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Legal Update

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United Kingdom: The Digital Fairness Act Proposal

What businesses should prepare for – a UK and EU perspective

In brief

Following our previous alert, on 11 November, the European Commission adopted its long-awaited Proposal for a Digital Fairness Act (DFA).

The DFA is a flagship initiative to modernise the EU's consumer protection framework for the digital age. It would replace the Unfair Commercial Practices Directive with a directly applicable Regulation and significantly update the Consumer Rights Directive and Unfair Contract Terms Directive. The changes span a number of areas including pricing, subscriptions, dark patterns, addictive design and engagement features, personalisation and agentic AI.

Given the substantial overlap between the DFA and other EU and UK legislation, effective compliance strategies mean businesses will consider a pan-European approach to compliance.

Below, we highlight the changes businesses should be preparing for. Look out for our upcoming DFA deep dives, where we will unpack the key proposals and their practical implications for businesses.

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Pricing

On drip pricing, the Proposal makes changes similar to the UK in the Digital Markets, Competition and Consumers Act (DMCCA) (see United Kingdom: CMA commences enforcement action under the Digital Markets, Competition and Consumers Act 2024, focusing on online pricing practices - Connect On Tech). The Proposal shifts the emphasis to displaying all foreseeable fees, taxes, charges or other payments that the consumer will **unavoidably incur** at the **first stage** the consumer sees pricing information, and removes the requirement to establish that omitted fees and charges were likely to affect the average consumer's **transactional decision**.

Similar to the UK, the EU is also focusing on misleading reference (strikethrough) pricing. Whilst the UK is still awaiting the anticipated consultation on this topic, the Proposal blacklists particular price comparisons based on RRPs or other non-competitor reference prices.

In addition, the Proposal prohibits harmful profiling-based pricing involving consumers whom the trader knows with reasonable certainty are minors or vulnerable, and introduces dedicated transparency rules for dynamically priced event tickets and virtual queues. The UK Competition and Markets Authority (CMA) had concluded that dynamic pricing can produce legitimate consumer and competitive benefits and therefore favoured targeted or sector-specific intervention over broad new legislation. It could be said that the EU has taken a similar approach, insofar as the Proposal does not establish a general dynamic pricing regime but instead targets event tickets and price changes affecting consumers in virtual queues.

Subscriptions

The Proposal introduces new subscriptions rules similar to those that will apply in the UK under the DMCCA to contracts entered into from 1 January 2027 (see New UK consumer subscription rules confirmed for January 2027: what businesses need to do now). However, the detail differs in ways that will matter for businesses designing a single UK and EU customer journey.

On free trials, the UK requires a reminder before a free or discounted period ends, followed by a 14-day cooling-off period once the contract rolls over. The Proposal goes further on free trials and effectively moves to an opt-in model: the consumer is not bound by the paid subscription unless they have received a reminder and expressly agreed to continue before the free trial ends.

Reminder timing also differs. The UK requires reminders every six months for rolling weekly or monthly contracts, with separate rules including an additional earlier reminder for annual subscriptions. The Proposal instead requires a reminder between one month and 14 days before a contract of six months or more is extended. For shorter contracts, the reminder must come at least one week before the extension that takes the contract to six months or is its tenth extension, whichever is earlier.

On exit, the UK requires cancellation to be "straightforward". The Proposal is more prescriptive. It requires a termination function labelled "terminate the contract here" (or an unambiguous equivalent) wherever the trader offers online contracting, however the contract was concluded - which companies will be familiar with from the EU withdrawal button requirement effective since June. The Proposal also requires online customer service, with access to a human on request where other means are not effective. Separately, the explanatory memorandum signals a first-month cancellation right for digital media (audio and video) subscriptions.

The EU rules would apply 12 months after entry into force, so businesses now face two overlapping regimes with different triggers, timings and wording.

Dark patterns

Dark patterns would face more prescriptive regulation under the new rules.

