and additional sales. In addition, time retention practices have become an unwanted factor in competition. Companies that are better able to leverage time retention practices, will be able to gather a larger market share of people's scarce time and attention. However, the ACM would argue that competition would need to take place based on the price and quality of a product or service, not on the ability of a company to retain consumer attention through unfair means.

Similar to persuasive practices in relation to economic transactions, not all-time retention practices could be considered problematic or harmful. However, there is a broad number of practices that could be considered problematic or problematic under circumstances.

Examples of those persuasive techniques are used and make use of the bounded rationality of consumers are infinite scrolls, out-of-app notifications, social cues through likes and reshares, other forms of the exploitation of social and peer pressure, default autoplay, habit-forming products in social games (these examples could be regarded as 'addictive design'). The outcome is entertaining, informative, and connecting, but research suggests also that these practices also have adverse mental health effects (e.g. anxiety, depression, addictive use, isolation), causing individual and societal costs.[19] These effects are

[16] C-210/96 Gut Springenheide GmbH, Rudolf Tusky v. Oberkreisdirektor des Kreises Steinfurt – Amt für Lebensmittelüberwachung. ECLI:EU:C: 1998:369 and following court decisions.
[17] ECJ, 14 November 2024, C-646/22 (Compass Banca SpA)
[18] Loewenstein, G., & Wojtowicz, Z. (2025). The economics of attention. *Journal of Economic Literature*, *63*(3), 1038-1089.; Davenport, T. H., & Beck, J. C. (2001). The attention economy. *Ubiquity*, *2001*(May), 1-es.
[19] Sharifian, N., & Zahodne, L. B. (2020). Social media bytes: Daily associations between social media use and everyday memory failures across the adult life span. *The journals of gerontology: Series B*, *75*(3), 540-548.; Ward, A. F., Duke, K., Gneezy, A., & Bos, M. W. (2017). Brain drain: The mere presence of one's own smartphone reduces available cognitive capacity. *Journal of the association for consumer research*, *2*(2), 140-154.; Hadar, A., Hadas, I., Lazarovits, A., Alyagon, U.,

researched for social media. For online video games we find that moderate gaming significantly increases wellbeing, but too much gaming is linked to less wellbeing.[20] Our national government, and other governments, are considering whether minors should have access at all to certain digital technologies that have strong addictive characteristics and make them spend too much time.

2.2.1. The impact of the attention economy on (mental) wellbeing

For the abovementioned reasons, the ACM asks the European legislator to extend the remit of consumer protection to include wellbeing, which lies beyond the current focus of economic outcomes on utility (monetary transactions). It would urge companies to take responsibility for the effects of their technologies on the wellbeing of people.

Article 34 of the DSA could be an example: The largest firms in terms of number of users could have a responsibility to make a risk assessment. They should "*identify, analyse and assess any systemic risks stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services*." [..] They should "*protect public health and minors and serious negative consequences to the persons physical and mental wellbeing*."

2.2.2. Enable autonomous consumer decisions on spending time

In addition, the ACM recommends to extent the application of the UCPD's consumer protection framework to the time people spend[21]. Generally speaking, a commercial practice is unfair if it materially distorts the consumer's economic behaviour, meaning that a consumer could make a different purchasing decision. Considering the economic benefits it offers the supply side, the ACM considers time spent in a product or service as a payment, equal to monetary payments and payments through the transferal of data by consumers[22]. Equal to the current unfair commercial practices, unfair time retention practices can unfairly make consumers spend more time than they would have without the time retention practice, for example social media or online video games.

2.3. Invisible and advanced manipulation through AI and targeting of vulnerable groups

Consumer law currently does not require a due diligence responsibility from companies. Enforcement authorities act primarily on harmful visible outcomes, while it is limited in getting insights in and demand changes in harmful internal companies' processes that might lead to harmful public outcomes. The power imbalance between companies and consumers was already problematic because companies apply A/B testing at large scale to influence consumer decisions and optimize their revenues, while remaining (long) invisible for consumers and enforcement authorities. However, the lack of visibility becomes even more problematic when generative AI is used to develop unfair design.

