U.S. Chamber of Commerce

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October 23, 2025

Directorate-General for Justice and Consumers
European Commission
1049 Brussels, Belgium

Re: European Commission Public Consultation on the Digital Fairness Act ("DFA")

The U.S. Chamber of Commerce ("Chamber") appreciates the opportunity to comment on the European Commission's ("Commission's") Public Consultation on the Digital Fairness Act ("Consultation") to identify the main use cases and the benefits, barriers, and risks related to expanding the EU's already significant digital rulebook.

The Chamber is the world's largest business organization, representing over three million enterprises. Our members range from small businesses and local chambers of commerce, to leading industry associations and global corporations, to emerging and fast-growing industries driving innovation and progress. Our members represent the various sectors highlighted in this Consultation, many of which are either headquartered or operate in Europe. We are committed to fostering a regulatory environment that protects consumers, promotes innovation, and ensures a level playing field for businesses operating in the digital economy.

The Chamber has provided comprehensive responses to all relevant questions in the applicable sections of the main questionnaire. This letter consolidates those responses, organized systematically on a section-by-section basis. But before we address those individual questions below, we offer some key recommendations and overarching principles that do not neatly fit the questionnaire's format.

The Chamber supports the EU's efforts to modernize consumer protection laws in light of rapid technological advancements and the growing importance of the digital economy. However, Europe's digital regulatory landscape has grown increasingly complex, with nearly 100 tech-focused laws creating overlaps and inconsistencies (*e.g.*, the Digital Services Act (DSA), Digital Markets Act (DMA), and General Data Protection Regulation (GDPR)). We urge policymakers to adopt a balanced, evidence-based approach that avoids unnecessary regulatory burdens, ensures legal certainty, and fosters innovation. Most fundamentally, the DFA should:

- **Align with President Von der Leyen's focus on simplification**, which will better serve consumer protection goals while fostering a competitive and innovative digital economy.
- Enable effective and consistent enforcement of existing laws, addressing specific gaps without duplicating existing legislation.
- Focus on demonstrable harms, targeting *specific*, *well-documented* risks, such as manipulative dark patterns or exploitative personalization practices, without overregulating beneficial digital tools and services.
- Harmonize with existing frameworks, aligning the DFA with existing EU laws to avoid duplication, regulatory fragmentation, and compliance challenges for businesses.
- Support innovation and competition, avoiding prescriptive mandates that stifle innovation or disproportionately burden small and medium-sized enterprises.
- Leverage co-regulatory approaches, which will encourage industry-led standards to address emerging challenges in the digital economy.

Further, the Chamber remains committed to working with the European Commission, Member States, and other stakeholders to ensure that the DFA achieves its objectives while fostering a vibrant, competitive, and inclusive digital economy. To that end, we offer five overarching principles to incorporate into any final piece of legislation:

1. Necessity and Proportionality - Any regulation should address clear, demonstrable gaps in consumer protection that result in material harm. The DFA must avoid overreach by focusing on specific risks, such as deceptive dark patterns or harmful influencer marketing practices, while preserving the benefits of legitimate digital tools and services.
2. Legal Certainty and Harmonization - Predictability and consistency are critical for businesses operating across borders. The DFA should align with existing EU frameworks, such as the GDPR and DSA, to ensure coherence and avoid duplicative obligations. Clear definitions and guidance are essential to provide businesses with the certainty they need to innovate and grow.
3. Support for Innovation and Competition - The DFA should foster a regulatory environment that encourages innovation and competition. Prescriptive mandates or overly broad rules risk stifling creativity and limiting consumer choice. Instead, the DFA should focus on outcomes, allowing businesses the flexibility to design solutions that meet regulatory goals.
4. Evidence-Based Policymaking - Any new rules or enforcement strategies must be grounded in robust evidence of widespread harm. Policymakers

should conduct comprehensive impact assessments to evaluate the potential effects on consumers, businesses, and the broader economy. Pilot programs and regulatory sandboxes can provide valuable insights before implementing binding measures.

5. Technology- and Business-Model Neutrality - The DFA should avoid favoring specific technologies or business models. Instead, it should focus on the effects and context of specific practices, ensuring that regulations are adaptable to evolving market conditions and technological advancements.

