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ECC-Net's Perspective on the Digital Fairness Act

Position Paper

Summary

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Introduction

Through its daily casework and EU wide data collection, the European Consumer Centres Network (ECC Net) has direct insight into persistent and emerging consumer harm in digital markets. This experience reveals systemic problems that existing rules do not adequately address, including:

- subscription traps and ineffective cancellation rights
- the exploitation of vulnerable consumers
- insufficient protection of minors online
- opaque influencer marketing practices that erode consumer trust
- the unclear responsibilities of digital intermediaries

As the European Commission prepares the Digital Fairness Act (DFA), ECC Net welcomes the focus on digital fairness, cross border e commerce and enforcement. However, evidence from consumer complaints shows that digitalisation has intensified long standing issues and enabled new manipulative practices, such as dark patterns and misleading marketing. At the same time, accountability gaps exist within the digital value chains.

Building on ECC Net's case handling experience and recent positions, this paper aims to support a robust Digital Fairness Act that addresses real harms consumers face today. The DFA should go beyond transparency and ensure genuinely fair digital choice architectures, stronger protection for vulnerable consumers and minors, and clear, enforceable obligations for intermediaries.

Combatting dark patterns and unfair commercial online practices

Subscription traps and cancellation rights

In the position paper on "Advancing Consumer Protection for the New EU Consumer Agenda", ECC-Net noted that it continues to receive a high number of complaints about so-called "subscription traps". This refers to the practice in which consumers are drawn into recurring subscriptions, often through free trials or low-cost introductory offers, without fully understanding the implications. Our case handling shows that consumers frequently find themselves enrolled in such subscriptions without having been clearly informed in advance or without having consciously consented.

Subscription traps in the digital economy

Typical examples of subscription traps include free trials that automatically convert into paid subscriptions, or misleading offers on social media that redirect users to unofficial, short-lived websites, making it difficult to trace traders or gather evidence. Advertisements on social media and high ranking on search engines are important ways through which consumers receive the offer. In many cases, they are unaware of the applicable conditions or encounter obstacles when attempting to terminate, including difficulty contacting the trader or navigating complex termination processes. This issue is not limited to obscure or small-scale operators; it extends across the entire market, affecting both minor websites and major industry players.

Termination of online subscriptions

A further structural issue observed in practice is the imbalance between entering into and exiting digital subscriptions. While signing up is typically quick and frictionless, leaving a subscription often requires navigating complex termination processes. Our experience further demonstrates that it is frequently made unnecessarily burdensome for consumers to terminate these subscriptions: multiple steps and clicks are required to locate and complete the termination process, while manipulative design techniques such as repeated confirmation screens, emotionally loaded messages and misleading button hierarchies create additional friction that discourages timely termination.

Introduce accessible mechanisms to terminate online subscriptions

To address these issues, ECC-Net strongly advocates for the introduction of simple and accessible termination mechanisms for all online subscriptions – similar to the withdrawal function introduced in the EU Directive 2023/2673 – requiring no more than two to three clicks. This approach reflects emerging best practices already implemented in several EU Member States. For example, both Germany and France have introduced legal requirements mandating a clear and easily accessible “cancel button” on websites offering subscription services. These rules aim to ensure that consumers can terminate contracts just as easily as they entered into them.

Require timely renewal notifications across Member States

Several Member States have introduced specific notification requirements for the renewal of subscription contracts. For example, under the French "Châtel Law" on automatic renewals, traders must inform consumers of the upcoming renewal between one and three months before the contract is renewed. Similarly, Italian law requires traders to send a written reminder at least 30 days before the renewal date and grants consumers the right to terminate the contract without penalty after renewal if this obligation is not fulfilled. Such notifications must clearly inform consumers of the impending renewal and the available cancellation options. However, these national requirements are frequently overlooked by traders operating across borders within the EU.

Harmonise EU rules on subscription practices

Considering these challenges, ECC-Net would strongly welcome EU-wide harmonisation of rules governing subscription practices. The framework should explicitly state that traders bear the obligation to prove that consumers knowingly and intentionally concluded the subscription agreement and gave their informed consent. To ensure effective consumer protection under the DFA, consumers and market surveillance authorities should not need to demonstrate the absence of consent in practice. This responsibility must be placed more firmly on traders and platforms. Consumers frequently face informational and procedural disadvantages when attempting to prove that they did not knowingly consent to a subscription, particularly where dark patterns or misleading interface design are involved. Allowing the burden of gathering and providing evidence to be placed on individual consumers or under-resourced authorities undermines the enforceability of consumer rights and weakens trust in digital markets.

