

Warsaw, 22 October 2025

Mr. Michael McGrath

Commissioner, Democracy, Justice, the Rule of Law and Consumer Protection

Ms. Hadja Lahbib

Commissioner, Equality, Preparedness and Crisis Management

Ms. Ana Gallego

Director-General, Directorate-General for Justice and Consumers (JUST)

Dear Commissioners, Director-General,

Appreciating the opportunity to provide feedback on the proposed regulatory initiative of Digital Fairness Act, on behalf of Digital Poland Association I wish to express that we share and commend the European Commission's objectives of protecting and empowering customers regardless of where they shop, ensuring fairness for consumers and businesses in business-to-consumer transactions in the Digital Single Market, improving legal certainty, ensuring effective enforcement and preventing market fragmentation. **It is however a cause of our concern that the recent regulatory initiative - Digital Fairness Act - would not only fail to deliver on these objectives, but also prove to be a step backwards** in terms of the declared efforts for simplification of the EU regulatory environment, stifle efforts for Europe's competitiveness by adding yet another layer of unnecessary red tape, deepen the legal complexity and uncertainty, while duplicating and encroaching on existing regulations and finally result in a



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number of dire consequences, affecting European businesses making up the Single Market. **As such, we wish to present a rationale for and argue that the most reasonable path in regards to the proposed Digital Fairness Act, aligned with the commendable simplification and implementation agenda that we urge the Commission to follow, is to refrain from moving forward with the proposed legislation completely, making note that to date, we do not see proof of market failure, which would warrant a new piece of regulation such as DFA. Instead, the Commission's efforts should focus on facilitating effective enforcement and provide workable and actionable guidance for the existing regulatory environment.**

### **Contradicting the simplification agenda**

The European Union's digital regulatory landscape has grown increasingly complex, with nearly hundred tech-focused laws creating overlaps and inconsistencies (e.g., DSA, DMA, GDPR, AI Act), while enforcement of this vast, complex network of rules is proving to be a challenge. A commendable goal of simplification, gaining near universal support in Europe, gave the actors in the Single Market much hope, hinting at a possibility of freeing the market's potential and strengthening our competitiveness.

Yet, the proposal of Digital Fairness Act appears to contradict this goal, proposing broad new business restrictions, adding yet more red tape and inevitably stifling efforts to strengthen the competitiveness of Europe. It also does appear to duplicate already existing regulations, including the UCPD, CRD, UCTD, and a wide array of recent digital laws like the DSA, DMA, AI Act, and Data Act. Introducing overlapping rules would without a doubt create confusion for both market participants and enforcement authorities, undermining regulatory efficiency and setting us back the goal of simplification.

**Simplification of existing rules must be complemented by a halt in imposing new ones if it is to be effective. There is no need for new regulation in order for the existing rules to be effective. Rather, implementation and enforcement of the current obligations and provisions should be ensured. For that very reason, the approach taken in regard to the Digital Fairness Act will be a**



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crucial litmus test of the European Commission's commitment to the simplification and implementation goals, and as a result of the Commission's actual dedication to improving Europe's competitiveness through creating conditions for our market's growth.

### **Addressing already regulated areas and deepening fragmentation**

The EU already has the world's most comprehensive consumer protection framework, strengthened by recent major legislative updates, including the Omnibus Directive, DSA, Data Act, and AI Act, alongside existing directives (UCPD, CRD, UCTD) and GDPR. This comprehensive framework is technologically neutral and flexible enough to address emerging practices, making new legislation unnecessary. The issues raised in the Digital Fairness Act debate can be addressed under existing rules.

**The right legal tools are already available. A clear, predictable, and stable regulatory environment is needed to support consumer protection, innovation, and growth. Proposing new legislation does not provide stability or predictability nor does it address the root causes of the current challenges in enforcing existing regulations. Thus, we urge the Commission to limit any regulatory initiatives, consultation or impact assessments to policy areas that are completely unregulated and not already covered by other laws.**

Moreover, the additional, premature legislation could also fragment the Single Market, increase compliance costs, and undermine innovation, potentially reducing consumer choice while doing little to improve standards where enforcement is already weak. Rather than creating new regulations, the Commission and Member States should engage in broader dialogue about long-term consumer protection in the digital age. This vision should focus on principles like technology neutrality, proportionality, and effective resource use, while fostering innovation and strengthening competitiveness. The goal should be simplification and better enforcement of existing protections rather than adding complexity to an already comprehensive framework.



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Introducing another layer of regulation, such as the DFA, would increase the complexity of the current legal landscape, which in turn could hinder effective enforcement and lead to further legal fragmentation. The current patchwork of regulations is already difficult to navigate, and adding new regulations would deepen legal uncertainty for businesses and consumers. Different authorities will interpret the regulations differently, further leading to divergent enforcement across Member States.

