

BEREC Input to the European Commission's Call for Evidence on the Digital Fairness Act

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Introduction

On 17 July 2025, the European Commission (EC) published a Call for Evidence and a public consultation on its planned Digital Fairness Act (DFA) legislative initiative, which is expected in 2026.

In October 2024, the EC published the Digital Fairness Fitness Check report¹ (DFFC), evaluating the effectiveness of key EU consumer protection laws, including the Unfair Commercial Practices Directive², the Consumer Rights Directive³, and the Unfair Contract Terms Directive⁴. The report concluded that these instruments have only partially met their objectives, noting that harmful online practices cost EU consumers at least €7.9 billion annually. These findings are guiding the preparation of the DFA, intending to address power and information asymmetries between businesses and consumers in the digital environment.

The EC's consultation aims to gather the views of all relevant stakeholders on how to ensure fairness for consumers and businesses in business-to-consumer transactions within the digital single market, improve legal certainty, ensure effective enforcement, and prevent market fragmentation. The feedback collected during the consultation will contribute to the impact assessment and inform the legislative proposal, ensuring that the initiative reflects real-world challenges/trends and stakeholder concerns and gives due consideration to the impact assessment. In this context, it is important to note the close interlink between the forthcoming DFA and the future Digital Networks Act (DNA). Ensuring temporal and material consistency between these two initiatives would help prevent potential overlaps or gaps, while supporting a more integrated approach to fairness and connectivity within the EU digital framework.

BEREC⁵ welcomes the opportunity to participate in the Call for Evidence and, hereinafter, expresses its views in a format of open input.

1. Consumer protection in the digital environment

Digital transformation is reshaping society as a whole, by introducing new digital services and innovative ways to use them. On the other hand, the digital transformation is permeating majority of the sectors, sometimes provided within closed ecosystems or substituting traditional services, but not subject to the same rules and standards for consumer protection. This transformation affects daily life, business operations, and societal interactions, giving rise to new consumer protection issues. The regulation of the digital world should be based on, and fully respectful of, fundamental European rights and values⁶ (no one is left behind, everyone enjoys freedom, protection and fairness). Hence, it should have a strong focus on the welfare of its users.

¹ https://commission.europa.eu/document/707d7404-78e5-4aef-acfa-82b4cf639f55_en

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1585324585932&uri=CELEX%3A02005L0029-20220528>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0083-20220528>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01993L0013-20220528>

⁵ The Body of European Regulators for Electronic Communications (BEREC) fosters consistent, independent, forward-looking, and high-quality regulation of the EU electronic communications markets for the benefit of Europe and its citizens. It is governed by Regulation (EU) 2018/1971, holds key sectoral advisory roles towards the EC, the European Parliament, the Council and national regulatory authorities (NRAs) and plays a pivotal role in the European regulatory processes.

⁶ https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_en

The digital environment is composed of many different interrelated elements and actors, combining and interacting with electronic communications and digital technologies, which are reciprocal enablers for their mutual development.

BEREC focuses on promoting consumer welfare, choice and empowerment by contributing to the development of policies that assist consumers in making better-informed choices and ensure access to electronic communications services (ECS) for all, regardless of their accessibility needs or socio-economic status. BEREC fosters consistency and coherence in the application of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the EECC), ensuring that consumers benefit from clearer, fairer and more effective contractual relations with their providers in order to receive quality ECS.

BEREC observes that in the DFFC, to which the Call for Evidence⁷ is referring, the assessment focused on three Directives, which form the core of the framework of horizontal consumer protection that applies to most traders and consumer-facing sectors in the EU:

- Directive 2005/29/EC on Unfair Commercial Practices (UCPD);
- Directive 2011/83/EU on Consumer Rights (CRD);
- Directive 93/13/EEC on Unfair Contract Terms (UCTD).

In addition, BEREC notes that the DFFC highlights that there is an interplay of the EU consumer law with new pieces of legislation, namely the Audiovisual Media Services Directive (AVMSD), the Digital Markets Act (DMA), the Digital Services Act (DSA), the Data Act (DA), and the Artificial Intelligence Act (AIA).

BEREC analyses the internet ecosystem as a broad environment of products and services that allow consumers, business users and society as a whole to offer and benefit from the potential of a vast variety of services provided via the internet. Thus, in the last decade, BEREC has increasingly focused on the elements of the digital ecosystem beyond the layers of electronic communication networks and services (ECN/ ECS) in different reports⁸.

These include assessments of over-the-top (OTT) services, digital platforms, traffic management practices, and the interplay between content and connectivity and their providers. The outcomes of this BEREC work have highlighted that the evolution of the digital ecosystem calls for a more holistic approach, which takes account of the services which are closely related to, directly depending on, or affecting ECN/ECS and increasingly blurs the boundaries between sectoral and horizontal regulation.