Burden of proof and consumer consent

The DFA should establish clear, rebuttable presumptions and documentation obligations for traders, obliging them to demonstrate that valid, informed, and explicit consent was obtained. In practice, this would more effectively prevent traders from charging consumers for a contract they did not consent to. Additionally, it would give consumers the confidence to refuse or reject a direct debit if a trader cannot demonstrate that the consumer was clearly informed about subscription terms, renewal conditions, and cancellation options. This measure would create stronger incentives for compliance, improve enforcement efficiency, and ensure that consumer protection rules are effective in practice rather than theoretical.

Free trials and automatic conversion

Furthermore, consumer law should clarify how the right of withdrawal applies to free trials that are converted into paid subscriptions. At present, there is legal ambiguity regarding when the 14-day withdrawal period under the Consumer Rights Directive begins in such cases. ECC-Net proposes that, for free-to-paid conversions, the withdrawal period should start at the moment the consumer is first charged, rather than at the beginning of the free trial. This would allow consumers a fair opportunity to assess the service once it becomes a paid contract.

More broadly, traders should be required to provide clear and timely reminders before a free trial ends and a payment obligation begins. Such transparency would prevent a significant number of disputes.

In addition, it would be worth exploring whether, when a free trial is converted into a paid subscription, traders should be required to obtain an explicit confirmation from the consumer before charging the first payment. In the absence of such confirmation, the subscription should automatically expire without creating any payment obligation. Such an approach could significantly reduce subscription traps while preserving legitimate subscription-based business models.

Free trials should not require payment details

ECC-Net also considers the proposal of the Finnish Consumer Ombudsman to be worthy of further consideration. According to this approach, genuinely free trials should not require consumers to provide credit card or other payment details at the outset. If a trial is truly free, there is no need to collect payment information before any payment obligation arises. A paid subscription could only begin once the consumer actively provides payment details and is clearly informed that a binding paid contract is being concluded.

Harmonise enforcement across the EU for effective protection against subscription traps

Finally, many subscription traps rely on the immediate provision of digital services, such as access to a customer area or downloadable standard documents, to argue that the right of withdrawal no longer applies once the consumer has given explicit consent. However, ECC-Net has observed several cases in which such consent is questionable or insufficiently documented. This highlights the urgent need for consistent and harmonised enforcement across the EU to ensure effective consumer protection.

Protecting vulnerable consumers and minors online

The debate on protecting vulnerable consumers and minors online has gained significant momentum, particularly in the context of social media. Platforms are increasingly criticised for amplifying risks through addictive design, opaque monetisation models, and insufficient safeguards for younger users. In this context, discussions about stricter regulation – including the possibility of an EU-wide social media ban for minors – should not be dismissed outright. While such a measure would raise complex questions of feasibility and proportionality, it remains an option that should be carefully considered within the framework of the Digital Fairness Act (DFA), especially given the scale and persistence of harm observed in practice.

Establish stronger safeguards for children and teenagers

A particularly vulnerable group in the digital environment are children and teenagers. Strengthening their protection requires more than general consumer safeguards; it calls for targeted, default protections in services likely to be used by minors or other vulnerable consumers. ECC-Net therefore welcomes the European Commission's focus on making the digital world safer for young users but emphasises that more concrete and enforceable measures are needed. Our case handling repeatedly shows that minors encounter problems with online contracts, in particular in the context of online games, where they often enter into agreements or make purchases without fully understanding the legal and financial consequences.

Set limits to addictive design mechanisms

One key area of concern is the widespread use of addictive design features, such as endless scrolling, autoplay videos, and gamified reward systems. These mechanisms are designed to maximise engagement but can disproportionately affect minors, who are less equipped to recognise or resist such techniques. At a minimum, digital services should be required to offer clear opt-out options for these features – or refrain from enabling them by default, particularly where minors are concerned.

Require full transparency in monetisation practices

In online games and apps popular with children, monetisation practices also require stricter scrutiny. The use of virtual currencies, such as gems, coins, or tokens, often obscures the real-world cost of purchases, making it difficult for minors to understand how much they are spending. Full transparency regarding the real-money value of such currencies should therefore be mandatory. More fundamentally, games directed at minors should avoid monetisation models based on virtual currencies altogether, as these systems are inherently prone to misleading younger users and encouraging overspending.