AI developments help companies to design advanced interfaces or provide personalised contractual terms and allow companies to segment the consumer populations by their specific characteristics and vulnerabilities. This can be used to make digital markets work better for people, provide them more user-

Eliraz, D., & Zangen, A. (2017). Answering the missed call: Initial exploration of cognitive and electrophysiological changes associated with smartphone use and abuse. *PloS one*, *12*(7), e0180094.; Rathje, S., Van Bavel, J. J., & Van Der Linden, S. (2021). Out-group animosity drives engagement on social media. *Proceedings of the national academy of sciences*, *118*(26), e2024292118.; Flaxman, S., Goel, S., & Rao, J. M. (2016). Filter bubbles, echo chambers, and online news consumption. *Public opinion quarterly*, *80*(S1), 298-320.

[20] Mentzoni, R. A., Brunborg, G. S., Molde, H., Myrseth, H., Skouverøe, K. J. M., Hetland, J., & Pallesen, S. (2011). Problematic video game use: estimated prevalence and associations with mental and physical health. *Cyberpsychology, behavior, and social networking*, *14*(10), 591-596.; Lemola, S., Brand, S., Vogler, N., Perkinson-Gloor, N., Allemand, M., & Grob, A. (2011). Habitual computer game playing at night is related to depressive symptoms. *Personality and individual differences*, *51*(2), 117-122. Twenge, J. M., Joiner, T. E., Rogers, M. L., & Martin, G. N. (2018). Increases in depressive symptoms, suicide-related outcomes, and suicide rates among US adolescents after 2010 and links to increased new media screen time. *Clinical psychological science*, *6*(1), 3-17.

[21] This may require some adaptions, but the broader framework could be made applicable.

[22] Time spent in a product or service should be separated from time spent comparing product offerings due to missing or deceptive information ('search costs' in economic terms)

friendly interfaces or contractual terms. However, it can also be used to exploit vulnerabilities. With the current consumer law, enforcement authorities have very limited insights in these variations in design or contract terms and the targeting of specific (vulnerable) groups. We believe it is necessary to specifically look out for vulnerable groups, like minors and elderly. But also, groups who are particularly vulnerable like in the gaming industry (the so called 'whales'), or in e-commerce people being tempted to impulsively buy[23].

Most of the commercially used, consumer-facing AIs in e-commerce do not currently fall under the scope of the draft AI Act, requirements such as logging, auditing and human oversight are not required. As a result, the risks of advanced manipulative design are increased, and controlling these practices will be complex.

The recommendations below are not limited to companies using AI to develop their interfaces, but AI makes these recommendations more urgent. We experience the lack of due diligence requirements also as a problem when it comes to non-digital market problems. For instance, in telemarketing practices we find that the remuneration policy is an important cause of consumer being mislead and put under pressure. As enforcement authorities we have limited instruments to pre-emptively investigate the companies processes and demand changes in this remuneration policy.

2.3.1. Due diligence requirements: business processes in the interest of consumers

To be able to prevent harmful designs or harmful contractual terms it should be clear that companies have a due diligence responsibility to shape their internal business processes in such a way that outcomes of their interfaces or contractual terms are fair, are in the interest of consumers and allow consumers to make decisions that are in their interest.

This positive obligation, in the form of a due diligence norm, would require a different type of enforcement actions, namely compliance-oriented supervision. Enforcement authorities should be able to conduct audits to investigate whether internal business processes are organised in such a way that the interest of the consumer and fairness is considered when companies decide on the design of their online interface or the contractual terms. They would already be able to do this before any harm is done. This would improve the way in which national enforcement authorities would be able to investigate and discuss with companies to what extent processes allow consumers to take autonomous decisions about spending money, sharing data, or spending time and attention, and take decisions that are in their best interest.