Digital platforms have increasingly become key actors in the European economy, by supporting economic and social interaction⁹, as well as citizen participation and bringing

⁷ See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14622-Digital-Fairness-Act_en

⁸ Such as BEREC Report on Cloud and Edge Computing Services BoR (24) 136, BEREC Report on the IP Interconnection ecosystem BoR (24) 177; BEREC Report on the entry of large content and application providers into the markets for electronic communications networks and services BoR (24) 139; BEREC Report on ICT sustainability for end-users: Empowering end-users through environmental transparency on digital products BoR (24) 82; BEREC high-level position on artificial intelligence and virtual worlds BoR (24) 68; BEREC Report on the impact of Artificial Intelligence (AI) solutions in the telecommunications sector on regulation BoR (23) 93; BEREC Report on the Internet Ecosystem BoR (22) 167; BEREC Report on the Data Economy, BoR (19) 106; BEREC Report on OTT services BoR (19) 106, etc.

⁹ In 2021, BEREC also conducted a study (BoR (21) 89), where, similar to the findings in the Digital Fairness Fitness Check report, it was stated that digital platforms – especially large international ones – also act as strongly disruptive forces, transforming social, economic and even political relationships (more: https://www.berec.europa.eu/sites/default/files/files/document_register_store/2021/6/BoR_%2821%29_89_Consumer_Behaviour_and_Digital_Platforms_Report.pdf)

important benefits in terms of innovation and consumer choice. However, given that they provide an ecosystem of services and products, large digital platforms have the possibility, and may have the incentive, to engage in unfair practices, that can undermine contestability and negatively impact businesses and consumers including ECS end-users' ability to exercise choice.

To tackle the aforementioned issues, as it is well stated in the DFFC, a range of regulations targeting the digital markets and services have recently come into force: the DMA, the DSA, and the AIA, among others.¹⁰ BEREC has actively contributed to the discussions which shaped these legislations and is now playing a role in the enforcement of some of them. For instance, BEREC is assisting the EC in the implementation of the DMA obligation imposing the interoperability of the gatekeeper's messaging services, and raised, in its opinions¹¹, several points concerning user experience and design¹². Moreover, BEREC contributed¹³ to the EC's consultation on the first review of the DMA, which was launched on 3 July 2025, and made some proposals to ensure that the regulation tackles the current challenges.

However, BEREC stresses that the digital space is regulated not only by the newly adopted legislation, as listed above, but also by earlier legislation, such as the EECC – which broadened the definition of ECS to encompass some OTT services, for instance, NI-ICS – and Directive (EU) 2019/770¹⁴, as well as Directive 2000/31/EC on e-commerce.

BEREC, in compliance with Article 123 of the EECC, published an Opinion on the market and technological developments regarding the different types of ECS¹⁵ assessing to what extent Title III of Part III meets the objectives of the EECC. In this opinion, it provided a thorough assessment of trends and technological developments that have or might have an impact on end-user¹⁶ rights.

The question on trends and developments was divided into three distinct categories (lists): market developments, technological trends, and legislative changes, which resulted in a comprehensive and structured analysis of the electronic communications sector. This approach ensured a clear and focused examination of each aspect, enabling a better understanding of how different factors interact and comparing information with stakeholders' views.

Based on the views¹⁷ of its members, sectoral national regulatory authorities (NRAs), BEREC is of the view that the most significant ECN/ECS market developments impacting end-users are:

1. Continued growth and importance of data use in mobile communications;
2. Significant increase in demand for connectivity and high-capacity internet connections;

¹⁰ In the Digital Fairness Fitness Check report it is stated that these instruments, together with the Audiovisual Media Services Directive, complement EU consumer protection laws and aim to reduce the risks and harms online, while promoting open digital markets.

¹¹ https://www.berec.europa.eu/en/all-topics/ni-ics-interoperability?language_content_entity=en

¹² See in particular BEREC Opinion on Meta's reference offers to facilitate Messenger and WhatsApp interoperability under Article 7 of the Digital Markets Act, BoR (25) 21.

¹³ BoR (25) 119.

¹⁴ Because of the fact that the term "interpersonal communications services" was introduced, some provisions, related to number-independent interpersonal communications services fall also under the Directive (EU) 2019/770, on certain aspects concerning contracts for the supply of digital content and digital services.

¹⁵ BEREC Opinion on the market and technological developments and on their impact on the application of rights of end-users in the EECC (Article 123) BoR (24) 180.

¹⁶ According to Article 2 (14) of the EECC, 'end-user' means a user not providing public electronic communications networks or publicly available electronic communications services.

