# Are We Forcing Companies to Be “Fair”?

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** The views expressed here summarize policy discussions and stakeholder feedback. As the Commission proceeds with a formal proposal, the text will evolve, and so might the controversies around it as well as this piece. For now, all eyes remain on Brussels to see how bold or how cautious the final blueprint for “digital fairness” will be.

**DISCLAIMER**

## 1 A Bold New Provisions or Red Tape Overload?

Europe may soon experience a new wave of digital consumer protection regulation. One would be forgiven for rolling their eyes upon hearing the words “new EU digital regulation.” After all, in the past couple of years, Brussels has enacted a bulk of new digital measures, such as the Digital Services Act (DSA), the Digital Markets Act (DMA), and the AI Act, to name the most debated ones. While those take root and slowly appear in CJEU requests, talks around a new regulation push are circulating in Brussels. In October 2024, I wrote on the intention of the Commission to adopt a Digital Fairness Act (DFA).[1] Insiders at Berlaymont confirm that an official proposal might land as early as mid-2026.

Supporters see the DFA as a reality check and update of Europe’s consumer-protection labyrinth. However, critics label it as just another set of burdensome rules digital businesses would have to comply with. The question now is *not whether* the DFA is coming *but why* the Commission believes Europe needs it, what it might look like, and what it would mean for consumers.

This piece is a continuation of the one published last year on the BPH, *Digital Fairness Act: If and How?,* for two reasons. First, it continues the debate by asking whether the potential benefits of a new measure outweigh the risks of regulatory fatigue and second, it compiles in an anonymised way series of discussions with private sector representatives, scholars as well as EU public bodies officials.

## 2 The Commission’s ‘Fitness Check’ Rationale, Why the DFA and Defining “Digital Fairness”

In October 2024, the Commission published its Digital Fairness Check Report, concluding that many “nuisance” tactics used in the modern web environment fall into a grey area, technically covered by broad principles but lacking black-and-white rules. The result is that there are at least 27 different interpretations in 27 Member States. The risk is not just confusion among

[1] Liubomir Nikiforov, ‘Digital Fairness Act: If and How?’ [2024] Brussels Privacy Hub <https://www.ssrn.com/abstract=5025754>.

e-businesses but also inaction from national enforcement authorities reluctant to fight lengthy battles in ambiguous territory.

Why the Commission pushes for the DFA now, despite the DSA and DMA still being fresh ink? Possible answer could be that these laws address certain digital-specific problems such as platform liability, gatekeeping behaviour, transparency. But they do not systematically address manipulative design or a wide range of unethical commercial practices across the entire digital marketplace. Consumer and enforcers still rely on directives that were never calibrated to the intricacies of e-commerce or app-based interactions. In other words, the Commission might be envisioning the DFA as a puzzle piece that complements existing laws.

Then, is the current regulation set not bold enough? The Commission itself argues that the existing consumer protection frameworks the Unfair Commercial Practices Directive (UCPD), the Consumer Rights Directive (CRD), and the Unfair Contract Terms Directive (UCTD) remain strong if properly enforced. At the same time, the digital shift has introduced subtler forms of manipulation. From dark patterns to misleading influencer marketing, there is a real gap in how precisely EU law confronts digital manipulations that could be see from different implementation and interpretation on national level.

Meanwhile, as discussed in the BPH October 2024 blog post, big controversies revolve around so-called “dark patterns” (camouflage design, fake countdown timers, impossible subscription-cancellation pages) and “addictive design” that hooks users into continuous usage. On top of that, influencer marketing has blossomed into a profitable industry, although disclaimers about commercial influence remain wild and varied. This new reality explains to some extent the need for a more explicit rulebook which deals with industry practices rather than beautiful rules on paper.

A public body source underlines that the plan is not to craft an entirely new online platforms law, despite the DFA this very lofty name, but rather to amend or fine-tune existing directives such as the Unfair Commercial Practices Directive (UCPD) or the Consumer Rights Directive (CRD). However, caution should be maintained throughout the negotiation process as the result could be drastically different once consultations begin, and stakeholders weigh in.

