

# 3<sup>rd</sup> ANNUAL DIGITAL CONSUMER EVENT

Ensuring fairness and safety for consumers in the digital world.

30 November 2023



#digitalfairness4consumers  
#productsafety



## Report: 3<sup>rd</sup> Annual Digital Consumer Event (30 November 2023)

### Summary overview

On 30 November, DG JUST held the third edition of the Annual Digital Consumer Event. The event included a **signing ceremony of the “Consumer Protection Pledge”**, where 11 online marketplaces signed voluntary commitments for the protection of consumers. They include ensuring easy exercise of certain existing consumer rights, ensuring transparency of reviews and promoting knowledge of consumer rights among sellers. The event also included **panel discussions on two topics in the framework of the Commission’s Digital Fairness Fitness Check**: the burden of proof in consumer law and the addictive design of digital services. The discussions in both panels showed the views of different stakeholders (academia, consumer and business organisations, national public authorities). These included calls for updating the current legal framework in line with digital trends. Panellists also highlighted the need to ensure effective enforcement and addressing new challenges in digital environments, such as personalisation and digital asymmetries between traders and consumers.

It was a hybrid event with speakers attending physically whilst the audience mostly following the event online. The audience could interact with the panels via Slido, asking questions that were then discussed by the panellists.

### Detailed summary

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### **Keynote speech by Commissioner Reynders**

The event was opened by Commissioner Reynders. The Commissioner emphasised that the legal framework has been strengthened since the adoption of the new consumer agenda three years ago, mentioning both current legal proposals and previous amendments, such as the Modernisation Directive. However, he also underlined that we need to go even further to protect consumers online.



Therefore, the Commission launched the Digital Fairness Fitness Check to assess the consumer protection problems in online environments, including in light of the recent developments concerning other EU legislation that also affects consumers. The Commissioner noted that this event provides a good opportunity to share views on digital addiction and the rules on the burden of proof. He welcomed the recent report of the EP on addictive design and posed the question of whether we need to adopt new rules on burden of proof to ensure effective enforcement.

The Commissioner also announced that 11 signatories have negotiated additional consumer protection commitments that go beyond the existing legal requirements. He stressed the importance and benefits of using both mandatory requirements and voluntary commitments within consumer law. The Commissioner also mentioned the Cookie Pledge, which aims to provide consumers with better information, and on which the work is currently ongoing.

The Commissioner's speech was followed by interventions of the Members of IMCO committee:

- Andreas Schwab (EPP/DE) – underlined that it is as important to protect consumers online as offline. There are issues such as digital disinformation and risks of addiction, and we need a balanced approach to protect consumers.
- René Repasi (S&D/DE) – pointed to the importance of assessing how all recent initiatives on consumer law work in practice. He noted that the role of businesses and online marketplaces cannot be underestimated and that we need a fair balance of power. He welcomed that COM is looking into dark patterns.
- Kim Van Sparrentak (the Greens/NL) – welcomed the work already done but stressed the need for stronger consumer protection. The design of devices should be scrutinised and changing the burden of proof should be considered to give consumers a better standing.
- Virginie Joron (ID/FR) – pointed to different trends in the digital sphere and the indispensable nature of the internet. There is a risk of social digital divide; therefore, we need to embrace the opportunity of protecting the digital consumer.

### **Consumer Protection Pledge**

Commissioner Reynders welcomed the 11 online marketplaces - signatories of the current Product Safety Pledge+, i.e., Allegro, AliExpress, Amazon, Bol.com, Cdiscount, eBay, EMAG, Etsy, Joom, Rakuten France, and Wish. The Commissioner explained that, when the original Product Safety Pledge was signed in 2018, it was a new tool for the COM, which has clearly showed its value regarding product safety. He thanked the companies for their commitment to go one step further in advancing consumer digital rights, namely:



- easy exercise of consumer's withdrawal and contract cancellation rights,
- facilitating consumer's communication with the marketplace and its sellers via human interlocutor,
- taking measures to increase the reliability of user reviews and the transparency of influencer marketing, and
- promoting the knowledge of consumer rights among their sellers.