Main Questionnaire (Section-by-Section) Comments

Section 1 **– "Dark patterns"**

The Chamber recognizes the importance of addressing digital interface design that is truly manipulative (*i.e.*, design that legally qualifies as "unfair"). This is necessary to protect consumers and ensure fair competition in the digital marketplace. However, any regulatory action must strike a balance between addressing harmful practices and preserving the benefits of user-centric design. Overly broad or prescriptive measures risk stifling innovation and creating unnecessary compliance burdens for businesses, particularly small- and medium-sized enterprises. Instead, a targeted, evidence-based approach is essential to address demonstrable harms while fostering innovation and maintaining a competitive marketplace.

Such an approach is necessary to prevent the DFA from duplicating—or potentially conflicting with—laws already in force, leading to greater confusion among consumers and businesses. Provisions in existing EU consumer laws already address a broad spectrum of deceptive design practices. For example:

- Article 5(1) of the AI Act expressly prohibits practices related to AI that deploy subliminal or purposefully manipulative or deceptive techniques, with the objective or effect of materially distorting the behavior of a person by impairing the ability to make an informed decision and causing them to take a decision that they would not otherwise have taken.
- The DSA's Article 25 expressly prohibits the design of an online interface "in a way that deceives or manipulates the recipients" of a service or "in a way that otherwise materially distorts or impairs" the ability of users "to make free and informed decisions."
- And Unfair Commercial Practices Directive Article 6(1) explicitly sets out that the "overall presentation" of a commercial practice is capable of

constituting a misleading action if it "deceives or is likely to deceive the average consumer, even if the information is factually correct", and the practice causes or is likely to cause the average consumer to take a transactional decision they would not otherwise have taken in relation to certain mandatory consumer law obligations.

As a first step, policymakers should closely examine where (if at all) current law fails to address illegal manipulative practices, and focus only on those specific gaps. As drafted, the DFA should avoid duplication of existing legislation and encourage ongoing consumer education efforts to tackle the issue of dark patterns. It should not, however, present expansive or divergent interpretations of what constitutes a "dark pattern," which would create uncertainty for businesses operating across borders and undermine the effectiveness of existing consumer protection measures.

Finally, the Chamber emphasizes the importance of stakeholder collaboration in addressing dark patterns. Policymakers should engage with businesses, consumer groups, and design experts to develop practical, evidence-based solutions. This multi-stakeholder approach will ensure that regulatory actions are informed by diverse perspectives and grounded in real-world insights, fostering a regulatory environment that protects consumers while supporting innovation and economic growth.

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Section 2 **– "Addictive design"**

The Chamber appreciates the importance of addressing concerns related to addictive design features, while preserving the benefits these features provide to consumers and businesses. Features such as infinite scrolling, autoplay, and recommender systems often enhance user experience by improving convenience and engagement. However, we support a balanced approach that prioritizes transparency, user empowerment, and parental tools over categorical bans. Policymakers should focus on promoting user controls, such as time limits and autoplay toggles, and ensuring clear disclosures about how these features function. This approach allows consumers to make informed decisions while enabling businesses to innovate and provide valuable services.

Additionally, for services likely to be used by minors, platforms have already begun to implement age-appropriate default settings and robust parental controls to safeguard younger users. Regulatory measures should be risk-based and tailored to the context of the service, avoiding one-size-fits-all mandates that could stifle innovation or limit consumer choice. By fostering collaboration with industry stakeholders and encouraging voluntary standards, policymakers can address concerns about addictive design while maintaining a competitive and dynamic digital economy.

Finally, in the interest of harmonization, we note that some existing EU regulations already contain provisions which can be applied to tackle the issue of addictive design. For example:

- The DSA (in Article 34) addresses addictive design by requiring Very Large Online Platforms to conduct systemic annual risk assessments to assess the risk of any serious negative consequences to a user's mental well-being. In addition, DSA Article 28(1) requires providers of online platforms accessible to minors to put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service, complemented by the Article 28 Guidelines.
- The AI Act's Article 5(2) also prohibits the use of an AI system that exploits the vulnerabilities of a person due to their age, disability of specific social or economic situation, in a way that is likely to cause them significant harm (and, as mentioned above, the Commission's accompanying guidance refers to addictive designs in this context).
- General provisions of the UCPD potentially apply, such as when a trader is exploiting known vulnerabilities (*e.g.*, lack of impulse control, gambling history) to unduly influence the consumer's decision.