¹⁷ BoR (24) 180

3. Significant increase in fraudulent traffic and scams;
4. Increasing usage of digital platforms.

There is a growing prevalence of bundled and tied offerings that combine connectivity with content-based digital services.¹⁸

Those observations are in correlation with the findings of the DFFC, which also pointed out the specific challenges raised by digitalisation as regards consumer protection, especially those related to behavioural aspects. The growth in the usage of digital platforms has rapidly emerged as a significant trend over the last decade. In its Opinion¹⁹, BEREC noted that while legislative measures have been taken to address this development (DSA, DMA, etc.), their full impact was yet to be observed, while, nowadays some criticalities have already emerged.

The design of specific rules for the protection of consumers in the digital sector and their potential impact in sectoral frameworks raises the need to carefully assess and mitigate the risk of undermining end-user protection. The new rules should aim to complement the existing sectoral rules on end-user protection, rather than substitute them, particularly considering that sectoral rules address concerns that are mainly sector-specific and would likely not be sufficiently addressed by general solutions.

BEREC, as a well-established and experienced actor in the electronic communications sector with a significant understanding of the digital sector, fully recognises the need to continuously adapt to evolving conditions and emerging challenges. A clear and coherent regulatory framework, with clear scopes of application and definitions, and consistent application reduces legal uncertainty and facilitates the proper enforcement of the existing and any upcoming provisions. Moreover, achieving the right balance between legal certainty and flexibility requires regulatory approach that is data-driven, user-centric, and evidence-based, allowing rules to adapt to the evolution of markets and maintaining the welfare of European citizens. In this regard, the importance of NRAs' powers in relation to data collection should be mentioned and promoted more widely at the EU level.

BEREC also points out that the full system of digital regulation provisions must be jointly considered to avoid inconsistencies between various pieces of European legislation related to user and consumer rights. For instance, this might duplicate, or even conflict, with transparency obligations on stakeholders and/or increase compliance costs, which can harm consumers or have other unintended effects. This fragmentation can lead to confusion and potential legal loopholes and uncertainty, allowing stakeholders to circumvent some requirements or resulting in public authorities interpreting the requirements differently. The lack of consistency across various pieces of legislation undermines efforts to create an effective regulatory framework, ultimately affecting the welfare and rights of end users.

Therefore, BEREC considers that it is important to take all legislation into consideration, not only the most recent ones, when assessing the requirements, horizontal and sectoral, impacting consumers online. By way of non-exhaustive example, consistency checks should recognise that user-experience (UX) obligations are already in force under the DMA (e.g. the ability to change default settings and to uninstall pre-installed applications under Article 6, and the anti-circumvention rule in Article 13). Likewise, the DSA addresses dark patterns through systemic obligations for online platforms. These frameworks should be duly taken into account when regulating consumer-contract information, pricing, and related UX matters under the DFA, not only to avoid duplication or conflict, but also to build upon synergies.

¹⁸At the wholesale level, this implies increased vertical and horizontal integration and related partnerships and agreements between telco and ecosystemic platforms.

¹⁹ BoR (24) 180

2. Necessity for sectoral legislation

At a principle level, a high level of usage of various services, a high level of consumer satisfaction and quality of experience, and safety in the digital environment would be key indicators of a well-functioning digital market. The EECC has assisted in ensuring widespread connectivity in each Member State, which is essential for economic and social development, participation in public life and social and territorial cohesion. Connectivity and the use of electronic communications and digital services are an integral element of European society and welfare.

ECS and digital services must be analysed both with regard to contract terms and with regard to the service provision itself. Consumer protection is primarily based on general rules that apply to all markets. Complementing those, the EECC continues to underline the importance of sector-specific end-user protection, recognising that horizontal consumer protection rules alone are not sufficient to address the particularities of electronic communications. As highlighted in the recitals of the EECC, ECS are essential for participation in the digital economy and society, and therefore a high level of protection is necessary to ensure accessibility, transparency and effective choice. The EECC explicitly acknowledges that sectoral rules complement general consumer law by safeguarding specific rights related to contract duration and termination, number portability, switching, quality of service, and accessibility for end-users with disabilities.

These provisions underline that end-users of ECS should benefit from clear, predictable, and enforceable rights that go beyond horizontal consumer protection, thereby fostering trust, competition, and innovation in the electronic communications sector and associated digital ecosystem.

Moreover, as the provision of ECS becomes even more complex, with contracts to a greater extent including bundled services other than ECS, as well as increasingly necessary to daily life and participation in society, the importance of a clear and strong end-user protection framework grows. Although everything will be closely intertwined, sectoral legislation addressing specific challenges of the ECS sector will still be necessary.