Traders would be prohibited from designing, organising or operating online interfaces that are likely to deceive or manipulate consumers, or otherwise materially distort their economic behaviour. The "likely to" drafting would set a lower threshold than the DSA test, giving regulators greater scope to intervene before they are confident the interface has caused actual manipulation.

The rules would blacklist 10 dark patterns, broadly covering:

- False popularity or availability claims.
- Scarcity claims.
- Pre-selected options and default consent.
- Shaming consumers for declining.
- Creating a false impression that there is no alternative.
- Nagging.
- Misleading or ambiguous language.
- Misleading price or renewal information.
- Fake notifications.
- Making it harder to refuse or withdraw a choice.

The Commission could add to this list as new practices emerge.

The blacklist marks a clear policy shift towards directly prohibiting specific manipulative practices, removing the need for regulators to show the effect on consumers' transactional decisions.

Businesses should be auditing their consumer journeys now, particularly choice architecture, consent flows, pricing and renewals, notifications and cancellation or withdrawal mechanisms.

Addictive design and engagement features

Another significant area for product design is the introduction of new rules on engagement-related features, including virtual currencies, in-game purchases and features that encourage compulsive or excessive use:

- **Virtual currencies**: Prices expressed in paid-for virtual currencies must also indicate the corresponding value in real-money terms. Where traders know their products are used by minors, virtual currencies would be disabled by default and would only be activated with parental or guardian approval.

- **Loot boxes and related virtual reward features**: Businesses offering "paid-for variable reward systems", such as loot boxes, would need to disclose the probability of receiving rewards and allow consumers to switch these features off. Traders won't be able to offer these features and related pay-to-win and pay-to-progress mechanisms to minors.
- **Addictive design**: Adult consumers must be able to switch off certain features that are intended to or can reasonably be foreseen to encourage compulsive or excessive use. These include: autoplay, certain notifications, engagement incentives (e.g., streaks) and features that simulate relationships. As with dark patterns, the Commission could amend this list of features in future.

These changes will directly impact how many digital platforms drive user engagement and spend. They will be particularly relevant to gaming and social media services, where notifications, virtual currencies, loot boxes and other engagement features form part of the core product and monetisation model.

Given the overlap with the EU KIDS Act proposal, businesses should consider now which products and features may require redesign across both regimes. We're expecting the UK's upcoming social media ban to address similar engagement design features, so online platforms should be able to implement a coordinated pan-European approach to product compliance.

Personalised advertising and marketing

Influencer marketing is also expressly brought into scope. Businesses would need to ensure that influencers clearly, prominently and unambiguously label commercial content as an "advertisement" or "commercial collaboration". Other labels would not be compliant. This broadly aligns with the UK's approach, including the ASA's recently updated guidance: Influencers' guide to making clear that ads are ads - ASA | CAP.

Traders would also need to ensure that influencers acting on their behalf comply with these disclosure requirements, including through contracts with influencers. The Proposal also captures existing rules prohibiting direct exhortations to minors and not advertising products which are dangerous or otherwise cannot be advertised.

The Proposal also prohibits advertising targeted on the basis of profiling where:

- Personal data is used and the trader knows with reasonable certainty that the consumer is a minor; or
- Special category personal data under Article 9(1) GDPR is used.

This extends comparable protections beyond the online platforms already subject to the DSA. The recitals indicate that this extension in scope is intended to capture actors that target or facilitate targeted advertising, including those selecting advertising content or delivery criteria, supplying targeting data or technology, and delivering or disseminating advertisements; as well as personalised product rankings and recommendations, content suggestions and promotional messages delivered through AI tools.

Agentic AI

The Proposal introduces the first dedicated EU consumer rules on "automated systems" that can conclude contracts on a consumer's behalf. The obligations fall on the trader offering the agent, not on the underlying AI model. On first use, consumers must choose whether to confirm every contract, only certain contracts or none, and can change that choice at any time. The agent must disclose any payment received for proposing a contract, such as a sponsored suggestion, and any conflict of interest, in which case the consumer must confirm the contract whatever setting they have chosen. Traders cannot require consumers to use an agent to access their online interface, but contracts concluded solely between automated systems benefit from lighter information requirements. Traders and agent providers may also identify themselves through European Business Wallets, establishing whom the agent represents. The addictive design rules also capture persistent prompts to keep engaging with an automated system, relevant to chatbot and companion features.

