European Commission's findings on the digital fairness fitness check

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Back in 2020, the European Commission announced in its consumer policy strategy that it would analyse whether additional legislation or other action was needed to ensure equal fairness online and offline. A fitness check on the digital fairness of three consumer law directives was therefore launched in 2022:

- the Unfair Commercial Practices Directive

- the Consumer Rights Directive

- the Unfair Contract Terms Directive.

The European Commission’s findings were published on 3 October 2024 in the form of a staff working document, which evaluates whether the EU consumer protection laws are fit to ensure a high level of protection in the digital environment. To reach this point, the Commission also consulted the public through several consultation activities, including a call for evidence and a public consultation. The fitness check was also supported by an external study and existing analyses, such as the behavioural study on unfair commercial practices in the digital environment.

The results show that while these rules remain necessary to ensure a high level of protection for consumers and provide a degree of regulatory certainty and consumer trust, consumers behave differently online and offline and some harmful and evolving practices that are faced online should therefore be addressed more specifically.

According to the Commission’s evaluation, consumers do not always feel fully in control of their online experience due to practices such as:

- dark patterns that can unfairly influence their decisions, for example, by putting unnecessary pressure on consumers through false urgency claims;

- the addictive design of digital services that pushes consumers to keep using the service or spending more money, such as, gambling-like features in video games;

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- personalised targeting that takes advantage of consumers' vulnerabilities, such as showing targeted advertising that exploits personal problems, financial challenges or negative mental states;

- difficulties with managing digital subscriptions, for example, when companies make it excessively hard to unsubscribe;

- problematic commercial practices of social media influencers.

The Commission also found that the effectiveness of EU consumer protection is undermined due to fragmented national laws, leading to legal uncertainty and a lack of incentives for businesses to aim for the highest standard of protection.

The fitness check provides a state of play and points to areas for improvement, which can be further analysed and built upon in the future but it does not establish recommendations on the exact format and content of future Commission action. However, in her mission letter addressed to Commissioner-designate for Democracy, Justice and the Rule of Law, Ursula von der Leyen referred to the need to develop “a Digital Fairness Act to tackle unethical techniques and commercial practices related to dark patterns, marketing by social media influencers, the addictive design of digital products and online profiling especially when consumer vulnerabilities are exploited for commercial purposes”.

Commission Staff Working Document Fitness Check on EU consumer law on digital fairness

https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en

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