

Digital Fairness – fitness check on EU consumer law

The Commission is exploring whether additional action is needed to ensure an equal level of fairness online and offline. The evaluation will look at the following pieces of EU consumer protection legislation to determine whether they ensure a high level of protection in the digital environment:

1. [The Unfair Commercial Practices Directive](#)
2. [The Consumer Rights Directive](#)
3. [The Unfair Contract Terms Directive](#)

Fitness Check Consultation - overview

- The Fitness Check will aim to answer the question whether horizontal consumer law instruments **remain adequate** for ensuring a high level of consumer protection in the digital environment.
- It will examine the adequacy of the existing EU rules in dealing with consumer protection issues such as, but not limited to, **consumer vulnerabilities, dark patterns**, personalisation practices, influencer marketing, contract cancellations, subscription service contracts, **marketing of virtual items** and the **addictive use** of digital products.
- It will assess whether the existing legal framework would benefit from a targeted strengthening or streamlining, while taking into account and ensuring coherence with forthcoming legislation. It will also examine the scope for any **burden reduction, cost savings and simplification**.
- The Fitness Check could lead to:
 - a new legislative proposal
 - measures to improve implementation through better enforcement and guidance
 - or further monitoring

Structure: The public consultation is directed at all stakeholders and the general public.

- It consists of:
 - A. a short questionnaire aimed at individual consumers and
 - B. an in-depth questionnaire aimed at organisations (consumer and businesses associations, public authorities, companies etc.)
 - The in-depth questionnaire is optional for consumers
 - **You can also upload an additional policy paper**

Timeline: Deadline - 20 February 2023

- The Commission will publish a factual summary report of the **outcome of the consultation shortly after its closure on the consultation page**.

Other activities from the EC to inform themselves as part of this process:

- Targeted consultations addressing, in particular, Member States' authorities and European stakeholder organisations, such as consumer and business organisations
- Discussions with a Commission expert group (Consumer Policy Advisory Group)
- Discussions with Member States expert group on consumer and marketing law.
- Bilateral meetings with stakeholders affected by the directives under evaluation
- The results of all consultation activities will be summarised in a synopsis report published as an annex to the Fitness Check

QUESTIONNAIRE

★ *To what extent do you agree or disagree with the following statements? (Range: strongly agree; agree; neutral; disagree; strongly disagree; don't know)*

1. Consumers require a strong legal framework to protect their interests in the digital environment.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
★					

2. The existing EU consumer laws provide sufficient protection in the digital environment.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
★					

3. There are some legal gaps and/or uncertainties in the existing EU consumer laws.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
			★		

4. Traders generally comply well with the existing EU consumer laws in the digital environment.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
★					

5. Consumer protection in the digital environment should be regulated at EU level in a uniform manner.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
	★				

6. The existing EU consumer laws are coherent with other laws, such as on data protection, new rules applicable to online platforms, artificial intelligence etc.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
	★				

7. There is some scope for simplification and burden reduction in existing EU consumer laws.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
	★				

→ Please explain your replies, including any other statements you wish to highlight.

Explanatory Notes:

We welcome the opportunity for the Mobile Games Intelligence Forum to respond to this consultation. The Forum welcomes evidence-based initiatives to ensure equal levels of fairness, online and offline, in order maintain pace with evolving technologies. We are deeply committed to engaging in a meaningful dialogue with the Commission to ensure that our shared objective of protecting the consumer continues to be met under existing, robust measures.

As such, we have provided a focused response to the questionnaire. While we appreciate the structure of the consultation in regard to its aims, we feel that there are limitations to rating and commenting on unevidenced assertions. We hope therefore that our explanatory notes provide much-needed context in interpreting the ratings we have given. Additionally, we will use our policy paper to define our key arguments. We hope to have further follow-up and consultation following this process.

1. The Mobile Games Intelligence Forum (MGIF) supports the Commission's goals in seeking to ensure a high level of protection in the digital environment amidst fast paced technological advances. Consumers should continue to benefit from a strong legal framework in the digital environment that provides protection within the wider context of the overall consumer experience. Mobile games companies have consistently used their position at the intersection between technology and innovation to interpret and comply with existing EU consumer laws.

2. New technologies and data-driven practices are developed with the intention of providing consumers with an optimal and enjoyable experience. Nonetheless, the current legal framework duly covers the potential for unfair commercial practices. The recent introduction of the Omnibus Directive modernised and strengthened existing consumer protection legislation by, among other things, applying traditional consumer rights to digital goods, content, and services, in addition to adding GDPR-style enforcement measures.

