



REPORT

Annual Digital Consumer Event 21 November 2022

Summary overview

On 21 November 2022, the European Commission held the second edition of the [Annual Digital Consumer Event](#) - a dedicated event that allows to go deeper into the digital aspects of consumer policy. The discussions at the event demonstrated the different perspectives that diverse stakeholders (academia, consumer and business organisations, traders, enforcement authorities) have on the role of consumer law in the digital transition. It also helped to see whether the Commission is on the right track in terms of identifying the problems that should be further examined in the Fitness Check on digital fairness. There were calls for regulatory intervention in the form of a new “Digital Fairness Act”, which could fill any remaining gaps of consumer protection after the adoption of recent legislation in the digital area, such as the [Digital Services Act](#), [Digital Markets Act](#) and others. The discussions also underlined the importance of effective enforcement, which could be enhanced by the introduction of a reversed burden of proof, and cooperation with market players, including in the context of the

Product Safety Pledge. Overall, participants acknowledged the key role that EU consumer law plays in the digital transition and recognised the importance of preserving its principle-based, safety-net nature, while also ensuring that companies have more legal certainty about their obligations and that the most harmful practices are tackled directly, including through new prohibitions.

Detailed summary

This was a hybrid event moderated by Jennifer Baker with most of the speakers physically present whilst participants joined online via Webex or webstream. The registered participants joined from 25 EU countries as well as other regions such as United States, China, Japan, Ukraine and Saudi Arabia. The participants interacted with the panels also via Slido (open Q&A and voting polls).

Keynote speech by Didier Reynders

The event was opened by Commissioner Reynders' speech. The Commissioner pointed to the fact that a lot has changed since last year's event as the EU now has stronger legislation protecting consumers in the digital era. On the one hand, legislation such as the Digital Services Act and the Digital Markets Act clarified the platforms' obligations, which would make it easier to prevent infringements of consumer rights online. On the other hand, specific consumer law legislation entered into application, such as the new [Digital Content Directive](#), [the revised Sale of Goods Directive](#) and [the Modernisation Directive](#) (which updated the [Unfair Commercial Practices Directive](#), [Consumer Rights Directive](#) and [Unfair Contract Terms Directive](#)). Thus, the Modernisation Directive ensures that consumers have stronger rights in case they become victims of unfair practices. For example, if a consumer was tricked into a subscription due to dark patterns, they have a right to seek remedies, such as the termination of the contract. These rights will be even stronger next summer, when the [Representative Actions Directive](#) starts to apply. The Commissioner also explained that national authorities co-operating within the Consumer Protection Co-operation (CPC) network have now at their disposal stronger tools

to sanction major cross-border infringements of consumer rights with fines up to 4% of the infringing trader's annual turnover.

Commissioner Reynders further underlined that many of the existing consumer rules can work well in the digital world and that the Commission's guidelines, which were adopted in December 2021, help to clarify how existing law can be used to its maximum effect. He elaborated on successful enforcement actions by the [Consumer Protection Cooperation \(CPC\) network](#) in cases such as [TikTok](#), [Wish](#), [Amazon Prime](#), but also pointed out that enforcement authorities must be able to respond faster and more effectively to practices that threaten the consumers' collective interests. The Commissioner invited the participants to reflect on whether EU consumer law is still sufficient to address problems of consumers in the digital world. He also encouraged everyone to take part in the public consultations on the Fitness Check on [Digital Fairness](#) and the [Enforcement Package](#).

Panel: Involving consumer organisations with the voluntary cooperation mechanism under the Product Safety Pledge – launch of an innovative Pilot project

Panellists:

Els Bruggeman – Euroconsumers
Delphine Dauba-Pantanacce – eBay
Andras Zsigmond – European Commission

Summary of discussions:

The panel focused on the innovative Pilot project launched in autumn 2022 and facilitated by the Commission. This Pilot establishes new communication channels between lead EU consumer organisations and the signatories of the



Product Safety Pledge allowing consumer organisations to directly notify to online marketplaces the results of the tests they carried out regarding products offered on these marketplaces. In

parallel, consumer organisations also inform the relevant market surveillance authorities and the Commission on these results. This Pilot was built on the successful mechanism established under the [Product Safety Pledge](#).

Panellists highlighted the importance of this cooperation avenue that has the potential to create trust between the stakeholders. Panellists agreed that all relevant information available on unsafe products that are offered online should be channelled into the Pledge cooperation mechanism, and into the online market surveillance in general.