### Enforcement and guidance

Enforcement of already existing rules remains the core challenge, rather than insufficient regulation. Indeed, current enforcement is uneven across channels and fragmented among member states. The problem lies less in absent rules and more in their fragmented enforcement. Strengthening coordination between national authorities, improving resources, and clarifying guidance would be more effective than adding new legal obligations, further adding to the argument for Digital Fairness Act being unnecessary.

The need for better enforcement can be addressed by harmonized guidelines. The lack of harmonized guidelines leads to inconsistent enforcement. This burdens both regulators and companies, who waste time interpreting divergent regulations. The lack of a clear legal hierarchy also complicates identifying the relevant authorities and hinders consumers' ability to pursue redress. Guidelines ("soft law") offer greater flexibility in adapting to rapidly changing technologies and market conditions, which is more difficult with rigid legal acts. Instead of creating new legislation, it is recommended to focus on improving the implementation and effective enforcement of existing regulations. It is crucial for the European Commission to issue clear, consistent, and harmonized guidelines that clarify the interactions between already existing regulations and reduce increasing legal uncertainty.

With Europe's competitiveness and ability to innovate at stake – and the fundamental role of simplification, implementation, efficient enforcement and limiting regulatory complexity in



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moving us towards these goals – the new regulatory proposal appears as setting us back in our efforts and directly opposing the supposed new course for Europe.

Should the Commission decide to move forward with the regulatory initiative of Digital Fairness Act – thus acting in direct opposition to declared simplification goals of reducing red tape, streamlining processes, combating complexity and improving clarity – we would like to recommend the following:

1. Such an initiative should fully reflect the overall goals to ensure a simple and competitive legal framework, which benefits both consumers and businesses.
2. The DFA should focus on simplifying the legislative framework by addressing gaps and ensuring regulatory consistency. The GDPR, ePrivacy directive, DSA, DMA and the Accessibility Act, all have consumer-relevant provisions, and some of these laws have only entered into force a short time ago. Additionally, there is a body of extensive guidance – such as the EDPB guidance on dark patterns. Many of the issues the DFA is looking to address are already partially or in total covered by other laws. The DFA should not add to the complexity or create overlaps or conflicts. Instead it should focus on plugging gaps, compliment or provide more legal enforceability of good practices or standards.
3. User-centricity as an overarching EU policy should remain the objective for the DFA. The DFA should be used to set a standard by creating an overarching framework putting empowered consumers at the centre of the legal framework, ensuring that other laws do not undermine important consumer protections. It could also be used to help streamline and simplify existing consumer laws too – which are currently Directives and therefore subject to Member State interpretation – by harmonising these further.



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4. All new consumer laws should incentivize privacy friendly settings and practices and as a matter of principle. Companies should be encouraged to develop privacy friendly data collection, default settings, business practices etc. Any effort to protect specific categories of consumers should align with GDPR's data minimization principle, i.e. not require service-providers to actively collect or track additional personal data for the purpose of identifying users that fall into those categories. Moreover, the EC should continue to plug remaining gaps by updating the ePrivacy framework in order to strengthen privacy protections, harmonise the existing framework and provide clear guardrails for cookies and tracking technologies.
5. It should be ensured that it will be used to make further progress with the digitisation of consumer information. Providing information to consumers in digital form allows consumers to receive more relevant information, information that is up to date, available in more languages, reduces costs and operational burden as well as preventing environmental waste. It should be also used to promote legal certainty by focusing responsibility on the party that is closest to the consumer. Service providers, compared to marketplaces, know their products, services, and customers best. While online marketplaces have a role to play in incentivizing good practices and minimizing risks to users, it remains undeniably the case that online service providers are in the best position to ensure compliance with applicable EU laws.

**Moreover, in case of ongoing commitment to proposing a Digital Fairness Act, responding to its proposed scope of tackling issues such as unfair commercial practices related to dark patterns, misleading marketing by influencers, addictive design of digital products and unfair personalisation practices, a number of critical concerns must be addressed.**

1. **While no new legislation is needed to address "dark patterns"** because existing EU regulations: Unfair Commercial Practices Directive (UCPD), Digital Services Act (DSA), AI Act and the General Data Protection Regulation (GDPR) contain relevant provisions to



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tackle deceptive design and prohibit harmful commercial practices, a key challenge is that there is no clear consensus on what constitutes a "dark pattern," making new legislation potentially problematic. The term is often applied too broadly, sometimes encompassing legitimate business practices. It's crucial to distinguish between genuinely harmful practices (already illegal under current laws) and beneficial choice architecture that improves user experience. EU consumer law such as the Unfair Commercial Practices Directive (UCPD). The primary focus should be on consistent enforcement of these existing laws. The DFA should avoid duplication of existing legislation by focusing on specific gaps, and encourage consumer awareness and education efforts to tackle the issue of dark patterns.

