

Consultation response

Digital fairness – fitness check on EU consumer law



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

The **American Chamber of Commerce to the European Union** (AmCham EU) welcomes the European Commission's thoughtful approach – meant to first conduct an evidence-based evaluation of potential gaps and challenges to the enforcement of existing rules.

The European Union has established itself as a global leader in consumer protection by building an extensive framework around the issues flagged by the European Commission (EC) in this roadmap: from the Omnibus Directive (and its guidance) to the privacy framework and more. Practices of consumer protection are currently covered by the existing rules. Efforts and resources should be directed towards enforcement authorities so that they are able to enforce effectively the updated Omnibus and in the context of the Consumer Protection Cooperation Regulation evaluation. The EC, industry, consumer groups and authorities should strengthen the enforcement framework to ensure it is effective and reflects the consumer priorities.

From a consumer experience perspective, the current framework applies across the entire journey and there are no clear gaps. Consumers are protected by extensive rights that mandate pre-contractual information obligations for traders. There are rules granting consumers the right to withdraw from contracts, should they find their purchases do not meet their expectations. There are rules regarding the fairness of contract terms as well as extensive case law and decisions for those instances where unfair contract terms are used.

In addition, the Omnibus Directive is not entirely new. The basic principles around aggressive commercial practices or undue influence, or more generally misleading practices, are already in place and enforced across the EU.

Moreover, at this stage, a revision of the Unfair Commercial Practices Directive regarding the digital angle does not seem timely nor needed. Rather, the authorities should prioritise the application of the recently approved Digital Services Act which focuses on several of the issues identified by the European Commission in its call for evidence, including dark patterns, personalisation, consumer vulnerabilities and subscriptions. Public authorities' resources should hence be focused on the application of existing norms and on testing their efficacy, rather than developing additional requirements which may result in overlaps, lack of clarity, operational and legal complexity and increasing compliance costs.

Given the opportunity to enforce already existing rules, policy makers, enforcers and consumer groups should engage in dialogues on how specific concerns can be addressed effectively and timely. Such practices could lead to self-regulatory initiatives or partnerships with consumer groups to ensure consumers are better informed and more aware of their rights and their enforcement in the constantly moving digital economy.