As such, in line with the Commission's own 2022 study on commercial practices in the digital environment, we believe the existing EU legal framework is strong. In particular, we agree with the assessment that the Unfair Commercial Practices Directive (UCPD) is flexible enough to cover most, if not all, unfair commercial practices.

3. Updated guidance from 2021 on the UCPD includes a section on gaming that deals comprehensively with subject-specific topics ranging from 'free' digital services and in-game promotions and advertisements to platform-level parental controls. It is clear that

certain practices involving the use of behavioural biases or manipulative elements could amount to an aggressive practice. Ergo, existing consumer laws provide robust protection in the digital environment – the Forum does not believe there are gaps in the current framework and will continue to work with relevant regulators to ensure compliance.

4. As a result of the 2013 common position agreed by the CPC on in-app purchases, MGIF’s membership have individually implemented internal policies regarding transparency around loot boxes, for example, that sets out parameters for prominently disclosing the presence of the mechanic in clear and simple language.

6/7. Be that as it may, ‘dark patterns’ exemplify uncertainties within the framework that may harm innovation. For example, in the UCPD guidance, ‘intention’ is not required by the perpetrator of the manipulation in order to qualify it as an unfair commercial practice. Moreover, if ‘dark patterns’ are applied in the context of business-to-consumer commercial relationships, the Directive can be used in addition to other instruments in the EU legal framework, such as GDPR. A broad definition that lacks a legal basis, and the existence of the term ‘dark patterns’ within multiple frameworks, provides for blurred lines where legitimate attempts at persuasion or encouragement may be subjectively interpreted as illegitimate manipulation techniques (for example encouraging the use of parental controls or encouraging users to update apps so they do not need to seek out updates). An increased burden on digital companies may lead to a reduction in competition and innovation, especially considering that the majority of games companies operating in the EEA are SMEs.

Inconsistency in application, we believe, is a major stumbling block that needs to be addressed. In some EU Member States, transposition of the Omnibus Directive is still in progress, despite a deadline of May 28th, 2022.

★ How positive / negative is the impact of the existing EU consumer law framework on the following aspects in the digital environment? (Range: very positive impact; rather positive impact; neutral; rather negative impact; very negative impact; I don’t know)

1. Amount & relevance of information available to consumers to compare and make informed purchasing choices.

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don’t know</i>
	★				

2. A level playing field amongst businesses addressing consumers in the EU.

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don’t know</i>
	★				

3. Enforcement regarding cross-border infringements through EU coordination mechanisms (Consumer Protection Co-operation network).

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don't know</i>
		★			

4. Protection of consumers against unfair commercial practices.

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don't know</i>
★					

5. Protection of more vulnerable consumers (e.g., minors, elderly, persons with disabilities).

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don't know</i>
★					

6. Availability and choice of products.

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don't know</i>
★					

7. Prices of products.

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don't know</i>
★					

8. Number of customers and revenues for businesses supplying consumers in the EU.

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don't know</i>
★					

9. Increase of national ecommerce (i.e., within your EU country).

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don't know</i>
		★			

10. Increase of e-commerce across EU Member States.

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don't know</i>
		★			

11. Competitiveness of EU businesses vis-à-vis non-EU businesses.

<i>Very positive impact</i>	<i>Rather positive impact</i>	<i>Neutral</i>	<i>Rather negative impact</i>	<i>Very negative impact</i>	<i>don't know</i>
		★			

→ Please explain your reply.

Explanatory Notes:

1. The EU consumer law framework, in particular, Consumer Rights Directive (CRD), Unfair Commercial Practices Directive (UCPD), Unfair Contract Terms Directive (UCTD) and E-Commerce Directive, is designed to ensure that consumers have access to clear, comprehensive, and easily accessible information so that they can make informed decisions. This contributes to a fair and transparent marketplace for both traders and consumers and ensures that laws apply across the entire digital consumer journey.

Games companies are therefore required to provide a significant amount of information, including: the main features of the service, including its compatibility and functionality with different devices and platforms; the price of the service, including recurring charges, and the terms and conditions of payment; the duration of the contract and conditions for termination; information about the service provider's data protection and privacy policies, including how the consumer's personal data will be used and protected; and any relevant restrictions on the use of the services, such as geographic restrictions.

