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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on promoting fair business-to-consumer commercial practices in the offline and digital single market, and repealing Directive 2005/29/EC (Digital Fairness Act)

{SEC(2026) 1100 final} - {SWD(2026) 1100 final} - {SWD(2026) 1101 final} - {SWD(2026) 1102 final}

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The digital era has fundamentally transformed consumer experiences. It has enabled faster, more convenient and wider access to an ever-increasing range of goods and services. At the same time, it has given rise to new and more sophisticated ways of influencing consumers' choices. Along with the indisputable benefits in choice and efficiency, the extensive use of digital technologies allows both old and new unfair commercial practices to affect consumers at scale, exacerbating risks to their economic interests, as well as to their mental and physical wellbeing. Vulnerable consumers are particularly affected.

Directive 2005/29/EC of the European Parliament and of the Council (the 'Unfair Commercial Practices Directive' or 'UCPD')[1] constitutes one of the cornerstones of the EU consumer protection acquis. As a maximum harmonisation instrument, the UCPD establishes a single, common set of rules on unfair commercial practices in the Union, thereby enhancing legal certainty for both traders and consumers and removing barriers to cross-border trade. Its scope is broad: it applies to all unfair commercial practices, including misleading actions or omissions as well as aggressive commercial practices before, during and after a transaction; it covers all consumers including vulnerable consumers, such as children, and all types of traders. It applies to any trader targeting consumers in the EU, including when these traders are established outside the EU. It serves as a general safety net with respect to unfair commercial practices. The framework was however conceived in a market that pre-dated the data and attention economy, influencer marketing, personalisation, subscription-based digital services, or in-app purchases.

The Fitness Check of EU consumer law on digital fairness[2] evaluated the UCPD together with Directive 2011/83/EU of the European Parliament and of the Council (the 'Consumer Rights Directive' or 'CRD')[3] and Council Directive 93/13/EEC[4] over the period 2017-2023. It concluded that the three Directives remain relevant and necessary to ensure a high level of consumer protection online and the effective functioning of the Digital Single Market and that their principle-based architecture has delivered the regulatory certainty needed for a diverse market in consumer-facing digital products. At the same time, the Fitness Check also pointed to gaps and legal uncertainties in consumer protection legislation that significantly affect consumers and businesses alike.

The present proposal for a Digital Fairness Act responds to the mandate to tackle unethical techniques and commercial practices related to dark patterns, marketing by social media

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1 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') (OJ L 149, 11.6.2005, p. 22, ELI: http://data.europa.eu/eli/dir/2005/29/oj).

2 Commission Staff Working Document, Fitness Check of EU consumer law on digital fairness, SWD(2024) 230 final, 3.10.2024.

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 (OJ L 304, 22.11.2011, p. 64, ELI: http://data.europa.eu/eli/dir/2011/83/oj).

4 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29, ELI: http://data.europa.eu/eli/dir/1993/13/oj).

influencers, the addictive design of digital products and online profiling, especially where consumer vulnerabilities are exploited for commercial purposes[5].

This proposal is to be read in conjunction with the proposal for a Directive amending Directive 2011/83/EU as regards simplification of Union consumer protection rules[6].

This proposal was announced in the 2030 Consumer Agenda[7] and included in the Commission work programme 2026[8]. It also responds to the European Parliament resolutions calling for legislation against addictive design and a Digital Fairness Act to address targeted advertising, influencer marketing, addictive design, loot boxes, in-app currencies and dark patterns[9]. In its Conclusions on the 2030 Consumer Agenda, also the Council recognised "the need to address existing regulatory gaps"[10]. The co-chairs of the Special Panel on child safety online identified the upcoming Digital Fairness Act and the revision of the Consumer Protection Cooperation (CPC) Regulation as a key opportunity to embed the protection of children and adolescents at the heart of EU consumer law[11].

The proposal for a Digital Fairness Act has two components.

First, it converts the substantive law on unfair commercial practices from a directive into directly applicable Union law, a regulation. This will replace 27 transposing regimes of the Member States and reduce the scope for divergent national interpretations that the Fitness Check identified as a driver of fragmentation and legal uncertainty. It is also a legal precondition for centralising consumer law enforcement in specific cases at Union level, as envisaged by the Commission's proposal to revise the Consumer Protection Cooperation (CPC) Regulation[12].

Second, it addresses the shortcomings identified in the Fitness Check by introducing substantive rules on: dark patterns, influencer marketing, unfair personalisation and spending-maximising practices, addictive design, unfair marketing practices related to prices and fairness in contracts, to the extent that such practices qualify as B2C commercial practices. It also includes horizontal measures and a number of targeted simplification measures identified as capable of reducing burdens without loss of consumer protection. As indicated above, the simplification elements are also partly laid down in the Directive on simplification of Union consumer protection rules, which is part of the same legislative package as this initiative.

This proposal aims to:

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5 Mission letter of 17 September 2024 from the President of the European Commission to the Commissioner-designate for Democracy, Justice, the Rule of Law and Consumer Protection.

6 Proposal for a Directive of the European Parliament and of the Council amending Directives 2011/83/EU and 2002/58/EC as regards simplification of Union consumer protection rules, COM(2026) 1110 final.

7 Communication from the Commission, 2030 Consumer Agenda and action plan for consumers in the single market, COM(2025) 848 final, 19.11.2025.

8 Commission work programme 2026, COM(2025) 870 final.

9 European Parliament resolutions of 12 December 2023 on addictive design of online services and consumer protection (2023/2043(INI)), of 8 May 2025 on the old challenges and new commercial practices in the internal market (2025/2542(RSP), and of 26 November 2025 on the protection of minors online (2025/2060(INI)), P10_TA(2025)0299.

10 Council conclusions on the 2030 Consumer Agenda, of 26 February 2026, doc. 6634/26.

11 https://commission.europa.eu/document/download/d833504d-5ec3-4fac-945f-38e7d0bd5326_en?filename=Special-panel-report.pdf

12 Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities and the Commission in the enforcement of consumer protection laws in the Union, amending Directive (EU) 2019/1937 and Regulations (EC) No 261/2004, (EC) No 1107/2006, (EC) No 1008/2008, (EU) No 1177/2010, (EU) No 181/2011, (EU) 2018/302 and (EU) 2021/782 and repealing Regulation (EU) 2017/2394, COM(2026)1120 final.

– reduce the detriment that consumers, including children and other vulnerable groups, suffer as a result of problematic digital practices;

– improve traders' compliance with consumer protection rules in the digital markets;

– provide a more harmonised set of rules to facilitate businesses' cross-border transactional activities.

• **Consistency with existing policy provisions in the policy area**

The proposal for the Digital Fairness Act is coherent with other EU priorities and with the Commission's priorities for consumer protection. It repeals and replaces Directive 2005/29/EC in its entirety. The substance of that Directive – the general clause, the provisions on misleading actions and omissions, aggressive practices, and the practices listed in Annex I – are carried over while maintaining the level of consumer protection[13].

Several Union acts refer to Directive 2005/29/EC. The proposal, therefore, provides that references to the repealed Directive must be read as references to this Regulation.

In addition, the proposal for a Directive on simplification of Union consumer protection rules proposes targeted amendments to the Consumer Rights Directive to reduce administrative burdens for traders while maintaining consumer protection in the digital sphere.

In parallel, the Commission is proposing a revision of the Consumer Protection Cooperation (CPC) Regulation (EU) 2017/2394 of the European Parliament and of the Council[14]. The aim of that revision is to strengthen the existing enforcement coordination system for national authorities and to centralise enforcement in specific cases at EU level, including in areas covered by the Digital Fairness Act.

• **Consistency with other Union policies**

The proposal for the Digital Fairness Act is also coherent with the existing digital rulebook, including the Digital Services Act (DSA), Digital Markets Act (DMA) and AI Act, the General Data Protection Regulation (GDPR), the Digital Omnibus and ongoing initiatives, such as the proposal for an EU KIDS Act, and the review of the Audiovisual Media Services Directive (AVMSD).

In particular, the proposal is complementary to the DSA, the AI Act, the proposal for an EU KIDS Act and the upcoming AVMSD review and provides a safety net for consumer protection in the digital environment.

The DSA establishes a harmonised horizontal framework governing the responsibilities of providers of intermediary services and, in particular, imposes obligations relating to the transparency, safety and accountability of online platforms, including specific obligations concerning the protection of minors and the assessment and mitigation of systemic risks. The

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[13] As amended by Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ L 328, 18.12.2019, p. 7, ELI: http://data.europa.eu/eli/dir/2019/2161/oj) and Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information (OJ L, 2024/825, 6.3.2024, ELI: http://data.europa.eu/eli/dir/2024/825/oj).

[14] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1, ELI: http://data.europa.eu/eli/reg/2017/2394/oj).

present proposal addresses the fairness of commercial practices, including design choices that may affect consumers' ability to make free and informed decisions, in the digital environment generally, regardless of the traders' business model, without duplicating the Digital Services Act.

The AI Act establishes harmonised rules for the placing on the market, the putting into service and the use of AI systems to promote the uptake of human-centric and trustworthy AI in the Union, while ensuring a high level of protection of health, safety and fundamental rights, including the right to consumer protection. The present proposal aims to strengthen consumer protection in the digital environment, regardless of the technology used. It complements the AI Act by establishing certain rules with which AI tools should comply when used by consumers.

The proposal for an EU KIDS Act establishes harmonised specific requirements to enhance the safety and age-appropriateness of risky services and systems ('social media +') used by minors. The present proposal complements those measures by establishing a horizontal framework for the fair treatment of consumers in the digital environment, including in relation to practices that may affect children as young consumers, without duplicating the EU KIDS Act. The present proposal interchangeably refers to children and 'minors', both defined as any natural person under the age of 18.

The proposal is also coherent with the AVMSD and its ongoing review, which covers, *inter alia*, commercial communications and the protection of minors in audiovisual media services and video-sharing platform services.

The complementary application of the digital rulebook and consumer law instruments can ensure comprehensive and effective consumer protection[15] and contribute to efficient enforcement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which is also the legal basis of Directive 2005/29/EC (adopted based on Article 95 of the Treaty establishing the European Community). Article 114 TFEU provides for the approximation of laws and commits the EU to a high level of consumer protection, to ensure the functioning of the internal market in line with Article 26 TFEU. Article 169 TFEU and the Charter of Fundamental Rights (Article 38) recall the aim of a high level of consumer protection, with Article 169 TFEU referring specifically to protecting the health, safety and economic interests of consumers.

Article 114 TFEU is the appropriate legal basis. The proposal aims to remove obstacles to the cross-border supply of goods and services in digital markets which arise from divergent national rules in the areas covered by the proposal, and to prevent the emergence of such obstacles, which the Fitness Check identified as a foreseeable risk. The policy area falls under shared competence pursuant to Article 4(2)(a) and (f) TFEU. Therefore, the principle of subsidiarity applies, and the proposal is subject to the subsidiarity control mechanism under Protocol No 2.

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[15] Complementary application of the DSA and consumer law is demonstrated, for example, by the parallel Commission and CPC network actions regarding online marketplaces Temu and Shein. In these proceedings, the CPC network is addressing consumer protection issues such as fake discounts, pressure selling, forced gamification, missing and misleading information on consumers' legal rights, fake reviews and hidden contact details.

- **Subsidiarity**

Consumer protection issues, especially in the digital sphere, are intrinsically cross-border, arising from digital markets that operate across the EU. In areas fully harmonised by Directive 2005/29/EC, Member States are unable to act unilaterally to resolve legal uncertainty at EU level, which increases the risk of divergent interpretations resulting in different levels of consumer protection and business risks. Where Member States act to address issues not yet fully harmonised at EU level, they also tend to adopt divergent approaches, creating obstacles to cross-border business activities and fragmenting the internal market.

There is a strong added value of action at EU level. Nearly all EU citizens and a significant proportion of EU businesses are affected by the problems identified in the impact assessment for the initiative; many originating from practices of businesses that operate cross-border. Action at EU rather than national level would therefore create significant effects of scale. Fully harmonised EU rules also contribute to more effective and less costly enforcement due to synergies in the actions of national enforcers, and, if the proposal for the reform of the Consumer Protection Cooperation is also adopted, due to centralised enforcement at EU level in specific cases[16].

- **Proportionality**

The proposal does not go beyond what is necessary to achieve its objectives.

First, the change of instrument does not, in itself, change the level of harmonisation. Directive 2005/29/EC is already a full harmonisation directive. Converting that directive into a regulation removes the need for transposition by the Member States and further reduces the scope for divergence.

Second, the conversion does not extend Union competence into areas previously reserved to the Member States. The express derogations from full harmonisation are preserved. Article 3(9) of Directive 2005/29/EC permits Member States to impose more restrictive requirements in relation to financial services and immovable property; Article 3(5) permits more protective national rules to counter aggressive or misleading practices in the context of unsolicited visits to a consumer's home and of commercial excursions. Both derogations concern predominantly offline or sector-specific conduct outside the area pertaining to digital fairness and are relied on by many Member States. They will continue to exist.

Third, the proposal does not go beyond what is necessary to achieve its objectives. As described in Section 6 of the Impact Assessment Report[17], the policy options have been assessed also in light of the anticipated proportionality of the retained measures with regard to addressing the identified problems. The new substantive obligations represent the least intrusive option capable of achieving the objective and are, therefore, proportionate as also explained in Section 7.2 of the Impact Assessment Report.

- **Choice of the instrument**

The proposal for the Digital Fairness Act takes the form of a regulation, for the following reasons. First, it responds to the call by the European Council to favour regulations over directives[18] reflected in Commission's Communication "A Simpler, Clearer and Better Enforced EU Rulebook"[19]. Second, it reduces the scope for legal uncertainty caused by

16 See also the Subsidiarity Assessment Grid, SWD(2026) 1100 final.
17 SWD(2026) 1101 final.
18 Conclusions of 19 March 2026, point 36, d (ii), en-20260319-european-council-conclusions.pdf.
19 COM(2026) 380 final.

possible differences in transposition, divergent national interpretations and gold-plating, which is key to cut red tape and bring simplification. Third, it creates the legal precondition to vest in the Commission direct investigation and enforcement powers in relation to commercial practices covered by the Digital Fairness Act in specific cases under the revised Consumer Protection Cooperation (CPC) Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

The Fitness Check[20] evaluated the three consumer law Directives[21] against the five better regulation criteria for the period 2017-2023. Its conclusions may be summarised as follows:

– Effectiveness: the Directives are only partially effective since consumer complaints and detriment remain high, legal uncertainty and legal gaps persist, and there is risk of regulatory fragmentation and insufficient enforcement.

– Coherence: is positive with limitation; the internal coherence is consistent and mutually reinforcing while the external coherence is generally complementary to other EU legislation.

– Efficiency: also positive with limitation as the costs and benefits are balanced at societal level and compliance costs are not considered high with significant benefits for consumers, traders and authorities and specific areas with potential for simplification (e.g. information obligations, right of withdrawal).

– EU added value: EU legal framework achieves moderately or significantly better outcomes than could have been achieved by Member States.

– Relevance: is positive with limitations. The objectives remain highly relevant and there are benefits of a technology-neutral safety-net framework. Different technological and market developments will have an impact on fitness for purpose and are expected to do so at a faster pace in the future (e.g. growing use of AI, automation, personalisation). Application of other EU legislation will impact the relevance of consumer law.

• Stakeholder consultations

In line with the Better Regulation guidelines, there were extensive consultations to ensure the widest possible participation of stakeholders.

Consultation activities included:

– A public consultation, open for feedback from 17 July 2025 to 24 October 2025;

– A call for evidence published on the “Have your say” portal, running in parallel with the public consultation;

– A quantitative survey with businesses;

– A quantitative survey with consumers (aged 15 years and older);

– A quantitative survey with children (aged 7-14);

[20] Digital fairness – fitness check on EU consumer law.

[21] Directive 2005/29/EC, Directive 2011/83/EU and Directive 93/13/EEC.

– A series of behavioural experiments with consumers (aged 15 years and older);
– A series of behavioural experiments with minors (aged 12-17);
– Qualitative research (focus group discussions) with minors (aged 12-17);
– Three targeted stakeholder surveys with:
  - Business associations;
  - Consumer associations;
  - Public authorities.
– Targeted stakeholder interviews with representatives from businesses, business associations including SME representatives, consumer associations, civil society organisations, including organisations representing children, youth and other vulnerable groups, and academics;
– Roundtable discussions with key stakeholders on specific topics;
– A consultation of children via the EU Children's Participation Platform;
– An Implementation Dialogue with Commissioner McGrath on consumer protection in the digital environment on 15 July 2025;
– A Youth Policy Dialogue on the Digital Fairness Act on 17 and 18 June 2026;
– Desk research of relevant academic literature, articles, policy papers and online resources.

Account has been taken also of the recommendations of the co-chairs of the Special Panel on child safety online published on 13 July 2026, informed notably by the results of the 2026 Eurobarometer on the impact of excessive screen time and social media on young people's mental health[22]. Digital fairness was also among the topics discussed at the first meeting of President von der Leyen's Youth Advisory Board, which took place on 3 December 2025 and the Youth Policy Dialogue on Protecting Young People online on 22 September 2026.

A synopsis report of the stakeholder consultation is part of Annex 2 of the Impact Assessment Report.

The factual summary report of the Public Consultation was published on 19 December 2025[23]. The public consultation received 3 341 responses from a broad range of stakeholders, including consumers, businesses, SMEs, consumer and civil society organisations, public authorities, and academic and research organisations. The consultation covered dark patterns, addictive design, specific features in digital products such as video games, unfair personalisation, influencer marketing, pricing-related practices and digital contracts. Overall, the responses showed substantial support for further EU action in the digital environment.

[22] European Commission, Impact of excessive screen time and social media on young people's mental health, June 2026. The results show that 40 % of EU adolescents aged 13-18 years think they spend too much time on screens, and nearly one in three report feeling stressed, sad or socially excluded because of social media. The results of the Eurobarometer informed the work of the Special Panel as well as the proposed EU KIDS Act. It also has data on the share of adolescents feeling pressured to who experience promotion of unhealthy products on social media (25%) and pressure on how to look or what to buy (24%).

[23] Public consultation on the Digital Fairness Act - Factual summary report, December 2025.

Among the 1 733 responses[24], 72% supported new binding EU rules on dark patterns, 70% on addictive design, 70% on specific features in digital products and 70% on unfair personalisation, and 68% on influencer marketing.

The consultation also highlighted the importance of effective enforcement and coherence with the existing EU legal framework. While respondents supported a range of measures to strengthen consumer protection, some businesses and business associations stressed the need to avoid overlaps, duplication and unnecessary regulatory complexity. Support among SMEs for the measures presented in the consultation was generally higher than among large enterprises and business associations. The results therefore point to a need for targeted EU action addressing identified gaps, while ensuring consistency with existing legislation, reducing fragmentation and maintaining a level playing field in the Single Market.

The necessity to convert the Unfair Commercial Practices Directive from a directive into a regulation to grant the Commission direct enforcement powers in specific cases in relation to practices covered by the Digital Fairness Act was discussed with stakeholders in the context of an Implementation Dialogue on cross-border enforcement cooperation in consumer law on 6 May 2026[25]. Moreover, the Impact Assessment Report[26] accompanying the Commission's proposal to revise the Consumer Protection Cooperation (CPC) Regulation includes an overview of national consumer protection authorities' view on the conversion of the UCPD.

- **Collection and use of expertise**

The Commission relied on the external evaluation study supporting the Fitness Check, on the external study supporting the initiative for a Digital Fairness Act, surveys of authorities, behavioural research, the Consumer Conditions Scoreboard, the work of the Joint Research Centre, and on independent academic literature. The supporting studies are published and referenced in the annexes to the Impact Assessment Report.