Further research is necessary to identify the specific design features of most concern. New legislation should only address gaps with respect to clearly identified consumer needs. The European Commission's initiative for an EU-wide inquiry into digital well-being, advocating for collaboration across a wide range of stakeholders, is a step in the right direction. Moreover, companies are already addressing the growing concern over digital well-being by offering tailored solutions, especially for minors, across different services and devices. These industry best practices should be considered by policymakers while assessing the need for new regulation on the matter.

In sum, 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.

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Section 3 **– "Specific features in digital products"**

The Chamber supports a balanced, technology-neutral approach to addressing concerns about specific features in digital products, such as loot boxes and in-game purchases, while preserving the innovation and engagement these features provide.

To enhance transparency and consumer protection, developers should be required to disclose the probabilities of receiving specific rewards in loot boxes in a clear and accessible manner. Additionally, implementing robust spend controls, such as spending limits and transaction histories, can empower users to manage their in-game purchases responsibly and protect vulnerable populations, including minors.

It is just as important to avoid conflating loot boxes with gambling activities, as this could lead to overly restrictive regulations that stifle innovation and limit consumer choice. Instead, policymakers should work with industry stakeholders to expand and refine existing ratings systems, such as the Entertainment Software Rating Board, to address emerging concerns effectively. By leveraging these systems and focusing on targeted, evidence-based measures, regulators can protect consumers while fostering a vibrant and competitive digital economy.

Finally, the DFA should avoid duplication of current legislation covering specific features in gaming and digital products, such as the UCPD and the Consumer Rights Directive (CRD). For example:

- When a business offers a virtual currency, it must follow the UCPD's information rules and not mislead customers.
- The Commission's UCPD guidance includes a section on gaming, which covers loot boxes, among other issues.
- The CRD pre- and post-contractual information obligations and other consumer protections cover in-app purchases made with real money (including vouchers or gift cards).

Some aspects of these features are also regulated by national laws, particularly in relation to uncertainty-based rewards in games.

When users purchase virtual currency 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. These laws require businesses to provide clear information on the total price of the virtual currency at the time of purchase, allowing consumers to easily calculate its value in real-world terms.

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 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.

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Section 4 – **"Unfair personalisation practices"**

Personalization is essential for organizing online information and is widely preferred by users. The Chamber supports a balanced approach to addressing concerns about unfair personalization practices, emphasizing the importance of leveraging existing frameworks and promoting industry-led best practices. The General Data Protection Regulation (GDPR) already provides robust protections for consumers, including provisions on profiling, consent, and transparency. Policymakers should avoid duplicative or conflicting regulations that could create unnecessary compliance burdens and instead align any new measures with the GDPR's established standards. This alignment ensures consistency, reduces regulatory fragmentation, and provides businesses with the clarity needed to innovate responsibly.

Personalization, including advertising and recommendations, is comprehensively governed by the GDPR, DMA, ePrivacy Directive, AI Act and DSA. For example:

- DSA Article 26 requires that providers of online platforms showing advertisements ensure that the recipients can identify meaningful information directly and easily accessible about the main parameters used to determine the recipient to whom the advertisement is presented. Further, DSA Articles 26(3) and 28(2) implement a prohibition to present personalized advertising based on profiling using personal data towards minors and even towards all users where special categories of personal data are used.
- DMA Article 5(2) requires that a gatekeeper obtain EU GDPR-standard consent if it wants to (amongst other things) process personal data for online advertising purposes where that data has been gathered from the users of a third party.
- AI techniques that facilitate unlawful personalization are also covered by existing prohibitions – AI Act Article 5(1)(b) prohibits AI systems that exploit vulnerabilities of an individual due to a range of protected characteristics with the objective of materially distorting the behavior of that person in a manner that causes significant harm. The Commission's guidance on that prohibition gives an example of a game that deploys AI to personalize unpredictable rewards so as to be highly addictive to children.