2. The existing framework also ensures a level playing field by setting minimum standards for their business practices and the information they must provide to consumers. The e-commerce directive, for instance, requires digital service providers to provide clear and comprehensive information about their services including the main features, price and terms and conditions of sale. The CRD gives consumers the right to cancel a contract for a digital service within a certain time period, usually 14 days, and to receive a full refund. The UCPD prohibits digital service providers from engaging in commercial practices that are misleading, deceptive, or aggressive.

4/5. Additionally, the UCPD prohibits pressuring minors to purchase products/services and forbids misleading practices. The CRD restricts the use of telemarketing and unsolicited emails directed at minors, and the E-Commerce Directive bans the use of minors in advertising that is harmful to their welfare, health or safety.

6/7. UCPD and CRD guidance, guided by a Consumer Protection Cooperation (CPC) 2013 paper, includes that games advertised as 'free' should not mislead consumers about the true costs involved. Furthermore, games should not contain direct exhortations to children to buy items in a game or to persuade an adult to buy items for them. It is because of this guidance that most freemium mobile games are no longer describes as 'free-to-play'.

As a result, the European Commission cited 'real progress in delivering tangible results ... the action will increase consumer confidence in the fast-growing 'app' sector.' The existing framework as a whole has increased consumer confidence by providing clear rights and protections for consumers when making purchases in the digital environment. Conversely, compliance with legislation may be a challenge, especially for SMEs – it requires significant time and resources and could make it more difficult for smaller companies to compete with established players.

★ How strongly do you agree or disagree with each of the following statements about potential suggestions to improve EU consumer law for the benefit of consumers? (Range: strongly agree to strongly disagree; I don't know)

1. There is a need for stronger protection against digital practices that unfairly influence consumer decision making (e.g., manipulative website/app designs such as misleading presentation of 'yes' and 'no' choices; or creating multiple obstacles before reaching a cancellation /unsubscribing link).

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
			★		

2. Where traders require consumers to agree to terms and conditions (T&C), consumers should receive an easily understandable summary of the key T&C in an easily accessible manner.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
	★				

3. When cancelling contracts, a clear technical means (e.g., a prominent cancellation button) would help consumers to cancel more easily.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
				★	

4. Receiving a confirmation (e.g., by e-mail) when a consumer terminates a contract would help consumers check that their contract has been successfully terminated.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
		★			

5. Receiving a reminder before any automatic renewal of digital subscription contracts would help consumers to decide whether they want to renew a contract or not.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
			★		

6. Reminders about their subscriptions after a period of inactivity could be beneficial for consumers who might otherwise have forgotten that their subscription exists

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
		★			

7. Signing up for a free trial should not require any payment details from consumers.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
			★		

8. Requiring express consent when switching from a free trial to a paid service could be beneficial for consumers.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
	★				

9. Having the explicit option to receive non-personalised commercial offers (e.g., non-personalised advertising, non-personalised prices) instead of personalised ones could be beneficial in allowing consumers greater choice.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
				★	

10. There is a need for more price transparency when buying virtual items with intermediate virtual currency (e.g., in-game currency in video games).

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
				★	

11. There is a need for more transparency regarding the probability of obtaining specific items from paid content that has a randomisation element (e.g., prize wheels, loot/mystery boxes in video games, card packs).

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
		★			

12. Allowing consumers to set limits to the amount of time and money they want to spend using digital services (e.g., in-app purchases in video games) could help to better protect consumers.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
	★				

13. Clarifying the concept of an 'influencer' (e.g., social media personalities) and the obligations of traders towards consumers would be beneficial.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
	★				

14. Where automation/bots are used to deal with consumer complaints and other inquiries, consumers should have the possibility of contacting a human interlocutor upon request.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
			★		

15. It should be possible to limit the possibility for resellers to buy sought-after consumer products using automated means (software bots) in order to resell them at a higher price.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
	★				

16. More specific information obligations should apply when products such as event tickets are sold in the secondary market.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
	★				

17. The concept of the trader's 'professional diligence'* towards consumers should be further clarified in the digital context.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
		★			

18. The burden of proof of compliance with legal requirements should be shifted to the trader in certain circumstances (e.g., when only the company knows the complexities of how their digital service works).

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
			★		

19. The concept of the 'average consumer' or 'vulnerable consumer'** could be adapted or complemented by additional benchmarks or factors.