- **Impact assessment**

The proposals are supported by an impact assessment, on which the Regulatory Scrutiny Board (RSB) issued a positive opinion with reservations on 3 July 2026[27].

The RSB commented that: (1) in the problem definition, the interrelation between dark patterns, addictive design and unfair personalisation practices should be clarified; (2) some policy measures should be more clearly defined; (3) some methodological shortcomings of quantifications, in particular of revenue effects for businesses, and inherent uncertainties related to impacts of measures should be better reflected; and (4) the report should assess in more detail the coherence of the intervention with other relevant initiatives.

The Impact Assessment Report[28] has subsequently been updated addressing these points.

For each of the identified areas of problematic online practices, between 3 and 4 policy options were examined against the baseline.

In addition, the impact assessment assessed several horizontal and simplification measures.

Based on that assessment and the comparison of options, the preferred overall policy option is

[24] One large campaign was identified during the Public Consultation, involving 1,594 responses, all from consumers. Those replies were analysed separately. The 1,733 responses correspond to the replies outside of the campaign.

[25] Implementation dialogue on cross-border enforcement cooperation in the area of consumer law with Commissioner Michael McGrath - European Commission.

[26] SWD(2026) 1121 final.

[27] SEC(2026)1100.

[28] SWD(2026) 1101 final.

composed as follows:

Summary overview of the preferred overall policy option

Policy option with respect to dark patterns	General prohibition of B2C dark patterns as unfair commercial practices coupled with a flexible list of dark patterns that are prohibited in all circumstances. Removal of Article 16e CRD.
Policy option to address spending-maximising products and addictive design features	Clearer definition of "transactional decision". Price transparency on the real value of in-app purchases using virtual currencies and the probabilities of winning for virtual offers with uncertainty-based rewards (loot boxes). All consumers can turn off virtual offers with uncertainty-based rewards. Some spending-maximising practices prohibited for minors, with the remaining turned off by default. Supporting self-regulation for video games and legal obligation for video games to have an age-appropriate rating. All consumers can turn off attention-maximising features, with some prohibited for minors and the remaining turned off by default.
Policy option to address unfair personalisation practices	Personalised advertising targeting minors and personalised advertising based on special categories of personal data as defined under the GDPR or consumers' vulnerabilities is prohibited. Personalised pricing towards minors or based on consumers' vulnerabilities is prohibited when leading to less favourable results.
Policy option to address problematic influencer marketing	Definition of influencer marketing as commercial practice and clarification of the obligation to saliently disclose commercial content. Removal of obligation to disclose geographical address for influencers who do not directly sell to consumers. Obligation for other actors in the influencer marketing chain (e.g. brands and advertising agencies) to require influencers to comply with EU law. Prohibition of influencer marketing of certain harmful or otherwise unsuitable products, including to minors.
Policy option to address unfair pricing practices	The real-time evolution of the price and the maximum price must be displayed when consumers are waiting in a virtual queue for their chance to buy. "Drip pricing" and specific misleading techniques in price comparisons are prohibited. In a dynamic pricing context, traders must disclose how many items are available to consumers at the advertised price.
Policy option to address issues with digital contracts	Consumers receive a reminder before the start of a paid contract period after a free trial and have to actively accept the paid contract. Consumers receive a reminder before a paid subscription is automatically renewed and can terminate an automatically extended subscription any time with short notice. Traders have to provide an easy cancellation facility. Consumers can set parameters of automated systems used in contracting. Reduced information requirements for contracts fully automated on the trader and consumer side. Consumers have the right to access a human interlocutor in customer services.
Horizontal	The definitions of "average consumer" and "vulnerable consumer" are

measures	updated to account for the specificities of the digital environment. The burden of proof is eased in technologically complex cases. A general fairness-by-design obligation is introduced, without being linked to specific process requirements.
Simplification measures	Traders no longer need to provide mandatory pre-contractual information about the right of withdrawal when the consumer explicitly agrees to receive immediate access to online digital content. For digital media (audio and video) service subscriptions, the current 14-day right of withdrawal is replaced with a right to cancel the contract during the first month, subject to paying the full subscription fee for that month. Reduced information requirements apply for repeat in-app purchases.

The preferred option is expected to be very effective, as it directly targets harmful practices that impair decision-making, through stronger safeguards, opt-outs, default protections and specific restrictions for minors, thereby delivering large reductions in financial consumer detriment – of EUR 88.4 billion over the period 2025-2035 – and strong distributional benefits for vulnerable consumers and minors. The preferred option is also expected to have positive health effects, possibly resulting in monetised avoided societal costs between EUR 2.7 billion and EUR 18.5 billion per type of problematic practice per year[29]. It is also effective in addressing unfair competition by introducing stronger, clearer, more uniform safeguards. More specific rules could facilitate the development of automated methods to detect infringements. Further, the overall preferred option foresees the procedural measure of easing the burden of proof, which is expected to facilitate enforcement especially in cases concerning personalised commercial practices. This measure will contribute to ensuring the long-term effectiveness of enforcement. Finally, it is expected to facilitate cross-border transactions by harmonising legislation across the EU.

On a yearly basis, the consumer detriment reduction - covering both financial detriment and monetised time losses[30] - would reach EUR 13.7 billion, while the yearly recurrent costs for business are estimated at EUR 1.2 billion without adjustment and EUR 678 million adjusted for overlaps between the measures and across topics.

Environmental impacts are limited and indirect; social impacts are positive, in particular for minors and for consumers in situations of vulnerability.

The initiative contributes to Sustainable Development Goals 3, 10, and 12, as analysed in Annex 3 to the Impact Assessment Report.

The preferred option is implemented via this proposal for a Digital Fairness Act, and for the simplification measures via the proposal for a Directive on simplification of the Union consumer protection rules. Elements of the preferred option have been integrated also in the proposal for an EU KIDS Act, which relies partly on the impact assessment for this initiative.

- **Regulatory fitness and simplification**

The proposals are REFIT initiatives. The simplification component is addressed in the exploratory memorandum pertaining to the modifications of CRD under the proposal for a Directive on simplification of Union consumer protection rules.

[29] Mental health effect estimates cannot be added up due to overlapping populations and synergies in addressing common drivers of harm.

[30] This also includes detriment for some practices not included in the baseline.

The proposal is expected to have two additional burden-reduction effects. The first is structural: one directly applicable act replaces one directive and its 27 transpositions, strengthening harmonisation, and removing transposition costs for Member States and familiarisation costs for traders operating in more than one Member State. Second, consolidating into binding provisions the interpretation set out in the Commission Notice of 17 December 2021[31] reduces advisory costs, since traders and authorities will no longer have to derive obligations from a lengthy non-binding text.

The proposal creates a single set of adjustments that, once made, should improve the situation of all market participants. Consumers will enjoy clearer, more neutral choices, easier-to-understand pricing and fewer frictions when joining, using or leaving digital services, which builds trust. Large enterprises, with existing legal and compliance capacities, need only to recalibrate design standards and monetisation strategies, shifting towards longer-term, reputation-driven models that reduce short-term flexibility but increase predictability and lower enforcement risk. SMEs may face an initial compliance burden - redesigning interfaces, processes and documentation - due to the measures included in the proposal for the Digital Fairness Act, but will, at the same time, profit from burden reduction due to the simplification measures under the proposal for the Directive on simplification of Union consumer protection rules. In addition, after the initial changes, they will benefit from a simpler, more transparent competitive environment allowing them to focus on product quality and innovation. Finally, enforcement authorities will gain clearer, less ambiguous rules and tools that enable earlier, preventive interventions, greater consistency across Member States and more efficient, credible enforcement.

Overall, the proposal is compatible with EU competitiveness objectives. It does not induce systemic cost or innovation disadvantages and provides clear net gains for overall business and SME competitiveness, while steering innovation and competition towards more sustainable and trust-based market dynamics.

The proposal is digital-ready and consistent with the operation of the internet. It concerns an amendment and partial repeal of existing EU legislation, together with the introduction of new substantive rules in the area of consumer protection. However, it does not, as such, mandate the collection, processing, generation, exchange, or sharing of data to achieve its objectives. It also does not require developing or using any technologies that would digitalise or automate stakeholders' processes or using any digital solutions to achieve the policy objectives. Finally, it does not impose the development of specific public services that would require digital means for their implementation. However, the initiative does not exclude the possibility for consumer protection authorities to consider using specific digital tools for the application of the policy.

- **Fundamental rights**

The proposal gives effect to Article 38 of the Charter and to Article 24, under which the child's best interests must be a primary consideration in all actions relating to children, whether taken by public authorities or private institutions.

The proposal limits the freedom to conduct a business (Article 16). Those limitations are provided for by law, respect the essence of the rights concerned and are proportionate to the objective of consumer protection, in accordance with Article 52(1) of the Charter. The disclosure duties applicable to influencer marketing are confined to communications made in

[31] Commission Notice - Guidance on the interpretation and application of Directive 2005/29/EC (OJ C 526, 29.12.2021, p. 1).

return for payment or other valuable consideration and do not extend to editorial or personal expression.

Article 21 (non-discrimination) is engaged by personalised advertising and pricing, which can produce differentiation correlating with protected characteristics; the proposal responds through transparency and through the prohibition of personalisation exploiting vulnerability.

Overall, the combination of policy measures contained in the proposed Regulation strikes a balance between consumer rights and the right to conduct business.

The European Data Protection Supervisor will be consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[32].

4. BUDGETARY IMPLICATIONS

The proposal does not result in any human resource increases or other costs for the Commission and has, therefore, no budgetary implications. The current proposal does not introduce, modify, or affect the use of digital solutions, data aspects, or the provision of digital-public services. The proposal lays down rules on fair business-to-consumer commercial practices; it does not regulate the digital means for implementation. Considering that there is neither a budgetary impact, nor a digital dimension in this specific sense, it is not necessary to provide a legislative financial and digital statement.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Since the proposal is a regulation, no transposition and no implementation plan are required.

Progress towards achieving the objectives of the proposal will be monitored by a series of core indicators (listed in the Impact Assessment Report). The monitoring framework will be subject to further adjustment according to the final legal and implementation requirements and timeline.

- **Detailed explanation of the specific provisions of the proposal**

Chapter I - General provisions (Articles 1 to 4)

Article 1 sets out the subject matter and objectives. Article 2 defines the scope, reproducing that of Directive 2005/29/EC. Article 3 contains definitions and adapts them in view of the Court of Justice of the EU case law. Article 4 regulates the relationship with other Union legislation on commercial practices.

Chapter II - Unfair commercial practices

This Chapter reproduces the substance of Articles 5 to 9 of Directive 2005/29/EC. Article 5 lays down the general prohibition and the test of professional diligence and amends the concept of vulnerability. Articles 6 to 9 address misleading actions, misleading omissions and aggressive practices.

Chapter III – Digital fairness

[32] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

Article 10 deals with dark patterns, clarifying that designing and organising online interfaces in a manner that is likely to materially distort consumers' economic behaviour is prohibited. A list of dark patterns which are prohibited in all circumstances is introduced in Part III of Annex I. Online traders are prohibited from using such practices, as well as the other practices listed in Annex I, which does not differentiate between offline and online environment. Article 10(3) empowers the Commission to adopt delegated acts to amend the list of dark patterns in Part III of Annex I in order to ensure a high level of consumer protection against such practices.

Article 11 deals with influencer marketing. It clarifies the manner in which salient disclosure of commercial communication should take place. It also prohibits influencers from exploiting minor's' trust. To protect consumers, including minors, it prohibits influencer marketing with respect to products for which advertising is prohibited under EU or national law or which are unsafe, and it imposes obligations on other traders in the influencer marketing chain to ensure that influencer marketing complies with the provisions of this Regulation.

Articles 12 and 13 deal with unfair personalisation practices. Article 12 extends existing prohibitions under the DSA to other traders, by prohibiting the targeting of advertising based on profiling to minors or using special categories of personal data when this could cause harm to the consumer. Article 13 prohibits personalised pricing based on profiling when this could cause harm to minors or vulnerable consumers.

Articles 14 to 16 deal with spending-maximising practices. Articles 14 requires transparency of prices when expressed in virtual currencies. Article 15 tackles matters related to variable reward systems, including the transparency of the probability of winning, a prohibition of such systems towards minors and an option to disable them for all consumers. Article 16 prohibits pay-to-win and pay-to-progress mechanisms for minors.

Article 17 requires traders to provide consumers who are not minors with the possibility to switch off addictive features that are intended to or can reasonably be foreseen to encourage compulsive or excessive use. Article 17(2) empowers the Commission to adopt delegated acts to amend the list of features intended or which can reasonably be foreseen to encourage compulsive or excessive use of the service and consumers should be able to disable in order to ensure a high level of consumer protection regarding such practices.

Articles 18 and 19 deal with transparency obligations for event tickets the price of which is dynamically increasing due to the trader's actions or automated or algorithmic processes (Article 18) or where a trader makes use of virtual queue systems (Article 19).

Articles 20 to 27 deal with fairness in digital contracts. Article 20 lays down the right of consumers to receive a reminder and to actively accept the conversion from free trial into a paid contract. Articles 21 and 22 introduce the right of consumers to receive a reminder before an automatic extension of a long-term and short-term contract. Article 21 also stipulates that after an automatic prolongation of a contract for an indeterminate duration consumers may terminate it at any time with short notice. Additionally, an obligation for traders to provide an online contract termination facility (Article 23) and the right for consumers to access a human interlocutor in consumer services (Article 25) are introduced. Article 24 regulates the exercise of the right of withdrawal from distance contracts concluded by the means of an online interface. Finally, Article 26 stipulates that consumers should be able to set the main parameters of automated systems used in contracting, and Article 27 simplifies pre-contractual information requirements for contracts fully automated on the trader and consumer side.

Article 28 protects consumers from unsolicited electronic communications for direct marketing purposes.

Article 29 prohibits traders from engaging in any behaviour that undermines effective compliance with their obligations in Chapter III.

Chapter IV- Enforcement, Remedies and Penalties

This chapter deals with redress and enforcement. It is clarified that the Commission shall have powers to supervise and enforce compliance with this Regulation.

Article 30 concerns the enforcement of this Regulation by the Member States and the Commission.

Article 34 enables courts and competent authorities to, at the request of claimant who has presented facts and evidence sufficient to support the likelihood of an unfair commercial practice in the online environment or where a reasonable suspicion of an unfair commercial practice in the online environment exists, require the trader to produce relevant evidence relating to the design, functioning and impact on consumer behaviour of the relevant commercial practice.

Article 35 deals with penalties, including fines applicable to infringements of this Regulation investigated by the Commission pursuant to Chapter III of Regulation (EU) .../... of the European Parliament and of the Council on cooperation between national authorities and the Commission in the enforcement of consumer protection laws in the Union, amending Directive (EU) 2019/1937 and Regulations (EC) No 261/2004, (EC) No 1107/2006, (EC) No 1008/2008, (EU) No 1177/2010, (EU) No 181/2011, (EU) 2018/302 and (EU) 2021/782 and repealing Regulation (EU) 2017/2394 [New CPC Regulation].

Article 36 gives traders a right of recourse where an infringement for which they are found liable resulted from the actions or omissions of another person with whom they have a commercial relationship or where the conduct of another person with whom they have a commercial relationship contributed to the infringement. Member States are responsible for ensuring that effective, proportionate and dissuasive remedies exist enabling traders to exercise the right of recourse.

Chapter V- Final provisions

Article 37 sets out rules for the exercise of delegation powers.

Article 38 repeals Directive 2005/29/EC with effect from the date of application of this Regulation. References to the repealed Directive are to be construed as references to this Regulation. The Chapter also contains provisions on the review of the Regulation, entry into force and application.

Annexes

Annex I lists the commercial practices which are in all circumstances considered unfair, reproducing the list annexed to Directive 2005/29/EC as amended by Directive (EU) 2019/2161 and Directive (EU) 2024/825. Commercial practices identified by the Fitness Check and in the impact assessment as particularly harmful to consumers, and which are highly prevalent especially in the digital environment.

Annex II to Directive 2005/29/EC is removed. The new Annex II contains a correlation table.

2026/0356 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on promoting fair business-to-consumer commercial practices in the offline and digital single market, and repealing Directive 2005/29/EC (Digital Fairness Act)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[33],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive 2005/29/EC of the European Parliament and of the Council[34] has established an overarching framework for the approximation of the laws of the Member States relating to unfair commercial practices in business-to-consumer transactions. Through the introduction of horizontal, principle-based and technology-neutral rules, Directive 2005/29/EC contributed to a high level of consumer protection, while facilitating a level playing field for businesses, thereby improving the proper functioning of the internal market. The objectives and principles of Directive 2005/29/EC remain sound.

(2) The emergence of an increasingly data-driven economy, rapid technological developments, the growth of digital markets, and globalisation have created new challenges for the protection of consumers' economic interests. While those developments have brought significant benefits to consumers, including greater choice and new ways of accessing goods and services, they have also exacerbated information and power imbalances between businesses and consumers. Online traders increasingly resort to commercial practices that exploit consumers' cognitive biases and other vulnerabilities, harming their economic interests.

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33 OJ C , , p. .

34 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') (OJ L 149, 11.6.2005, p. 22, ELI: http://data.europa.eu/eli/dir/2005/29/oj).

(3) The 2024 Fitness Check of Union consumer law on digital fairness ('the Fitness Check')[35] concluded that consumer law remains relevant and necessary to ensure a high level of consumer protection and effective functioning of the digital single market. However, its effectiveness in the digital environment is undermined, among other things by legal uncertainty, regulatory fragmentation and ineffective enforcement. The Fitness Check also identified certain problematic practices that are not subject to harmonised rules, giving rise to divergent regulatory solutions by Member States.

(4) Legal uncertainty can partly be addressed by clarifying certain elements of the regulatory framework established by Directive 2005/29/EC, having regard to the case-law of the Court of Justice of the European Union ('the Court of Justice'). In addition, new rules on digital fairness are needed to ensure that consumers are empowered and protected in digital markets and to facilitate traders' cross-border activities in those markets.

(5) Additionally, in light of evolving business models, particularly in digital markets, enforcement solely by Member States is no longer sufficient to address the challenges faced by consumers and compliant traders. It was therefore found necessary to empower the Commission under Regulation (EU) .../... of the European Parliament and of the Council on cooperation between national authorities and the Commission in the enforcement of consumer protection laws in the Union, amending Directive (EU) 2019/1937 and Regulations (EC) No 261/2004, (EC) No 1107/2006, (EC) No 1008/2008, (EU) No 1177/2010, (EU) No 181/2011, (EU) 2018/302 and (EU) 2021/782 and repealing Regulation (EU) 2017/2394 [New CPC Regulation] [New CPC Regulation] to directly investigate and enforce at Union level certain infringements of the rules on unfair commercial practices which have or risk to have a significant impact on the functioning of the internal market for consumers. As the Commission can enforce only provisions that are directly applicable in all Member States, the existing rules on unfair commercial practices and the new rules on digital fairness should be laid down in a regulation.

(6) Laying down the rules contained in Directive 2005/29/EC in a regulation should neither diminish the high level of consumer protection ensured by that Directive nor require Member States to modify their existing enforcement structures, irrespective of whether such structures are based on administrative, private or criminal law enforcement.

(7) The purpose of this Regulation is to lay down uniform rules on fairness for offline and online business-to-consumer commercial practices.

(8) In order to support consumer confidence, this Regulation should apply equally to commercial practices which occur outside any contractual relationship between a trader and a consumer or following the conclusion of a contract and during its execution.

