



# Discussion Paper

## EU Consumer Law on Digital Fairness

February 2023

The European Tech Alliance (EUTA) and its members care deeply about their consumers and understand that they are at the heart of their success. In today's fast-paced and highly competitive business environment, companies are constantly innovating and adapting to meet the changing needs of their customers. This means that they are continually working to improve their products and services, as well as the overall customer experience.

As the European Commission is assessing European Union (EU) consumer law on digital fairness, the EUTA very respectfully shares some recommendations:

### 1. Apply targeted rules to companies interacting with EU consumers

Of utmost importance is that enforcement should equally target all companies interacting with EU consumers, irrespective of their country of origin or their online or offline origin. Selectively enforcing rules on certain players but being less focused on others is detrimental to consumer protection and can also create market distortions. This would be the case, for example, under the new DSA and GPSR obligations for marketplaces which don't apply to extra-EU retailers.

EU policymakers should target equally EU and non-EU players as well as towards digital native businesses and traditionally offline businesses that are increasingly active in ecommerce.

### 2. Allow time for effective action and evaluation

The existing consumer protection framework has been adapted to the digital age with the "Omnibus Directive" ([Directive \(EU\) 2019/2161](#)) which started applying only last May (May 2022). Landmark legislation has also recently been adopted or will soon be adopted, which will significantly enhance the protection of consumers online, such as the Digital Services Act - DSA - ([Regulation \(EU\) 2022/2065](#)) and the General Product Safety Regulation - GPSR.

Before considering new EU consumer legislation, European tech companies suggest assessing how consistently the Omnibus Directive and other EU consumer protection measures are enforced across the Single Market. Enough time must also be allowed for the rules to produce their intended effects before amending the rulebook once again. EU policy makers should not start assessing the impact of the rules for consumers, businesses and enforcing authorities, before the rules have had a chance to take effect.



### **3. Provide guidance to address potential overlaps and conflicts between EU rules**

The EU has a strong set of rules on consumer protection. Nevertheless, some measures or the cumulative effect of applicable rules result in overlaps or inconsistencies which increase legal uncertainty for businesses and consumers. For instance, in some cases GDPR and privacy rules prevent platforms from protecting consumers when it comes to fraud detection.

Adopting new legislation would be premature, but guidance on the alignment between various existing or newly adopted requirements would be welcomed. This is particularly relevant considering the multitude of digital business models and sector specificities. We strongly believe that it is crucial to ensure alignment, coherence and consistency between existing consumer law or any future revision and other pieces of legislation that might overlap in certain respects.

### **4. Facilitate collaboration among Member States and favour harmonisation**

EUTA members greatly benefit from the EU's Single Market and its cross-border nature. We would welcome a more harmonised approach to the implementation of consumer protection legislation.

We consider it crucial to ensure coherent and consistent enforcement of EU rules, given the cross-border operations of businesses. Divergent interpretations and enforcement lead to uneven consumer standards across Member States, generating legal uncertainty for businesses and constraining their potential on cross-border trade. Effective collaboration among Member States (e.g. via the Consumer Protection Cooperation Network) can help ensure more uniformity in the interpretation and enforcement of EU rules.

### **5. Enforce existing measures on misleading unfair practices, rather than create new requirements**

The concept of "dark patterns" has increasingly gathered the attention of regulators and policy stakeholders. However, it is a new branding of a well-known activity, which refers to deceptive commercial practices.

We invite EU and national authorities to make better use of the Unfair Commercial Practice Directive - UCPD - ([Directive 2005/29/EC](#)) and its recent guidance ([C/2021/9320](#)) adopted in December 2021. Both texts provide a list of misleading unfair practices and offer the regulatory tools to identify and sanction problematic online practices. Furthermore, Article 25.1. of the DSA complemented this strong legal framework to better protect consumers against deceives or manipulative practices.

Introducing a new (or double) definition, or new criteria, would create confusion and legal uncertainty. The current framework is flexible and future-proof as it allows for interpretation by authorities and judges, depending on the context and the impact on the consumer.



While we welcome the regular assessment of consumer protection rights, we believe that it would be premature to propose new EU rules. Before adding another layer to the already well equipped consumer acquis, EU policymakers should focus on better and more consistent enforcement of existing rules and allow time for these rules to take effect. Nevertheless, EU guidance would be welcomed in areas where EU rules overlap and/or conflict as this would also support a more coherent and uniform interpretation and enforcement of the rules across the EU.

## About the EUTA

The EUTA gathers major European digital champions and scaleups successfully built across Europe, with a total of 29 companies from 14 European countries.

Our mission is to create a better future for Europe through technology, based on our shared EU values. We aim to contribute to our local European economies and build a sustainable, green, innovative and inclusive Europe for future generations.

Our vision is to develop smart policies promoting European tech innovation, investments and competitiveness. We believe it is important to create the right regulatory conditions which both enable European tech champions to grow and empower consumers in the EU.

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