

Digital Fairness Act: Why we need an ambitious DFA to protect digital consumers from manipulative and addictive design practices

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May 2026

The [fitness check on EU consumer law](#) clearly shows there is more work to be done to tackle manipulative and addictive design patterns which can systematically undermine users' autonomy and well-being. These patterns predictably stem from the incentives of engagement-driven business models and are further enabled by the structural asymmetries of power and information that characterise digital markets. In this brief, we advocate for an ambitious Digital Fairness Act that futureproofs EU consumer law and protects consumers from the full range of unfair digital commercial practices across digital services, including deceptive interfaces, manipulative design, and addictive features.

DSA scope and enforcement are insufficient for preventing harmful design-related risks

It's encouraging that the Commission has made curbing dark patterns and addictive design practices a priority in protecting digital consumers, including in its ongoing enforcement of the Digital Services Act (DSA). Despite its ambitious scope, however, the DSA does not directly address harmful engagement-driven design practices — rather, Very Large Online Platforms and Search Engines (VLOPSEs) are required under Articles 34 and 35 to assess and mitigate systemic risks stemming from the design and use of their services, including risks to fundamental rights and public health.

While these provisions are sufficiently broad to cover design-related risks, evidence from [three rounds of platform risk assessments](#) suggests that they are rarely meaningfully addressed. Platforms [have largely avoided](#) assessing risks stemming from engagement-based recommender system and interface designs. Risk management practices tend to shift focus onto “bad actors” pushing illegal or violative content, with little acknowledgement of, or incentives to address, how their own system architectures — built around engagement and profit optimisation — generate structural pressure to deploy manipulative and harmful design practices, with systemic consequences for public health and consumers' physical and mental well-being.

Given the DSA does not address addictive design *per se*, nor comprehensively address engagement-driven design practices, this gap cannot be fully addressed through its existing framework. Moreover, neither the DSA's systemic risk provisions nor its dark pattern rules give consumers any concrete and actionable rights vis-a-vis platforms, creating a significant gap in their legal protection. This gap must be closed by an ambitious DFA.

We need a strong DFA to address the source of harmful design, not just its consequences

A strong DFA should address the core problem, which is the [structural misalignment](#) between the commercial interests of the provider (i.e., to extract time, attention, and money from users) and the interests of the user (i.e., to be empowered to develop and practice their autonomy online). Addictive design, deceptive interfaces, and manipulative commercial practices are all consequences of this underlying misalignment, found not only on social media platforms but across the full range of digital services and commercial environments.

Existing instruments (the DSA and UCPD) fall short precisely because they address problematic *influences* on particular consumption choices, not the structural conditions that generate them. Article 25(1) DSA aims to address the ‘design, organisation, and operation’ of online interfaces, potentially casting a wide net. Like the UCPD, however, it ultimately concerns the ‘impairment’ of *individual decisions* — and its scope is further constrained by the explicit carve-out excluding practices already covered by the UCPD and GDPR. The harms generated by commercial engagement-optimisation logics go beyond whether specific, isolated decisions were manipulated. Harmful design is structural, rendering the *entire design* of digital services [hostile](#) and unfair.

An ambitious DFA should address this directly, by **banning hostile and unfair design** that seeks to structurally subject users to the interests of the service provider at the expense of their own autonomy.

It’s time to update the UCPD to address structural digital asymmetries identified by Fitness Check

At the root of the problem is the *digital asymmetry* stemming from the structural power imbalance between traders and citizens/consumers, combined with commercial incentives to exploit consumers’ vulnerabilities. Manipulative and addictive design practices, such as infinite scrolls, autoplay or hyperpersonalisation, are manifestations of this asymmetry — designed to wear users down, subtly shaping and steering their behaviour and goals over time. Their structural character means they cannot be adequately addressed by rules targeting individual decisions alone, but require a comprehensive and robust legal framework.

We’ve laid out concrete proposals for realizing such a framework in [Towards Digital Fairness](#) (detailed in this [report](#) and [this](#) report, both attached as Annex). This framework centres on three interconnected updates to the UCPD. First, the UCPD’s definition of ‘commercial practices’ – which largely determines its scope – should be widened to include ‘digital commercial practices’ which capture *all* influences, designs, and interactions the citizen-consumer is confronted with online. Second, the concept of ‘professional diligence’ should be updated to a concept of [‘digital professional diligence’](#) which should help broaden the scope of the UCPD’s General Clause to make explicit that exploiting digital asymmetry and/or digital vulnerability is a breach of professional diligence. Third the DFA offers the

opportunity to blacklist a number of unacceptable manipulative, deceptive, and addictive design practices.

Acknowledging structural digital asymmetry also necessitates **reversing the burden of proof**. Unfair practices may be hidden in the architecture of digital services, and the manipulative potential of digital technology stems precisely from its ability to conceal attempts to steer and shape behaviour. “Effective remedies against unfair commercial practices require alleviation of the burden of proof where there is an indication of an unfair commercial practice. Thus, it should be on the trader to provide a meaningful explanation for a phenomenon that indicates an unfair commercial practice and to disclose relevant evidence” ([Micklitz et al. 2024: 29](#)).

Finally, the relation between 25(1)DSA – essential for regulating dark patterns and, possibly, addictive design – and the UCPD is currently [unclear](#). This ambiguity risks fragmenting an already complex regulatory framework and undermining effective enforcement. The updates proposed above (to the General Clause, the definition of commercial practices, and the blacklist) should be designed with this relationship in mind, ensuring the two regimes operate as a coherent whole.

An ambitious Digital Fairness Act should:

1. **Ban hostile and unfair design** that structurally subjects users to the commercial interests of service providers at the expense of their autonomy — addressing the root cause rather than isolated symptoms.
2. **Widen the UCPD's scope** by updating the definition of 'commercial practices' to include 'digital commercial practices', to capture all influences, designs, and interactions consumers encounter online.
3. **Update the UCPD's General Clause** by replacing 'professional diligence' with 'digital professional diligence', making explicit that exploiting digital asymmetry or digital vulnerability is a breach of that standard.
4. **Expand the UCPD blacklist** to explicitly prohibit manipulative, deceptive, and addictive design practices, establishing horizontal protections for all users, regardless of age.
5. **Reverse the burden of proof**, requiring traders to demonstrate that their design practices do not exploit digital asymmetry or vulnerability, rather than placing that burden on consumers.
6. **Clarify the relationship between the DSA and UCPD**, resolving current ambiguities about scope and precedence so that the two regimes operate as a coherent whole and consumers have concrete, actionable rights across both frameworks.

Annex: Supporting Reports

1. **[Towards Digital Fairness](#)**. (Journal of European Consumer and Market Law, 2024). Hans-Wolfgang Micklitz, Natali Helberger, Bram Kas, Monika Namysłowska, Lotte Naudts, Peter Rott, Martin Sax & Michael Veale.
2. **[Digital Fairness for Consumers](#)** (BEUC, 2024). Natali Helberger, Martin Sax, Joanna Strycharz, Lotte Naudts, Peter Rott, Bram Kas, Monika Namysłowska & Michael Veale.
3. **[EU Consumer Protection 2.0: Structural Asymmetries in Digital Consumer Markets](#)** (BEUC, 2021). Natali Helberger, Orla Lynskey, Hans-Wolfgang Micklitz, Peter Rott, Martin Sax & Joanna Strycharz.