Specifically, the risk of lock-in effects for end-users within the electronic communications sector requires end-user provisions designed specifically with the purpose of combating this risk. In order for end-users to truly understand and use these services and to gather all the benefits they can bring to their lives, they must be transparently and fairly informed by service providers, they must feel safe while using the services, and they must know that there are specialised bodies that can help them quickly and efficiently when a problem arises with a service provider throughout the customer journey, and have the ability to use them.

BEREC considers that sectoral provisions of the EECC, such as those on contract termination and switching, number portability, quality of service and accessibility, provide the necessary safeguards to address the particularities of electronic communications markets. In this regard, BEREC also highlights the important role of NRAs in safeguarding end-user rights. Their technical expertise and legal powers to collect market data, monitor practices and address disputes²⁰ can contribute to ensuring that horizontal and sector-specific consumer protection frameworks operate in a coherent and complementary manner.

²⁰ Figure 6 in BEREC Opinion (BoR (24) 180) shows that more than half of NRAs resolve disputes between end-users and ECS providers, p.54.

Furthermore, Part III of the EECC contains access to emergency communications as well as universal service provisions, which are crucial to grant end-users with connectivity options and increase digital inclusion by ensuring access to the Internet to all and in an affordable way to end-users with low income or special social needs.

These rights are tailored to the specific characteristics of ECS markets and must not be weakened or superseded by the new DFA. Also, the sectoral regulatory framework has evolved and been refined through subsequent instruments and takes into account the growing complexities of bundled digital services and the difficulties of switching ECN/ECS providers. BEREC also notes that sectoral end-user protection is strongly interlinked with other sectoral provisions, such as those on competition, innovation, technological developments, and security, which together assist in ensuring that end-users benefit from transparent, fair, and future-proof digital markets. This is especially the case when measures addressing these aspects usually have a direct or indirect impact on end-users of ECS.

By continuing to complement the general consumer framework – including that in the upcoming DFA – with clear, predictable and enforceable rights, sectoral legislation ensures that end-users can participate in the digital economy on fair terms, while maintaining trust and confidence in the functioning of the internal market.

Hence, BEREC strongly advises that the DFA should ensure complementarity – and clear interplay – rather than replacement, maintaining the high level of consumer protection enshrined in sector-specific law.

2.1. Flexibility in sectoral legislation

BEREC is also of the view that, within the process of designing the new DFA, a certain level of discretion is important. NRAs in electronic communications noted that their practice shows that there is a need for a possibility for quick regulatory action (regulations, decisions, instructions) to address potential market failures and unfair practices harming end-users, taking into account specific national circumstances, again considering relevant behavioural biases and insights as a tool to ensure the design of better consumer protection policies.

The EECC introduced a clause imposing (as a principle) the full harmonisation of national end-user protection provisions in the electronic communications sector. The EECC establishes a calibrated full-harmonisation approach, aiming to ensure a high and consistent level of protection across the European Union (EU) while avoiding unnecessary regulatory burdens. This balance became crucial and beneficial to ensure that end-users are both protected and empowered, while providers retain sufficient room to compete, innovate, and develop new services. The EECC, recognising the differences in the ECS market, allows a certain flexibility in the application of the full harmonisation principle established in Article 101(1) of the EECC. When consulting NRAs to support the aforementioned BEREC Opinion²¹, the answers received showed that Member States have used their discretionary rights to adapt the provisions to their national circumstances rationally and only in those cases where a reaction was necessary. BEREC recognises the need to ensure swift national intervention when necessary, while also safeguarding regulatory predictability.

Additionally, some Member States have introduced provisions in their national laws addressing newly emerging issues and distributing public interest information in the service

²¹ BoR (24) 180.

provider's communications with end-users, such as information about parental control software and protection measures against risks to privacy and personal data. Another example is the growing scenario of fraud regarding ECS switching of end-users or phishing and other practices through traditional SMS and phone calls, which have received a response in some Member States. In BEREC's view, and regardless of the DFA addressing digital protection measures from the standpoint of consumers/recipients of digital services, measures involving ECS providers should continue to be viable on the basis of sector-specific regulation.

In any case, these examples demonstrate that a level of flexibility – at least the one currently in place – in addressing emerging consumer-protection issues should be maintained (even if changes are considered), as it enables better reflection of consumer needs in specific sectors and according to national circumstances, regardless of developments and market trends. Also, consideration should be given in any DFA provisions to give MS some flexibility as appropriate to address emerging issues in the digital environment that cannot yet be foreseen.

3. Proportionality and interplay of provisions

BEREC suggests keeping a proper focus on a common standard of key definitions when drafting the DFA. For instance, the concept of “average consumer” should be updated, taking into account its horizontal scope. Furthermore, efforts to reduce the burden of enforcement, such as shifting the burden of proof to traders and/or resellers selling through their own websites, could be taken on board.