The DFA should focus on 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 personalization to deliver higher quality,

more relevant information and safer, age-appropriate online experiences. Personalization is not only valued by users to help them effectively navigate vast quantities of online content, it is also an essential tool for online services to create safer online environments, particularly for younger users.

A recent survey on digital ads conducted by the IAB in Europe shows that consumers want ads to be relevant, non-intrusive, and valuable to their online experience.

It is also crucial to recognize that personalized advertising is a vital economic enabler for the European economy and for SMEs. It currently secures €100 billion in additional sales for EU businesses, contributes over €25 billion to the EU's GDP, and supports nearly 600,000 jobs. This is projected to more than double by 2030 to €250 billion in sales and 1.4 million jobs due to AI technologies. For SMEs, personalized ads are especially valuable, helping them compete with larger businesses, with 86% of EU SMEs' revenue growth directly attributed to personalized digital advertising.

The DSA prohibits targeted advertising for minors, as well as the use of sensitive data for targeting. The DFA could look at extending those safeguards beyond the online services covered by the DSA to ensure young people and users are equally protected no matter where they are online.

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. Any restrictions should focus on clear, objective categories of data. Limitations on using 'sensitive categories of data' for personalized advertising were a key part of the DSA debate and ultimately adopted in the legislation. These provisions could be easily extended to apply to other online services that are not regulated under the DSA, ensuring consistent protections.

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. Increased uncertainty may lead to over-enforcement, directly impacting the businesses that rely on those advertisements to thrive, and small and medium businesses in particular. A focus on clear, actionable and objective categories of data is essential to foster a competitive digital economy.

Finally, the Chamber encourages the development of industry-led guidelines to promote algorithmic transparency and ethical personalization practices. These guidelines can help businesses adopt responsible data practices, such as clear disclosures about how personalization decisions are made and what data is used. By fostering collaboration among stakeholders, including businesses, consumer groups, and regulators, policymakers can support the creation of practical, evidence-based solutions that protect consumers while preserving the benefits of personalization, such as enhanced user experiences and greater choice. This approach strikes the

right balance between consumer protection and fostering innovation in the digital economy.

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Section 5 **– "Harmful practices by social media influencers"**

The Chamber supports a measured approach to addressing harmful practices in influencer marketing, emphasizing the need for harmonized disclosure standards and practical tools to ensure transparency without stifling innovation. Clear, consistent guidelines across the EU are essential to help influencers and brands comply with disclosure requirements, while platform-provided tools, such as tagging features for paid content, can simplify compliance and enhance consumer trust. Additionally, promoting education through training programs for influencers and brands on ethical marketing practices will foster a culture of accountability and transparency within the industry.

To ensure fairness and avoid undue burdens, policymakers should clearly define the roles and responsibilities of influencers, brands, and platforms, avoiding strict liability for intermediaries. It is also critical to differentiate between direct sellers and influencers, clarifying liability distinctions to prevent brands from being unfairly held accountable for content posted by direct sellers. Harmonized guidelines should account for the unique challenges faced by smaller influencers, with criteria for influencers of special relevance modeled on examples from Spain, Italy, and the Netherlands. Flexibility should also be incorporated to allow influencers to display product and service promotions in varied, context-appropriate ways, ensuring that regulations remain practical and adaptable to the dynamic nature of digital marketing.

Finally, we note that the current regulatory framework already effectively governs influencer marketing. For example:

- Non-disclosure/hidden advertising is banned in EU law under the AVMSD (Article 9(1)), UCPD (Article 7(2), and the DSA (Article 26 DSA).
- The UCPD also provides strong tools to address deceptive practices and online fraud, including fake "likes" and followers. This is supplemented by the Commission's UCPD guidance with a section dedicated to "online marketing".
- The European Commission's Influencer Legal Hub provides additional clarity on the legal roles and responsibilities of influencers.
- The food supplement sector is already strictly regulated, with clear rules on safety, labeling, and claims—under EU laws such as the regulation on nutrition and health claims on food, the Food Supplements Directive, and the UCPD. Further, the International Alliance of Dietary/Food Supplements Association (IADSA) has developed guidelines on influencer marketing of food supplements, and food supplement associations are actively developing specialized advertising guidelines for commercial communications and social

media as well as training programs for influencers with a particular focus on protecting minors. Instead of new restrictions, what is needed is proper enforcement of existing rules against misleading or unauthorized claims. Applying a different, stricter set of rules to influencers compared to other media would be inconsistent with harmonized EU law. Influencers should be regulated on the same basis as other audiovisual media services, such as television broadcasting, to ensure quality of communication channels.