(9) This Regulation should ensure a high level of consumer protection in all economic sectors by complementing sector-specific Union law. To ensure coherence with existing Union law, particularly where detailed provisions on business-to-consumer commercial practices apply to specific sectors, this Regulation should apply only in so far as there are no conflicts with specific Union law provisions regulating specific

[35] Commission Staff Working Document, Fitness Check of EU consumer law on digital fairness, SWD(2024) 230 final, 3.10.2024.

aspects of commercial practices. As interpreted by the Court of Justice, the concept of 'conflict' refers to a relationship between provisions which cannot be overcome by a unifying formula enabling both situations to exist alongside each other. Accordingly, a conflict between this Regulation and Union law provisions regulating specific aspects of commercial practices is present only where the provisions that regulate specific aspects of business practices impose on traders, in such a way as to leave them no margin for discretion, obligations which are incompatible with those laid down in this Regulation. This Regulation should also provide protection for consumers where there is no specific sectoral legislation at Union level. This Regulation should consequently complement the Union acquis, which is applicable to commercial practices harming consumers' economic interests.

(10) In particular given the need to ensure the coherence of this Regulation with other relevant Union law in the field of regulation of online commercial practices, this Regulation should be without prejudice to Union legal acts that may apply to the commercial practices of traders in the online environment, such as Regulation (EU) 2016/679 of the European Parliament and of the Council[36], Regulation (EU) 2022/1925 of the European Parliament and of the Council[37], Regulation (EU) 2022/2065 of the European Parliament and of the Council[38], Regulation (EU) 2024/1689 of the European Parliament and of the Council[39], Regulation (EU) .../... of the European Parliament and of the Council EU KIDS ACT - 'EU Keeping Internet Digital Spaces Accountable and Trustworthy' [EU KIDS Act] and Directive 2010/13/EU of the European Parliament and of the Council[40].

(11) The full harmonisation pursued through this Regulation should create a high common level of consumer protection. Unless authorised by this Regulation or the relevant sector-specific Union law, Member States should not maintain or impose further obligations on traders by way of laws, regulations or administrative measures to achieve a higher level of consumer protection.

(12) This Regulation should be without prejudice to Union and national rules on contract law, on intellectual property rights, on the health and safety aspects of products, on conditions of establishment and authorisation regimes, including those rules which, in conformity with Union law, relate to gambling activities, and to Union competition rules and the national provisions implementing them. This Regulation should therefore

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36 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

37 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/1925/oj).

38 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) (OJ L 277, 27.10.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2065/oj).

39 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (OJ L, 2024/1689, 12.7.2024, ELI: http://data.europa.eu/eli/reg/2024/1689/oj).

40 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Codified version) (OJ L 95, 15.4.2010, p. 1, ELI: http://data.europa.eu/eli/dir/2010/13/oj).

not preclude Member States from retaining or introducing restrictions and prohibitions of commercial practices on grounds of the protection of the health and safety of consumers in their territory wherever the trader is based, for example, in relation to alcohol, tobacco and nicotine products, or pharmaceuticals.

(13) Financial services and immovable property, by reason of their complexity and inherent serious risks, necessitate detailed requirements, including positive obligations on traders. For this reason, in the field of financial services and immovable property, this Regulation should be without prejudice to the right of Member States to go beyond its provisions, in conformity with Union law, to protect the economic interests of consumers.

(14) This Regulation should not address commercial practices carried out primarily for purposes other than influencing consumers' transactional decisions in relation to products, including, for example, commercial communication aimed at investors, such as annual reports and corporate promotional literature. It does not address legal requirements related to taste and decency which vary widely among the Member States. Member States should accordingly be able to continue to ban commercial practices in their territory, in conformity with Union law, for reasons of taste and decency.

(15) This Regulation should be without prejudice to Member States' freedom to adopt national provisions to further protect the legitimate interests of consumers against unfair commercial practices in the context of unsolicited visits at their homes by a trader in order to offer or sell products or excursions organised by a trader with the aim or effect of promoting or selling products to consumers where such provisions are justified on grounds of consumer protection. Any such provisions should be proportionate and non-discriminatory and should not prohibit those sales channels as such. National provisions adopted by Member States could, for example, define time of the day when visits to consumers' homes without their express request are not allowed or prohibit such visits when the consumer has visibly indicated that such visits are not acceptable or prescribe the payment procedure. Member States should be required to notify any national provisions adopted in this regard to the Commission so that the Commission can make this information available to all interested parties and monitor the proportionate nature and legality of those measures. Where such provisions are adopted on grounds other than consumer protection, such as public interest or the respect for consumers' private life protected by Article 7 of the Charter of Fundamental Rights of the European Union, they should be regarded as falling outside the scope of this Regulation.

(16) Further, this Regulation should not affect accepted advertising and marketing practices, such as legitimate product placement, brand differentiation or the offering of incentives which may legitimately affect consumers' perceptions of products and influence their behaviour without impairing the consumer's ability to make an informed decision.

(17) This Regulation neither covers nor affects the national laws on unfair commercial practices which harm only competitors' economic interests or which relate to a transaction between traders.

(18) This Regulation should be without prejudice to existing Union law which expressly offers Member States regulatory options for the protection of consumers in the field of commercial practices.

(19) For the effective application of this Regulation, certain concepts should be clarified so that they also reflect the evolution of the jurisprudence of the Court of Justice.

(20) This Regulation should address commercial practices directly related to influencing consumers' transactional decisions in relation to products. For the purposes of its application, it should suffice that the trader's conduct concerns or targets only one single consumer.

(21) The term 'transactional decision' should have a broad meaning covering not only decisions such as whether or not to purchase a product, but also decisions directly related to such decisions, for example the decision to enter a shop or to continue scrolling in a digital setting.

(22) Unless otherwise provided for in this Regulation, the concept of 'payment' for the purposes of this Regulation should be given the meaning of any consideration of an asset value, as interpreted by the Court of Justice. It, therefore, not only includes funds used in payment transactions as defined in Article 3, points 7 and 8 of Regulation (EU) [Payment Services Regulation], but also encompasses gifts, invitations, and any other payment in kind. In order to ensure that the consumers are not excluded from protection granted under this Regulation, this term should also encompass situations where the consumer does not pay with money but provides personal data to the trader as defined in Directive (EU) 2019/770 of the European Parliament and of the Council[41]. While fully recognising that the protection of personal data is a fundamental right, and that personal data cannot be considered as a commodity in itself, the collection of such personal data in the digital economy and their use for commercial purposes has an economic, asset value and, in the context of the digital economy, it could be considered as 'payment' within the meaning of this Regulation.

(23) In line with the principle of proportionality, this Regulation should take as a benchmark the average consumer, who is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice.

(24) The average consumer test is not a statistical test. National courts, competent authorities and, where applicable, the Commission, will have to exercise their own faculty of judgement, having regard to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case. As interpreted by the Court of Justice, the 'reasonably well-informed' nature of the average consumer refers to the information which can reasonably be presumed to be known to any consumer, taking into account the relevant social, cultural and linguistic factors. Equally, the fact that the concept of 'average consumer' should be understood by reference to a consumer who is 'reasonably observant and circumspect' does not exclude taking into account the influence of cognitive biases on that average consumer.

(25) In certain fields, it is unlikely that the average consumer is technically capable of understanding all the details of an offer in order to make a choice in a fully rational way. Particularly in the online environment, the average consumer may have limited capacity to process information due to information overload or limited digital literacy.

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[41] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1, ELI: http://data.europa.eu/eli/dir/2019/770/oj).

This may impair attention, comprehension and the quality of decisions taken by the consumer.

(26) Where a commercial practice specifically targets a particular group of consumers, such as minors, the impact of the commercial practice should be assessed from the perspective of the average member of that group.

(27) It is also necessary to lay down provisions aimed at preventing the exploitation of consumers who are particularly vulnerable to unfair commercial practices. Certain consumers may be particularly susceptible to a commercial practice or to the underlying product due to personal attributes such as age or disability, behavioural characteristics such as credulity, or any specific misfortune or circumstance of such gravity as to impair the consumer's judgment, such as financial distress, or a combination thereof. 'Persons with disabilities' means persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. For the purposes of this Regulation, persons with impairments that are not long-term should likewise be protected. Where a commercial practice is likely to materially distort the economic behaviour primarily of consumers who are vulnerable in a way that the trader can reasonably foresee, it is appropriate to ensure that such consumers are adequately protected by objectively assessing the practice from the perspective of the average member of that group, irrespective of the number of consumers affected.

(28) In order to ensure a high level of consumer protection for children, for the purposes of this Regulation, a 'minor' or 'child' should be understood as any natural person under the age of 18, irrespective of any provisions of national law providing for an earlier or later attainment of legal majority.

(29) Whether a product is directed at minors, or whether a trader is aware with reasonable certainty that the product is used by minors, should be assessed having regard to objective indicators.

(30) For example, Union law, such as Regulation (EU) [EU KIDS Act] and the Guidelines on the protection of minors under Regulation (EU) 2022/2065, may require age assurance methods for certain types of traders. Also, traders may integrate customer accounts which allow them directly or indirectly to establish if the accounts belong to minors. Age rating systems, of traders themselves or of third parties, such as those that providers of software application stores have to put in place on the basis of Regulation (EU) [EU KIDS Act], or the Pan-European Game Information (PEGI) age classification system or comparable reliable age rating schemes, can also be taken into account.

(31) Objective indicators pointing to the fact that the consumer is a minor also include the marketing channels used to advertise the product or product features, such as the characters (including celebrities or influencers), themes, animations, or the type of music or language used, when such indicators are likely to render the product appealing to minors.

(32) A trader may also be aware that some of the consumers are minors, for example because the trader already processes consumers' personal data revealing their age for other purposes. Pursuant to Regulation (EU) 2016/679, notably the principle of data minimisation as provided for in Article 5(1), point (c) of that Regulation, the

provisions of this Regulation should not lead the trader to maintain, acquire or process more personal data than traders already have.

(33) In order to protect consumers from misleading commercial practices, this Regulation should cover those practices, including misleading advertising, which by deceiving consumers prevent them from making an informed choice. This Regulation should classify misleading practices into misleading actions and misleading omissions. In respect of misleading omissions, this Regulation should set out a limited number of key items of information which the consumer needs to be made aware of in order to make an informed transactional decision. Such information should not have to be disclosed in all advertisements, but only where the trader makes an invitation to purchase in accordance with this Regulation. In accordance with the case-law of the Court of Justice, an invitation to purchase exists as soon as the information on the product advertised and its price is sufficient for the consumer to be able to make a transactional decision, without it being necessary for the commercial communication also to offer an actual opportunity to purchase the product or for it to appear in connection with such an opportunity.

(34) The way in which information is presented or framed may influence consumer decisions. For example, consumers are more likely to take into account information that is presented more saliently when taking decisions. Accordingly, when designing their online commercial communications, including invitations to purchase, traders should prioritise presentations that promote comprehension of material information and thereby facilitate consumers' free and well-informed decision-making.

(35) Marketing across Member States of goods as being identical when, in reality, they have a significantly different composition or characteristics may mislead consumers and cause them to take a transactional decision that they would not have taken otherwise. Competent authorities and, where applicable, the Commission should assess and address on a case-by-case basis such practices in accordance with this Regulation. Such assessment should take into account whether such differentiation is easily identifiable by consumers, a trader's right to adapt goods of the same brand for different geographical markets due to legitimate and objective factors, such as national law, availability or seasonality of raw materials or voluntary strategies to improve access to healthy and nutritious food as well as the traders' right to offer goods of the same brand in packages of different weight or volume in different geographical markets. The competent authorities and the Commission should assess whether such differentiation is easily identifiable by consumers by looking at the availability and adequacy of information. It is important that consumers are informed about the differentiation of goods due to legitimate and objective factors. Traders should be free to provide such information in different ways that allow consumers to access the necessary information. Alternatives to providing information on the label of goods should generally be preferred by traders.

(36) The requirement to provide the identity and geographical address of the trader in an invitation to purchase enables consumers to identify and contact the trader responsible for the transaction. However, information about the geographical address of the trader is most relevant where the consumer needs to exercise their contractual rights in relation to the purchase, such as the right of withdrawal or legal guarantee. Requiring traders, in particular individuals acting in the context of influencer marketing who merely promote, recommend or otherwise communicate about a product sold or supplied by another trader, to make their geographical address publicly available may interfere disproportionately with their privacy. Therefore, the requirement to disclose

the geographical address in an invitation to purchase should only apply to traders engaged in the sale or supply of products to consumers.

(37) When products are offered to consumers in online marketplaces, both the provider of the online marketplace and the third-party supplier are involved in the provision of the pre-contractual information required by Directive 2011/83/EU of the European Parliament and of the Council[42]. As a result, consumers using the online marketplace may not clearly understand who their contractual partners are and how their rights and obligations are affected. Specific information requirements for providers of online marketplaces should therefore be provided in this Regulation to inform consumers whether the third-party offering goods, services or digital content is a trader or non-trader, such as another consumer, based on the declaration made to them by the third party.

(38) Higher ranking or any prominent placement of commercial offers within online search results by the providers of online search functionality has an important impact on consumers. Ranking refers to the relative prominence of the offers of traders or the relevance given to search results as presented, organised or communicated by providers of online search functionality, including resulting from the use of algorithmic sequencing, rating or review mechanisms, visual highlights, or other saliency tools, or combinations thereof. The transparency requirements with regard to the main parameters determining ranking under Regulation (EU) 2019/1150 of the European Parliament and of the Council[43] only apply between traders and online intermediaries. Similar transparency requirements should therefore be provided for in this Regulation to ensure adequate transparency towards the consumers, except in the case of providers of online search engines, which are already required by Regulation (EU) 2019/1150 to publish the main parameters which individually or collectively are most significant in determining ranking and the relative importance of those main parameters.

(39) Traders enabling consumers to search for goods and services, such as travel, accommodation and leisure activities, offered by different traders or by consumers should inform consumers about the default main parameters determining the ranking of offers presented to the consumer as a result of the search query and their relative importance as opposed to other parameters. That information should be succinct and made easily, prominently and directly available. Those parameters should include any general criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms used in connection with the ranking.

(40) The information requirement regarding the main parameters determining the ranking should be without prejudice to Directive (EU) 2016/943 of the European Parliament and of the Council[44]. Traders should not be required to disclose the detailed

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42 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 (OJ L 304, 22.11.2011, p. 64, ELI: http://data.europa.eu/eli/dir/2011/83/oj).

43 Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57, ELI: http://data.europa.eu/eli/reg/2019/1150/oj).

44 Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1, ELI: http://data.europa.eu/eli/dir/2016/943/oj).

functioning of their ranking mechanisms, including algorithms. Traders should provide a general description of the main parameters determining the ranking that explains the default main parameters used by the trader and their relative importance as opposed to other parameters, but that description does not have to be presented in a customised manner for each individual search query.

(41) Where Union law sets out information requirements in relation to commercial communication including advertising and marketing, that information should be considered as material under this Regulation. This Regulation does not prevent Member States from retaining or adding information requirements relating to contract law and having contract law consequences where this is allowed by the minimum clauses in the existing Union law instruments.

(42) Only the information required under Union law should be considered as material for the purpose of misleading omissions prohibited under this Regulation. Where Member States have introduced information requirements over and above what is specified in Union law, on the basis of minimum clauses, the omission of that additional information should not constitute a misleading omission under this Regulation.

(43) Consumers rely on consumer reviews and endorsements when they make purchasing decisions. Therefore, when traders provide access to consumer reviews of products, they should inform consumers whether processes or procedures are in place to ensure that the published reviews originate from consumers who have actually used or purchased the products. If such processes or procedures are in place, traders should provide information on how the checks are made. They should also provide clear information to consumers on how reviews are processed, for example, whether those reviews have been sponsored or influenced by a contractual relationship with a trader.

(44) In order for consumers to be empowered to take better-informed decisions and thus stimulate the demand for, and the supply of, more sustainable goods, they should not be misled about a product's environmental or social characteristics or circularity aspects, such as durability, reparability or recyclability, through the overall presentation of a product. Environmental and social characteristics and circularity aspects should be considered amongst the main characteristics of a product in respect of which a trader's practices can be considered misleading, following a case-by-case assessment. Information provided by traders on the social characteristics of a product throughout its value chain can relate, for example, to the quality and fairness of working conditions of the workforce involved, such as adequate wages, social protection, the safety of the work environment and social dialogue. Such information can also relate to respect for human rights, to equal treatment and opportunities for all, including gender equality, inclusion and diversity, to contributions to social initiatives or to ethical commitments, such as animal welfare. The environmental and social characteristics of a product can be understood in a broad sense, encompassing the environmental and social aspects, impact and performance of a product.

(45) Environmental claims, in particular climate-related claims, increasingly relate to future performance in the form of a transition to carbon or climate neutrality, or a similar objective, by a certain date. Through such claims, traders create the impression that consumers contribute to a low-carbon economy by purchasing their products. To ensure the fairness and credibility of such claims, it is necessary to prohibit such claims, following a case-by-case assessment, where they are not supported by clear, objective, publicly available and verifiable commitments and targets given by the trader and set out in a detailed and realistic implementation plan that shows how those

commitments and targets will be achieved and that allocates resources to that end. That implementation plan should include all the relevant elements necessary to fulfil the commitments, such as budgetary resources and technological developments, where appropriate and in accordance with Union law. Such claims should also be verified by a third-party expert, who should be independent from the trader, free from any conflicts of interest, with experience and competence in environmental issues and who should be able to monitor the progress of the trader regularly with regard to the commitments and targets, including the milestones for achieving them. Traders should ensure that the regular findings of the third-party expert are available to consumers.

(46) Another potentially misleading commercial practice is advertising benefits to consumers that are irrelevant and not directly related to any feature of that specific product or business and which could mislead consumers into believing that they are more beneficial to consumers, the environment or society than other products or traders' businesses of the same type, for example, claiming that a particular brand of bottled water is gluten-free or claiming that paper sheets do not contain plastic.

(47) Comparing products based on their environmental or social characteristics or circularity aspects, such as durability, reparability or recyclability, is an increasingly common marketing technique that could mislead consumers, who are not always able to assess the reliability of that information. In order to ensure that such comparisons do not mislead consumers, traders should provide consumers with information about the method of comparison, the products which are the object of comparison and the suppliers of those products, and the measures to keep information up to date. This should ensure that consumers make better-informed transactional decisions when relying on such comparisons. It should be ensured that such comparisons are objective by, in particular, comparing products which serve the same function, using a common method and common assumptions, and comparing material and verifiable features of the products being compared.

(48) The provisions on aggressive commercial practices should cover practices which significantly impair the consumer's freedom of choice by using harassment, coercion, including the use of physical force, and undue influence. The consumer's freedom of choice may be significantly impaired by commercial communications and other commercial practices, including increasingly personalised practices, that exploit consumer vulnerabilities due to attributes such as disability, age or credulity, or any specific misfortune or circumstance of such gravity as to impair the consumer's judgment. This includes addictions and financial distress. Online traders should not be required to process additional personal data to assess whether a consumer is vulnerable.

(49) It is desirable that commercial practices which are in all circumstances unfair be identified to provide greater legal certainty. It is therefore necessary to provide a list of such practices which should be deemed unfair without a case-by-case assessment in Annex I.

(50) Certain problematic commercial practices are prevalent in the online environment and warrant specific rules to address them. The fact that a commercial practice in the online environment does not infringe the specific rules of this Regulation on digital fairness or of Annex I should not preclude that practice from being considered unfair where it does not comply with the general rules on unfair commercial practices.