From multiple private sources, it seems that the Commission does not aim to force an “ethical” overhaul of corporate strategy; rather, the objective is to sharpen definitions of harmful or deceptive conduct. In that sense, the Commission could plausibly create a “blacklist” of manipulative dark patterns so that businesses understand precisely which design tactics are off-limits, for example together with other measures in order to concretise and operationalise the current safety net of rules, full of rather broad definitions and rules.

## 3 A Safety Net Full of Holes?

A question arises: don’t the old consumer directives and the newly enacted Digital Services Act or GDPR already regulate manipulative design? Yes and no.

For example, the DSA forbids certain dark patterns on *platforms*, but huge swaths of online commerce are not necessarily platform-based. A direct-to-consumer brand, say, an e-shop or a software provider selling via its own website, typically falls outside the DSA’s scope for dark-pattern prohibitions.

The GDPR addresses the manipulative use of personal data, but only in certain contexts because dark patterns do not always revolve around data collection. Some revolve around interface design and choice architecture.

## 4 Dark Patterns, Addictive Design, and the ‘Fairness by Design’ Debate

One provocative aspect of the potential DFA is how far it might go in banning manipulative design altogether. The Commission might integrate a new, or at least expanded, blacklist of specific manipulative tactics. For instance, colour manipulations that nudge you into a more expensive subscription or endless pop-ups that overshadow a “cancel” button might be explicitly outlawed. Another open question is whether a broader “fairness by design” principle should be introduced, a concept floated by some civil society groups.

Still, the line between a “friendly nudge” and a “manipulative nudge” can blur quickly. Many consumer advocates argue that the term “dark patterns” is itself vague, covering everything from mild persuasion to downright deception.

Thus, the Commission would need to define them in a very concrete way or make it obligatory to offer alternatives in order not to ban all forms of “autoplay”, but only the “manipulative” ones, for example. Talking with professionals and officials, expect extra scrutiny on the difference between convenient features and “harmful manipulations.”

## 5 EU Competitiveness, Legislative Overlap and SME Concerns

One cannot discuss new EU laws without addressing competitiveness. I love mentioning in front of public bodies representatives that “Europe overregulates, while the U.S. innovates, and China scales.” The usual comment is that this stance ignores how clarifying vague rules can save money in cross-border e-commerce. For example, if there is a definitive “don’t do these manipulative patterns” list, then a small or mid-sized company does not have to hire lawyers to decipher 27 different national interpretations.

Taking other regulations into account, the DSA partially tackles dark patterns for platforms. Some apps, e-shops, or digital services fall outside the DSA, which is mainly focused on platforms. Though important players, they are not the only ones on the market. Similarly, the GDPR deals with personal data but not necessarily with interface design. Thus, potentially a single measure clarifying which digital manipulations are banned for all businesses could reduce fragmentation.

Compliance costs are usually what private sector parties raise as a hindrance but a counterargument may be that the Fitness Check showed that EU consumer protection laws are not a *high-cost* area of law because companies have low to limited costs of compliance because there are no reporting obligations and the existing rules are principle based, requiring companies to refrain from misleading practices.

Whether the potential of the legislation to lead to higher prices for consumers is yet to be assessed and, more importantly, seen in practice.

## 6 Is Enforcement the Real Story?

A frequent critique of EU consumer law is not that it is too weak, but that it is weakly enforced. There is the CPC (Consumer Protection Cooperation) network linking national authorities, the Commission itself, unlike under the DSA, lacks direct enforcement power in consumer cases, and thus cannot impose fines. Once again the key is in the hands of national authorities.

For high-profile examples, the Commission sometimes coordinates a common position such in the recent case, involving “TEMU,” where multiple EU states took issue with the platform’s discounting tactics.[2] Still, an actual penalty or forced compliance can take years to implement. It would be something to write and discuss on if the Commission explores the idea of direct enforcement powers for large-scale cross-border consumer cases, akin to the DSA. However, that would require a huge political effort among the 27 for the success of which there are no guarantees at all.