BEREC recognises and supports the necessity of proportionality. When drafting the DFA, careful assessment should be made on the level of requirements to be set, as excessively detailed or prescriptive rules may reduce flexibility, hinder innovation, and ultimately limit the diversity of offers available to consumers.

BEREC stresses that the forthcoming DFA and the EECC review must be approached in a coordinated and coherent manner. The DFFC demonstrated that the potential for consumer harm in the online environment is significant, particularly due to unfair practices by large platforms. However, as already set out, sector-specific provisions, including those under the EECC, also remain crucial, as they address issues unique to electronic communications, including switching, number portability, contract transparency and accessibility. These rules have proven effective in helping to build ECS end-user trust in using digital tools and services without hindering the development of competition and innovation in the telecommunications markets and digital sector.

At the same time, BEREC recalls its Opinion on Article 123 EECC²², where it highlighted the risk that uncoordinated horizontal and sectoral reforms could generate duplication, inconsistency and legal uncertainty. Even the existing rules in various pieces of legislation can cause duplication, overlap or conflict²³. Hence, this could create compliance burdens for market players and, most importantly, weaken protection for end-users. The problems of legislative fragmentation are also a significant barrier to the supervision carried out by the NRAs. This aspect also means a risk to legal certainty, especially in the application of the law or complaint handling, in legal systems where some entities are not specialised according to national legislation.

²² BoR (24) 180.

²³ In BoR (24) 180, p. 11-13, 18, some examples of discrepancies are considered.

Therefore, BEREC urges the EC to ensure coherence and legal clarity across frameworks. To that end and before adopting the DFA, a structured assessment of potential overlaps with other provisions, including the EECC and/or the upcoming DNA, should be carried out. Only through such coordination can the interplay of legal provisions deliver consistent and coherent high levels of protection without undermining legal certainty, and consequently competition, innovation, or end-user/consumer interests and trust when choosing and using ECS and digital services.

4. Enforcement of requirements

Given the Call for Evidence and findings in the DFFC, BEREC acknowledges the need for strengthened consumer protection in the digital environment at both the horizontal and sectoral levels.

BEREC considers that the effectiveness of any regulatory framework depends not only on the clarity of rules but also on effective enforcement. In the digital environment, fragmented or inconsistent enforcement can undermine trust, create unequal conditions for businesses, and weaken consumer protection. The DFFC also highlighted gaps in enforcement²⁴, pointing out that *“This problem is likely to worsen under the conditions of legal uncertainty, which has a chilling effect on enforcement and increases the risks that the litigant or authority has to bear in the face of uncertain outcomes”*, particularly when consumer protection rules are applied across different digital markets.

BEREC has already addressed this issue in its Opinion²⁵ where it emphasised the risks of fragmented enforcement and the need for mechanisms that ensure consistency across Member States, particularly when end-users face cross-border digital services and platforms, and the need for proper cooperation mechanisms. These examples demonstrate that enforcement challenges are not limited to the electronic communications sector but extend across the digital ecosystem.

BEREC also notes that enforcement should be effective, timely, and consistent, while leaving space for innovation and diversity in services. Beyond regulatory coordination, fostering operational cooperation among NRAs, law enforcement bodies, and digital platforms could further enhance the effectiveness of enforcement mechanisms. Such collaboration would be particularly relevant in tackling cross-border fraudulent activities, phishing, and number misuse, thereby strengthening consumer trust and digital security. In BEREC's view, exchange of best practices and experience in relevant national and international fora, including BEREC, will likely contribute to a smoother operation of the future DFA rules, and the fine-tuning of national legislation, in cases where this future Act allows for such fine-tuning.

In line with its earlier positions, BEREC considers that the DFA should reinforce coordination and enforcement capabilities, clearly establishing the role of NRAs under the ECN/ECS regulation in order to design a clear legal framework and ensure that sectoral provisions are applied consistently, while unfair practices in the broader digital ecosystem are tackled coherently across Member States.

However, as stated above, cooperation at the national and European level, across multiple stakeholders and authorities, is vital in order to align the enforcement of horizontal provision with that of sectoral ones. Such coordination is necessary not only to foster a common

²⁴ Especially, in Section 4.1.1.4 of the document. Of course, the evaluation is regarding 3 horizontal Directives.

²⁵ BoR (24) 180, p. 11-13.

understanding and consistent implementation of consumer rights but also to guarantee coherence across different legal frameworks across Member States.

5. Simplification

As possible measures to achieve the simplification goal, the Call for Evidence mentions the possibility of simplification, for instance, to reduce reporting obligations on providers.

