



ROYAL NORWEGIAN MINISTRY OF CHILDREN AND FAMILIES

Fitness Check of EU consumer law: Protecting children as consumers

The ongoing fitness check, of whether EU consumer protection legislation ensures a high level of protection in the digital environment, is pertinent. Norway welcomes the initiative, appreciates the Commission's calls for input, and is committed to continuing our contributions to ensure a high level of consumer protection for European consumers.

It is crucial that the ongoing fitness check adequately addresses the consumer protection of children, with their best interests as a primary consideration.

Norway forms a part of the European single marketⁱ where children are growing up digitally:

- 90 percent of Norwegian 9 – 18-year-olds are on one or more social media platforms. Almost half of Norwegian nine-years-olds and 56 percent of ten-year-olds use social media. From the age of 12 onwards, at least 90 percent are on social media.ⁱⁱ
- 70 percent of Norwegian children and young people report that they receive too much advertising on social media.ⁱⁱⁱ
- 76 percent of Norwegian 9 – 18-year-olds play games. 63 percent of those gamers have bought game items with real money. 24 percent have bought items in games where the content was unknown, such as lootboxes.^{iv}

Childhoods are digital across Europe.^v As children increasingly spend time with digital devices and services, they are automatically entering the market in the role of consumers. Children are now exposed to an extent -and modes- of marketing and commercial practices that were not foreseen at the inception of the current consumer protection law. Research shows that the commercial influence children experience in their digital everyday lives has become more personal, complex, hidden, and ubiquitous, and challenges their digital consumer protection in many ways.^{vi} Children and young people's lack of maturity and experience, their impressionability, stand in stark contrast to market actors' strong power position, and their extensive use of technical, psychological, social, and relational techniques for persuasion and manipulation.^{vii}

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The Ministry of Children and Families is currently evaluating whether Norwegian legislation and enforcement adequately protect children as consumers in the digital environment. The Ministry recognises the importance of European Consumer Law for protecting children as consumers today. Together with an expert group consisting of members of consumer organisations, children's organisations, enforcement authorities, researchers, and other stakeholders, we have identified several topics that are relevant to the ongoing fitness check.

1. Children should not be tricked, controlled or pushed into making choices primarily in a trader's interest

Manipulative design, or dark commercial patterns, consist of different actions or mechanisms that deceive or hamper consumers' ability to make informed choices.^{viii} It is unclear to what extent these types of commercial practices are covered by the Unfair Commercial Practices Directive (UCPD) today. Norway would welcome an assessment of manipulative design or practices in the fitness check and an exploration of options for clarifying the protection of consumers against these types of practices. In particular, regard should be had for the inherent vulnerabilities of children. Possible measures that could be considered in the fitness check include:

- Fairness by design – measures to ensure that child rights considerations are taken into account in the development of services,
- Mandatory default settings that reduce the amount of marketing and/or features that may manipulate children, in particular into spending more money or time with a digital service than intended,
- Considering targeted bans (e.g. by including in the UCPD “blacklist” practices that are particularly likely to manipulate children into spending more money or time than intended, such as
 - countdown mechanisms, erratic movement of buttons in user interfaces, virtual currencies in digital services, and certain addictive techniques.

2. Strict regulation of lootboxes and manipulative design in games

Games have developed into important digital marketplaces. Norway would welcome a review of how consumer protection against lootboxes, in-app purchases and manipulative design can be strengthened through stricter regulation. Consumer organisations have identified several problematic practices in games, including^{ix}:

- Exploiting cognitive biases and vulnerabilities through manipulative design and marketing,
- Using layers of virtual currencies to mask or distort real-world monetary costs,
- Targeting lootboxes and manipulative practices towards minors.

All gamers may be vulnerable to manipulative techniques, and Norway would welcome an assessment of appropriate measures to increase consumer protection for all gamers. Certain practices that are used in games may also be relevant to consider in general for immersive digital products in order to future proof consumer protection. Furthermore, it is essential to assess how children's consumer protection in this field may be strengthened.

In the research project Pay to play^x, SIFO - Consumption Research Norway - played alongside children aged 10 to 15 to learn more about how games influence children. Thirteen different forms of manipulative design were identified in the project, and placed under four overarching categories: Visual design, unclear labelling, time-based elements, and gambling mechanisms. The research reports show that these elements collectively encourage players to invest time and money in the game.

Possible measures that could be considered in the fitness check include:

- Transparency requirements in marketing of games and apps, including clear labelling of apps containing lootboxes or other problematic design elements such as virtual currencies,
- Transparency requirements in-app, such as prices in local currency for all purchases and/or meaningful information on main characteristics of virtual elements,
- Mandatory default settings to limit users' exposure to lootboxes,
- Restrictions on the use of lootboxes in games that are likely to be played by children.