By contrast, the UK has no dedicated rules. The CMA makes clear in its Agentic AI and consumers paper that consumer law, strengthened by the DMCCA, applies whether decisions are made by people or AI. Suggested safeguards (e.g., disclosing incentives/confirming high-risk actions) closely track the EU rules, but as good practice rather than prescribed requirements.

Stakeholder positions

We tested the final Proposal against what stakeholders actually wanted in the Consultation responses. Most industry respondents argued that no new law was needed given that existing EU consumer, data protection and platform rules already cover the practices of concern — the real problem is inconsistent enforcement. The Commission has not accepted this but several of the new

rules are narrower than the Commission had signalled and (in response to requests for clarity), where another EU law conflicts with the DFA on the same issue, that law prevails, and the DSA's dark patterns ban will not apply to dark patterns covered by the DFA.

Where industry has secured reprieve

Industry has secured reprieve on several fronts. On addictive design, respondents wanted user controls rather than bans, and that is broadly what they have got. Businesses must let adult users switch off features such as autoplay, but these features are not banned and need not be off by default. On personalisation, the new bans are limited to targeted advertising to known children or using sensitive data in a harmful way (and the advertising rules do not apply to online platforms already covered by the DSA), and harmful personalised pricing aimed at known children or vulnerable consumers. Businesses do not need to collect extra data to identify those consumers, and helpful personalisation such as student discounts is permitted. On pricing, new transparency rules for dynamic pricing apply only to event tickets, not to flights, hotels or other products.

Where industry arguments did not prevail

In other areas, respondents' arguments did not prevail. Despite arguing that existing law is sufficient, they face a specific ban on dark patterns (misleading website and app design). This is backed by a list of always-prohibited practices that the Commission can extend. Drip pricing and discounts measured against recommended retail prices will also be banned outright. On influencer marketing, some respondents considered existing guidance sufficient. The Proposal instead follows the Dutch consumer regulator's call for standard labels ("advertisement"/"commercial collaboration"). It also adopts the regulator's proposal for a right to speak to a human in customer service, although only after a contract is concluded and where other channels are not effective. Finally, although the burden of proof has not been reversed, courts and regulators will be able to order businesses to disclose evidence on how an online feature was designed and how it affects consumers.

Enforcement and evidence

Stronger enforcement is a key theme in the DFA. The Commission would be empowered to impose fines of up to 6% of worldwide annual turnover for infringements it investigates directly under the revised CPC framework, mirroring the maximum figure in Article 52 of the DSA, but less than the 10% maximum penalty which the UK's CMA can impose under the DMCCA. It further gives Member States the opportunity to provide for maximum fines of at least 4% of a trader's annual turnover in the Member State or States concerned. The Proposal also contains significant evidence-gathering powers. Courts and regulators could compel businesses to disclose evidence about how online interfaces are designed, operated, and affect consumer behaviour. The stakes are therefore high, and compliance planning efforts should start in good time. If a regulator requested evidence about your business' online interfaces tomorrow, would it be available, and what would it show?

Next steps

Having been adopted by the Commission, the Proposal will proceed through the EU ordinary legislative procedure. Significant negotiation in the European Parliament and Council is likely and, whilst we do not expect to see the final text before 2028, with staggered application to follow, the direction of travel is clear. Businesses should start assessing the potential impact on their consumer journeys and wider compliance approach.

For more information, please reach out to the Baker McKenzie Consumer Law Team.

Iman Jamil and Alice Hawes, Associates, have contributed to this legal update.

Contact Us



Julia Hemmings

Partner
Julia.Hemmings@bakermckenzie.com



Lucy Hart

Counsel
Lucy.Hart@bakermckenzie.com



Serena King

Senior Associate
Serena.King@bakermckenzie.com

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