(51) Traders increasingly use dark patterns on the online interfaces of their websites, applications, including mobile applications, and other software which serves to give

consumers access to the trader's products. Such practices may pressure, mislead or otherwise interfere with consumers' ability to take free and informed transactional decisions. Their widespread use in sectors such as ultra-fast-fashion online retail can for example influence consumers' choices towards impulsive buying and overconsumption. While Regulation (EU) 2022/2065 prohibits intermediary service providers operating online platforms from using dark patterns in the design and organisation of their online interfaces, that prohibition does not apply to dark patterns covered by this Regulation, which relate exclusively to business-to-consumer commercial practices.

(52) In order to ensure legal certainty, it is necessary to clarify that using dark patterns to materially distort the economic behaviour of consumers is prohibited. As some dark patterns present a particularly high risk of distorting the behaviour of consumers, the practices listed in Part III of Annex I should be deemed to be unfair in all circumstances. Exploitative design features that materially distort the economic behaviour of consumers by directing consumers to choices or actions that benefit the trader, but which may not be in the consumer's interests, including, for example, by giving more prominence to choices that benefit the trader, decreasing the prominence of material information or forcing consumers to click through too many steps to access it, or making the choice indicated by the consumer lead to an unexpected result, should be deemed unfair.

(53) Consumers are increasingly exposed to commercial communications disseminated by social media influencers. Such communications are frequently perceived as personal recommendations rather than advertising. While this Regulation prohibits misleading omissions, including the failure to disclose the commercial nature of the communication which may prevent consumers from making an informed choice, the application of its provisions to influencer marketing should be clarified, in particular as regards the manner in which such disclosure should be made.

(54) Disclosure of the commercial nature of communications by influencers should be made in a clear, prominent, and unambiguous manner, in the same medium in which the communication is disseminated. The disclosure of the commercial nature of the communication should also be presented prominently and at the outset, at the same time when the communication is published, and maintained for the duration of the communication. It should be expressed in the language of the communication and in easily understandable terms which are adapted to the targeted audience and not be obscured by placement among unrelated items of information. The terms 'advertisement' and 'commercial collaboration' should be considered as sufficiently clear.

(55) Minors are particularly vulnerable to influencer marketing, often perceiving influencers as their friends. Influencers sometimes exploit minors' trust, for example by blurring the commercial purpose of their activities, or exploiting gender stereotypes and gender-specific vulnerabilities, pushing minors to buy products or otherwise distorting their transactional decisions. Some influencers also engage in the marketing of products that could be harmful, or otherwise unsuitable for consumers in general or to minors in particular, such as speculative instruments, betting, lotteries or other forms of gambling products. Concerns may also arise from influencer marketing where it leads to unbalanced diets or influences minors' consumption of foods and beverages whose nutritional or physiological effects may make them unsuitable for their age. Union law such as Directive 2010/13/EU prohibits the advertising of certain products in general, when directed at minors only or by certain actors only. Influencer

marketing should be prohibited for products for which advertising is prohibited under Union or national law.

(56) Traders disseminating commercial communications by means of influencer marketing, such as companies selling branded products or advertising agencies, determine the subject matter and the incentives of such communications. They are, generally, also better placed to be aware of the applicable legal requirements. Such traders should therefore also be liable for compliance with the legal requirements concerning influencer marketing irrespective of the type of payment granted to the influencer, meaning not only a sum of money, but also any other form of consideration having an asset value, and irrespective of the degree of editorial freedom conferred to the influencer. To this end, such traders should be required to contractually ensure, in a clear manner, that the legal requirements provided for in this Regulation are respected. Contractual provisions should not operate as means for traders to exclude their own liability with regard to the influencer and cannot affect the trader's liability under this Regulation. Where a contract is not formally concluded, for example in a situation where traders provide gifts or invitations or other benefits in kind to the influencer, whether solicited or unsolicited, traders should take alternative measures to ensure compliance. Such measures should be effective, appropriate and proportionate. They may include providing the influencer with clear information on the applicable rules, requesting or verifying appropriate disclosure and, where necessary, requesting the correction or removal of the commercial communication, including by means of legal actions where appropriate.

(57) Regulation (EU) 2023/988 of the European Parliament and of the Council[45] and other Union product legislation set out proportionate obligations to economic operators, including manufacturers, importers and distributors, concerning the safety of products, in relation to their respective roles in the supply chain. In the context of influencer marketing, the operators concerned may in some cases have obligations as economic operators pursuant to Regulation (EU) 2023/988 or other Union product legislation depending on their role and their position in the product supply chain. For instance, operators engaging in influencer marketing that have manufactured the product or have a product manufactured or designed for them and are marketing it under their own name or trademark have to comply with the obligations of a manufacturer. Economic operators are to only make available on the market safe products and, where a product appears to be dangerous, they are to adopt corrective measures, including withdrawal or recall of the product, as well as inform consumers and the relevant authorities. Regardless of whether operators engaging in influencer marketing qualify as economic operators pursuant to Regulation (EU) 2023/988 or other Union product legislation, influencer marketing of dangerous products within the meaning of that Regulation or other Union product legislation should be prohibited. Prior to engaging in influencer marketing activities regarding a product, the operators concerned are encouraged to check whether such products are subject to a corrective measure notified in the Safety Gate Portal, a web portal providing free public access to corrective measures taken against dangerous products.

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45 Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC (OJ L 135, 23.5.2023, p. 1, ELI: http://data.europa.eu/eli/reg/2023/988/oj).

(58) When consumers are presented with advertisements based on targeting techniques optimised to exploit their vulnerabilities, personalised online advertising can have serious negative effects. In such instances, the use of sensitive personal data referred to in Article 9(1) of Regulation (EU) 2016/679, for example, personal data revealing information such as racial or ethnic origin, or health and sexual orientation, may be particularly problematic. Further, minors may be less aware of the risks relating to the processing of their personal data for commercial purposes. Regulation (EU) 2022/2065 already prohibits certain advertising practices of providers of online platforms, in particular the presentation of advertisements to recipients of their service based on profiling using special categories of personal data, or any kind of personal data when the provider is aware with reasonable certainty that the recipient of the service is a minor. However, the dissemination of personalised online advertisements can involve a complex chain of actors beyond providers of online platforms. Therefore, it is necessary to impose similar prohibitions on other traders which do not qualify as online platforms within the meaning of Regulation (EU) 2022/2065 or do not meet the requirements for the application of Section 3 of Chapter III of that Regulation.

(59) Traders should therefore be prohibited from targeting advertisements based on profiling pursuant to Regulation (EU) 2016/679 using sensitive personal data of consumers. Traders should also be prohibited from targeting advertisements based on profiling using personal data when they are aware with reasonable certainty that the consumer is a minor. The prohibitions of unfair personalised advertising should also apply where personalised advertising takes the form of personalised content suggestions, product rankings and recommendations, and other types of promotional targeted messaging, including in natural language systems. In order to ensure their effectiveness, these prohibitions should apply to all traders, including providers of advertising services, that target or facilitate the targeting of advertising, such as by selecting the advertising content, selecting the targeting and ad-delivery criteria, providing the data used for the targeting and delivery of an advertisement, providing the targeting techniques and ad-delivery techniques, and delivering and disseminating an advertisement.

(60) Online personalised pricing, where the prices of products are adapted to particular consumers or particular categories of consumer on the basis of personal data, resulting in different prices for the same product offered at the same time to different consumers, can be unfair if traders use this information in a manner that could be harmful for consumers. When they are aware with reasonable certainty that the consumer is a minor, traders should therefore be prohibited from personalising prices based on profiling pursuant to Regulation (EU) 2016/679 in a manner that is reasonably likely to cause the minor harm. Traders should also be prohibited from personalising prices based on profiling in a manner that is reasonably likely to cause the consumer harm where they are aware with reasonable certainty that the consumer is vulnerable due to age, credulity, disability, or any specific misfortune or circumstance of such gravity as to impair the consumer's judgment. These prohibitions would in most cases include offering higher prices to consumers, but may include offering lower prices, for example where traders offer, on the basis of the personal data, a product that may have a detrimental effect on the consumer. These prohibitions should not extend to personalisation to the benefit of consumers, such as student or senior rebates. These prohibitions should in particular not preclude the use of consumers' personal data, including data that may be related to vulnerabilities, for the purposes of personalised pricing or differentiation of contractual terms, where such

personalisation or differentiation is based on lawful, relevant, objective and transparent factors, such as evidence-based insurance risk or additional costs for the trader, provided that the processing of such data complies with the applicable requirements of Union and national law and that such personalisation does not exploit vulnerabilities.

(61) Consumers are often exposed to commercial practices that have the effect of reducing the transparency of their economic transactions or that consist in offering products that can increase spending beyond the level they would choose. Such spending-maximising commercial practices include the use of virtual currencies, making available variable reward systems or making available pay-to-progress or pay-to-win mechanisms. The use of virtual currencies or other tokens or coins that can be acquired in full or in part through payment transactions within the meaning of Article 3, point 8 of Regulation (EU) [Payment Services Regulation] or through other paid-for virtual currencies, to purchase virtual items or other products, makes it more difficult for consumers to assess the true cost of an economic transaction. Virtual currencies that are locked inside a specific video game, gaming platform or app, hold no external cash value and cannot be cashed out or traded outside the video game, gaming platform or app, do not fall within the scope of Regulation (EU) [Payment Services Regulation] or Regulation (EU) 2023/1114 of the European Parliament and of the Council[46]. In order to allow consumers to make informed purchasing decisions when paying for virtual items or other products by exchanging in-game virtual currencies that have been purchased through payment transactions within the meaning of Article 3, point 8 Regulation (EU) [Payment Services Regulation] or through other paid-for virtual currencies, the real-world monetary value of such products in the currency used to purchase the virtual currency should be indicated to them in a prominent, clear and comprehensible manner, irrespective of any legal classification or definition of in-game currencies in Union law. Where the monetary value cannot be directly determined, it may be estimated based on what the consumer would have to pay in full, directly or indirectly through another virtual currency without applying quantity discounts or other promotional offers. Points or other items collected or obtained through loyalty programmes do not amount to virtual currency in the meaning of this Regulation.

(62) It may be particularly difficult for minors to understand the real monetary value of virtual currencies. Therefore, where a product is directed at minors or when the trader is aware with reasonable certainty that the product is used by minors, virtual currencies should be disabled by default, and the trader should only allow their activation upon prior approval of a parent or guardian. A product is directed at minors, for instance in cases where it has obtained an age rating, whether from traders themselves or from third-parties, such as those that the providers of software application stores have to put in place on the basis of Regulation (EU) [EU KIDS Act], or the Pan-European Game Information (PEGI) age classification system or comparable reliable age rating schemes, that indicates that the product's use is appropriate for persons under the age of 18. Where a product is accessed through a customer account that a trader has established and that allows the trader directly or indirectly to establish that it belongs to a minor, the trader should be considered to be aware with reasonable certainty that the recipient of the product is a minor. For the

[46] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40, ELI: http://data.europa.eu/eli/reg/2023/1114/oj).

purpose of complying with their obligations under this Regulation, traders subject to the Regulation (EU) [EU KIDS Act] may rely on tools for guardians set forth under that Regulation.

(63) Variable reward systems that offer random rewards or variable odds, such as loot boxes, wheels of fortune, or collectible card packs, are prone not only to cause unwanted spending by consumers but can also be harmful due to the fact that they share the speculative features of gambling. In order to ensure that the invitation to purchase those products complies with existing consumer protection rules, it is necessary to clarify traders' obligations. Consequently, traders should inform consumers in a clear and prominent manner about the types of products available in such variable reward systems and the probabilities of obtaining them. Investment services relating to financial instruments which by nature offer variable returns should not be considered variable reward systems.

(64) Minors are particularly exposed to the persuasive effects of spending-maximising products. Therefore, where a product is directed at minors or when the trader is aware with reasonable certainty that the product is used by minors, variable reward systems that can be acquired in full or in part through payment transactions within the meaning of Article 3, point 8 of Regulation (EU) [Payment Services Regulation] or though paid-for virtual currencies should not be made available to minors. In addition, consumers should be able to use effective, easily accessible and simple tools enabling them to disable variable reward systems. The prohibition to offer variable reward systems to minors provided for in this Regulation should not apply to the providers of online social networking services, of video-sharing platform services and of AI companions and of general conversational chatbots which are subject to the same prohibition under Article 13(2) of Regulation (EU) [EU KIDS Act].

(65) Pay-to-win and pay-to-progress mechanisms may make it impossible for consumers to advance in a video game or in an app or may lead them to reasonably believe that they cannot advance or compete without paying. Such mechanisms may include artificial difficulty barriers, progression speeds that render the unpaid path illusory, or competitive structures in which outcomes are effectively determined by expenditure. It may be difficult for minors to resist such perceived pressure to pay. Therefore, where a product is directed at minors or when the trader is aware with reasonable certainty that the product is used by minors, pay-to-progress or pay-to-win mechanisms that can be acquired in full or in part through payment transactions within the meaning of Article 3, point 8 of Regulation (EU) [Payment Services Regulation] or though paid-for virtual currencies should not be made available to minors.

(66) Digital products are increasingly designed not merely to serve the purposes for which consumers use them, but to capture and retain consumers' attention, thereby encouraging prolonged engagement which may translate into harm of consumers' economic interests. Certain design features and functionalities exploit consumers' cognitive, psychological and other vulnerabilities for economic purposes. This Regulation complements Regulation (EU) 2022/2065, which focuses on specific risks caused by very large online platforms and very large online search engines in relation to the design of online interfaces which intentionally or unintentionally exploit the weaknesses and inexperience of minors or which may cause addictive behaviour, or serious negative consequences to a person's physical and mental well-being. Nothing in this Regulation should affect the application of Regulation (EU) 2022/2065 to protect the recipient of the services against addictive design by designated entities. It also complements Regulation (EU) [EU KIDS Act], which imposes safety by design

measures tailored to the specific characteristics and risks stemming from those systems in order to offer minors an age-appropriate experience. In particular, that Regulation bans addictive design features that exploit minors' vulnerabilities and encourage compulsive or excessive use of the service, with adverse effects on minors' mental, emotional and physical well-being, beyond their role as consumers. It also sets out specific features that shall be deemed to encourage such use on online social networking services and video-sharing platform services as well as to a certain extent on online games and AI companions and general conversational chatbots, in view of the specific characteristic of such services. For instance, video-sharing platforms and online social networks often feature the automatic play of content and incentivise "infinite scrolling"; video games may incentivise engagement by penalising the consumer if they do not engage; AI companions and general conversational chatbots, in turn, may simulate interpersonal relations to incentivise prolonged use. While the relevant features should not be available to minors on these services, pursuant to Article 9, 14 and 15 of Regulation (EU) [EU KIDS Act], in light of the extensive evidence on the harmfulness of such features also for adult consumers and beyond such services, it is necessary to enable consumers to disable features that encourage compulsive or excessive use. The provisions of this Regulation related to addictive design should not apply to traders subject to the relevant provisions of Regulation (EU) [EU KIDS Act] for practices concerning minors nor to providers of educational or scientific services as specified in that Regulation.

(67) Access to cultural, sporting, and entertainment events is an important aspect of consumer participation in social and cultural life, and the market for tickets to such events has become increasingly digitalised. However, information asymmetry between traders and consumers and the emotional or social value attached to an event make consumers particularly vulnerable to practices designed to obscure the real price of the ticket, impairing their ability to take an informed decision. It is therefore necessary to establish specific transparency requirements applicable to traders offering event tickets. In particular, where traders make event tickets available at prices that may increase as a result of the trader's actions or the use of automated or algorithmic pricing mechanisms, consumers should be informed, in a clear and prominent manner, of the number of tickets available at the advertised price and of the maximum price that may be charged, including any additional charges or fees that the consumer may be required to pay.

(68) Traders often use virtual queuing systems in the event ticketing and other sectors for products in limited supply and for which there is strong consumer demand. Consumers waiting in a virtual queue for their chance to buy are particularly vulnerable to opaque pricing practices that can distort their transactional decisions. To ensure the necessary transparency, consumers should be informed, in a clear, prominent and timely manner, about the price of the product applicable at the time of the entry into the queue and whether that price is subject to variation during the waiting time. Consumers should also be notified about the current price changes in real time and about the maximum selling price while they are waiting in a virtual queue.

(69) When first entering into a contract for the continuous provision of goods or services by means of an online interface or by other digital means, consumers are usually not able to see the goods or experience the service before concluding the contract. For that reason, traders often allow consumers to test the goods or services covered by such subscriptions during a free trial period at the end of which a paid contract period starts. The practice whereby after a free trial period a paid period starts automatically without

informing the consumer unduly restricts consumers' freedom of choice. Therefore, the trader should give the consumer clear and comprehensible information sufficiently ahead of the start of the paid period, allowing the consumer to decide whether to continue the contract against payment. Such information should include at least the end date of the free trial period and the start of the paid period, the detailed characteristics of the paid contract, such as the price, duration and termination procedure for the paid contract, as well as the procedure by which the consumer can confirm the start of the paid contract period. No payment should be required from the consumer during a free trial period, unless the consumer has expressly accepted the provision of the goods or services against payment.

(70) Contracts for the continuous supply of goods or for the continuous provision of services concluded by means of an online interface or by other digital means often contain automatic extension clauses. Such automatic extension clauses may unduly restrict consumers' freedom of choice in particular concerning the possibility of changing suppliers. It is difficult for consumers to keep track of the notice periods of all the contracts they have concluded. Traders should therefore be obliged to give consumers clear and comprehensible information sufficiently in advance of the extension date, allowing consumers to decide whether to terminate their contracts. Moreover, contracts that are automatically extended for an indeterminate duration, even after a reminder, can lead to customer lock-in. Consequently, consumers should have the right to terminate such long-term contracts with a short notice period.

(71) Short-term supply contracts containing automatic extension clauses can unduly restrict consumers' freedom of choice, if their cumulative duration, extensions included, exceeds a certain duration and the consumer is not informed about such extension. Consequently, it is appropriate also in such cases to require traders to provide consumers with information enabling them to decide whether to terminate their contracts. Such information should include at least the contract extension date, price, duration, and termination procedure of the extended contract, including a reference or direct link to the online contract termination function.

(72) In order to ensure the effective exercise of the right to terminate a contract, the procedure for the exercise of that right should not be more burdensome than the procedure for the conclusion of a contract. Where the trader offers the possibility of concluding contracts by means of an online interface, the trader should enable the consumer to terminate a contract concluded with that trader via an online function. This should ensure that consumers can terminate a contract just as easily as they can conclude it. To strengthen trust in the termination process, traders should be able to use a European Business Wallet established under Regulation (EU) [European Business Wallets], or, in the case of sole traders, a European Digital Identity Wallet issued under Regulation (EU) No 910/2014, as amended by Regulation (EU) 2024/1183, to identify and authenticate themselves towards the consumer when the online contract termination function is used. Acknowledgements of receipt of the termination statement could also be issued by means of qualified trust services, such as qualified electronic seals, qualified time stamps and qualified electronic registered delivery services, which benefit from legal effect across the Union. The use of such means should remain optional, should not make the procedure for terminating the contract more burdensome than the procedure for concluding it, and should not prevent the use of other equivalent technical solutions.

(73) Where the trader offers the possibility of concluding distance contracts that are subject to the right of withdrawal under Directive 2011/83/EU by means of an online

interface, such as through a website or application, Directive 2011/83/EU already requires traders to provide an online function for exercising the consumer's right of withdrawal. Traders should be able to rely on a European Business Wallet, or on a European Digital Identity Wallet in the case of sole traders, to identify and authenticate themselves when providing this function, in order to help consumers verify that the function is operated by the trader with whom they contracted. Traders should also be able to use trust services to send consumers a sealed and time-stamped acknowledgement of the withdrawal statement, including by means of qualified electronic registered delivery service. Such an acknowledgement should provide reliable evidence of the date and time at which the withdrawal statement was submitted, without prejudice to the consumer's right to prove the exercise of the right of withdrawal by other means.