<i>strongly agree</i>	<i>agree</i>	<i>neutral</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
			★		

Explanatory Notes:

1. MGIF believes that there are already strong protections in places for consumers, against bad digital practices. Many of the suggestions in this section could potentially be helpful to consumers in certain circumstances, but also highly adverse in others. It is important that any new proposal is thoroughly explored, and we would like to offer ourselves as mobile games experts in exploring these areas, beyond this consultation.

'Dark Patterns' is a broad definition that lacks a legal basis, and these practices may be legitimate attempts at not only persuasion, in line with the 2022 Commission assessment, but also providing information, in line with the existing consumer framework.

In terms of defining concepts like 'dark patterns', it is problematically referred to as an 'overarching term that can capture all manipulative business-to-consumer practices', so, in turn, can simply be referred to as an 'unfair commercial practice' under the UCPD (2022 study). Using this logic, the existing framework already sufficiently deals with this.

While we do not recognise gaps in the current consumer framework, should new, evidence-based issues arise, they must similarly be dealt with in the non-digital world – to ensure fairness and consistency for consumers and traders alike.

3. Regarding account cancellations, of course we agree that customers should be able to easily cancel an account. However, the ‘big red button’ concept outlined here is a very binary solution which may not be most helpful to a customer. This suggestion doesn’t reflect the reality of the customer journey in many cases and would reduce customer choices. A customer may discover a preferential option such as pausing payments, changing their subscription, getting a reduced fee, or having a temporary suspension. In a game for example, to delete an account entirely would mean a gamer losing all of their saved progress, digital goods and digital communications. Customers should be given a range of options, all in a simple way.

4. We do not disagree that a customer should receive a confirmation if their subscription has changed or been cancelled. However, there are many ways a customer may prefer to do this. Email is one legacy technology that could be used, as well as SMS or Fax. However, on mobile people manage subscriptions on their devices either in app, via the app stores, or via their payment platforms such as PayPal, Google Pay or Apple Pay which gives people far more granular control. For example, a user may subscribe to a service using Apple Pay so that they do not have to give the service provider their email or other personal data. Mandating email would be retrograde, it reduces consumer choices, and its effectiveness may be limited.

5/6. Automatic renewal of digital subscription contracts is another area where there a number of use-cases must be considered. There are of subscriptions that can roll daily, weekly, monthly or multi-annually. A business with high frequency contract renewals, i.e., a news outlet may have weekly renewals, and a constant barrage of reminders turns to oversaturation and a poor customer experience, encouraging people to simply to ignore and click through boxes as has happened with cookies. Reminders about subscriptions after a period of inactivity may be useful.

7/8. It is hard to fully answer the ‘free trial’ example here, without a definition of what one is. However, there are many good reasons for a service to require a potential customer to provide payment details before providing access to part of their service, which may range from preventing abuse of their service, to increasing age-assurance. These mechanisms are vital to businesses as they are providing a service and may legitimately wish to maximise their value. A policy like this would likely hurt SME’s more than others and contradict the Commission’s aim to maintain a level playing field.

9. Regarding non-personalised advertisement or offers, a 2018 Commission study highlights that close to two thirds of consumers choose to use services in the knowledge that they are personalised. What’s more, in the 2022 study, a mystery shopping exercise was not able to identify personalised practices that exploit vulnerabilities. Therefore, there does not appear to be an evidence-based reason for this.

Customers have a choice to use a service or not. Many digital businesses are free to the consumer and ad supported. A business should have the freedom to choose whether to offer a service in return for personalised advertisements, or non-personalised advertisements, or a paid-for subscription – as long as the customer has been correctly informed. Mandating a specific commercial digital business model would reduce customer choice, and harm SMEs.

10. We appreciate that consumers value transparency, and the mobile games industry is keen to provide consumers with the transparency and information they need to make informed decisions. As such, mobile games companies abide by all applicable existing laws and regulations, as well as platform guidance encompassing labels for in-app purchases.

When offering in-game purchases, traders must ensure that they comply with the information obligations in Article 7 UCPD and the CRD. The main characteristics of the product must be clearly described, and the prices of virtual items must be clearly and prominently displayed (also) in real currency. If the price cannot reasonably be calculated in advance, the trader should indicate the manner in which the price is to be calculated. The prices of virtual items must be clearly and prominently displayed in real currency when the commercial transaction takes place.