## 7 Collective Harms and Collective Redress?

One topic overshadowed by the “dark patterns” conversation is the potential group-based or “collective” harm caused by AI-driven personalization and targeting. Inferred preferences and behaviour are techniques commonly used to reach consumers whose data may not have even been directly collected. Therefore, it is not just about tricking *one* consumer but entire social or economic groups or algorithmically “designed” groupings being systematically steered.

The concern has been partially acknowledged in existing laws like the Representative Actions Directive (Directive (EU) 2020/1828), whose effect is still early to observe in practice. In addition, a complementary protection in that sense could be looked at the interplay with the DSA’s risk assessments for systemic biases or even the GDPR’s representative actions (Art. 80). It would be a true (r)evolution if the DFA envisages some sort of group harms.

[2] https://ec.europa.eu/commission/presscorner/detail/fi/ip_24_5707

## 8 The Text: When and how?

The biggest puzzle remains: what would be the text of the provisions of the Act? The Commission only completed its Fitness Check relatively recently, staff are still assessing potential options, working towards a proposal aimed for mid-2026. That timeline means at least 18 months or more of stakeholder dialogues, impact assessments, and behind-the-scenes negotiations with the Council and the Parliament. All of that in the current climate of competitiveness, simplification, and EU-US-China relations.

Do not expect a short read. If the Commission truly wants to "concretise" manipulative designs, it may mean a revised "blacklist" in the Unfair Commercial Practices Directive or a brand-new regulation that covers all digital consumer interactions. A full-scape regulation would be big news since consumer law in the EU has traditionally been done via directives, giving Member States leeway. A direct regulation would guarantee immediate effect, but it is a bold step, and there seems still no decision on the specific legislative tool. In any case, negotiations are still on the way; however, they could lead to either an amendment to existing text or propose a separate "umbrella" regulation or directive.

## 9 Why This Matters to You?

It is easy to wave off regulatory talk, but the stakes for ordinary internet users are real. For instance, you might sign up for a streaming subscription that automatically renews and cunningly hides the "cancel" button behind five submenus. Or you could be lured into paying for premium shipping because a web shop uses color-coded illusions that direct your eye away from the standard (free) option. Some users spend hours doomscrolling on social media with infinite feeds, unaware of how design features encourage addictive habits.

If implemented robustly, the DFA could outlaw many of these questionable tactics and require more transparent user interfaces. The payoff is a less stressful user experience, one that respects consumer choice and halts borderline manipulations that degrade trust in e-commerce. On the flip side, one person's manipulation is another person's helpful nudge. Some e-businesses' autoplay or personalized recommendations might be seen as time-savers rather than malicious manipulations.

## 10 Conclusion: The Calm Before the Storm

So, is the Digital Fairness Act poised to become the EU’s next big triumph in consumer protection? Or is it just another layer of paternalistic meddling in an already over-regulated digital environment? For now, the final shape remains uncertain.

While a decision on the format is taken, there is a real momentum behind making certain manipulative “dark patterns” explicitly illegal and aligning consumer rules with modern digital realities.

Reality, in this case, means bridging the gap between the Commission’s policy ambitions and the everyday manipulations that can sway consumers without them even noticing. If the Digital Fairness Act materializes as promised, it may well become the defining consumer-rights measure of the late 2020s and evidence of how far Europe is willing to go to keep digital businesses truly “fair.”

It remains to be seen whether that vision can navigate the messy legislative process and whether it will truly change how platforms, apps, and e-shops interact with us.

What is clear is the upcoming months of negotiations will be loud. Politically, the Commission has signalled a willingness to champion direct measures if they see national authorities struggle. Technologically, we are on the cusp of even more immersive interfaces, where the line between convenience and coercion grows dangerously fuzzy.

If you are a European consumer or simply do business in the EU, you should follow closely. The Digital Fairness Act might be the next big wave that redefines how you are sold to, how your apps are designed, and how you are *convinced* into “clicking yes.”