(74) The online contract termination function and the online withdrawal function should be provided in a similar manner, thus potentially requiring only one-time changes to the design of the online interface, with the distinction that the online withdrawal function should only be available during the withdrawal period while the newly introduced online contract termination function should be available throughout the contract duration. Therefore, it is appropriate to set out the requirements for both functions in this Regulation. The obligation to provide the online withdrawal or contract termination function should not in itself grant any right to withdraw from or terminate a contract but should only regulate the technical means of exercising such rights where they exist.

(75) The online withdrawal function and the online contract termination function should be easy for the consumer to find, continuously available and clearly visible during the withdrawal period or throughout the contract respectively. The consumer should not have to undertake procedures to find or access those functions, such as downloading an application if the contract was not concluded through that application. The online withdrawal function and online contract termination function should enable consumers to provide or confirm the information necessary to identify themselves and the contract. For instance, consumers who have already identified themselves by logging in, should be able to withdraw from or terminate the contract without the necessity of providing once more their identification data or, where applicable, the identification of the contract from which the consumer wishes to withdraw or which the consumer wishes to terminate. In order to avoid the unintended exercise of the right of withdrawal or unintended termination of the contract by the consumer, the trader should request the consumer to confirm the decision to withdraw or terminate the contract. Where the consumer uses the function to exercise the right of withdrawal or to terminate a contract, the trader should communicate to the consumer an acknowledgement of receipt of such a withdrawal or a contract termination on a durable medium without undue delay.

(76) An increasing number of traders use online tools for communication with and provision of customer service to consumers, both as regards distance and other contracts. After a contract has been concluded, the consumer should have the right to request communication with a human being in order to solve a problem, when other means are not effective. This communication could take place online or otherwise, including via email or instant messaging services, in the same language as the one used for concluding the contract, free of charge, and without undue delay during business hours of the trader. In undertaking their assessment of infringements of this obligation, competent authorities and, where applicable, the Commission, may take

into account the nature and extent of the difficulties experienced by consumers and whether human intervention could result in undue burden for the trader in such cases, particularly given the size of the trader's undertaking. Investment services as defined under Article 4(1)(2) of Directive 2014/65/EU of the European Parliament and of the Council[47] should be excluded from this provision in view of the applicable financial services legislation.

(77) Automated systems programmed to interact with natural persons or with other automated systems in contracting, including through the deployment of artificial intelligence (AI) systems, are becoming increasingly relevant both for traders and consumers. It is, therefore, important to enhance legal certainty and commercial predictability, including in cross-border transactions, through the harmonisation of certain rules on the use of automation in contracting in a technology neutral manner. Automated systems are capable of carrying out actions without the necessity of review or intervention of a natural person. However, the fact that an automated system is subject to human oversight does not imply that it would cease to be considered an automated system.

(78) Consumers can use automated systems, including those provided by third parties, for their contractual relations with traders, but should not be obliged by traders to use automated systems to access their online interfaces, including to access special offers or conditions, or to conclude commercial transactions. Consumers may decide to use automated systems not only at the pre-contractual stage, but also for contract conclusion and performance. It is therefore important to clarify that consumer law continues to apply when consumers use automated systems and to safeguard the existing consumer rights also in this context. Consumers should be able to maintain a level of control over the actions of automated systems they use by having the possibility to express certain choices and set the key parameters for such automated systems and modify such settings as needed. For the purpose of setting those key parameters, traders making available to consumers automated systems should, therefore, ensure that such automated systems used for contracting contain easily accessible and effective tools, enabling the consumers to set and adjust the main parameters. To maintain a sufficiently high level of consumer protection, traders should ensure that on the first use of an automated system, consumers are required to expressly choose whether they wish to confirm all contracts proposed by the automated system before they are bound by such contracts, only certain contracts, based on specific parameters to be set by the consumer, or whether no confirmation of any contracts before being bound by them is necessary. The use of an automated system by the consumer does not imply any waiver of consumer rights accorded under Directive 2011/83/EU, even in case the consumer decides not to pre-approve any contracts before being bound by them. In all cases, traders should make available to the automated system used by the consumer for contracting the pre-contractual information required under Directive 2011/83/EU. Where consumers choose to confirm certain or all contracts, they should receive through the automated system at least the information provided for in Article 6(1), points (a) to (e), (h) to (k), (o) and (p), of Directive 2011/83/EU in a human-readable format to allow them to take informed decisions. When choosing to confirm only certain contracts proposed by the automated system, consumers should be able to set the parameters that they find

[47] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349, ELI: http://data.europa.eu/eli/dir/2014/65/oj).

important for their decision-making. For instance they should be able to exclude contracts above a certain monetary value that they set up-front, limit automated contracts to only those with specific traders as a counterpart or only those traders that provide a right of withdrawal or specific guarantees. Moreover, consumers should be able to indicate a time limit for the applicability of their choice to only confirm certain contracts before they are bound by them. Where the trader making available to consumers an automated system for contracting receives any payment for proposing a contract, for instance in case of a sponsored suggestion by the automated system or in case of any other conflict of interest with the trader concerned by the proposed contract, such as preferencing of that trader's products in the proposals made by the automated system, the automated system should disclose the existence of such payment or other conflict of interest to the consumer on whose behalf it is acting and request a confirmation of the contract by the consumer, independently of the choice expressed by the consumer as regards the confirmation or not of all or certain contacts.

(79) Where automated systems interact with traders on behalf of consumers, it is important that both sides can rely on trusted information on who is acting and on whose behalf, as well as to the effect of identifying the particular system. To that end, traders and providers of automated systems that are economic operators should be able to identify and authenticate themselves by means of their European or Digital Identity Wallets. Further, the interoperability with and use of European Business Wallets may aid in the identification and authentication of such systems, in order to boost the trust in the ecosystem used.

(80) Traders making available to consumers automated systems for contracting should ensure that the automated system used by the consumer is programmed in such manner that when concluding a contract on the consumer's behalf with a trader, it transmits to the latter trader the consumer's contact details, including the e-mail and the geographical address, on the basis of consumer's consent in compliance with the requirements of Regulation (EU) 2016/679 to process such information for that purpose.

(81) At the same time, to decrease the administrative burden of traders, where a contract is concluded by the trader and the consumer solely through automated systems, the trader should be allowed to provide the pre-contractual information required under Article 6(1) of Directive 2011/83/EU only in machine-readable format and should be exempted from providing the information required under Article 6a. Articles 8(1), (2), (3), (4) and (8) of Directive 2011/83/EU should not apply to such situations.

(82) Directive 2002/58/EC protects the users of electronic communications services from unsolicited communications for direct marketing purposes by means of telephone calls, electronic mail, SMS, MMS and telefax. This protection is highly relevant for consumers. It is therefore appropriate to integrate it into the Union consumer law framework. At the same time, the rules should be modernised by removing telefax which has lost its relevance as a means of communication in business to consumer relations. The use of electronic communications for direct marketing purposes should be possible with prior consumer consent which should be interpreted in line with Regulation (EU) 2016/679. Member States may in their national laws allow direct marketing calls operated with human intervention if the consumer has not opted out from receiving such calls. The modalities of the opt-out should be determined by national law provided that it is free of charge for the consumer.

(83) It is appropriate to provide a role for codes of conduct, which enable traders to apply the principles of this Regulation effectively in specific economic fields. In sectors where there are specific mandatory rules regulating the behaviour of traders, it is appropriate that such rules also provide evidence as to the requirements of professional diligence in that sector. The control exercised by code owners at national or Union level to eliminate unfair commercial practices may avoid the need for recourse to administrative or judicial action and should therefore be encouraged. With the aim of pursuing a high level of consumer protection, consumers' organisations could be informed and involved in the drafting of codes of conduct.

(84) Persons or organisations regarded under national law as having a legitimate interest should have legal remedies for initiating proceedings against unfair commercial practices, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings. Such proceedings should also include proceedings under Directive (EU) 2020/1828 of the European Parliament and of the Council[48]. While it is for national law to determine the burden of proof, it is appropriate to enable courts and administrative authorities to require traders to produce evidence as to the accuracy of factual claims they have made.

(85) Business-to-consumer relationships are often characterised by information asymmetries, and the necessary evidence can be held exclusively by the trader. This is particularly the case in the online environment, due to the high technical complexity of commercial practices, which are increasingly data-driven and personalised. To ensure the effective enforcement of this Regulation, it is appropriate to enable courts and competent authorities to require traders to produce, at the request of a claimant who has presented facts and evidence sufficient to support the likelihood of an unfair commercial practice, or where the administrative authority has a reasonable suspicion of an infringement, relevant evidence relating to the design, operation and impact on the behaviour of consumers of the relevant commercial practice. Such evidence should be presented in an easily accessible and understandable manner. Courts and competent authorities should ensure that the disclosure of evidence is limited to what is necessary and proportionate. Confidential information, such as trade secrets must be protected in accordance with Union and national law, in particular Directive (EU) 2016/943.

(86) Remedies should be available for consumers harmed by unfair commercial practices in order to eliminate all the effects of those unfair practices. A clear framework for individual remedies would facilitate private enforcement. Consumers should have access to compensation for damage and, where relevant, a price reduction or termination of the contract, in a proportionate and effective manner. The remedies available to consumers shall be without prejudice to other remedies available to consumers under Union or national law, including the right to compensation under Directive (EU) 2024/2853 of the European Parliament and of the Council[49]. Member States should not be prevented from maintaining or introducing rights to other remedies such as repair or replacement for consumers harmed by unfair commercial practices in order to ensure full removal of the effects of such practices. Member

[48] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1, ELI: http://data.europa.eu/eli/dir/2020/1828/oj).

[49] Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC (OJ L 2024/2853, 18.11.2024, ELI: http://data.europa.eu/eli/dir/2024/2853/oj).

States should not be prevented from determining conditions for the application and effects of remedies for consumers. When applying the remedies, the gravity and nature of the unfair commercial practice, damage suffered by the consumer and other relevant circumstances, such as the trader's misconduct or the infringement of the contract, could be taken into account, where appropriate.

(87) In order to ensure that enforcement acts as a deterrent, Member States should lay down penalties for infringements of this Regulation and they should ensure that these are enforced. The penalties should be effective, proportionate and dissuasive. Moreover, the Commission should have the possibility to impose fines for breaches of this Regulation pursuant to Regulation (EU) [New CPC Regulation], as this would contribute to deterrence also in cases of very large-scale infringements that have a significant impact on the functioning of the internal market for consumers.

(88) This Regulation ensures the same high level of consumer protection irrespective of the size of the trader, since consumers are equally exposed to unfair practices whether these originate from a large undertaking or from a micro, small or medium-sized enterprise. At the same time, in order to ensure that the enforcement of this Regulation is effective, proportionate and dissuasive, and does not impose an unnecessary burden on micro, small and medium-sized enterprises within the meaning of Commission Recommendation 2003/361/EC[50], competent authorities and courts should take the size and economic capacity of the trader into account when determining the type and amount of the penalties or amount of compensation. In particular, competent authorities and courts should have due regard to the size, turnover and financial resources of the trader, without prejudice to the level of protection afforded to consumers.

(89) It should remain a matter for the Member States to choose the types of penalty to be imposed and to lay down in their national law the relevant procedures for the imposition of those penalties.

(90) To facilitate more consistent application of penalties, in particular in the case of intra-Union infringements, widespread infringements and widespread infringements with a Union dimension as defined in Regulation (EU) 2017/2394 of the European Parliament and of the Council[51]/ Regulation (EU) [New CPC Regulation], it is necessary to lay down common non-exhaustive and indicative criteria for the application of penalties. Those criteria should include the nature, gravity, scale and duration of the infringement, and any redress provided by the trader to consumers for the harm caused. Repeated infringement by the same perpetrator shows a propensity to commit such infringements and is therefore a significant indication of the gravity of the conduct and, accordingly, of the need to increase the level of the penalty to achieve effective deterrence. The financial benefits gained, or losses avoided, due to the infringement should be taken into account, if the relevant data are available. Other aggravating or mitigating factors applicable to the circumstances of the case may also be taken into account.

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50 Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36, ELI: http://data.europa.eu/eli/reco/2003/361/oj).

51 Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1, ELI: http://data.europa.eu/eli/reg/2017/2394/oj).

(91) Those common non-exhaustive and indicative criteria for the application of penalties might not be relevant in deciding on penalties regarding every infringement, in particular regarding non-serious infringements. Member States should also take account of other general principles of law applicable to the imposition of penalties, such as the principle of *ne bis in idem*.

(92) In accordance with Article 21 of Regulation (EU) 2017/2394/Regulation (EU) [New CPC Regulation], Member States' competent authorities concerned by the coordinated action are to take within their jurisdiction all necessary enforcement measures against the trader responsible for the widespread infringement or the widespread infringement with a Union dimension to bring about the cessation or prohibition of that infringement. Where appropriate, they are to impose penalties, such as fines or periodic penalty payments, on the trader responsible for the widespread infringement or the widespread infringement with a Union dimension. Enforcement measures are to be taken in an effective, efficient and coordinated manner to bring about the cessation or prohibition of the widespread infringement or the widespread infringement with a Union dimension. The competent authorities concerned by the coordinated action are to seek to take enforcement measures simultaneously in the Member States concerned by that infringement.

(93) To ensure that Member States' authorities can impose effective, proportionate and dissuasive penalties in relation to widespread infringements and to widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement measures in accordance with Regulation (EU) 2017/2394/Regulation (EU) [New CPC Regulation], fines should be introduced as an element of penalties for such infringements. In order to ensure that the fines have a deterrent effect, Member States should set in their national law the maximum fine for such infringements at a level that is at least 4 % of the trader's annual turnover in the Member State or Member States concerned. In certain cases, a trader can also be a group of companies. For infringements of this Regulation investigated by the Commission pursuant to Regulation (EU) [New CPC Regulation] the Commission should have the possibility to impose fines not exceeding 6% of the trader's worldwide annual turnover.

(94) As laid down in Regulation (EU) 2017/2394/Regulation (EU) [New CPC Regulation], when imposing penalties due regard should be given, as appropriate, to the nature, gravity and duration of the infringement in question. The penalties imposed should be appropriate to the nature and the overall actual or potential harm of the infringement of Union laws that protect consumers' interests. The power to impose penalties should be exercised either directly by competent authorities under their own authority, or, where appropriate, by recourse to other competent authorities or other public authorities, or by instructing designated bodies, if applicable, or by application to courts competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful.

(95) Where, as a result of the coordinated action under Regulation (EU) 2017/2394/ Regulation (EU) [New CPC Regulation], a single competent authority within the meaning of that Regulation imposes a fine on the trader responsible for the widespread infringement or the widespread infringement with a Union dimension, it should be able to impose a fine of at least 4 % of the trader's annual turnover in all Member States concerned by the coordinated enforcement action.

(96) Member States should not be prevented from maintaining or introducing in their national law higher maximum turnover-based fines for widespread infringements and

widespread infringements with a Union dimension. It should also be possible for Member States to base such fines on the trader's worldwide turnover, or to extend the rules on fines to other infringements not covered by this Regulation and that relate to enforcement measures in coordinated actions under Regulation (EU) 2017/2394/ Regulation (EU) [New CPC Regulation]. The requirement to set the fine at a level of not less than 4 % of the trader's annual turnover should not apply to any additional Member State rules on periodic penalty payments, such as daily fines, for non-compliance with any decision, order, interim measure, trader's commitment or other measure with the aim of bringing to an end the infringement.

(97) When allocating revenues from fines, Member States should consider enhancing the protection of the general interest of consumers as well as other protected public interests.

(98) Online traders increasingly rely on software components and services provided by third parties for the design of their digital products, online interfaces, algorithmic systems and other digital functionalities and processes. This is particularly true for small and medium-sized enterprises. Where a trader is held liable for an infringement of this Regulation, it is important to ensure that they have appropriate recourse rights against persons whose actions or omissions caused or contributed to the infringement. Such rights should be limited to commercial relationships and they should therefore not cover situations where the trader is liable for an infringement that resulted from the use of software which was supplied without the payment of a price under a free and open-source licence by another person.

(99) Sustainability labels can relate to many characteristics of a product, process or business, and it is essential to ensure their transparency and credibility. Therefore, the displaying of sustainability labels which are not based on a certification scheme, or which have not been established by public authorities should be prohibited. Before displaying a sustainability label, the trader should ensure that, according to the publicly available terms of the certification scheme, it meets minimum conditions of transparency and credibility, including the existence of objective monitoring of compliance with the requirements of the scheme. Such monitoring should be carried out by a third party whose competence and independence from both the scheme owner and the trader are ensured based on international, Union or national standards and procedures, for example by demonstrating compliance with relevant international standards, such as ISO 17065 'Conformity assessment – Requirements for bodies certifying products, processes and services' or through the mechanisms provided for in Regulation (EC) No 765/2008 of the European Parliament and of the Council[52]. The displaying of sustainability labels remains possible without a certification scheme when such labels are established by a public authority, or where additional forms of expression and presentation of food are used in accordance with Article 35 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council[53].

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52 Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30, ELI: http://data.europa.eu/eli/reg/2008/765/oj).

53 Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and

Examples of sustainability labels established by public authorities are logos awarded when complying with the requirements of Regulations (EC) No 1221/2009[54] or (EC) No 66/2010[55] of the European Parliament and of the Council. Some certification marks, as defined in Article 27 of Directive (EU) 2015/2436 of the European Parliament and of the Council[56], can also operate as sustainability labels if they promote a product, process or business with reference, for example, to its environmental or social characteristics or both. The trader should be able to display such certification marks only if they are established by public authorities or based on a certification scheme. This rule complements Annex I, point (4), to this Regulation, which prohibits the making of a claim that a trader, the commercial practices of a trader or a product have been approved, endorsed or authorised by a public or private body when that is not the case, or the making of such a claim without complying with the terms of the approval, endorsement or authorisation. Voluntary market-based standards and voluntary public standards for green and sustainable bonds do not primarily target retail investors and are subject to specific laws. For those reasons, those standards should not be considered to be sustainability labels under this Regulation. It is important that public authorities, as far as possible and in compliance with Union law, promote measures to facilitate access to sustainability labels for small and medium-sized enterprises.

(100) Where the displaying of a sustainability label involves a commercial communication that suggests or creates the impression that a product has a positive or zero impact on the environment or is less damaging to the environment than competing products, that sustainability label should also be considered as constituting an environmental claim.

(101) This Regulation should also prohibit the making of a generic environmental claim without recognised excellent environmental performance which is relevant to the claim. Examples of generic environmental claims include ‘environmentally friendly’, ‘eco-friendly’, ‘green’, ‘nature’s friend’, ‘ecological’, ‘environmentally correct’, ‘climate friendly’, ‘gentle on the environment’, ‘carbon friendly’, ‘energy efficient’, ‘biodegradable’, ‘biobased’ or similar statements that suggest or create the impression of excellent environmental performance. Such generic environmental claims should be prohibited when recognised excellent environmental performance cannot be demonstrated. Whenever the specification of the environmental claim is provided in clear and prominent terms on the same medium, such as the same advertising spot, the product’s packaging or online selling interface, the environmental claim is not considered to be a generic environmental claim. For example, the claim ‘climate-friendly packaging’ would be a generic claim, whilst claiming that ‘100 % of energy used to produce this packaging comes from renewable sources’ would be a specific claim, which would not fall under this prohibition, without prejudice to other provisions of this Regulation remaining applicable to those specific claims.

Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18, ELI: http://data.europa.eu/eli/reg/2011/1169/oj).