As in other areas, the DFA should avoid duplication with existing legislation, enable the efficient enforcement of the existing regulatory framework on influencer marketing and encourage self-regulatory initiatives that educate content creators on advertising regulations. In fact, according to their policies, many services already require content creators and influencers to indicate whether their content includes any advertising or endorsement during the upload process.

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Section 6 **– "Unfair marketing related to pricing"**

The Chamber applauds efforts to address unfair marketing practices related to pricing, such as drip pricing, misleading reference prices, and unclear price comparisons. However, any regulatory measures must prioritize transparency and consistency while preserving the flexibility businesses need to innovate and compete. Harmonizing rules on reference prices is a critical step toward ensuring that consumers receive clear and accurate information about pricing. Standardized guidelines for presenting price comparisons, including the basis for reference prices, will help prevent misleading practices and foster trust in the marketplace. For example, businesses could be required to disclose whether a reference price reflects the original price, an average price over a specific period, or another benchmark.

To further enhance clarity and compliance, policymakers should develop optional templates or icons for price disclosures. These tools can provide businesses with a straightforward way to communicate pricing information while maintaining flexibility to tailor their presentations to specific contexts. For instance, a standardized icon could indicate the inclusion of additional fees, helping consumers quickly understand the total cost of a product or service. By offering these optional resources, regulators can promote consistency across markets without imposing rigid mandates that may stifle innovation or create unnecessary burdens.

It is also essential to avoid overly prescriptive rules that could inadvertently limit consumer choice or increase costs. Dynamic pricing models, for example, allow businesses to adjust prices based on demand, time of day, or other factors, often resulting in discounts or other benefits for consumers. Policymakers should ensure that any new regulations do not constrain these practices, as they provide significant value to both businesses and consumers. Instead, the focus should remain on

ensuring that consumers are informed about pricing structures in a clear and accessible manner.

Moreover, existing EU law already sufficiently addresses unfair marketing related to pricing through legal frameworks like the Price Indication Directive, the CRD, and the UCPD. These regulations are flexible and can be applied to different marketing practices, including drip pricing and dynamic pricing.

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.

By harmonizing rules, providing optional tools, and maintaining flexibility for businesses, policymakers can address concerns about unfair marketing practices while fostering a competitive and transparent marketplace. This balanced approach ensures that consumers are protected without undermining the benefits of innovative pricing strategies or imposing unnecessary compliance burdens on businesses.

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Section 7 **– "Issues with digital contracts"**

Addressing issues with digital contracts requires a thoughtful approach that prioritizes consumer-friendly practices while maintaining the flexibility businesses need to innovate. Simplifying cancellation processes is a key component of this effort. Businesses should provide clear, self-serve cancellation options that are intuitive and include reasonable authentication measures to safeguard against fraud. For instance, consumers should be able to cancel subscriptions through the same platform they used to sign up, such as an online portal, without encountering unnecessary obstacles or delays.

Equally important is the implementation of pre-billing reminders for transitions from free trials to paid subscriptions. These reminders should include essential details, such as the transition date, subscription cost, and cancellation instructions, ensuring consumers are fully informed before any charges are incurred. Timely notifications not only protect consumers but also build trust and reduce potential disputes, benefiting both consumers and businesses.

To further improve the consumer experience, businesses should adopt digital-first customer service tools, such as chatbots and online help centers, while also providing escalation pathways for more complex or critical issues. For example, consumers facing challenges with automated systems should have access to human support, such as live chat or callback options. This hybrid model combines efficiency with personalized assistance, enabling consumers to address their concerns effectively while allowing businesses to maintain operational adaptability. These

measures can help establish a regulatory framework that safeguards consumers and fosters innovation in the digital economy.

Finally, the Chamber notes that a robust regulatory framework governing digital contracts already exists in the EU. Consumers are comprehensively protected through an extensive framework of pre- and post-contractual information obligations, and by existing "dark patterns" legislation as discussed above in Section 1. The DFA should focus on specific needs that are not covered in the current regulatory framework, 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 detriment of consumers.