- 2. Some existing EU regulations already contain provisions which can be applied to tackle the issue of addictive design.** The DSA addresses addictive design by requiring VLOPs to conduct systemic annual risk assessments to assess the risk of any serious negative consequences to a user's mental well-being. Article 5(2) of the AI Act also prohibits the use of an AI system that exploits the vulnerabilities of a person due to their age, disability or specific social or economic situation. General provisions of the UCPD could apply in certain scenarios, such as when a trader is exploiting known vulnerabilities (e.g., lack of impulse control, gambling history) to unduly influence the consumer's decision. Thus, the DFA should avoid duplication by focusing on specific gaps, leverage successful industry practices, and take a flexible, risk-based approach that empowers individual users with more options instead of defaulting to a restrictive experience for everyone, and targets parts of the industry not already regulated. Blanket measures like arbitrary limits on service usage should be avoided, as these may not be suitable for all users.
- 3. In the area of unfair personalisation practices,** it should be noted that personalisation is essential for organizing online information and is widely preferred by users. Personalisation, including advertising and recommendations, is comprehensively governed by the GDPR, DMA, ePrivacy Directive, AI Act and DSA. The DFA should focus on



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addressing specific, well-defined gaps in the current legal framework to avoid legal duplication, increasing uncertainty and exacerbating compliance burdens. More generally, the DFA should not introduce new rules that would prevent services from making use of personalisation to deliver higher quality, more relevant information and safer, age-appropriate online experiences. It is also crucial to recognise that personalised advertising is a vital economic enabler for the European economy. Personalized advertising is a long-standing commercial practice that helps businesses reach interested customers, both offline and online. The practice has proven particularly valuable for SMEs, with three in four European small businesses stating that online advertising allows them to compete effectively with larger firms. While the need to protect vulnerable users is paramount, the DFA should avoid broad definitions of “vulnerability” (e.g., “emotional distress”) as this might hinder enforcement. The introduction of unclear or subjective criteria, such as ‘negative mental states’, risks making restrictions unworkable, particularly for complex systems that require automation like advertising, which processes thousands of ads per millisecond.

4. **In case of specific features in digital products**, the DFA should follow a technology-neutral and risk based approach, focusing on specific consumer needs and avoiding duplication of the current legislation covering specific features in gaming and digital products, such as the UCPD and the Consumer Rights Directive (CRD). Some aspects of these features are also regulated by national laws, particularly in relation to uncertainty-based rewards in games. When virtual currency is purchased with real money, transparency regarding the cost of virtual currency is already addressed by existing consumer protection laws such as the CRD and the UCPD. Many digital games offer intermediate virtual currency that players can earn through gameplay or purchase at various rates (e.g. due to bundle deals). This makes it challenging for publishers to assign a single, universal conversion rate to the virtual currency. Mandating the display of a real-world currency equivalent for every exchange with in-game items could



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potentially confuse consumers through indication of inaccurate values and/or require businesses to process even more personal data to ensure accuracy. The DFA should encourage effective transparency about potential risks and the empowerment of consumers' education and controls tailored to specific services, while considering industry best practices.

5. **While addressing harmful practices by social media influencers**, providing better practical guidance and increasing customer awareness would be more effective than introducing new legislation. The existing EU legal framework provides comprehensive protection through multiple directives including the UCPD, AVMSD, E-commerce Directive, and the DSA. The most effective path forward involves three main approaches: Creating clearer, more accessible guidance documents for influencers and brands, enhancing consumer education through expanded promotion of resources like the EU Influencer Legal Hub and collaboration with major social media platforms to develop specific guidelines, and strengthening enforcement of existing regulations. Rather than creating new rules, priority should be given to improving enforcement mechanisms and allowing recent legislation to demonstrate its effectiveness while maintaining ongoing dialogue about the future of digital consumer protection in an evolving technological landscape.
  
6. **In regard to unfair marketing related to pricing**, the retail sector's competitive nature ensures consumers can find varied deals based on their preferences (including sustainability, delivery speed, and personalized advice), but pricing and deal announcements remain challenging for enforcement. While the Price Indication Directive (PID) and Modernization Directive attempted to address issues like the 30-day lowest price reference requirement, fragmented enforcement across EU member states has created problems for both consumers and businesses. Regarding price comparison, targeted reforms of Article 6a may offer a balanced solution. The EC's policy suggestion to introduce obligations for traders to advertise price advantages only when other



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traders offer products at the referenced price addresses challenges partially created by the PID's 30-day lowest price requirement. Key recommendations in this area include: allowing contextual reference prices (like recommended retail prices or long-term averages) alongside the Omnibus Price to discourage price inflation before sales events, clarifying the definition of "price reduction announcement," and introducing EU-wide standards for labeling reference prices. These adjustments would help reduce fragmentation, improve consumer transparency, and ease business compliance while maintaining pricing flexibility. Recent developments in countries like Spain and the Netherlands, where national authorities have struggled with enforcing consistent pricing practices across online and offline channels, further emphasize the need for harmonized EU-wide reform rather than continued fragmented national approaches. Any specific, outstanding issues should be resolved through additional guidance or legal precedents rather than introducing new, potentially overlapping legislation. This approach ensures consumer protection through transparency without creating unnecessary regulatory layers.