54 Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/1221/oj).

55 Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1, ELI: http://data.europa.eu/eli/reg/2010/66/oj).

56 Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ L 336, 23.12.2015, p. 1, ELI: http://data.europa.eu/eli/dir/2015/2436/oj).

Furthermore, a claim made in written form or orally combined with implicit claims such as colours or images could constitute a generic environmental claim.

(102) Recognised excellent environmental performance can be demonstrated by compliance with Regulation (EC) No 66/2010 or with officially recognised EN ISO 14024 ecolabelling schemes in the Member States, or by corresponding to top environmental performance for a specific environmental characteristic in accordance with other applicable Union laws, such as class A in accordance with Regulation (EU) 2017/1369 of the European Parliament and of the Council[57]. The recognised excellent environmental performance in question should be relevant to the entire claim. For example, a generic environmental claim such as 'energy efficient' could be made based on recognised excellent environmental performance in accordance with Regulation (EU) 2017/1369. By contrast, a generic environmental claim such as 'biodegradable' could not be made based on recognised excellent environmental performance in accordance with Regulation (EC) No 66/2010, insofar as there are no requirements for biodegradability in the specific EU Ecolabel criteria related to the product in question. Similarly, a trader should not make a generic claim such as 'conscious', 'sustainable' or 'responsible' based exclusively on recognised excellent environmental performance, because such claims relate to other characteristics in addition to environmental characteristics, such as social characteristics.

(103) This Regulation should also prohibit making an environmental claim about the entire product or the trader's entire business when it actually concerns only a certain aspect of the product or a specific, unrepresentative activity of the trader's business. That ban would apply, for example, when a product is marketed as 'made with recycled material' giving the impression that the entire product is made of recycled material, when in fact only the packaging is made of recycled material, or when a trader gives the impression that it is only using renewable energy sources when in fact several of the trader's business facilities still use fossil fuels. Accordingly, the ban should not prevent a trader from making environmental claims about its entire business, provided that those claims are accurate and verifiable and that they do not overstate the environmental benefit, such as would be the case in the second of those examples, if that trader were to report a decrease in the use of fossil fuels for its business as a whole.

(104) It is particularly important to prohibit the making of claims, based on the offsetting of greenhouse gas emissions, that a product, either a good or service has a neutral, reduced, or positive impact on the environment in terms of greenhouse gas emissions. Such claims should be prohibited in all circumstances as they mislead consumers by making them believe that such claims relate to the product itself or to the supply and production of that product, or as they give the false impression to consumers that the consumption of that product does not have an environmental impact. Examples of such claims are 'climate neutral', 'CO2 neutral certified', 'carbon positive', 'climate net zero', 'climate compensated', 'reduced climate impact' and 'limited CO2 footprint'. Such claims should only be allowed when they are based on the actual lifecycle impact of the product in question, and not based on the offsetting of greenhouse gas emissions outside the product's value chain, as the former and the latter are not equivalent. Such a prohibition should not prevent companies from advertising their investments in environmental initiatives, including carbon credit

[57] Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1, ELI: http://data.europa.eu/eli/reg/2017/1369/oj).

projects, as long as they provide such information in a way that is not misleading and that complies with the requirements laid down in Union law.

(105) Traders frequently use price comparisons to promote products with the display of percentage reduction or absolute monetary saving and crossing-out the reference price. Such techniques suggesting a specific price advantage exert a significant influence on the transactional decisions of average consumers. To ensure transparency, traders should use such techniques only in comparisons with a verifiable price of the same product charged by a specific competitor, or when comparing the price of a second-hand or refurbished product with the price of the same new product. In contrast, these techniques suggesting a specific price advantage should not be used in comparisons based on mere estimated or recommended prices, such as the manufacturer's recommended retail price. This should be without prejudice to the possibility for traders to present estimated or recommended reference price as a means of promotion, for example in coordinated promotional campaigns in retail networks, subject to the general requirements of fairness and transparency laid down in this Regulation. The rules on price comparisons of this Regulation should be without prejudice to the requirements for price reductions laid down in Directive 98/6/EC.

(106) When traders present a price to consumers that does not include mandatory or unavoidable charges, which they only add at a later stage of the purchasing process, they limit consumers' ability to compare offers and make informed transactional decisions. Such practices also undermine the effectiveness of price transparency requirements established under this Regulation and Directive 2011/83/EU. Traders should therefore be prohibited from presenting a price to the consumer for a product without including, in the price that is first communicated to the consumer, all foreseeable fees, taxes, charges or other payments that the consumer will unavoidably incur if the consumer purchases the product. This prohibition should apply whenever the fee or charge cannot be avoided and its amount is known in advance, such as an administration fee for an event ticket or a fixed delivery fee. It should not apply where the charge or fee depends on the individual parameters of the transaction that are only established in subsequent steps of the ordering process, such as delivery costs that depend on the consumer's address, total amount of the order or the chosen means of delivery. This prohibition should apply regardless of the technical means or commercial channel through which the offer is presented.

(107) Presenting requirements that are imposed by law on all products within the relevant product category on the Union market, including imported products, as a distinctive feature of the trader's offer, should be prohibited in all circumstances. This prohibition should apply, for example, where a trader advertises a given product as not including a specific chemical substance when that substance is already forbidden by law for all products within that product category in the Union. Conversely, the prohibition should not cover commercial practices promoting traders' or products' compliance with legal requirements that only apply to some products but not to other competing products of the same category on the Union market, such as products of non-Union origin. It could be the case that certain products on the market are required to comply with certain legal requirements while other products in the same product category are not required to comply with those requirements. For example, as regards fish products produced sustainably in accordance with Union law, it would be allowed to promote the sustainability characteristics of those products that comply with Union legal requirements, if fish products of third country origin offered on the Union market are not required to comply with those Union legal requirements.

(108) Practices where a trader provides information to a consumer in the form of search results in response to the consumer's online search query without clearly disclosing any paid advertising or payment specifically for achieving higher ranking of products within the search results should be prohibited. When a trader has directly or indirectly paid the provider of the online search functionality for a higher ranking of a product within the search results, the provider of the online search functionality should inform consumers of that fact in a concise, easily accessible and intelligible form. Indirect payment could be in the form of the acceptance by a trader of additional obligations towards the provider of the online search functionality of any kind which have higher ranking as its specific effect. The indirect payment could consist of increased commission per transaction as well as different compensation schemes that specifically lead to higher ranking. Payments for general services, such as listing fees or membership subscriptions, which address a broad range of functionalities offered by the provider of the online search functionality to the trader, should not be considered to be a payment for specifically achieving higher ranking of products, provided that such payments are not dedicated to achieving higher ranking. Online search functionality can be provided by different types of online trader, including intermediaries, such as online marketplaces, search engines and comparison websites.

(109) Traders should be prohibited from reselling to consumers tickets to cultural and sports events that they have acquired by using software such as 'bots' enabling them to buy tickets in excess of the technical limits imposed by the primary ticket seller or to bypass any other technical means put in place by the primary seller to ensure accessibility of tickets for all individuals. That prohibition should be without prejudice to any other national measures that Member States can take to protect the legitimate interests of consumers and to secure cultural policy and broad access of all individuals to cultural and sports events, such as regulating the resale price of the tickets.

(110) Traders should be prohibited from misleading consumers by stating that reviews of a product were submitted by consumers who actually used or purchased that product when no reasonable and proportionate steps were taken to ensure that they originate from such consumers. Such steps could include technical means to verify the reliability of the person posting a review, for example by requesting information to verify that the consumer has actually used or purchased the product.

(111) Traders should also be prohibited from submitting fake consumer reviews and endorsements, such as 'likes' on social media, or commissioning others to do so in order to promote products, as well as from manipulating consumer reviews and endorsements, such as publishing only positive reviews and deleting the negative ones. Such practice could also occur through the extrapolation of social endorsements, where a user's positive interaction with certain online content is linked or transferred to different but related content, creating the appearance that that user also takes a positive stance towards the related content.

(112) In order to improve the welfare of consumers, this Regulation should also address several practices associated with early obsolescence, including planned early obsolescence practices, understood as a commercial policy involving deliberately planning or designing a product with a limited lifespan so that it prematurely becomes obsolete or non-functional after a certain period or after a predetermined intensity of use. Purchasing products that are expected to last longer than they actually do causes consumer detriment. Furthermore, early obsolescence practices have an overall negative impact on the environment in the form of increased waste and increased use of energy and materials. Therefore, addressing information related to early

obsolescence practices is also likely to reduce the amount of waste, contributing to a more sustainable consumption.

(113) It should also be prohibited to withhold information from consumers about the fact that a software update will negatively impact the functioning of goods with digital elements or the use of digital content or digital services. In general, traders responsible for the development of software updates are expected to have such information, while in other cases traders can rely on reliable information provided by, for example, software developers, suppliers or competent national authorities. For example, when inviting consumers to update the operating system on their smartphone, the trader should not withhold information from the consumer that such an update will negatively impact the functioning of any of the features of the smartphone, such as the battery, the performance of certain applications or cause a complete slowdown of the smartphone. The prohibition should apply to any update, including security and functionality updates. For updates, including security updates, that are necessary to keep the good, digital content and digital service in conformity, Article 8 of Directive (EU) 2019/770 and Article 7 of Directive (EU) 2019/771 of the European Parliament and of the Council[58] should also apply. This should be without prejudice to Article 19 of Directive (EU) 2019/770.

(114) Software updates that are security updates are necessary for the secure use of the product while updates related to enhancing functionality features are not. Therefore, this Regulation should prohibit the presentation of a software update as necessary to keep the product in conformity where that update only enhances functionality features.

(115) Commercial communications for goods that contain a feature introduced to limit their durability is a commercial practice that is detrimental to consumers and the environment as they encourage the sale of such goods which leads to higher costs for consumers and unnecessary use of resources, waste production and greenhouse gas emissions. Such commercial communications should therefore be prohibited when information on the feature and its effects on the durability of the good are available to the trader. Examples of such features could be software which stops or downgrades the functionality of the good after a particular period, or a piece of hardware which is designed to fail after a particular period. It could also be a design or manufacturing flaw which, although not introduced as a feature for that purpose, leads to the premature failure of the good, if it is not fixed once information about the existence and effect of the feature has become available to the trader. In the context of that prohibition, commercial communications include communications designed to promote, directly or indirectly, the goods. The manufacturing of goods and making them available on the market do not constitute commercial communications. That prohibition should aim to cover mainly traders who are also the producers of the goods, as it is they who determine the durability of the goods. Therefore, in general, when a good is identified as containing a feature to limit the durability, the producer of that good should be expected to be aware of that feature and its effect on the durability of that good. Nevertheless, traders who are not the producers of the goods, such as the sellers, should be targeted by that prohibition where reliable information is available to them about the feature and its effects on durability, such as a statement from a

[58] Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28, ELI: http://data.europa.eu/eli/dir/2019/771/oj).

competent national authority or information provided by the producer. Therefore, as soon as such information is available to the trader, the prohibition should apply irrespective of whether the trader is actually aware or unaware of that information, for example by neglecting it. For such a commercial practice to be considered unfair, it should not be necessary to demonstrate that the purpose of the feature is to stimulate the replacement of the respective good, but it would be sufficient to prove that the feature has been introduced to limit the durability of the good. This prohibition complements and does not affect the remedies available to consumers in the event of a lack of conformity under Directive (EU) 2019/771. The use of features limiting the durability of the goods should be distinguished from manufacturing practices using materials or processes of general low quality resulting in limited durability of the goods. Lack of conformity of a good resulting from the use of low quality materials or processes should continue to be governed by the rules on the conformity of goods set out in Directive (EU) 2019/771.

(116) This Regulation should also prohibit the practice of falsely claiming that a good has a certain durability in terms of usage time or intensity under normal conditions of use. That would be the case, for instance, if a trader informs consumers that a washing machine is expected to last a certain number of washing cycles, in accordance with normal expected use indicated in the instructions, while the actual use of the washing machine under the prescribed conditions shows that is not the case. Such claims are largely made by the producers, as it is they who determine the durability of the goods. Therefore, in general, traders who are also the producers of the goods are expected to be aware of false claims regarding the durability of the goods, whereas other traders such as sellers should rely on reliable information available to them, for instance based on a statement from a competent national authority or information provided by the producer. Lack of conformity of a good resulting from occasional faults in the manufacturing of a good should continue to be governed by the rules on the conformity of goods set out in Directive (EU) 2019/771.

(117) Another practice associated with early obsolescence which should be prohibited is inducing the consumer to replace or replenish the consumables of a product earlier than would otherwise be necessary for technical reasons. Such practices mislead the consumer into believing that the goods will no longer function unless their consumables are replaced, thus leading the consumer to purchase more consumables than necessary. For example, the practice of urging the consumer, via the settings of the printer, to replace the printer ink cartridges before they are actually empty in order to stimulate the purchase of additional ink cartridges should be prohibited.

(118) This Regulation should also prohibit the withholding of information from the consumer about the impairment of the functionality of a good when using consumables, spare parts or accessories that are not provided by the original producer. For example, if a printer is designed in such a way that its functionality is limited when using ink cartridges not provided by the original producer of the printer, that information should not be hidden from the consumer because such a practice could mislead the consumer into purchasing an alternative ink cartridge which cannot be used for that printer, thus leading to unnecessary waste streams or additional costs for the consumer. Similarly, if a smart device is designed in such a way that its functionality is limited when using chargers or spare parts that are not provided by the original producer, that information should not be hidden from the consumer at the time of purchase. It should also be prohibited to mislead the consumer into believing that using consumables, spare parts or accessories not supplied by the original producer

will impair the functionality of a good when this is not the case. In general, traders who are also the producers of the goods are expected to have that information, whereas other traders such as sellers should rely on reliable information available to them, for instance based on a statement from a competent national authority or information provided by the producer.

(119) Accurate and unambiguous statements about the availability or popularity of a product can contribute to well-informed consumer decisions. However, consumers tend to assign greater value to products that are perceived as limited, difficult to obtain or desired by other consumers. Traders should therefore be prohibited from making false claims about the availability or popularity of a product. Such claims should include statements about other consumers' activity, such as how many consumers have purchased a product. Equally, traders should be prohibited from making statements about the availability or popularity of a product which do not clearly and unambiguously disclose relevant qualifications about the availability or popularity of that product. For example, where a product offered by a trader can be purchased elsewhere, the trader should disclose that any claims they make about availability concern only the respective trader's supply.

(120) Techniques relying on default options which the consumer is required to reject, such as pre-ticked boxes, and other means of inferring consumers' consent to payment for additional products, a different product quantity or a different product exploit consumers' strong behavioural tendency to accept default options. Such techniques should therefore be prohibited. This prohibition is to complement Article 22 of Directive 2011/83/EU. This prohibition should cover practices that may impact the consumers' consent to acquire additional products, a different product quantity or different products, and should not extend to consumers' consent to execute the underlying payment.

(121) False or fake notifications serve no legitimate purpose and are inherently deceptive. This includes alerts, messages, badges, pop-ups or other signals which falsely suggest that another consumer, the trader or a third party has contacted, or taken an action concerning the consumer, or which falsely suggest that a matter requires the consumer's attention. Such notifications should therefore be prohibited in all circumstances.

(122) The types of dark patterns used by traders in the digital environment can change quickly and substantially. In order to ensure that a high level of consumer protection can be maintained in the event that traders use dark patterns on online interfaces which are not explicitly covered by Annex I to this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the list of dark patterns that are prohibited under all circumstances in Part III of Annex I. Given the evolving nature of digital products and features that are intended or which can reasonably be foreseen to encourage compulsive or excessive use of the service by consumers, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commissions in order to amend the list of features intended or which can reasonably be foreseen to encourage compulsive or excessive use of the service, which traders should enable consumers to disable. When adopting delegated acts under this Regulation, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better

Law-Making[59]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(123) Directive 2005/29/EC should be repealed.

(124) Since the objective of this Regulation, namely to contribute to the proper functioning of the internal market through the achievement of a high level of consumer protection, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve a high common level of consumer protection.

(125) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[60] and delivered an opinion on [date].

HAVE ADOPTED THIS REGULATION:

Chapter I

GENERAL PROVISIONS

Article 1

Subject matter

The purpose of this Regulation is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by laying down rules on fairness for business-to-consumer commercial practices to prevent harm to consumers' economic interests.

Article 2

Scope

1. This Regulation shall apply to business-to-consumer commercial practices before, during and after a commercial transaction in relation to a product.

2. This Regulation is without prejudice to contract law and, in particular, to the rules on the validity, formation or effect of a contract.

3. This Regulation is without prejudice to Union or national rules relating to the health and safety aspects of products.

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59 OJ C 123, 12.5.2016, p. 1, ELI: http://data.europa.eu/eli/agree_interinstit/2016/512/oj.

60 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

4. This Regulation does not prevent Member States from adopting provisions to protect the legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers. Such provisions shall be proportionate, non-discriminatory and justified on grounds of consumer protection.

5. Member States shall notify the Commission without delay of any national provisions adopted on the basis of paragraph 4 as well as of any subsequent changes. The Commission shall make this information easily accessible to consumers and traders on a dedicated website.

6. This Regulation is without prejudice to the rules determining the jurisdiction of the courts.

7. This Regulation is without prejudice to any conditions of establishment or of authorisation regimes, or to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional, which Member States may, in conformity with Union law, impose on professionals.