Panellists also highlighted that the first results of the Pilot are promising, but before deciding on whether it could be established as a more structured cooperation mechanism, further experience should be gained. Accordingly, all speakers advocated for extending the Pilot further to additional commitments.

The audience was asked in Slido if they faced any safety concerns related to products bought online. 39% of the respondents replied that they did.

Panel: Online consumer vulnerabilities: shedding light on dark patterns, personalisation and structural asymmetries

Panellists:

Prof. Hans Micklitz - European University Institute (EUI)
Ursula Pahl - European Consumer Organisation (BEUC)
Antonio Mancini - Italian Competition Authority (AGCM)
Ilya Bruggeman – Eurocommerce
Egelyn Braun - European Commission

Summary of discussions:

The panel focused on problems that arise from the distortion of the consumer's freedom of choice and conduct due to unfair



commercial practices in the digital world, such as dark patterns and data-driven

personalisation. Panellists shared their views on the role that consumer law has in addressing these and many other problems in digital markets, ultimately in view of reflecting on whether the existing EU legal framework, including the Unfair Commercial Practices Directive, is still fit for purpose.

Several panellists did not consider consumer law to be sufficiently fit, especially in order to tackle “digital asymmetry”, which is a structural state of power imbalance between consumers and traders (that, notably, have access to consumer data). One panellist called for putting forward a “Digital Fairness Act” that would tackle the issues that were not addressed in recent legislation or current EU consumer law in a satisfactory and more holistic manner. Several panellists underlined the importance of taking a holistic approach, both when assessing the legislative framework (notably consumer law’s interplay with data protection, competition law, the Digital Services Act, Digital Markets Act, AI Act etc.) but also in the context of enforcement (e.g. certain enforcement authorities have powers in several areas of law, such as consumer and competition law).

In view of several panellists, among the elements that should be considered in order to increase the effectiveness of consumer protection are: the reversal of the burden of proof, introducing a new duty of care in order to ensure fairness by design; further addressing personalisation practices, including targeted advertising that amounts to commercial surveillance and personalised pricing, the prohibition of dark patterns, and the protection of minors.

The importance of enforcement was acknowledged across the board and one panellist stressed that existing rules should be properly enforced before proposing any revisions. The panellists acknowledged the limits of the EU’s competences in the enforcement area and looked forward to the forthcoming Enforcement Package, which entails a revision of the CPC Regulation. In that context, one panellist considered that the European Commission should have more powers to centralise certain activities such as investigations, while acknowledging the limits of EU competence in this area. Also, as regards private enforcement, one panellist highlighted that the Artificial Intelligence Act does not, at the moment, include the possibility of collective redress through the Representative Actions Directive and therefore, in a mass harm situation caused by an AI system, consumers may not have a right to seek collective redress.

Some panellists also acknowledged as major issue the resources available to the enforcement authorities and stressed the need for public enforcers to be well-equipped with investigation powers, such as dawn raids (unannounced inspections), and IT tools in order to effectively detect, monitor and sanction unfair practices. One panellist raised the issue that companies may have difficulties with compliance because the law does not always go into detail on what the required level of professional diligence entails and further clarifications may be beneficial, whether in the form of legislative revisions, guidance or enforcement activities.

The audience was asked in Slido if they were ever misled into signing up for a service or buying something online that they did not want because of the confusing online interface (dark pattern). 51% responded that they were.

Panel: Online consumer purchases: challenges raised by digital subscriptions, virtual items and the addictive use of digital products

Panellists:

Prof. Alberto De Franceschi - University of Ferrara (online)

Michaela Schröder - Federation of German Consumer Org (vzbv) (online)

Dries Cuijpers - Netherlands Authority for Consumers and Markets (ACM)

Ann Becker - Interactive Software Federation of Europe (ISFE)

Martins Prieditis - European Commission

Summary of discussions:

The panel focused on issues related to online contract cancellation, addictive use of digital products and marketing



of in-app purchases. Panellists acknowledged that the existing principle-based EU consumer rules allow for innovative interpretation that enables their application also to new challenges in the digital markets. A periodical update of the respective guidelines, both at EU and national

levels, helps steering the business behaviour towards better compliance. Notwithstanding this, more precise and targeted rules may be needed to ensure more effective consumer protection. The Fitness check should focus on dark patterns, the fairness of interface design, preventing abusive personalisation and revisiting the concept of average consumer. In general, regulatory alternatives to mere transparency requirements should be privileged, such as mandatory (pro-consumer) default settings. The use of in-app currencies for in-app purchases should be examined, as it conceals from the consumer the real-world cost of these purchases. Also, the issues regarding the ownership of non-fungible tokens (NFTs) and the exercise of consumer rights should be considered (e.g. how a transaction could be reversed in the case of non-conformity of the product).