After signing the new 'Consumer Protection Pledge', the signatories' representatives shortly intervened, each focusing on one of the following questions related to their new commitments:

- **How can marketplaces take more responsibility for transactions on their sites?**
- **How can effective training on EU consumer protection rules be ensured?**
- **How can fake reviews be prevented?**

### **Panel 1: Burden of proof in consumer law**

Panellists: Ursula Pahl (BEUC), Jelle van Loo (Economic Inspection, Belgium), Peter Rott (University of Oldenburg), Jolanda Girzl (Ecommerce Europe). Chaired by Martins Prieditis (European Commission).

The discussion focussed on the following points:

- The need for **effective public enforcement**, especially of the UCPD. Some panellists stressed the importance of procedural rules that help the authorities in gathering the evidence. It is important that traders present such information about their activities that can be effectively processed by the authorities.
- The panellists agreed that online and offline environments should be regulated together as the burden of proof is relevant for both.
- Some panellists emphasised that digital markets and the complex technology (e.g., complicated algorithms) create **information asymmetries between consumers and traders**. To remedy this asymmetry, the burden of proof should be placed on the trader. The Digital Content Directive already provides for a reversal of the burden of proof based on this reasoning. The same should be used in relation to the digital environment in general. Moreover, the increased **personalisation** makes it difficult for consumers to have a clear point of reference.

The panellists discussed how consumer legislation could draw **inspiration from other areas of law**, regarding the alleviation of burden of proof and the principle of compliance by design. In particular, the ongoing revision of the Product Liability Directive, case law on medical malpractice and the Sale of Goods Directive were highlighted as examples. The General Data Protection Regulation (GDPR), and the Shopify case of the Consumer Protection Co-operation (CPC) network could serve as inspiration for introducing a **principle of compliance by design**.

- Some panellists emphasised the importance of **legal certainty**, so that the procedure in legal claims is clear and predictable for both consumers and traders. Also the interests of **small businesses** with limited resources and of law-abiding businesses in general should be considered.

### **Panel 2: Addictive design of digital services**

Panellists: Kasper Drazewski (BEUC), Brian Wessel (Ministry of Industry, Business and Financial Affairs, Denmark), Mark Leiser (VU Amsterdam), Francesco Bondi (DOT Europe). Chaired by Egelyn Braun (European Commission).

The panel discussed the problematic aspects of addictive design and reflected on what can be done to mitigate the risks related to addictive design:

- The panel started with an explanation of how design techniques can exploit psychological traits and bringing examples of **different types of addictive designs** (digital interface, profile-powered and AI-powered addictive design) and how addictive design differs from dark patterns. It was also pointed out that we do not just need to look at design features and interface, but also on the whole system architecture and on designs that cannot actually be seen.
- The panellists highlighted that there is a **digital asymmetry between businesses and consumers** and that **consumers are practically powerless against digital service providers** since consumers have become dependent on digital services.
- From the consumer perspective, consumers are often caught in digital services that give consumers **misleading impressions** of how the services function and an impression of services being free even if they are not. When consumers provide value to service providers, this could potentially be qualified as a transactional decision. Panellists also pointed out that consumers should have a right to be free from **personalisation** or at least a right to an explanation of how content is being personalised.
- Panellists emphasized that there is an **enforcement** issue in current legislation, in particular in relation to the UCPD, and that there is a need to strengthen enforcement.
- The panellists all agreed that there is a need for a **holistic approach**, instead of working in silos, to take into consideration different stakeholder views and to approach the topic more broadly, covering different legislation and disciplines. Panellists also mentioned a need to take different business models into consideration (i.e. not all traders rely on maximising consumer data collection and engagement) and a need to **provide tailored solutions to different challenges**.
- The panellists discussed **vulnerable consumers**, especially minors, and pointed out that there has so far been an unsatisfactory level of protection of vulnerable consumers. Some panellists mentioned a need to involve parents in minors' use of digital services.
- Several panellists pointed out that the current legal framework and current assumptions (e.g., in the GDPR "as long as the consumer consents, there are no issues") are outdated and need to catch up with digital trends, for example by updating the concepts included in current legislation. They pointed to the need to make legislation clearer and future-proof.