8. In relation to 'financial services', as defined in Directive 2011/83/EU, and immovable property, Member States may impose requirements which are more restrictive or prescriptive than those imposed by this Regulation, in conformity with Union law.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'consumer' means any natural person who, in commercial practices covered by this Regulation, is acting for purposes which are outside that person's trade, business, craft or profession;

(2) 'trader' means any natural or legal person who, in commercial practices covered by this Regulation, is acting for purposes relating to that person's trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;

(3) 'commercial practice' means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers;

(4) 'goods' means goods as defined in Article 2, point (5), of Directive (EU) 2019/771 of the European Parliament and of the Council;

(5) 'product' means any good or service including immovable property, digital service and digital content, as well as rights and obligations;

(6) 'transactional decision' means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment, in whole or in part for, retain, dispose of, or continue using a product or to exercise a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting;

(7) 'to materially distort the economic behaviour of consumers' means using a commercial practice to appreciably impair the consumer's ability to make an

informed decision, thereby causing the consumer to take a transactional decision that the consumer would not have taken otherwise;

(8) 'invitation to purchase' means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase;

(9) 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice or the general principle of good faith in the trader's field of activity;

(10) 'undue influence' means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision;

(11) 'online interface' means any software, including a website, part of a website or an application, including a mobile application, that is operated by or on behalf of a trader and serves to give consumers access to products;

(12) 'online marketplace' means a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers;

(13) 'free trial' means a commercial practice whereby a product is offered to the consumer during a set period of time without the obligation to pay through a payment transaction in funds within the meaning of Article 3, point 8 of Regulation (EU) 2027/(..);

(14) 'ranking' means the relative prominence given to products, as presented, organised or communicated by the trader, irrespective of the technological means used for such presentation, organisation or communication;

(15) 'influencer marketing' means a commercial practice whereby traders use their popularity among their audience to directly or indirectly promote products in exchange for payment;

(16) 'minor' or 'child' means any natural person under the age of 18;

(17) 'paid-for virtual currencies' means virtual currencies acquired through payment transactions within the meaning of Article 3, point 8 of Regulation (EU) [Payment Services Regulation] or, where applicable, in exchange for another paid-for virtual currency;

(18) 'paid-for variable reward systems' means virtual items, other than financial products, offering random rewards or variable odds acquired through payment transactions within the meaning of Article 3, point 8 of Regulation (EU) [Payment Services Regulation] or in exchange for paid-for virtual currencies;

(19) 'pay-to-progress and pay-to-win mechanisms' means in-game or in-app purchases that are necessary or are presented as necessary for in-game or in-app progress or success, that are acquired through payment transactions within the meaning of Article 3, point 8 of Regulation (EU) [Payment Services Regulation] or in exchange for paid-for virtual currencies;

(20) ‘virtual queue’ means a digital feature whereby consumers are placed in a sequenced waiting system prior to accessing the ordering interface, during which time the traders could change the price;

(21) ‘automated system’ means software that is capable of carrying out actions and taking decisions producing legal effects for its user, including concluding contracts, without the need for human intervention;

(22) ‘certification scheme’ means a third-party verification scheme that certifies that a product, process or business complies with certain requirements, that allows for the use of a corresponding sustainability label, and the terms of which, including its requirements, are publicly available and meet the following criteria:

(a) the scheme is open under transparent, fair, and non-discriminatory terms to all traders willing and able to comply with the scheme’s requirements;

(b) the scheme’s requirements are developed by the scheme owner in consultation with relevant experts and stakeholders;

(c) the scheme sets out procedures for dealing with non-compliance with the scheme’s requirements and provides for the withdrawal or suspension of the use of the sustainability label by the trader in case of non-compliance with the scheme’s requirements; and

(d) the monitoring of a trader’s compliance with the scheme’s requirements is subject to an objective procedure and is carried out by a third party whose competence and independence from both the scheme owner and the trader are based on international, Union or national standards and procedures;

(23) ‘consumable’ means any component of a good that is used up recurrently and that needs to be replaced or replenished for the good to function as intended;

(24) ‘durability’ means durability as defined in Article 2, point (13), of Directive (EU) 2019/771;

(25) ‘environmental claim’ means any message or representation which is not mandatory under Union or national law, in any form, including text, pictorial, graphic or symbolic representation, such as labels, brand names, company names or product names, in the context of a commercial communication, and which states or implies that a product, product category, brand or trader has a positive or zero impact on the environment or is less damaging to the environment than other products, product categories, brands or traders, or has improved its impact over time;

(26) ‘generic environmental claim’ means any environmental claim made in written or oral form, including through audiovisual media, that is not included on a sustainability label and where the specification of the claim is not provided in clear and prominent terms on the same medium;

(27) ‘recognised excellent environmental performance’ means environmental performance compliant with Regulation (EC) No 66/2010 or with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in the Member States, or top environmental performance in accordance with other applicable Union law;

(28) ‘functionality’ means functionality as defined in Article 2, point (9), of Directive (EU) 2019/771;

(29) ‘software update’ means an update that is necessary to keep goods with digital elements, digital content and digital services in conformity in accordance with Directive (EU) 2019/770 of the European Parliament and of the Council and Directive (EU) 2019/771, including a security update, or a functionality update;

(30) ‘sustainability label’ means any voluntary trust mark, quality mark or equivalent, either public or private, that aims to set apart and promote a product, a process or a business by reference to its environmental or social characteristics, or both, and excludes any mandatory label required under Union or national law;

(31) ‘regulated profession’ means a professional activity or a group of professional activities, access to which or the pursuit of which, or one of the modes of pursuing which, is conditional, directly or indirectly, upon possession of specific professional qualifications, pursuant to laws, regulations or administrative provisions;

(32) ‘code of conduct’ means an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;

(33) ‘code owner’ means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it;

(34) ‘durable medium’ means durable medium as defined in Article 2(10) of Directive 2011/83/EU.

Article 4

Relationship with other Union legislation

1. This Regulation is without prejudice to the rules laid down by other Union legal acts regulating specific aspects of unfair business-to-consumer commercial practices, in particular:

   (a) Regulation (EU) 2016/679;

   (b) Regulation (EU) 2022/1925;

   (c) Regulation (EU) 2022/2065;

   (d) Regulation (EU) 2024/1689;

   (e) Directive 2010/13/EU; and

   (f) Regulation (EU) [EU KIDS Act].

2. In the case of conflict between the provisions of this Regulation and other Union rules regulating specific aspects of unfair business-to-consumer commercial practices, the latter shall prevail and apply to those specific aspects.

Chapter II

UNFAIR COMMERCIAL PRACTICES

Article 5

Prohibition of unfair commercial practices

1. Unfair commercial practices shall be prohibited.

2. A commercial practice shall be unfair if:

   (a) it is contrary to the requirements of professional diligence;

   and

   (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

3. Commercial practices which are likely to materially distort the economic behaviour primarily of consumers who are particularly vulnerable, in a way which the trader could reasonably be expected to foresee, to the practice or the underlying product because of disability, age, credulity, or any specific misfortune or circumstance of such gravity as to impair the consumer's judgment, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.

4. In particular, commercial practices shall be unfair if they:

   (a) are misleading as set out in Articles 6 and 7,

   (b) are aggressive as set out in Articles 8 and 9, or

   (c) breach any of the obligations laid down in Chapter III.

5. Annex I contains a list of commercial practices which are in all circumstances regarded as unfair.

Article 6

Misleading actions

1. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause them to take a transactional decision that they would not have taken otherwise:

   (a) the existence or nature of the product;

   (b) the main characteristics of the product, including its availability, benefits, risks, execution, composition, environmental or social characteristics, accessories, circularity aspects, such as durability, reparability or recyclability, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;

(c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;

(d) the price or the manner in which the price is calculated, or the existence of a specific price advantage;

(e) the need for a service, part, replacement or repair;

(f) the nature, attributes and rights of the trader or the trader's agent, such as the trader's or the agent's identity and assets, qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or the trader's or the agent's awards and distinctions;

(g) the consumer's rights, including the right to replacement or reimbursement under Directive (EU) 2019/771, or the risks that the consumer may face.

2. A commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise, and it involves any of the following:

(a) any marketing of a product, including comparative advertising, which creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor;

(b) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where both the following conditions are fulfilled:

(i) the commitment is not aspirational but is firm and is capable of being verified;

(ii) the trader indicates in a commercial practice that the trader is bound by the code;

(c) any marketing of a good, in one Member State, as being identical to a good marketed in other Member States, while that good has significantly different composition or characteristics, unless justified by legitimate and objective factors;

(d) making an environmental claim related to future environmental performance without clear, objective, publicly available and verifiable commitments set out in a detailed and realistic implementation plan that includes measurable and time-bound targets and other relevant elements necessary to support its implementation, including allocation of resources, and that is regularly verified by an independent third party expert, whose findings are made available to consumers;

(e) advertising benefits to consumers that are irrelevant and do not result from any feature of the product or business.

Article 7

Misleading omissions

1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the

communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise.

2. A commercial practice shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner material information referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise.

3. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.

4. In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:

   (a) the main characteristics of the product, to an extent appropriate to the medium and the product;

   (b) the geographical address and the identity of the trader, such as the trader's trading name and, where applicable, the geographical address and the identity of the other trader on whose behalf the trader is acting;

   (c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

   (d) the arrangements for payment, delivery and performance, if they depart from the requirements of professional diligence;

   (e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right;

   (f) for products offered on online marketplaces, whether the third party offering the products is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace.

   By way of derogation from point (b) of this paragraph, where traders do not engage in the direct sale of products to consumers, including in the context of influencer marketing, they shall not be required to provide their geographical address in an invitation to purchase.

5. When providing consumers with the possibility to search for products offered by different traders or by consumers on the basis of a query in the form of a keyword, phrase or other input, irrespective of where transactions are ultimately concluded, general information made available in a specific section of the online interface that is directly and easily accessible from the page where the query results are presented, on the main parameters determining the ranking of products presented to the consumer as a result of the search query and the relative importance of those parameters, as opposed to other parameters, shall be regarded as material. This paragraph does not

apply to providers of online search engines as defined in Article 2, point (6), of Regulation (EU) 2019/1150.

6. Information requirements established by Union law in relation to commercial communication including advertising or marketing shall be regarded as material.

7. Where a trader provides access to consumer reviews of products, information about whether and how the trader ensures that the published reviews originate from consumers who have actually used or purchased the product shall be regarded as material.

8. Where a trader provides a service which compares products and provides the consumer with information on environmental or social characteristics or on circularity aspects, including durability, reparability or recyclability, of the products or suppliers of those products, information about the method of comparison, the products which are the object of comparison and the suppliers of those products, as well as the measures in place to keep that information up to date, shall be regarded as material information.

Article 8

Aggressive commercial practices

A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes or is likely to cause them to take a transactional decision that they would not have taken otherwise.

Article 9

Use of harassment, coercion and undue influence

In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of any of the following:

(a) its timing, location, nature or persistence;

(b) the use of threatening or abusive language or behaviour;

(c) the exploitation by the trader of any vulnerability within the meaning of Article 5(3), or any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;

(d) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;

(e) any threat to take any action that cannot legally be taken.

Chapter III

DIGITAL FAIRNESS

Article 10

Dark patterns

1. Traders shall not design, organise or operate their online interfaces, including visual, auditory and other components thereof, in a manner that is likely to deceive or manipulate consumers, or in a manner that is likely to otherwise materially distort the economic behaviour of consumers.

2. Part III of Annex I contains a list of dark patterns which shall in all circumstances be regarded as unfair.

3. The Commission is empowered to adopt delegated acts in accordance with Article 37 to amend the list referred to in paragraph 2 by adding or by modifying dark patterns in light of technological and market developments, consumer behavioural research and enforcement experience by the competent authorities and the Commission, provided that such an amendment is necessary to maintain the high level of consumer protection provided for by this Regulation.

Article 11

Influencer marketing

1. Traders carrying out influencer marketing shall disclose the commercial intent of a communication in a clear, prominent, and unambiguous manner, taking into account the context, placement, timing, duration, communication medium, language and the target audience. Such disclosure shall be made explicit, for each commercial communication, through the terms ‘advertisement’ or ‘commercial collaboration’.

2. Where the commercial communication referred to in paragraph 1 is placed on an online platform falling within the scope of Regulation (EU) 2022/2065, disclosure of that communication shall be made using the functionality referred to in Article 26 (2) of that Regulation.

3. Traders carrying out influencer marketing shall not:

   (a) include direct exhortations to minors to buy products or to persuade their parents or other adults to buy products in commercial communications;

   (b) create the impression that they are not acting for commercial purposes when they are, in particular when the relevant communications are carried out by or feature minors;

   (c) create the impression that a product is appropriate for minors when it is not.

4. Traders shall not carry out influencer marketing of products prohibited from being advertised to consumers under Union or national law, including products referred to in Directive 2010/13/EU.

5. Traders shall not carry out influencer marketing of products that are dangerous within the meaning of Article 3, point (3), of Regulation (EU) 2023/988 or other Union product legislation.

6. Any trader using influencer marketing services shall ensure contractually, or in the absence of a contract through other appropriate means, that the trader carrying out influencer marketing complies with the provisions of this Regulation.

Article 12

Personalised advertising

Traders shall not target advertisements to a consumer based on profiling as defined in Article 4, point (4) of Regulation (EU) 2016/679:

(a) by using personal data of the consumer where the trader is aware with reasonable certainty that the consumer is a minor;

(b) by using special categories of personal data of the consumer referred to in Article 9(1) of Regulation (EU) 2016/679.

Compliance with the obligations set out in this Article shall not oblige traders to process additional personal data to assess whether the consumer is a minor.

This Article does not apply to providers of online platforms to whom Section 3 of Chapter III of Regulation 2022/2065 applies.

Article 13

Personalised pricing

Traders shall not personalise the price based on profiling, as defined in Article 4, point (4) of Regulation (EU) 2016/679 in a manner that is reasonably likely to cause harm to the consumer where:

(a) the trader is aware with reasonable certainty that the consumer is a minor;

(b) the trader is aware with reasonable certainty that the consumer is vulnerable due to their age, credulity, disability, or any specific misfortune or circumstance of such gravity as to impair the consumer's judgment.

Compliance with the obligations set out in this Article shall not oblige traders to process additional personal data to assess whether a consumer is a minor or vulnerable.

Article 14

Virtual currencies

1. A trader offering or making available to consumers paid-for virtual currencies that are used for the purpose of purchasing virtual items or other products offered by that trader, shall indicate the corresponding monetary value of those virtual items or other products, or their estimated monetary value in the currency in which the consumer acquired the first virtual currency.

   This paragraph shall not apply to providers of online social networking services or video-sharing platform services and of AI companions and of general conversational chatbots subject to the disclosure obligation laid down in Article 13(1) of Regulation (EU) [EU KIDS Act].

2. Where a trader's products are directed at minors or where the trader is aware with reasonable certainty that the product is used by minors, the trader shall ensure that paid-for virtual currencies are disabled by default for minors and shall ensure that paid-for virtual currencies can only be activated upon parent or guardian approval.

Article 15

Variable reward systems

1. Traders offering or making available to consumers paid-for variable reward systems shall inform consumers about the types of products or virtual items available in such variable reward systems and the probability of obtaining them.

2. Traders shall make available to consumers, in an easily accessible manner, effective tools enabling those consumers to disable paid-for variable reward systems.

3. Where a trader's products are directed at minors or where the trader is aware with reasonable certainty that the product is used by minors, the trader shall not offer paid-for variable reward systems to minors. This paragraph shall not apply to providers of online social networking services or video-sharing platform services and of AI companions and of general conversational chatbots that are subject to Article 13(2) of Regulation (EU) [EU KIDS Act].

Article 16

Prohibition of pay-to-progress and pay-to-win mechanisms for minors

Where a trader's products are directed at minors or where the trader is aware with reasonable certainty that the product is used by minors, the trader shall not offer pay-to-progress and pay-to-win mechanisms to minors.

Article 17

Addictive design

1. Traders that design, organise or operate their digital products in a manner that is intended, or can reasonably be foreseen to encourage compulsive or excessive use, shall make available to consumers, in an easily accessible manner, effective tools enabling them to disable, individually or all at once, the following features that encourage such use:

   (a) features enabling automatic play of content and uninterrupted content consumption without effective and regular interruption moments that enable deliberation by the consumer on their willingness to consume more content;

   (b) notifications not triggered by, or not directly related to, the consumer's interaction or activity on the service;

   (c) features incentivising engagement at regular times or with greater frequency, including through penalties or loss of benefits for failing to engage regularly or within specified time intervals;

   (d) features and system behaviours that encourage continued use by simulating interpersonal relations, such as persistent prompts to continue engaging with an automated system.

   This Article does not apply to traders subject to Articles 9, 14 and 15 of Regulation (EU) [EU KIDS Act] for practices concerning minors, nor to traders providing services falling within the categories specified in Article 2 (4) points (c), and (e) of Regulation (EU) [EU KIDS Act].

2. The Commission is empowered to adopt delegated acts in accordance with Article 37 to amend the list of features in paragraph 1 by adding or modifying features in light of technological and market developments, consumer behavioural research and enforcement experience by the competent authorities and the Commission, where such amendments are necessary to maintain the high level of consumer protection provided for by this Regulation.

Article 18

Price transparency in the event ticket sector

1. In an invitation to purchase event tickets the price of which is liable to increase due to the trader's actions or due to automated or algorithmic processes, the trader shall clearly and prominently disclose how many tickets in the relevant ticket category are available at the advertised price and the maximum price a consumer may be required to pay for that ticket.

2. Without prejudice to the pre-contractual information requirements provided in Directive 2011/83/EU, a trader offering resale of an event ticket shall clearly and prominently display:

   (a) the original total price of the ticket charged by the event organiser;

   (b) where applicable, the ticket category, row and seat number.

Article 19

Virtual queue

Where a trader makes use of a virtual queue system, the trader shall, at the moment when the consumer enters the virtual queue and for as long as the consumer is in it, clearly and prominently display the following information:

(a) the current price of the product, which shall be updated in real time where the price varies during the consumer's time in the virtual queue;

(b) whether that price is subject to variation during the consumer's waiting time in the queue; and

(c) where the price may vary, the maximum price the consumer may be required to pay.

This Article does not apply to the execution of orders on financial instruments pursuant to Regulation (EU) No 600/2014 of the European Parliament and of the Council.

Article 20

Contracts with free trial periods

1. For contracts concluded by means of an online interface or by other digital means with a free trial period, the trader shall remind the consumer in a clear and prominent manner on a durable medium, and within a reasonable period before the end of the trial period, of the end date of the free trial period, the right to terminate the contract after the free trial period and the possibility for the consumer to continue the contract on a paid basis after the end of the free trial period if the consumer expressly agrees. The reminder shall clearly indicate the date on which the free trial period will end and the price, the duration and the conditions for terminating the paid contract.

2. Where the reminder has not been sent to the consumer in accordance with paragraph 1 or the consumer has not expressly agreed before the end of the trial period to continue the contract on a paid basis, the consumer shall not be bound by the contract.

3. Where the reminder has been sent to the consumer in accordance with paragraph 1 and the consumer has expressly agreed before the end of the free trial to be bound by the contract on a paid basis, the trader shall provide the consumer with a confirmation of that agreement, on a durable medium without undue delay and at the latest within a week of the receipt of the consumer's confirmation.

The confirmation to be sent by the trader shall include the information referred to in Article 6(1) Directive 2011/83/EU pertaining to the paid contract unless the trader has already provided that information to the consumer on a durable medium.

Article 21

Reminder before automatic extension of a long-term supply contract

1. For a contract concluded by means of an online interface or by other digital means for the continuous supply of products with a duration of six months or longer that provides for an automatic extension of the contract for any period, the trader shall remind the consumer in a clear and prominent manner on a durable medium, no earlier than 1 month and no later than fourteen days before the date on which the contract is automatically extended, of the upcoming extension and the consumer's right to terminate the contract.

2. The reminder pursuant to paragraph 1 shall clearly indicate the date of the upcoming contract extension, the duration until the subsequent date of extension, the price, and the conditions for terminating the contract, including, where applicable, a reference or direct link to the contract termination function referred to in Article 23.

3. Where the reminder has not been sent to the consumer in accordance with paragraphs 1 and 2, the consumer shall have the right to terminate the contract free of charge at any time from the date of extension until the date the trader sends a reminder, without having to respect any notice period and without payment being due for the period between the extension date and the date of the termination of the contract.

4. For contracts that have been extended for an indeterminate duration, the consumer shall have the right to terminate the contract after the automatic extension at any time with a maximum one-month notice period and free of charge, except for the charges for receiving the product during the notice period.

Article 22

Reminder before automatic extension of a short-term supply contract

1. For a contract concluded by means of an online interface or by other digital means for the continuous supply of products with a duration of less than six months that provides for an automatic extension of the contract, the trader shall remind the consumer in a clear and prominent manner on a durable medium of the upcoming extension and the consumer's right to terminate the contract at the latest one week before the automatic extension which either results in the initial contract duration (or any subsequent extension period) to reach six months or constitutes the tenth extension of the contract, whichever occurs earlier.

2. The reminder pursuant to paragraph 1 shall clearly indicate the date of the upcoming contract extension, the duration until the subsequent date of extension, the price, and the conditions for terminating the contract, including, where applicable, a reference or direct link to the contract termination function referred to in Article 23.

3. Where the reminder has not been sent to the consumer in accordance with paragraphs 1 and 2, the consumer shall have the right to terminate the contract free of charge at any time from the date that the reminder was due until the date the trader sends a reminder, without having to respect any notice period and without payment being due for the period between the date the reminder was due and the date of termination of the contract.

4. By way of derogation from the requirements under paragraph 1, in the context of investment services as defined in point (2) of Article 4(1) of Directive 2014/65/EU, if the consumer provides the trader with explicit consent for an automatic extension of the short-term investment contract in financial instruments they entered into with the trader, the extension of this contract shall occur automatically without the obligation for the trader to remind the consumer until the consumer requests its termination, or until the conditions associated to the automatic extension are no longer fulfilled.

