

EU consumer policy perspective

- Commission's New Consumer Agenda (November 2020): „*Commercial practices that disregard the consumers' right to make an informed choice, abuse their behavioural biases, or distort their decision-making processes, **must be tackled**. These practices include the use of 'dark' patterns' , certain personalisation practices (...)*“
- New **Commission guidance** on the interpretation of the Unfair Commercial Practices Directive (see chapter 4.2.7 on dark patterns)
- Cross-border **enforcement actions** within the Consumer Protection Cooperation network (e.g. Amazon Prime, TikTok, Whatsapp)
- Discussions at **international level** (informal EU-US dialogue; OECD report)
- Behavioural study on dark patterns (May 2022): **97%** of the most popular websites and apps deployed **at least one dark pattern**; experiments proved effects on consumers' decision-making
- Consumer authorities investigated ecommerce sites (January 2023): nearly **40%** used dark patterns
- Public consultation on digital fairness (February 2023): **89% of consumers found dark patterns** within the last year; **69%** found it technically difficult to cancel their contracts online

Dark patterns in an evolving EU legal framework

- Consumer protection - **Unfair Commercial Practices Directive** (Articles 5-9 and Annex)
- Data protection - **General Data Protection Regulation & ePrivacy Directive**
- Platform regulation - **Digital Services Act** (Article 25) & **Digital Markets Act** (Article 13)
- Proposed **AI Act** (Article 5(1) & 5(2))
- Proposed **Data Act** (Article 6)

But also...

- Proposed Directive on **Distance Marketing of Financial Services** → withdrawal button?
- Proposed Directive on **Empowering Consumers for the Green Transition** → new amendments on dark patterns?
- Voluntary industry commitments → discussions about a **Cookie Pledge**?
- Launch of a Fitness Check of EU consumer law on '**digital fairness**' (2022-2024) → is EU consumer law still adequate in the digital environment? Or do we need to do more?