Prohibit manipulative in-game sales tactics targeting or affecting minors

In addition, manipulative in-game sales tactics, such as time-limited offers, pressure prompts, or "pay-to-win" dynamics, should be prohibited where they target or are likely to affect minors. A more comprehensive assessment of online games is needed to identify and address systemic consumer risks, including practices like loot boxes. If existing frameworks prove insufficient, these issues should either be explicitly addressed under the Digital Fairness Act or through a dedicated regulatory instrument across all sectors.

Ensure human support remains available alongside automated consumer interactions

Beyond design and monetisation, the increasing use of automated systems in consumer interactions also raises concerns. AI-driven chatbots and digital assistants must not become barriers, particularly for vulnerable consumers who may struggle to navigate complex or unresponsive systems. It is essential that users are clearly informed when they are interacting with an automated system and are always provided with a straightforward way to reach a human representative. A "human-in-the-loop" principle should be firmly established: no consumer should be left without access to meaningful human support when needed.

Towards a fairer, more transparent and safer digital environment for vulnerable users

Taken together, the identified issues underline the need for a robust and forward-looking approach to protecting minors and vulnerable consumers online. Whether through enhanced design obligations, stricter rules on monetisation, or even more far-reaching interventions such as restrictions on social media access, the Digital Fairness Act presents a crucial opportunity to ensure that the digital environment prioritises fairness, transparency, and the well-being of its most vulnerable users.

Influencer marketing and consumer trust

Over the past decade, influencer marketing has experienced significant growth, becoming a central component of digital advertising strategies across industries. Social media platforms have enabled individuals with large and engaged audiences – commonly referred to as "influencers" – to shape consumer behaviour, promote products, and influence public opinion at an unprecedented scale. This rapid expansion has outpaced the development of clear and consistent regulatory frameworks.

Fragmented regulatory approaches across Member States cause uncertainty

At present, regulatory approaches to influencer marketing remain fragmented within the European Union. While countries such as Spain, Italy and France have introduced specific national rules addressing transparency, advertising disclosure, and consumer protection in the context of influencer activities, there is no unified European standard. This lack of harmonisation creates legal uncertainty for influencers, brands, and consumers alike, particularly in a digital environment that inherently transcends national borders.

To address these challenges, there is a strong case for establishing a coherent European regulatory framework on influencer marketing, for instance through social media platforms. Such a framework would enhance legal clarity, ensure a level playing field across Member States, and strengthen consumer trust in digital advertising practices.

Ensure accountability of non-EU influencers by requiring legal representation within the EU

More broadly, a significant number of influencers targeting EU consumers are based outside the European Union. This creates additional challenges for enforcement and consumer redress, particularly where misleading advertising, unfair commercial practices, or product safety issues are concerned. To ensure effective supervision and accountability, influencers and commercial actors targeting the EU market should be required to designate a legal representative within the European Union who can serve as a point of contact for authorities and consumers and facilitate the enforcement of applicable EU rules.

Harmonise the rules on influencer marketing

In conclusion, as influencer marketing continues to grow in economic and societal importance, the European Union should take proactive steps toward harmonising the regulatory landscape. Introducing a common definition and aligned rules would not only reduce fragmentation but also foster transparency, accountability, and fairness in the digital marketplace.

Intermediaries

In recent years, digital platforms have become central intermediaries for purchases and bookings across a wide range of sectors, including e-commerce, travel, and services. While these platforms offer convenience and expanded choice, recurring issues continue to arise for consumers engaging in such transactions.

Challenges in identifying and contacting sellers and service providers in online transactions

A key concern is the lack of transparency regarding the identity of the actual seller or service provider. Consumers are often unable to clearly determine whether they are contracting with the platform itself, a third-party business, or another intermediary. This ambiguity can lead to confusion about rights and obligations, particularly in cases where problems occur. For example, when a consumer books a service and adds additional services which are offered by third parties and this is not clearly mentioned to the consumer. This is especially problematic if those third parties are situated outside of the EU or the ECC-Net competence area.

Communication difficulties represent another persistent challenge. Consumers frequently encounter fragmented or inefficient communication channels when attempting to resolve issues. Interactions may be split between the platform and the underlying business, leading to delays, inconsistent information, or a lack of effective support.

Closely linked to this is the issue of accountability. In situations involving defective products, service failures, or cancellations, responsibility is often shifted between the platform and the business operator. This "passing of responsibility" leaves consumers uncertain about whom to contact and may hinder the timely resolution of complaints or claims.