Intermediate virtual currencies also serve the interests of both the player and provider by alleviating the conflict of interest between the provider's need to supply in-game ads – thus contributing to a better overall experience. The Forum is supportive of transparency at the point of purchase. This is an essential part of consumers making informed purchasing decisions and we consider this to be essential in all advertising and marketing, not just for video games. Despite this support, we consider that this should not stray into regulating the point of consumption.

Transparency at the point of purchase of virtual currency is provided to the consumer by clearly showing the price of various products and bundles available. Transparency at the point of consumption may require that an equivalent 'real-world' price is shown at the point of use in-game virtual currency, this would create a novel regulatory regime for in-game purchases that does not exist for purchases outside of games, either in digital or non-digital worlds. For instance, the arcade will allow consumers to use real-world currency to earn stamps. These stamps can then be exchanged for a variety of different items, from water pistols to cuddly toys. There is no requirement to show the equivalent 'real-world' price next to those items, just the number of stamps required to acquire them.

Video game businesses are keen to provide consumers with the transparency and information they need to make informed decisions. Video game businesses are also keen to avoid providing consumers with information that is either unnecessary or inaccurate that might hinder their ability to make an informed purchasing decision. Introducing equivalent real-world prices may lead players to think their in-app currency and other items have a real-world value, which they do not.

Further, the Forum is concerned that they are being asked to create some kind of false transparency that would require game developers to provide information to the consumer

that either does not exist or would have to be engineered into existence with no obvious benefit to the consumer. Some video games will have a single in-game virtual currency that can both be earned through in-game activity and purchased with 'real world' currency. Other video games will have two in-game virtual currencies, one of which can be earned through in-game activity and one of which can be purchased with 'real world' currency. Others still will have more than two in-game virtual currencies which can be earned or purchased in a variety of ways. Further, virtual in-game currency is often gifted to players by developers. A variety of in game currencies allows video game developers to expand game worlds and create a more flexible user experience.

11. Our games are designed to be fun and easy to understand for the intended audience. The Forum agrees that there is a need for transparency regarding the probability of obtaining specific items from paid content that has a randomisation element. As a result of CPC action, Apple iTunes and Google Play developed information on the existence and price of items that can be purchased as part of games. It is therefore already the case that our games must provide probability disclosures for loot boxes.

It should also be noted that there is no independent research supporting a causal link between loot boxes and gambling. MGIF takes a strong view that they are designed to be enjoyable and enhance gameplay. This viewpoint does not appear to be reflected in the 2022 study, which frames the mechanic as inherently negative.

12.

The video games industry is already proactive in empowering parents, carers, and players. As such, the mobile games sector operates in an ecosystem that has developed easily operable functionality that enables players to see how much time they spend in apps, as well as how much they spend. Consumers are arguably more informed in the mobile app ecosystem already than anywhere else in their lives.

13. It should be made transparent where an 'influencer' is part of a paid partnership with a brand; this should be clear to the customer up front, as with all forms of advertising.

14. It should not be an automatic right to circumvent automation/bots/information provision before you are able to speak to a human. Part of dealing with consumer complaints is educating the consumer on their rights, the systems in place, how to deal with issues through information. This can be much better achieved and at scale through automation. If all else has failed then consumers should of course be able to contact the business to communicate with a human, using a tool that suits, which may be via email, online form, or messaging app. For instance, Article 20 of the Digital Services Act covers that providers of online platforms must ensure that humans are involved in decision making regarding complaints. Naturally, the automated systems should not be designed to frustrate the customer into going away but to help them as would already be the case under the existing framework.

18. Most companies, even digital ones, are SMEs. This issue of burden of proof is too complex an issue to be covered as part of a wider consultation and needs specific attention.

For example, what are the thresholds, what proofs does this cover? It has become clear in recent years that companies that have been audited and have been doing what they thought was enough to comply, has been disagreed with by regulators and massive fines handed out. The burden of proof cannot be shifted fully to the company without harming SMEs.

19. There is already extensive regulation to protect the vulnerable. There is no supporting evidence that this definition needs to be broadened.

** In general, 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers - honest market practice and/or the general principle of good faith in the trader's field of activity.*

*** According to the case law of the EU Court of Justice, the average consumer is defined as reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors. Under current EU law, vulnerable consumers are those that are particularly vulnerable to unfair commercial practices, for example because of their mental or physical infirmity, age or credulity.*

Please explain your replies, including suggestion(s) for these or other area(s) where the current EU consumer law could be improved.

You can also upload an additional policy paper.