2.3.2. Protect minors with the precautionary principle

A special pre-emptive approach for minors could be considered to ensure digital safety and protection. This is necessary since the executive functions of minors are less developed than those of adults. This also becomes more important in digital markets where the effects of rapidly developing commercial practices are insufficiently clear. The UN Convention on the Rights of the Child urges (amongst others) legislative bodies to make the best interest of the child as a primary consideration (art 3(1)).[24] In the scientific literature it is explored whether for children in the digital markets, applying a precautionary principle would serve the best interest of the child.[25] It implies a protective approach emphasizing that when children's rights are at risk due to potential but scientifically uncertain harm, precautionary measures should be taken to avoid or minimize that harm.[26]

[23] Schilling, T. & Sergeeva, A. (2025), Dark patterns to nudge them all? A development of a theoretical framework and an experimental examination of individuals' susceptibility tod ark patterns in e-commerce, *Social Science Research Network*, 2025, available at https://ssrn.com/abstract=5298257
[24] Convention on the Rights of the Child
[25] Lievens, E. (2021). Growing up with digital technologies: how the precautionary principle might contribute to addressing potential serious harm to children's rights. *Nordic Journal of Human Rights*, *39*(2), 128-145.
[26] Unicef Convention on the Rights of the Child. General comment No. 25 (2021) on children's rights in relation to the digital environment

3. Simplification and harmonization consumer protection

Companies experience a growing regulatory burden. The ACM supports the aim to simplify regulation to improve regulatory environments for companies, while at the same time maintaining and strengthening high standards for consumer protection.

First, the introduction and accumulation of different directives over the last decade, and its frequent changes, can be challenging for companies to oversee. It can lead to a perception of a fragmented regulatory framework with which companies must comply and legal uncertainty as to its application to complex online practices. Furthermore, companies experience additional costs stemming from differences in national laws on consumer protection.

Second, companies report extra regulatory burden added by diverging enforcement practices. This can lead to legal uncertainty and additional administrative burden for companies operating in multiple jurisdictions, as they must comply with different interpretations and procedures.

Third, companies report concerns about the volume and nature of information that traders must provide to consumers. The expanding list of information obligations can be burdensome, particularly for small and medium-sized enterprises, who are less able to keep up with the changes resulting from different legal instruments, including sector-specific legislation going beyond the three Directives.

3.1. Push for convergence and move to maximum harmonisation in digital regulation

There is significant overlap among legislative instruments of similar nature within the body of the European digital consumer acquis, with several provisions addressing similar areas of consumer protection. Especially the DSA and AI-Act entail a regulatory approach that closely relates to principles introduced in the DFA with regards to consumer protection. This underscores the importance of convergence and clarification, which would enhance legal certainty and contribute to the simplification of the regulatory framework for companies. It will also support the effective enforcement of these provisions. Therefore, it is crucial that the DFA outlines the scope and applicability in relation to other legislation. Furthermore, new and emerging challenges in the digital domain markets call for regular updates in guidance on the application of the existing general principle-based rules to complex online practices to enhance legal certainty for companies in the future.

Most notably, the ACM recognises the need to incorporate similar types of requirements, definitions and terminology across the various directives, where appropriate, to simplify legislation for companies and to ensure consistent enforcement. Certain terms or concepts related to design, ranking, and contact requirements are already (partly) addressed in other provisions, which may also be included in the forthcoming DFA legislation. Examples from the Digital Services Act (DSA) include:

- Article 12 DSA: Points of contact for recipients of the service.
- Article 25 DSA: Online interface design and organisation.
- Article 26 DSA: Advertising on online platforms.
- Article 27 DSA: Recommender system transparency.

Convergence and prioritization will be needed of rules including the Unfair Commercial Practices Directive (UCPD), Digital Services Act (DSA), Consumer Rights Directive (CRD), Digital Markets Act (DMA), General Data Protection Regulation (GDPR), AI Act, Data Act, Audio Visual Media Services Directive (AVMSD) and E-commerce Directive.