Furthermore, the structure of platform-based transactions is becoming increasingly complex. In many cases, the relationship is no longer limited to a platform, a business, and a consumer. Instead, additional intermediaries or even multiple platforms may be involved in facilitating a single transaction. This added layer of complexity further obscures responsibilities and exacerbates existing transparency and enforcement challenges.

Establish clear rules on platform liability

Looking at these developments, there is a growing need to strengthen the accountability of digital platforms. Where platforms play an active role in structuring transactions, presenting offers, or facilitating payments, they should not be able to evade responsibility by merely positioning themselves as neutral intermediaries. Establishing clear rules on platform liability would help ensure that consumers have a reliable point of contact and effective means of redress when problems arise. Holding platforms accountable, at least in defined circumstances, would contribute to greater transparency, improve enforcement of consumer rights, and enhance trust in the digital marketplace.

Ensure contractual parties can be identified and contacted

These recurring issues highlight the need for clearer rules and stronger safeguards to ensure that consumers can easily identify contractual partners, access effective communication channels, and rely on well-defined accountability mechanisms in platform-based environments. In particular, for companies established in third countries, there should be a designated representative located within the EU who can be contacted regarding consumer rights and responsibilities, ensuring enforceability and effective redress.

Collaboration of these platforms to assist consumers in providing the correct details of the trader should be obligatory, especially when ECC-Net is intervening in a case for a consumer. Swift collaboration is key.

Barriers to fair digital transactions and support

Another growing concern for consumers in the digital marketplace is the unilateral cancellation or withdrawal of products and services by providers after purchase – which can be called digital ownership. This issue arises, for example, when booked accommodations are cancelled by hosts without adequate justification or compensation, or when access to digital goods, such as online games or services, is discontinued shortly after purchase due to server shutdowns or business decisions. A further relevant example concerns in-app purchases in otherwise free-to-play games or even purchased video games, where consumers invest in digital content that may lose its value or become unusable if the service is altered or discontinued. Such practices undermine consumer trust and raise questions about fairness, transparency, and the durability of digital ownership.

Strengthen safeguards against unjustified cancellations

Consumers are often left without meaningful remedies or clarity on their rights. Policymakers should therefore consider strengthening safeguards against unjustified cancellations, ensuring appropriate compensation mechanisms, and clarifying the legal status and minimum availability expectations of digital goods and services.

Establish a procedural right to access timely and effective human support

ECC-Net also observes a growing number of cases in which consumers encounter barriers when attempting to contact traders or platforms, particularly in the context of digital services and online marketplaces. Many businesses increasingly rely exclusively on automated customer service systems, such as chatbots or predefined help flows, which are often unable to adequately address complex consumer issues or exercise of legal rights. As a result, consumers may become trapped in repetitive automated loops without any realistic possibility of obtaining meaningful assistance, clarifying contractual issues, or resolving disputes. This creates a serious imbalance, especially in cases involving cancellations, unauthorised charges, defective digital services, or requests related to statutory consumer rights.

To ensure effective consumer protection under the DFA, consumers should therefore be granted a clear procedural right to access timely and effective human support where automated systems fail to resolve an issue. Traders and platforms should not be permitted to rely exclusively on automated interfaces for customer communication in legally relevant matters. Instead, they should be required to provide accessible channels through which consumers can reach a competent human representative within a reasonable timeframe. Such safeguards are essential to ensure that digitalisation does not undermine access to redress, procedural fairness, and the effective enforcement of consumer rights.

Conclusion

In light of the persistent and evolving challenges identified through ECC-Net's casework, it is clear that the Digital Fairness Act represents a critical opportunity to modernise EU consumer protection for the digital age. Existing legal frameworks have not kept pace with the complexity and scale of online markets, allowing unfair practices, such as subscription traps, manipulative design features, opaque influencer marketing, and unclear intermediary responsibilities, to continue undermining consumer trust and welfare.

An effective DFA must go beyond formal transparency requirements and address the structural imbalances embedded in digital environments. This includes:

- ensuring that consumers can make and reverse decisions with equal ease
- embedding strong default protections for vulnerable users and minors
- eliminating manipulative practices that distort consumer choice

At the same time, harmonised rules on influencer marketing and clearer allocation of responsibilities among digital intermediaries are essential to reduce legal fragmentation and ensure accountability across borders.

Ultimately, the success of the Digital Fairness Act will depend on its ability to translate principles of fairness, transparency, and accountability into concrete, enforceable obligations. By doing so, it can restore consumer confidence, promote a level playing field for businesses, and ensure that the digital marketplace in the European Union operates in a way that is both innovative and fundamentally fair.

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