3. Marketing and generative artificial intelligence

One of the challenges mentioned in a report by the Consumer Council on generative artificial intelligence (AI) is manipulation of consumers who do not know that they are interacting with a machine.^{xi} Another concern is that anthropomorphised services that mimic or emulate human communication and emotions may be manipulative or create emotional dependencies that may be exploited for marketing purposes, regardless of whether it is clear to the consumer that they're interacting with AI^{xii}

Norway would welcome an assessment of how consumer protection law can complement other legislative measures such as the AI Act, in order to ensure a high level of consumer protection for AI generated content, in particular vis-à-vis children.

Possible measures that could be considered in the fitness check include:

- Restrictions on anthropomorphised models, especially in services that are likely to be used by children. Such restrictions may address manipulative effects of using first-person language, the use of emojis and similar symbols, and simulating human emotions and similar attributes.

4. Identification of marketing – clear enough for children, in context

Digital media can make it difficult for children to identify and assess marketing critically. Disclosure requirements in consumer protection law^{xiii} should take appropriate account of the context in which the marketing appears in order to be effective. Marketing may be highly integrated with other interactions, and technical, psychological, social, and relational techniques may hamper consumers' ability to critically assess the marketing. Norway would welcome an assessment of how disclosure requirements could be expanded to ensure effective disclosure, especially vis-à-vis children. If, depending on the circumstances of the commercial practice and the consumers that are likely exposed to it, effective disclosure

cannot be achieved, it could be explored whether integration of marketing with other content instead should be categorised as an unfair commercial practice vis-à-vis children.

Possible measures that could be considered in the fitness check include:

- mandating standardised prominence for identifying marketing,
- mandating clear separation of marketing from other content that children are exposed to.

5. Effective and dissuasive enforcement across sectors

The Unfair Commercial Practices Directive, E-Commerce Directive, Audiovisual Media Services Directive, and Digital Services Act all contain legislation relevant for the consumer protection of children in digital media. The latter has introduced regulations of platforms which are an essential part of children's digital environment. Additional legislative initiatives, notably the AI Act, will further complement the regulatory landscape that is relevant for protection of EU consumers.

The scope, material requirements and enforcement mechanisms vary across the relevant pieces of legislation. Norway welcomes a fitness check that looks into the functioning of the consumer protection legislation against this backdrop, and in particular clarifies how the different pieces of legislation work together, and how effective and dissuasive enforcement can be ensured. Norway encourages the Commission to use the fitness check as an opportunity to do so.

ⁱ As party to the EEA agreement, Norway is in the field of consumer protection in practice fully integrated in the internal market. The Norwegian Consumer Council (Forbrukerrådet) and the Norwegian Consumer Authority (Forbrukertilsynet) prioritise European cooperation and have over several years prioritised consumer protection in the digital sphere. The Consumer Authority participates in the Consumer Protection Cooperation Network which was established pursuant to CPC Regulation EU/2017/2394.

ⁱⁱ [Report](#) from the Norwegian Media Authority: Barn og medier 2022 – en undersøkelse om 9-18-åringers medievaner.

ⁱⁱⁱ Ibid.

^{iv} Ibid.

^v EU Kids Online 2020 showed that as compared to 2010, the amount of time that children spend online has almost doubled in many countries. [EU-Kids-Online-2020-10Feb2020.pdf \(lse.ac.uk\)](#)

^{vi} Report from SIFO (Consumption Research Norway): [Barns digitale forbrukervern](#). En kunnskapsgjennomgang om digital sårbarhet og negative konsekvenser ved kommersiell påvirkning. SIFO 2023.

^{vii} Ibid.

^{viii} The Norwegian Consumer Council has published several reports regarding manipulative design, for instance [Enough Deception!](#) (2022) [Deceived by Design](#) (2018).

^{ix} In 2022 The Norwegian Consumer Council published their report [Insert Coin](#) together with 20 other consumer organisations in 18 countries. The report illustrates how the video game industry may unfairly utilise manipulative techniques to increase revenue.

^x [Buying popularity: how children are influenced by in-game spending - OsloMet](#)

^{xi} <https://storage02.forbrukerradet.no/media/2023/06/generative-ai-rapport-2023.pdf> (The Norwegian Consumer Council, 2023).

^{xii} Ibid.

^{xiii} The UCPD states that a commercial practice shall be regarded as misleading if a trader fails to identify the commercial intent of the commercial practice if not already apparent from the context. (Article 7 (2)). An assessment of the requirements for identification of marketing in the UCPD should take into account also the relevant provisions of the Audiovisual Services Media Directive, Digital Services Act and e-Commerce Directive.