Generally, BEREC supports the EC's goal to simplify the European legislative framework for consumer protection. BEREC has consistently underlined the importance of simplification of regulatory frameworks in its contributions, most recently in the Input for the Digital Networks Act.²⁶ In that document, BEREC stressed that regulatory complexity can fragment the single market, create compliance burdens²⁷, and slow down the implementation of effective rules. In the context of the Call for Evidence, the same principle should be followed: the DFA must avoid duplication with existing sectoral frameworks, such as the EECC, and must not impose unnecessary administrative burdens on digital providers, including ECS providers.

Also, BEREC stresses that 'simplification' should not be confused with 'deregulation'; these are not interchangeable terms. Simplification should facilitate the understanding and the application of the framework, thus fostering compliance and ultimately the effectiveness of regulation. Simplification should indeed be meant primarily as a tool to streamline provisions, as relevant, such as, to remove duplication or redundant provisions and simplify overly complex provisions; not as a tool to deregulate.

Therefore, careful attention should be paid to ensure that, when simplifying, especially if amending Directives on consumer protection²⁸, no valuable consumer protection provisions are inadvertently weakened or deleted. Attention should also be given to the relationship between new and existing digital regulations, and to any risk of increasing complexity and incoherence between them.

Simplification is also crucial from the consumer perspective. Overlapping and excessively detailed provisions may reduce transparency and weaken consumer understanding of their rights. BEREC has highlighted that consumer protection is most effective when rights are clear, predictable, and enforceable. Additionally, rules should provide for a simple and streamlined framework of rights for consumers, for instance, without requiring the consumer to navigate multiple sets of documents with terms and conditions. Hence, a simplified framework, with a clear articulation of general protections under the DFA, alongside sector-specific safeguards, would best ensure ECS end users' interests and trust, accessibility, and fair competition in digital markets.

BEREC once again points out that the DFA should complement rather than complicate existing frameworks. This means leaving sectoral issues to be addressed by sectoral law, while using the DFA to address genuinely cross-sectoral unfair practices in the wider digital ecosystem.

By way of example, while reporting obligations are key to ensure the independent national regulators' capacity to collect the necessary market data, understand relevant dynamics and

²⁶ BoR (25) 101.

²⁷ In this regard, it should be noted that these burdens may be more significant for small and medium-sized companies (including start-ups) in digital and communications services, which play a fundamental role in the innovation of technological solutions in the European market. Therefore, it would affect the competition between companies.

²⁸ UCPD, CRD, UCTD.

take appropriate action where needed, data collection procedures could be automated and harmonised throughout the EU.²⁹

6. Consideration of recent trends

6.1. Dark patterns and unfair practices

BEREC considers that the Call for Evidence on the DFA provides a timely opportunity to address current and emerging risks for consumers arising from market players using dark patterns and unfair practices online. To support consistency across Member States, the DFA could consider the development of a harmonised taxonomy of dark patterns, which would be beneficial for identifying manipulative design practices and would enhance legal certainty for both regulators and providers. It would also facilitate the exchange of best practices and allow competent authorities to apply uniform supervisory and sanctioning approaches across the EU.

Practices described in CfE exploit behavioural and cognitive biases, for instance, the fear of losing something, focusing too much on the first option they see, or staying in a contract out of habit. This can sometimes lead consumers to make decisions that are not in their best interest. BEREC has previously highlighted in its contributions that consumers' awareness and understanding are essential for effective protection in digital markets, and that regulatory frameworks should support users in navigating virtual environments safely, with confidence in contractual relationships and the quality of services received.

BEREC also underlines that information alone is insufficient. No less important is how the relevant information is presented, as it can significantly affect consumers' decision-making. It may particularly affect vulnerable groups and lead to suboptimal choices that may result in financial harm, loss of time and/ or negative health impacts. The DFA is expected to address a wide range of digital harms, including manipulative online choice architecture, addictive design features, particularly those affecting minors, unfair personalisation and profiling practices, harmful influencer marketing, friction in digital contracting through difficult cancellation flows or auto-renewals, and misleading pricing techniques like drip pricing and dynamic pricing. Introducing one-click cancellation rights, easy-to-understand renewals, and greater transparency on the use of chatbots and auto-renewals are some relevant areas of action, along with tackling addictive designs and ensuring transparent pricing. The application of behaviourally informed design promotes better decision-making by users without limiting their freedom of choice. In line with the findings of the DFFC, which notes that online ecosystems often exploit users' cognitive and emotional biases, increasing their vulnerability to unfair practices, regulatory interventions should therefore consider both the content and presentation of information³⁰, alongside robust safeguards against manipulative practices, to strengthen consumer empowerment and trust.

6.2. Measures to combat fraudulent activities online

²⁹ As an example is the One-Stop Shop (OSS) regulatory mechanism, applicable in several European regulations such as GDPR (General Data Protection Regulation) or DSA (Digital Services Act) allowing organisations to deal with a single Lead Supervisory Authority (LSA) for most reporting obligations.

