



## Summary input from The Netherlands Authority for Consumers and Markets for the implementation dialogue with EU Commissioner McGrath: Implementation Dialogue Digital Consumer Law (15 July 2025, Brussels)

We thank the European Commission for the opportunity to share our view on the forthcoming Digital Fairness Act (DFA). We support the aim to simplify regulation to improve regulatory environments for businesses, while at the same time maintaining high standards for consumer protection. To be future-proof the DFA should take into account relevant market developments attention economy and rapid developments in AI.

Below we summarize our main input for this moment.

### 1 Simplification measures

#### 1.1 Strengthen enforcement

- Establish an independent Consumer Protection Enforcement capability at EU level,
  - that can enforce cross-border infringements,
  - and that can test new EU legislative proposals on feasibility and enforceability.
- Introduce a clear legal liability for third party suppliers which offer services or products for digital sales environments, such as online interfaces (e.g. commerce platforms for businesses). Approximately 60% of a subsample of Dutch online retail entrepreneurs relied on these third party suppliers.
- Explicitly prohibit the offering and selling of fake reviews, the trader must carry the burden of proving the authenticity of reviews. This removes the burden of proof for the enforcement authority of the posting or submitting on behalf of a trader.

Additionally, as a national enforcement authority, we are committed to critically check what national/ EU legal requirements could be deleted or amended without losing the high level of consumer protection. We will analyse this, and share in the consultation on the DFA.

#### 1.2 Maintain open norms and simplify by concretization

- Expand the list of practices that are evidently harmful and unfair commercial practices and create some specific rules for video games, codifying some of the existing interpretations of the law. For instance,
  - obstruction to cancellation, like the [CPC Amazon case](#).
  - gamification of marketing, like in the [CPC Temu case](#).
  - random reward systems that contain uncertainty-based rewards, like loot boxes or wheels of fortune;
  - suggesting scarcity while this is not true, for instance about the supply, or creating artificial scarcity like in a videogame and putting time pressure, see the [ACM Fortnite case](#) about the rotating item shop.

- make for in-game and in-app social media virtual currencies explicit (i) that they are a digital representation of value, (ii) what is required in terms of price transparency and (iii) what is regarded as unfair commercial practices (see CPC Key principles)

Create a new definition of the average consumer. From empirical research on human decision-making, appears that people are boundedly rational. This should be the anchor point for businesses when it comes to compliance in consumer protection.

As a national enforcement authority we have been investigating the practices of video-game providers. In response to the DFA consultation we will provide more detailed suggestions for concretization of rules for this sector.

### 1.3 Push for convergence in digital regulation

- Push for convergence of the rules in UCPD, DSA, DMA, GDPR, AI Act, Data Act, Audio Visual Media Services Directive etc on design (dark patterns/ deceptive design/ online persuasive techniques), and clarify prioritization of these rules.
- Ensure that, similar to the requirement under the DSA, (large) multinational traders appoint a legal representative within the EU.
- Allow digital enforcement authorities CPC DSA DMA DPA to cooperate and exchange information without constraints (article 33 UCPD), to ensure convergence in their approach and to prevent multiple enforcement authorities to approach the same business for the same problem.

## 2 For a future-proof high level of consumer protection

### 2.1 Attention economy and impact on (mental) wellbeing

- Extend the focus of consumer protection to wellbeing, beyond the current focus on market outcomes on utility (monetary transaction). This is highly relevant in the current attention economy. Many business models are focused on keeping people's attention, to be able to extend the group of users, to gather more data, to be able to sell more ads, to be able to sell more goods. Examples of behavioural persuasive techniques that are used are infinite scrolls, 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 has adverse mental health effects (e.g. anxiety, depression, addiction, isolation), which bring individual and societal costs.
- Article 5 (UCPD) could be extended: design should not be unfair and not detriment well-being. Or in line with the DSA large companies could be required to identify, analyse and assess systemic risks stemming from the design, functioning and use of their services, including the impact on public health.

### 2.2 AI technology and personalisation

- For the larger businesses, give people the right to refuse a design that is personalised, and make this a one-click action (consistent with article 27 and 38 recommender system transparency DSA).
- All businesses provide information in the terms and conditions about when and how design is personalised (consistent with article 27 DSA).

- When companies offer customer support through AI systems (chatbots, virtual assistants, voice interfaces), they should also offer the possibility to contact a real person in case the AI system does not provide the help customers were searching for.
- Protect in particular vulnerable consumers which are more likely to be targeted with the AI models optimising designs. Think of children, elderly, but also groups that are particularly vulnerable like in the gaming industry the so-called 'whales', or in e-commerce people being tempted to [impulsively buy](#).