Article 23

Online contract termination function

1. Where the trader offers consumers the possibility of concluding contracts by means of an online interface, the trader shall ensure that consumers can terminate the contract by using a contract termination function on the online interface (‘online contract termination function’), irrespective of the manner in which the contract was concluded.

2. The online contract termination function shall be labelled with the words ‘terminate the contract here’ or an unambiguous corresponding formulation in an easily legible way. It shall be prominently displayed on the online interface and easily accessible to the consumer.

3. The online contract termination function shall enable the consumer to send an online contract termination statement informing the trader of the decision to terminate the contract.

   That online contract termination statement shall enable the consumer to easily provide or confirm the following information:

   (a) the consumer’s name;

   (b) details identifying the contract which the consumer wishes to terminate;

   (c) details of the electronic means by which the acknowledgement of the contract termination referred to in paragraph 5 will be sent to the consumer.

4. Upon completion of the online contract termination statement by the consumer in accordance with paragraph 3, the trader shall enable the consumer to submit it by means of a confirmation function. That confirmation function shall be labelled in an easily legible manner, and only with the words ‘confirm the contract termination’ or with an unambiguous corresponding formulation.

5. Once the consumer activates the confirmation function, the trader shall send to the consumer an acknowledgement of receipt of the online contract termination statement on a durable medium, including its content, the date and time of its submission and the date when the termination takes effect, without undue delay, and at the latest within a week.

Article 24

Exercise of the right of withdrawal from distance contracts concluded by the means of an online interface

1. For distance contracts within the meaning of Article 2, point (7) of Directive 2011/83/EU, including contracts for the supply of financial services, concluded by means of an online interface, the trader shall ensure that the consumer can withdraw, in accordance with Articles 9, 11 and 16b of Directive 2011/83/EU, from the contract by using a withdrawal function.

2. The withdrawal function shall be labelled with the words 'withdraw from contract here' or an unambiguous corresponding formulation in an easily legible way. The withdrawal function shall be continuously available during the withdrawal period. It shall be prominently displayed on the online interface and easily accessible to the consumer.

3. The withdrawal function shall enable the consumer to send an online withdrawal statement informing the trader of the decision to withdraw from the contract. That online withdrawal statement shall enable the consumer to easily provide or confirm the following information:

   (a) the consumer's name;

   (b) details identifying the contract from which the consumer wishes to withdraw; and

   (c) details of the electronic means by which the acknowledgement of the withdrawal referred to in paragraph 5 will be sent to the consumer.

4. Once the consumer has completed the online withdrawal statement in accordance with paragraph 3, the trader shall enable the consumer to submit it by means of a confirmation function. That confirmation function shall be labelled in an easily legible manner, and only with the words 'confirm withdrawal' or with an unambiguous corresponding formulation.

5. Once the consumer activates the confirmation function, the trader shall send to the consumer an acknowledgement of receipt of the withdrawal on a durable medium, including its content and the date and time of its submission, without undue delay.

6. Consumers shall be considered to have exercised their right of withdrawal within the relevant withdrawal period if they submitted the online withdrawal statement referred to in this Article before that period expired.

Article 25

Communication with a human being in customer service

Where a trader provides online customer service after the conclusion of a contract, the trader shall ensure that, upon request of the consumer and when other means are not effective, communication with a human being is made available.

This Article shall not apply to investment services as defined in point (2) of Article 4(1) of Directive 2014/65/EU.

Article 26

Automated systems for contracting on behalf of a consumer with a trader

1. Traders making available to consumers automated systems that can be used by consumers to conclude and perform contracts on the consumers' behalf with those traders or other traders shall ensure that such automated systems contain easily accessible, understandable and effective tools, enabling the consumers to express their choices and set and adjust the parameters of such automated systems referred to in paragraph 2. Consumers shall have the possibility to modify the expressed choice and change the parameters referred to in paragraph 2 at any time through the tools provided for that purpose in accordance with this paragraph.

2. Traders making available to consumers automated systems that can be used by consumers to conclude and perform contracts on the consumers' behalf shall ensure that on the first use of an automated system, consumers are required to expressly choose one of the following:

   (a) whether they wish to confirm all contracts proposed by the automated system before being bound by such contracts;

   (b) whether they wish to confirm only a certain type of contracts, based on specific criteria to be set by the consumer, including a maximum price and a time limit for the applicability of this choice;

   (c) whether they wish no confirmation of contracts before being bound by them.

3. Traders making available to consumers automated systems that can be used by consumers to conclude and perform contracts on the consumers' behalf shall send the consumer a confirmation of the choice made in accordance with paragraph 2 on a durable medium.

4. Traders making available to consumers automated systems for contracting shall also ensure that such automated systems comply with the following criteria:

   (a) where the consumer has chosen to confirm all or certain contracts before being bound by them, in accordance with paragraph 2, point (a) or (b), of this Article, the automated system shall provide the consumer with at least the information provided for in Article 6(1), points (a) to (e), (h) to (k), (o) and (p), of Directive 2011/83/EU;

   (b) the automated system shall disclose any payment received by the traders making available to consumers automated systems for contracting for proposing a contract and any conflict of interest with the traders concerned by a proposed contract and, in case of such payment or conflict of interest, require the consumer to confirm the corresponding contract, independently of the choice expressed by the consumer in accordance with paragraph 2.

5. Where a trader's automated system interacts with or on behalf of a consumer, the trader and the provider of the automated system, may identify and authenticate themselves by means of a European Business Wallet established under Regulation (EU) [European Business Wallets] or, through the use of a European Digital Identity

Wallet issued under Regulation (EU) No 910/2014, as amended by Regulation (EU) 2024/1183.

6. European Business Wallets may also be used to identify the automated system concerned and to establish on whose behalf it acts, so that both the trader and consumer can rely on trusted information on the identity of the system and of the party it represents. Providers of automated systems may therefore ensure interoperability with European Business Wallets in order to facilitate the identification and authentication of such systems.

7. Where the automated system concludes a contract on the consumer's behalf between a trader and the consumer, the automated system used by the consumer shall transmit to that trader the consumer's contact details necessary for the performance of the contract, such as the electronic address and the geographical address.

8. After the conclusion of a contract by the consumer with a trader through an automated system, that trader shall send to the consumer a confirmation of the contract concluded in accordance with Article 8(7) of Directive 2011/83/EU, on a durable medium, in plain and intelligible language.

9. Traders shall not design, organise, or operate their online interfaces in a way that requires consumers to use automated systems to access or to conclude commercial transactions on the traders' online interfaces.

10. This Article shall not apply to the provision of financial services.

Article 27

Requirements for contracts concluded solely through automated systems

1. Where a contract is concluded by the trader and by the consumer solely through automated systems, the trader shall be allowed to provide the information referred to in Article 6(1) of Directive 2011/83/EU only in a commonly used machine-readable format and shall be exempted from the obligation to provide the information required under Article 6a.

2. Articles 8(1), (2), (3), (4) and (8) of Directive 2011/83/EU shall not apply to the contracts referred to in paragraph 1.

3. The trader shall provide the consumer with the confirmation of the contract concluded in accordance with Article 8(7) of Directive 2011/83/EU on a durable medium, in plain and intelligible language.

Article 28

Unsolicited commercial communications

1. Traders shall not use automated calling systems without human intervention (automatic calling machines), SMS, MMS or electronic mail for the purposes of direct marketing without the consumer's prior consent within the meaning of Article 4, point (11) of Regulation (EU) 2016/679.

2. Notwithstanding paragraph 1, where a trader obtains from its customers their electronic contact details for electronic mail, in the context of the sale or supply of a product, in accordance with Regulation (EU) 2016/679, that trader may use these electronic contact details for direct marketing of its own similar products provided that consumers clearly and distinctly are given the opportunity to object, free of

charge and in an easy manner, to such use of electronic contact details at the time of their collection and on the occasion of each message in case the consumer has not initially refused such use.

3. Traders shall not call a consumer for the purposes of direct marketing, using communication systems other than those referred to in paragraph 1, without the consumer's prior consent within the meaning of Article 4, point (11) of Regulation (EU) 2016/679 or, where provided for by national law of the Member State of the consumer's residence, where the consumer has opted out from receiving such unsolicited communications in a manner determined by the Member State which shall be free of charge for the consumer.

4. Traders shall, in every electronic mail for the purposes of direct marketing, indicate a valid electronic mail address to which the recipient may send a request that such communications cease and shall not encourage consumers to visit websites that contravene Article 6 of Directive 2000/31/EC of the European Parliament and of the Council.

Article 29

Anti-circumvention

Traders shall not engage in any conduct that undermines effective compliance with their obligations in Chapter III, regardless of whether that conduct is of a contractual, commercial, technical or any other nature, or consists in the use of behavioural techniques or interface design.

Chapter IV

Enforcement, Remedies and Penalties

Article 30

Enforcement

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Regulation in the interest of consumers.

   Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating unfair commercial practices, including competitors, may:

   (a) take legal action against such unfair commercial practices;

   and/or

   (b) bring such unfair commercial practices before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.

   Each Member State shall decide which of the means referred to in the second subparagraph shall be available and whether to enable the courts or administrative authorities to require prior recourse to other established means of dealing with complaints, including those referred to in Article 31. Those means shall be available regardless of whether the consumers affected are in the territory of the Member State where the trader is located or in another Member State.

Each Member State shall decide whether the means referred to in the second subparagraph may be directed:

(a) separately or jointly against a number of traders from the same economic sector;

(b) against a code owner where the relevant code promotes non-compliance with legal requirements.

2. Under the legal provisions referred to in paragraph 1, second subparagraph, national courts or administrative authorities shall have powers enabling them, in cases where they deem such measures to be necessary taking into account all the interests involved and in particular the public interest:

(a) to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, unfair commercial practices;

or

(b) if the unfair commercial practice has not yet been carried out but is imminent, to order the prohibition of the practice, or to institute appropriate legal proceedings for an order for the prohibition of the practice,

even without proof of actual loss or damage or of intention or negligence on the part of the trader.

Member States shall also make provision for the measures referred to in the first subparagraph to be taken under an accelerated procedure:

(a) either with interim effect;

or

(b) with definitive effect,

on the understanding that it is for each Member State to decide which of the two options to select.

Furthermore, Member States may confer upon the courts or administrative authorities powers enabling them, with a view to eliminating the continuing effects of unfair commercial practices the cessation of which has been ordered by a final decision:

(a) to require publication of that decision in full or in part and in such form as they deem adequate;

(b) to require in addition the publication of a corrective statement.

3. The administrative authorities referred to in paragraph 1 shall:

(a) be composed so as not to cast doubt on their impartiality;

(b) have adequate powers, where they decide on complaints, to monitor and enforce the observance of their decisions effectively;

(c) normally give reasons for their decisions.

Where the powers referred to in paragraph 2 are exercised exclusively by an administrative authority:

(a) reasons for its decisions shall always be given;

(b) provision shall be made for procedures whereby improper or unreasonable exercise of its powers by the administrative authority or improper or

unreasonable failure to exercise the said powers can be the subject of judicial review.

4. The Commission shall have powers to investigate and enforce compliance with this Regulation with regards to widespread infringements with a Union dimension as defined in Regulation (EU) [New CPC Regulation] in accordance with Chapter III of that Regulation, except in respect of the matters referred to in Article 2(3), (4), (7), and (8) and Article 28(3) of this Regulation.

5. By way of derogation from paragraph 1, third subparagraph, the enforcement and supervision of Articles 14(2), 15(3), 16 of this Regulation shall be carried out by competent authorities designated under Article 34 of Regulation (EU) [EU KIDS Act] for traders within the scope of that Regulation under the conditions stipulated in that Article. For that purpose, any references in Chapter IV of Regulation (EU) 2022/2065 to compliance or non-compliance with the relevant provisions of Regulation (EU) 2022/2065 and Chapter IX of Regulation (EU) 2024/1689 to compliance or non-compliance with the relevant provisions of Regulation (EU) 2024/1689 shall be deemed to include Articles 14(2), 15(3), and 16 of this Regulation.

   By way of derogation from paragraph 1, third subparagraph, the enforcement and supervision of Article 17(1) of this Regulation shall be carried out by the authorities designated in accordance with Chapter IV of Regulation (EU) 2022/2065 for traders that are providers of online platforms pursuant to Regulation (EU) 2022/2065 and by authorities designated pursuant to Articles 70, 74 and 75 of Regulation (EU) 2024/1689 for traders that are providers or deployers of AI systems within the scope of Regulation (EU) 2024/1689. For that purpose, Chapter IV of Regulation (EU) 2022/2065 and Chapter IX of Regulation (EU) 2024/1689 shall apply and any references therein to compliance with the relevant provisions of Regulation (EU) 2022/2065 and Regulation (EU) 2024/1689 shall be deemed to include Article 17(1) of this Regulation.

   Enforcement under this paragraph should be without prejudice to the possibility for Member States to enable persons or organisations regarded under national law as having a legitimate interest in combating unfair commercial practices, including competitors, to take legal action against such unfair commercial practices.

6. Member States shall ensure that authorities designated by them in accordance with Article 49 of Regulation (EU) 2022/2065 and Articles 70 and 74 of Regulation (EU) 2024/1689 are competent to supervise and enforce Articles 14(2), 15(3), 16 and 17(1) of this Regulation in respect of traders specified in paragraph 5 that are within the competence of the national competent authorities.

7. To the extent that powers are conferred on the Commission under Section 4 of Chapter IV of Regulation (EU) 2022/2065 and Chapter IX of Regulation (EU) 2024/1689, those powers shall also cover the supervision, investigation, enforcement and monitoring of compliance with Articles 14(2), 15(3), 16 and 17(1) of this Regulation.

8. When a national administrative authority referred to in paragraph 1 or a competent authority referred to in paragraph 5 of this Article takes a decision on a matter which is already the subject matter of a decision adopted by the Commission in accordance with Articles 14(2), 15(3) and 16 of this Regulation or relating to the subject-matter

regulated in Article 17 of this Regulation, the authority shall not take any decision which runs counter to that Commission decision.

Article 31

Codes of conduct

This Regulation shall not exclude the control, which Member States may encourage, of commercial fairness by code owners or recourse to code owners by the persons or organisations referred to in Article 30 if proceedings before code owners are in addition to the court or administrative proceedings referred to in that Article.

Recourse to code owners shall not be deemed the equivalent of foregoing any means of judicial or administrative recourse as provided for in Article 30.

Member States shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.

Article 32

Remedies

1. Consumers harmed by unfair commercial practices shall have access to proportionate and effective remedies, including compensation for damage suffered by the consumer and, where relevant, a price reduction or the termination of the contract.

2. Member States may determine the conditions for the application and effects of those remedies. Member States may take into account, where appropriate, the gravity and nature of the unfair commercial practice, the damage suffered by the consumer and other relevant circumstances.

3. The remedies referred to in paragraph 1 shall be without prejudice to the application of other remedies available to consumers under Union or national law.

Article 33

Courts and administrative authorities: substantiation of claims

National courts or administrative authorities shall have powers enabling them in the civil or administrative proceedings provided for in Article 30:

(a) to require the trader to furnish evidence as to the accuracy of factual claims in relation to a commercial practice if, taking into account the legitimate interest of the trader and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case;

and

(b) to consider factual claims as inaccurate if the evidence demanded in accordance with point (a) is not furnished or is deemed insufficient by the court or administrative authority.

Article 34

Disclosure of evidence concerning commercial practices in the online environment

1. In addition to the powers referred to in Article 33, national courts and administrative authorities shall have powers enabling them, in the civil or administrative

proceedings referred to in Article 30 and Article 32, at the request of a claimant that has presented facts and evidence sufficient to support the likelihood of an unfair commercial practice in the online environment, or where the relevant administrative authority has a reasonable suspicion of an unfair commercial practice in the online environment, to require traders to disclose, in an easily accessible and understandable manner, relevant evidence in relation to the design, operation and impact on the behaviour of consumers of the relevant commercial practice.

National courts and administrative authorities shall have powers enabling them to impose penalties if the trader supplies incorrect, incomplete or misleading information under sub-paragraph 1 or does not supply such information within the required time-limit.

2. The disclosure of evidence pursuant to paragraph 1 shall be limited to what is necessary and proportionate.

3. When determining whether the disclosure of evidence is necessary and proportionate, national courts and administrative authorities shall consider the legitimate interest of the trader and any other party to the proceedings, in particular in relation to the protection of trade secrets.

4. Member States shall lay down the rules on penalties applicable to the failure to disclose the evidence referred to in paragraph 1.

5. National courts or administrative authorities may consider a failure to disclose the evidence referred to in paragraph 1 as a relevant element in establishing the unfairness of a commercial practice, based on the circumstances of the case together with other relevant evidence.

Article 35

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2. The following non-exhaustive and indicative criteria shall be taken into account for the imposition of penalties, where appropriate:

   (a) the nature, gravity, scale and duration of the infringement;

   (b) any action taken by the trader to mitigate or remedy the damage suffered by consumers;

   (c) any previous infringements by the trader;

   (d) the financial benefits gained or losses avoided by the trader due to the infringement, if the relevant data are available;

   (e) penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 [/Regulation (EU) [New CPC Regulation]];

   (f) any other aggravating or mitigating factors applicable to the circumstances of the case.

3. When penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394 [/Regulation (EU) [New CPC Regulation]], they shall include the possibility either to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, or both, the maximum amount of such fines being at least 4% of the trader's annual turnover in the Member State or Member States concerned. Without prejudice to that Regulation, Member States may, for national constitutional reasons, restrict the imposition of fines to:

   (a) infringements of Articles 6, 7, 8, 9, of the obligations in Chapter III and of Annex I; and

   (b) a trader's continued use of a commercial practice that has been found to be unfair by the competent national authority or court, when that commercial practice is not an infringement referred to in point (a).

4. For cases where a fine is to be imposed in accordance with paragraph 3, but information on the trader's annual turnover is not available, Member States shall introduce the possibility to impose fines, the maximum amount of which shall be at least EUR 2 million.

5. Member States shall, without delay, notify the Commission of any amendment affecting the rules and measures referred to in paragraph 1.

6. The Commission may impose fines not exceeding 6% of the trader's worldwide annual turnover pursuant to Article 43 of Regulation (EU) [New CPC Regulation] for infringements of this Regulation investigated by the Commission in accordance with Chapter III of Regulation (EU) [New CPC Regulation].

Article 36

Right of recourse

1. Where the trader is held liable for an unfair online commercial practice under Articles 30 and 32 of this Regulation, and where such liability results from the act or omission of another person with which the trader has a commercial relationship, or where the act or omission of another person with which the trader has a commercial relationship contributed to such liability, that trader shall be entitled to pursue remedies against that person.

2. Member States shall ensure that effective, proportionate and dissuasive remedies exist enabling traders to exercise the right of recourse referred to in paragraph 1.

Chapter V

FINAL PROVISIONS

Article 37

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 10(3) and 17(2) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force, Article 40].

3. The delegation of power referred to in Articles 10(3) and 17(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 10(3) and 17(2) shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 38

Repeal of Directive 2005/29/EC

1. Directive 2005/29/EC is repealed.

2. References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex II.

Article 39

Reporting by the Commission and review

1. By [60 months after the date of application], the Commission shall evaluate the implementation of the measures provided for in this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.

2. On the basis of the report referred to in paragraph 1, the Commission shall, where appropriate, submit a legislative proposal to the European Parliament and to the Council to amend this Regulation.

Article 40

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

2. It shall apply from [12 months after the entry into force].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President