³⁰ In this regard, the EECC introduced the contract summary template, which provided not only for the alignment of content requirements, but also the representation of the most important contractual information in a comprehensive manner.

Additionally, BEREC would like to raise another concern related to recent trends. As underlined in the BEREC Opinion³¹, the availability of a wide range of interpersonal communications services, such as voice communications, SMS, and other messaging services, including RCS (Rich Communication Services), remains the main element of communication. However, with this array of choice comes an opportunity for fraudsters – who can target consumers through different means – and a high risk of consumer harm due to fraudulent activities, making the protection of consumers against fraud more and more complex. As BEREC notes with concern, the risks associated with subscription traps, number misuse, identity theft, and phishing originate not from service providers but from third parties exploiting numbering resources and other digital channels and means, and this negative trend poses a growing threat to consumer trust and a properly functioning market. BEREC highlights that such practices contribute significantly to consumer detriment in the digital environment and remain a huge challenge, requiring protection measures and enforcement.

Recognising this, BEREC convened an external workshop on 21 May 2025, dedicated to "practical issues preventing number misuse and possible fraudulent activities as a result of the impact of new technologies".³² This event brought together the EC, NRAs, market players, Europol and other stakeholders to explore technical and regulatory solutions to discuss emerging threats and enhance trust in digital space. The agreement among all the participants of the event was that only through collaboration and joint efforts could consumers be protected. Also, the interplay between various provisions should be taken into account in a holistic manner.

BEREC reaffirms that effective protection against digital fraud requires clear consumer rights, robust complaint and redress mechanisms, and swift, coordinated enforcement across digital ecosystems. This approach emphasises the importance of cross-authority cooperation to effectively protect consumers in the face of evolving technological threats. The outcomes of ongoing reviews of consumer protection frameworks should address third-party fraudulent practices, with clear enforcement mandates and streamlined, cross-border collaboration, at the same time ensuring consumers are equipped with both preventive tools and practical remedies against fraud across the digital landscape.

6.3. Awareness raising

BEREC also notes that an increasing number of NRAs are actively engaged in awareness-raising campaigns aimed at equipping consumers with the necessary skills and knowledge to navigate the digital environment safely³³. Such initiatives include information for consumers about their rights in the digital space, such as the right to portability, numbers used by emergency services or the costs of premium rate numbers, safety in the digital space, etc. These experiences show how helpful these campaigns can be, and BEREC believes the DFA should encourage stronger coordination of this work across the EU. Such initiatives are particularly relevant in the context of the DFA and findings in the DFFC, examining the exploitation of cognitive and emotional biases and measures to deal with them.

BEREC emphasises that these campaigns are most effective when implemented in a coordinated manner across authorities and best practices shared among Member States,

³¹ BoR (24) 180.

³² Summary Report was adopted in 2025 October, BoR (25) 129, also information available: https://www.berec.europa.eu/en/events/external-workshop-on-practical-issues-preventing-number-misuse-and-possible-fraudulent-activities-as-a-result-of-impact-of-new-technologies?language_content_entity=en

³³ Also, some of the NRAs are Digital Services Coordinators, which help to monitor and enforce obligations in the DSA.

enabling a consistent approach and reinforcement of consumers' confidence in their rights. These efforts align closely with the objectives of the EU Digital Education Action Plan³⁴, which promotes digital literacy, skills, and safe engagement online.

BEREC further stresses that awareness-raising is most effective when combined with behaviourally informed approaches. Presenting information in clear, intuitive ways can guide consumers towards more suitable decisions without restricting their freedom of choice and may help in protecting them from misleading online practices. Coordination of such tools across competent authorities not only enhances the practical impact of campaigns but also supports the sector-specific protections, ensuring that consumers are informed, empowered, and able to exercise their rights effectively in complex digital environments. By integrating awareness initiatives, behavioural insights, and regulatory safeguards, the Single Market, which is the main target of the EU, can deliver a coherent and robust framework for consumer protection.

6.4. Sustainability

BEREC also underlines that, while aiming to ensure a level playing field for online traders, to facilitate enforcement and introduce potential simplification, the ongoing digital transformation intensifies the need for digital services, which is not without raising environmental issues.

Furthermore, BEREC notes that the Call for Evidence highlights the significance of non-financial harms, including environmental costs, as potential consequences of unfair digital practices. While these environmental impacts are currently recognised only indirectly, BEREC emphasises the opportunity to integrate sustainability more explicitly into the DFA. Enhancing consumer awareness and empowerment through greater transparency on the environmental footprint of digital services and products, such as energy usage, software update policies and device lifecycle implications, including software obsolescence, is a first step to allow consumers to make better informed choices. Addressing software obsolescence can also reduce the pressure for premature device renewal, contributing to lower electronic waste. By combining fairness and transparency measures with clear information on environmental impacts, the DFA could simultaneously protect consumers, mitigate environmental harms, and support the EU's green transition objectives, ensuring that digital services are fair, as well as environmentally responsible.