The question of consumer awareness about their right to cancel their contract was also raised. Existing national experience with the mandatory cancellation “button” was presented as an effective method to facilitate the cancellation process for the consumer and there were calls for extending it to all consumer contracts at EU level.

In the context of video games, a panellist referred to voluntary measures that the providers have already taken for better user protection, such as the PEGI age grading system and parental control tools. Several panellists criticised the loot boxes as regards their marketing techniques, the adequacy of consumer information and creating addictions. Regarding the latter, the need for redefining “undue influence” as a form of aggressive online practice was highlighted. Other panellists, however, recalled that the surprise mechanics used in loot boxes are not unique and also exist in off-line context and that, according to the available data, consumers spend more time on social media and TV than on video games.

A number of aspects regulated by the Consumer Rights Directive were also highlighted, including its application to services provided without payment but against commercial use of personal data, mandatory information at the moment of concluding the online contract and the consequences of failing to provide it (when consumer is not bound by the contract), the exemption from the right of withdrawal for digital content and stronger sanctions for lack of compliance.

One panellist underlined the need for avoiding regulatory fragmentation.

The audience was asked in Slido if they ever had problems with exercising their rights to cancel or withdraw from a digital subscription. 67% responded that they had such issues.

Panel: Online consumer contracts: mapping unfair contract terms and the lack of transparency

Panellists:

Prof. Joasia Luzak - University of Exeter

Frithjof Michaelsen - French Consumer Organisation (UFC-Que Choisir)

Emy Gustavsson - Swedish Consumer Agency (Konsumentverket) (online)

Léon Mölenberg - Ecommerce Europe

Ioana Patrascu - European Commission

Summary of discussions:

The panel reflected on the types of unfair contract terms present in the digital environment. It explored the challenges for consumers to obtain



clear and useful information regarding the terms and conditions. Finally, it addressed the adequacy of the existing EU legal framework, in particular the Unfair Contract Terms Directive, in the digital world.

Panellists referred to a number of types of unfair contract terms. For example, online traders use terms giving them the right to unilaterally amend the contract, for example to collect more data from the consumer than initially agreed or use it for other purposes, terms which unfairly limit the liability of the trader, terms with unclear consequences when the consumer decides to terminate the contract and terms stipulating that the consumer enters in a contract merely by accessing the trader's website.

Panellists highlighted issues related to transparency of contract terms online. Often, online traders draft contract terms in a convoluted, obscure manner, with links to various subpages,

which makes it impossible for consumers to understand them. Long, complex terms and conditions as well as privacy policies with unfair terms increase the information overload. Consumer empowerment cannot be achieved through even more information, so different solutions must be found.

Panellists considered that overall, the Unfair Contract Terms Directive was still relevant in the digital world, in particular thanks to its principle-based and technology neutral nature which should be maintained. Certain improvements should be considered, in particular the introduction of black and grey lists of unfair terms as regards the fairness assessment. Also, the panellists underlined the need of a more holistic approach to the transparency assessment, in conjunction with other EU rules such as the Unfair Commercial Practices Directive, leading to the possibility for consumers to trust that terms and conditions are fair without the need to read and assess them. Moreover, panellists referred to targeted aspects for improvement, such as the implications of services provided against the use of consumer's personal data or attention in terms of transparency and fairness. Traders, in particular SMEs, should be trained and benefit from relevant information on what is allowed or not when drafting terms and conditions. Finally, the panellists highlighted the crucial role played by the adequate enforcement of the rules, with the need for different enforcers to better cooperate, in particular the consumer and data protection authorities.

The audience was asked in Slido if they noticed that contract terms were unfair when signing up for a digital service or buying something online but had no option but to agree. 84% responded that they had such issues.

Closing remarks

Blanca Rodriguez-Galindo (acting Director for Consumers) delivered the closing remarks for the day. She acknowledged that the discussions were very rich and touched upon many topics, but certain common themes emerged. She noted that despite the challenging questions and points of divergence, there was a sense that the existing horizontal EU consumer law acquis has a lot of potential to provide a solid framework to tackle unfair practices both in the online and offline world. She also noted that a combination of principle-based rules and specific

obligations will help ensure that consumer laws are sufficiently future-proof, while maintaining a degree of precision that helps address the practices in the digital markets. She underlined that a major common theme was the importance of effective enforcement, which will be a key focus of the forthcoming Enforcement Package. She invited the audience and all stakeholders to contribute to the public consultations after the event.