There is no compelling evidence suggesting the need for a separate "cancellation button," and customer-friendly solutions under consideration of the current legal framework already exist. If a new regulation on a "cancellation button" was nevertheless introduced, it should allow for a certain level of flexibility in implementation requirements, factoring in not only different types of contracts but also different products, devices, and user interfaces.

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Section 8 **– "Simplification measures"**

Simplification and burden reduction are critical to fostering a competitive and efficient regulatory environment that benefits both businesses and consumers. Overly complex or duplicative requirements can stifle innovation, increase compliance costs, and create unnecessary barriers to market entry, particularly for small and medium-sized enterprises. By streamlining regulatory obligations and embracing modern, digital-first approaches, policymakers can reduce administrative burdens while maintaining robust consumer protections.

Adopting digital-first solutions is a key step toward achieving this goal. Allowing businesses to provide information in digital formats, such as layered disclosures and hyperlinks, enhances accessibility and clarity for consumers while reducing costs for businesses. For example, a subscription service could present key terms upfront with links to more detailed information, ensuring that consumers can easily navigate and understand their rights without being overwhelmed by excessive documentation.

Additionally, harmonizing cooling-off periods for digital and physical goods is essential to reducing confusion and compliance challenges. Aligning these rules ensures consistency across product categories, making it easier for businesses to comply and for consumers to understand their rights. Similarly, consolidating reporting requirements across regulatory frameworks can minimize duplication and administrative costs. By enabling businesses to submit unified reports that satisfy multiple obligations, policymakers can streamline compliance processes and free up resources for innovation and growth. These measures collectively create a regulatory environment that supports economic competitiveness while safeguarding consumer interests.

As with all other aspects of the proposed DFA, a focus on simplifying and harmonizing existing frameworks is crucial. Policymakers should carefully assess the necessity of any new consumer laws to avoid adding further legal complexity and regulatory burden on traders, while ensuring a stable business environment that fosters innovation and leads to more diverse and better products and services for consumers.

Finally, in response to question (3), we offer some specific actions that we support to better reflect the realities of today's economy.

Reducing Consumer Information

- Reduction of consumer information requirements for repeat transactions with the same provider and those conducted via digital assistants. For account-based purchases, where a customer has already signed a framework agreement, repeating most of the detailed information is unnecessary. Focusing on essential information—such as product features and price—is more effective and less burdensome.
- The mandate to provide a phone number and email for pre-contractual information is outdated; real-time chat support is now a more preferred and expected communication channel.
- The requirement for a physical withdrawal form for e-commerce purchases is no longer aligned with modern digital consumer expectations.

Rebalancing the Right of Withdrawal for Digital Services

- Particularly in relation to digital media subscription services, the current right of withdrawal for digital services allows consumers access valuable content indiscriminately and then cancel, paying only a minimal prorated fee, which can be less than the cost of processing the refund. A solution to this would be to delay access for 14 days, but this is inconvenient for both consumers and businesses. In relation to some digital services which provide access to digital content, such as digital media subscription services, the right of withdrawal should be handled similarly to digital

content, where it can be excluded if the consumer agrees to immediate access. This would mitigate the risk of content abuse and eliminate the need for a waiting period.

- Clearer legal guidance to help providers properly classify their offerings is needed. This would avoid the heavy burden of assuming an offer is a "digital service" out of uncertainty.

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Section 9 **– "Horizontal issues"**

The Chamber supports the following specific actions to improve both the protection of consumers and the functioning of the Single Market in the digital environment:

Age Assurance/Verification

- The DFA should advance a risk-based, service-level approach to age assurance, in line with the DSA's Article 28 Guidelines, ensuring children receive appropriate protections without losing access to valuable online 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.
- Age assurance is not a standalone solution but part of a broader safety strategy. It involves trade-offs with privacy and adult user access.
- Age assurance belongs at the service level. DSA Article 28 is clear in that regard. The service provider is closest to the user content, and best equipped to understand and manage risks. That provider bears the ultimate responsibility.
- Age assurance requirements could also be extended beyond the digital services covered by the DSA but only where services present a risk to minors.