As outlined in the BEREC Report on ICT Sustainability for End-Users³⁵, EU citizens are critically concerned about the green transition.³⁶ Thus, promoting the development of sustainable digital services and devices serves as a lever for empowering end users.

BEREC is of the view that pondering environmental issues is crucial to carefully account for the full complexity of the regulatory measures under consideration.. Encouragingly, some measures can simultaneously promote both consumer interests and sustainability considerations, such as the ecodesign of digital devices and services.³⁷ More specifically, for instance, there is a need to apply ecodesign principles to digital services in order to reduce their environmental footprint, which could also give consumers greater control over their usage, while limiting software obsolescence and its impact on device renewal.

³⁴ The measures, ensuring high-level consumer protection, should also be in line with the EU Digital Education Action Plan (2021-2027) and other future-proof education initiatives.

³⁵ See BEREC Report on ICT Sustainability for End-Users, BoR (24) 82.

³⁶ 88 % of Europeans support the goals of this green transition, while 77% of them feel a personal responsibility to act to limit climate change, according to Eurobarometer "Fairness perceptions of the green transition" (2022).

³⁷ See, for example, page 11 of BoR (24) 82.

Given the statements above, providing consumers with more effective protection in their online experience could also contribute to the EU's green transition goals, which is one of the positive effects expected by the DFA. Thus, the measures envisaged in the DFA should fulfil both objectives: to enhance consumer protection and to contribute to reducing the digital environmental footprint.

Conclusion

BEREC supports the EC's initiative to strengthen digital fairness and address harmful online practices. However, in developing the DFA, BEREC considers that the following actions are critical:

- Follow a holistic approach when designing the new rules, seeking the assessment of the complexity of all the potentially applicable frameworks. BEREC urges the EC to ensure coherence and legal clarity across frameworks, with the interplay between different EU acts and directives requiring particular consideration. Before adopting new rules in the DFA, a structured assessment of potential overlaps with other provisions, including the EECC and/or the upcoming DNA, should be carried out to safeguard the proportionality and flexibility of the sectoral framework, and explicitly recognise the importance of sectoral provisions in addressing specific sectoral issues. The new rules to be included in the DFA may be insufficient to address particular sectoral concerns and, therefore, they should not replace sectoral solutions, but rather complement them.
- Maintain sector-specific protections in electronic communications, considering its framework as an essential part of the digital sector, as horizontal consumer protection rules alone are not sufficient to address the particularities of electronic communications.
- Ensure a certain level of flexibility in sectoral legislation, allowing for the resolution of issues as they arise in an efficient and timely manner.
- Ensure complementarity and avoid duplication or conflict between the DFA and sectoral frameworks. End-users of ECS should benefit from clear, predictable, and enforceable rights that go beyond horizontal consumer protection, thereby fostering trust, competition, and innovation in the electronic communications sector.
- Address new digital risks such as manipulative design, unfair contract practices, and fraudulent activities in the digital environment.
- Raise awareness on the impact of behavioural biases on consumers' decision-making process, taking into account the new digital ecosystem and on newly established relevant restrictions and rights.
- Assess environmental considerations in the review of the provision of consumer protection to ensure that consumers can make informed and sustainable choices; highlighting in this regard the many benefits of the eco-design of digital services.
- Guarantee effective enforcement mechanisms and proper cooperation among interested parties.
- Simplify the European legislative framework for consumer protection. BEREC stresses that 'simplification' should not be confused with 'deregulation' – these are not interchangeable terms.

Finally, BEREC suggests that future regulatory efforts should ensure the expertise of competent authorities to monitor, detect, and address unfair practices effectively, which is permitted in particular by the powers to collect data. By combining awareness-raising, behavioural insights, and effective enforcement, the EU can achieve a coherent framework that protects consumers while preserving innovation and diversity in digital services.

BEREC stands ready to engage further with the EC to ensure that the DFA and other interplaying legislations contribute to a coherent and effective consumer protection framework, ones that empower consumers while safeguarding the high level of protection already established in the electronic communications sector.

BEREC will continue to collaborate with the EU institutions and other European bodies and networks for the implementation of the DMA, as well as for any other regulatory instrument addressing the internet ecosystem elements.

BEREC attaches fundamental importance to the single market goal, which guides its entire regulatory harmonisation efforts, and remains committed to constructively supporting the future development of the sector's governance framework, building on its institutional strengths and firmly upholding its core principles.