Finally, it should be noted that this recommendation for convergence primarily pertains the obligations in the Directives themselves. However, there are also additional costs for companies arising from differences in national laws which could be mitigated through harmonisation at the EU level. Divergent rules across

the single market can translate into additional regulatory or administrative burden for companies and making it more difficult for consumers to understand the scope of their protection.[27] Maximum harmonisation in legislation on digital consumer protection offers potential for simplification. The ACM therefore proposes taking steps towards maximum harmonisation in the DFA. In this process, it is recommended that national provisions in this legislative area which contribute to a high level of consumer protection be identified and addressed at EU level. The ACM would be pleased to provide input should such an analysis be undertaken.[28] Finally, the introduction of a Regulation, rather than Directives, will enhance legal certainty for companies, as it leaves no room for discrepancies in national implementation.

3.2. Establish an independent Consumer Protection Enforcement at EU Level and enable close cross-directive cooperation

The ACM notices that for companies operating cross-border within the EU, the enforcement system is complex. They need to comply with national consumer protection legislation and European legislation and have the involvement of national authorities from different member states as well as the CPC network.

Companies operating in more than one EU member state, whether European or non-European, are served by having a single enforcement portal as well as a convergent interpretation and application of harmonized consumer law. Additionally, enforcement interventions can be optimized for effectiveness by having one enforcement authority competent to investigate and formally intervene for violations of consumer law that take place in multiple or all EU member states. The current enforcement regime for consumer law, as created by the CPC Regulation, significantly limits the effectiveness of consumer enforcement in relation to cross-border violations, since every member state is competent for formal action regarding its own jurisdiction.

The solution could be found in the establishment of a consumer enforcement capability at the European level, while maintaining strong national consumer protection enforcement capacities at nation level to deal with smaller cross-border and purely national cases. This solution ensures that EU-wide infringements can be dealt with effectively and efficiently. This enforcement capacity should be independent from any political decision-making, in the same way as a lot of European legislation imposes a strict separation between enforcement and policymaking at a national level. These changes can be incorporated in the next version of the CPC Regulation which is currently under revision.

Furthermore, considering that the DFA interacts with many of EU's legislation in such an intricate way, it is of great importance that the relevant information streams and cooperation mechanisms are outlined on both a national and European level, and both between the various authorities as well as between the various networks of enforcement authorities. Allow digital enforcement authorities to cooperate and exchange information without constraints (article 33 UCPD and equivalent provisions on other pieces of legislation), to ensure convergence in their interpretations and guidance and to prevent multiple enforcement authorities to approach the same companies for the same problem. The ACM expects to work closely with its fellow authorities to ensure effective enforcement of this legislation. For this enforcement to be successful, we advise the Commission to outline the cooperation mechanisms and an additional legal basis for the exchange of information between all relevant authorities and the Commission itself.

3.3. Review transparency requirements to ensure effective application

Companies report concerns about the volume and nature of transparency requirements. Similar to the Commission, the ACM received few concrete examples of provisions or areas that could be simplified of removed. The ACM considers that the experience of a regulatory burden may be attributable, not so much

[27] The future of European competitiveness. Part B, in-depth analysis and recommendations. September 2024. Available at: https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en#paragraph_47059.
[28] For example, in the Netherlands, when a fixed-term contract is renewed, it may subsequently be terminated at any time with a notice period of no more than one month.

to specific provisions and their objective, but rather to the broader regulatory environment. Presumably, this is not an issue to be solved by removing or simplifying requirements themselves, but rather by an approach addressing the underlying causes and the regulatory framework as a whole (see recommendations above). Although it remains important to verify this.

Therefore, the ACM would support a systematic review of the existing and any possible future requirements that companies face to identify opportunities for simplification and elimination. This while keeping in mind the following considerations. Firstly, when transparency requirements turn out not to effectively remedy the negative effects of practices, consumer legislation should resort to other solutions aimed at restoring the healthy power balance between consumers and companies. For example, by prohibiting certain harmful techniques. Furthermore, empirical research suggests that one way to enhance the effectiveness of transparency requirements, would be to standardise the requirements in text and design to the extent possible. This contributes to consumer recognition and learning over time and it would aid companies with the implementation of the requirements. Lastly, studies show that the way in which information is presented, strongly impacts consumer understanding and potential behaviour. Uniform guidance on this matter will help reduce legal uncertainty for companies and enhance the effectiveness of transparency requirements.