



**MINISTRY OF INDUSTRY, BUSINESS  
AND FINANCIAL AFFAIRS**

7th of June 2022

### **Denmark's response to the Call for Evidence on Digital Fairness – fitness check on EU Consumer Law**

The Danish Government welcomes the Commission's decision to launch a fitness check of the EU Consumer Law and appreciates the opportunity to comment on the Commission's Call for Evidence on Digital Fairness – fitness check on EU Consumer Law. It is important that the EU consumer law continues to be up to date and able to handle new challenges arising especially from the growing digitalization of our society.

Although the consumer legislation has recently been updated with New Deal for Consumers, the Danish government still finds it is necessary to further study and identify challenges for consumers in the digital sphere. More specific, there is a need to look into existing legislation in order to ensure that the regulatory setup in place is providing the right level of protection for consumers, when they shop online or sign up for subscriptions, etc.

Further, the Danish government finds it of utmost importance to look into what children and minors are exposed to online, such as new methods of commercial practices. Although, the recently adopted regulation on digital services (DSA) and the new BIK+ strategy focus on creating more age-appropriate digital services, the Danish government has further identified challenges with children being able to access digital services with harmful content, such as pornographic content. Several member states have already adopted national rules demanding age verification for users to enter pornographic sites. Such a requirement should be harmonized at a European level. Hence, the Danish government calls on the Commission to further look into how to ensure other legal acts are fit for the digital age and protects children online.

#### *Ban on digital design practices (dark patterns) targeted at minors*

As stated in the newly published strategy from the Commission "*Better Internet for Kids (BIK+)*" children are exposed to inappropriate content and commercial practices.

The Danish government believes that the internet should be a safe space for children and minors and easy for them to navigate within. In the digital

world, children are particularly vulnerable and are easily exposed to manipulation from digital service providers because of their age and thus lack of experience. The impact on children as regards to methods used for commercial purposes such as persuasive designs in social media and in games, e.g. loot boxes, need to be studied more and handled upon.

The Danish government is of the opinion that the digital service providers should take on a greater responsibility to make sure that the design of the platforms, functions and the products provided on the platforms are not to the detriment of the well-being of the child. Particularly mechanisms, which serve to retain the user should clearly be prohibited. This is important when the user is a child as they are more perceptible to manipulative practices - particularly on social media and in gaming, where children and minors are the most present.

In the Commission guidelines to the UCPD from 2022, it is highlighted that the Directive covers practices resulting from transaction-decisions in retention, such as scrolling through a feed. For the sake of clarity the Danish government finds that the directive should explicitly address design features such as Snapstreaks, auto play, infinity scroll and even consider whether a ban should be put in place for these types of features.

On the issue of loot boxes the Danish government would like to express concern of the addictive nature of this particular feature. To our knowledge many Member States do not define loot boxes as gambling even though loot boxes have some of the same characteristics. Thus, we call on the Commission to study the nature of loot boxes and the impact on children in depth and to consider introducing an explicit ban in the Directive for certain age groups.

*Online terms and conditions (T&C) should be presented in a more salient and visible way for consumers*

Online terms and conditions (T&C) provide the consumer with information on a range of important issues, e.g. privacy-, shipping- and return policies. Despite their importance, consumers seem to ignore T&C's, mainly because they can be difficult to comprehend and compare across traders. An EU study from 2016 found that less than 10 pct. Of European Consumers read the T&C's before making an online purchase.<sup>1</sup>

Webshops T&C's are often long, complex and difficult to compare. For instance, some websites only show the price of shipping when the consumer has begun the purchase by entering personal data. As a consequence,

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<sup>1</sup> European Commission (2016): "Study on Consumers' Attitudes towards Terms and Conditions"

consumers will be less inclined to choose a webshop, i.e. according to the price including shipping than if the information was clearly highlighted on the product place.

A study from the Danish Competition and Consumer Authority<sup>2</sup> demonstrates, that T&C's which are easy to understand and are presented up-front to the consumer at the time of purchase, are far easier for the consumer to use. In other words, T&Cs can be made more salient and the visibility and comparability of T&Cs can have a significant impact on consumer choice and improve consumers' ability to understand and navigate online commercial domains.

The Danish government call on the Commission to look further into to the legal framework for T&Cs. To ensure effective consumer information in an online shopping environment, the Danish government suggest the Commission to look into how to make the T&C's more salient and visible up-front in the time of purchase, i.e. by requiring a standardized format to allow consumers to easily assess T&Cs when the consumers first encounters the product.

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<sup>2</sup> Danish Competition and Consumer Authority (2018) "Improving the Effectiveness of Terms and Conditions in Online Trade [20180621-improving-the-effectiveness-of-terms-and-conditions\\_ny4.pdf](https://www.kfst.dk/~/media/20180621-improving-the-effectiveness-of-terms-and-conditions_ny4.pdf) (kfst.dk)