- 7. On the matter of issues with digital contracts**, there is already a robust regulatory framework governing digital contracts and consumers are comprehensively protected through an extensive framework of pre- and post-contractual information obligations. The DFA should focus on specific needs that aren't covered in the current playbook, while considering the needed balance between consumer's and trader's interests. The DFA should refrain from requiring that subscriptions can be canceled at any time with short notice, as it could discourage businesses from offering discounted long-term subscriptions and consequently limit the consumer's options. Moreover, it shouldn't mandate explicit consent for every subscription renewal or free trial conversion, as this could be burdensome and irritating for users, especially for short-term subscriptions. Respective implementation burdens would likely discourage particularly smaller developers to offer free trials at all, or lead to an increase in subscription prices to the



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detriment of consumers. A need for a separate "cancellation button" is not evidence-based, customer-friendly solutions under consideration of the current legal framework already exist. If a new regulation on a "cancellation button" was introduced after all, it should allow for a certain level of flexibility in implementation requirements, factoring in not only different types of contracts but also different products and UI surfaces.

8. **In terms of simplification measures**, EU consumer protection laws have proven effective in safeguarding consumer interests by setting clear standards and providing access to transparent information and remedies. However, the rapid increase in tech-focused EU laws has created a complex and fragmented regulatory environment. This leads to a confusing patchwork of rules across member states, which may increase complexity and fragmentations, as well as limit consumer access to innovative products. Instead of introducing new, overlapping regulations, a focus on simplifying and harmonizing existing frameworks is crucial. The Commission should adopt a three-pronged strategy to guide its approach to digital fairness, by:

- Embracing a risk-based approach
- Integrating simplification from the start
- Implementing a holistic strategy

9. **Regarding the horizontal measures**, several key concerns arise:

- **On mandatory age verification tools**, a one-size-fits-all approach is inappropriate, particularly for online marketplaces which pose different risks than social media or gambling sites. The proposal lacks clarity about what constitutes "access to minors" and which "commercial practices" would trigger requirements. Moreover, robust protection for minors already exists through the DSA and GDPR, making new requirements potentially redundant. The DFA should advance a risk-based, service-level approach to age assurance, in line with the DSA's Art 28 Guidelines, ensuring children receive appropriate protections without losing access to valuable online



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experiences. Prescribing age verification for all adults across the internet risks being too blunt an approach and creating friction for all users, even when risk is not present on a certain platform or app.

- **The proposed "fairness by design"** concept appears to duplicate the existing consumer protection laws like the CRD and the UCPD, already requiring businesses to integrate principles of fairness and transparency into their services from the beginning without clearly adding value.
- **Similarly, the suggested reversal of burden of proof** lacks a clear definition of "disproportionate difficulty in obtaining information" and could impose excessive documentation requirements on legitimate businesses. Placing traders under a presumption of non-compliance by reversing the burden of proof risks creating additional effort and costs for businesses, which could negatively impact consumer experience and even lead to increased costs that could hinder consumer's purchase power.
- **The proposal to amend the "average consumer" definition** requires justification for why the current existing "average consumer" standard – an effective benchmark that has been consistently interpreted by the European Court of Justice for over two decades – is insufficient in the digital context.. This framework already includes special standards for specific consumer segments, such as the "vulnerable consumer". Introducing new benchmarks would undermine legal certainty for businesses and could hamper consumer protection by making it impossible to account for every individual's unique characteristics. Rather than lowering standards, focus should be on improving consumer awareness and education. Additionally, targeting consumers' "possible vulnerabilities" is already prohibited under multiple existing frameworks (UCPD, GDPR, AI Act), and new requirements would create practical challenges in identifying and assessing these vulnerabilities, particularly in



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digital environments. Enhancement of existing enforcement mechanisms would be more effective than creating overlapping requirements.

A more detailed, extensive commentary on the above issues was also provided via the dedicated call for evidence form.

We once more stress that right, sufficient legal tools are already available in the EU and that proposing new legislation does not provide stability or predictability nor does it address the root causes of the current challenges in enforcing existing regulations. Calling upon the European Commission not to proceed with Digital Fairness Act's development, we also share the concerns listed above, which should be considered thoroughly if the regulatory initiative is to be continued.

Sincerely,

Michał Kanownik, President of Digital Poland Association



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