Burden of Proof

The Chamber indicated particular support above for the notion that "With a view to strengthening the enforcement of consumer protection law, the burden of proof should be reversed in cases where consumers/interested parties or authorities have disproportionate difficulty in obtaining information to prove a trader's wrongdoing." This is because a reversal of the burden of proof would not be a mere procedural adjustment: it would cause profound shifts in how cases are managed, in incentives for business to innovate and offer products and services but also for incentives to litigate, including incentives to bring wholly opportunistic litigation.

EU law does not recognise any general rule that burdens should shift simply because one party may face evidential hurdles – rules on disclosure already address exactly this issue. Traders are entitled to a presumption of the lawfulness of their conduct. An easily accessed presumption of liability, causing traders to prove and re-prove the legitimacy of their activities, would be a material and unnecessary drain. The general rule is – and should remain – that the party making an accusation must make their case. If an accusation alone might be enough to lead to a damages entitlement (simply because a trader has failed to disprove), this would represent a serious intrusion into systems of checks and balances in EU law and in existing Member State systems.

While there are a few examples in EU law of informational asymmetries in litigation being considered relevant to proof (*e.g.*, in product liability), these are narrow, context-specific, and allow rebuttal to avoid transforming evidential difficulty into automatic liability. In no such case is a wholesale burden of proof reversal imposed. There would be no justification for making the EU's Digital Fairness Act the first EU instrument to do so.

Aside from the costs and consequences for traders of a system that presumes wrongdoing, such a presumption would not lead to overall improvements in consumer welfare. Traders—particularly smaller firms—would face significant pressure merely from allegations, as they would bear the evidential and financial burden of disproving wrongdoing in each case. This would distort incentives, prompting defensive commercial behaviour (including limitations in choice, and ever-more defensive and elaborate terms and conditions for consumers to accept) and chilling innovation and pro-competitive practices. It would also increase the workload of enforcement authorities and courts, diverting resources from more serious cases.

Most importantly, though, a reversal of the burden of proof would be a gift to the booming industry that exploits and profits from opportunities to bring legal cases. The recent phenomenon of 'intermediaries' such as third-party litigation funders, claims handlers and representative entities – often backed by undisclosed or offshore funding sources – promoting and participating in legal cases in exchange for a percentage of an eventual award should be a grave concern to all invested in consumer protection. It is already a frequent occurrence before EU national courts that digital service providers face cases which are posed as consumer advocacy, but in reality, are strictly for-profit ventures designed to direct maximum rewards to investors. Examples abound of consumers receiving little or nothing of value from such cases, and in essence being re-victimized by the claims supposedly taken to protect their interests. This litigation-related industry is experiencing spectacular growth, and one of the few constraining factors is the requirement that claimants can't merely accuse but must *prove* that claims have substance. It would be an important policy error to consider reversing this requirement without very careful

consideration of the consequences for the digital economy, justice systems, and most of all – consumers.

Definition of "Consumer"

- The existing "average consumer" standard is an effective benchmark that has been consistently interpreted by the European Court of Justice for over two decades. 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.
- New consumer laws like the EU New Deal for Consumers have introduced new obligations. However, it is too early to tell if more legislation is necessary.

Fairness by Design

- There is no need for a new, explicit "fairness by design" rule, as existing consumer protection laws like the CRD and the UCPD already require businesses to integrate principles of fairness and transparency into their services from the beginning.
- These current rules already cover this principle through measures like comprehensive pre- and post-contractual information requirements and the prohibition of manipulative practices. Moreover, regulations such as Article 5(1) of the Unfair Commercial Practices Directive already achieve the same goal by broadly prohibiting unfair commercial conduct.
- A more effective approach to ensuring fairness is to clarify and specify the current regulations through court rulings or official guidance, instead of mandating an ambiguous "fairness by design" principle with a new law.

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The Chamber appreciates the opportunity to provide feedback on potential improvements in EU consumer law. We welcome the EU's efforts to modernize consumer protection in light of accelerating technological change and the rising importance of the digital economy. As reflected in our individual responses, we support a balanced, evidence-based approach that limits unnecessary regulatory duplication and burden, enhances legal certainty, and supports innovation.

Sincerely,

W. Ashley Gum
Vice President, Consumer Policy