

ISFE Reply to the Public Consultation for the Fitness Check of EU consumer law on digital fairness.

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Summary of ISFE recommendations

General recommendations

- The existing consumer protection acquis continues to be fit to address new consumer concerns in the digital environment as it provides breadth and flexibility to address more recent digital consumer concerns.
- The 2021 Guidance to the Consumer Rights Directives should be used and tested by national authorities to address consumer concerns in the digital sphere before considering new legislation.
- Because of the substantial impact of new and forthcoming legislation on the functioning of the consumer and data protection frameworks, a subsequent consultation should be undertaken when new legislation has come into force to provide authorities, consumers and businesses with a holistic framework for the interplay and functioning between different laws.
- Where needed, the Commission should develop specific guidelines and recommendations which allow businesses to determine ex ante whether the practices that they are considering may be unfair and how they can avoid infringements of the law.

Specific recommendations

- The Commission 2021 Guidance should be revised to mirror the recent guidelines adopted by the UK Advertising Standards Authority, on advertising of in-game purchases¹, which provide clarity to consumers and businesses as regards the use of in-game currencies to encourage a harmonised approach across the European region.
- National authorities should use the Commission 2021 Notice to ensure that transparency regarding the probability of obtaining specific items from paid content with randomised elements apply to all market players.
- Parental choice allows for active participation in children's digital activities, instead of passively relying on default settings. All parental and family tools must allow for flexibility in their usage. There is a danger that default settings to manage spending and screen time could be counter-productive, leading to the disengagement of parents from their children's online activities. ISFE recommends Member States to prioritise education and awareness raising of existing tools towards parents and other relevant stakeholders such as schools.

¹ [Guidance on advertising in-game purchases - ASA | CAP](#)

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Introduction

1. ISFE welcomes the opportunity to respond to the Public Consultation for the Fitness Check of EU consumer law on digital fairness. Effective consumer protection is essential to enable online trust and the consultation is an opportunity to determine whether key horizontal consumer law instruments remain adequate for ensuring such a level of protection in the digital environment, taking into account the interplay with other instruments.
2. The video game sector is strongly committed to providing consumers and players with a high level of protection. The industry abides by strict European laws on data and consumer protection, supplemented with its own self-regulatory system in the form of a Europe-wide age-appropriate labelling scheme of video game content, and by an enforceable Code of Conduct applicable to the video game companies that receive and display the age labels. This self-and co-regulatory solution is implemented by the Pan European Game Information System (PEGI) which prioritises safety and well-being of players and vulnerable consumers and provides guidance to parents and consumers on

suitable video games. Further, the industry leads in the provision of easy-to-use tools to manage playtime, spending, online privacy, access to age-appropriate games, and more. By equipping parents with the right tools the industry supports players and parents in making the right choices for themselves and their children.

3. As an industry, we take our responsibility seriously, and want players and parents to enjoy video games in a fun and responsible way. This commitment is structured around the following pillars: (i) age-appropriate pre-contractual information, (ii) safety by design in online environments, (ii) tools to enable players, parents, and caregivers to set the permissions that are appropriate for them or their children, and (iii) enabling consumer redress and efficient and proportionate enforcement.
4. This position paper outlines ISFE's views on the current European consumer protection acquis and its interplay with other legal instruments. It addresses specific points raised in the consultation that are of particular relevance for our sector. Finally, it makes recommendations on how to ensure fairness in B2C commercial practices.

Minor protection commitment

Providing age-appropriate pre-contractual information

5. In addition to the requirements stipulated by law relating to pre-contractual information to consumers, in 2003, the video game industry established the PEGI system which operates through a set of scientifically backed ethical standards in the form of a Code of Conduct². The PEGI system is part of the industry's commitment to protect minors and behave responsibly, especially where children are concerned.
6. The PEGI system ensures a high level of transparency for consumers as regards video games through its labelling system, allowing the consumer and the player to make an informed choice about the video game he/she would like to play or to buy, by displaying the appropriate age for playing the game and the type of content featured in the game, e.g. violent content, bad language, etc.. The rating criteria provide for a framework against which the age-appropriateness of certain types of content or gameplay activities is assessed. While developing video games, companies will aim for a certain age band and adapt the content, narrative and gameplay experience to meet this age band. The video game is then assessed through the PEGI age rating process, a process which is run jointly by the Video Standards Council in the UK and by NICAM in the Netherlands (the PEGI Administrators), after which the age-appropriate label is attributed to the game (i.e., PEGI 3, PEGI 7, PEGI 12, PEGI 16, or PEGI 18). This labelling system aims to provide parents and consumers with objective, intelligible and reliable information regarding

² <https://pegi.info/pegi-code-of-conduct>

the suitability of a game's content, prior to purchase, or prior to engaging with a game. The level of awareness of the PEGI age labels is high, 75%³.

7. In order for video games companies to submit their games to PEGI for classification, PEGI requires that such video game companies agree to be contractually bound by PEGI's Code of Conduct. The Code stipulates rules for labelling and advertising, and since 2007 includes rules for privacy policies, illegal and harmful content, safety warnings and community standards. The Code includes complaints and consumer redress mechanisms and gives PEGI the power to issue sanctions in case of breaches of the Code.

Safety by design in online gameplay environments

8. In 2007, the industry adopted a safety by design approach to online gameplay environments by extending the PEGI commitments to better protect players online. Since then, PEGI Code signatories must ensure that community standards are implemented to ensure the protection of minors from unsuitable content and behaviour associated with these online environments. This includes requiring appropriate reporting mechanisms to be in place to allow players to notify such content or conduct and to ensure that offensive, racist, degrading, corrupting, threatening or obscene content is always taken down, including in chatrooms. By signing the Code, the publisher also undertakes to maintain a responsible advertising policy, to provide opportunities for consumer redress, and to maintain an effective and coherent privacy policy.
9. In addition, the video games industry is actively working on maintaining a positive community in the game environment, for example by hiring community managers, whose role is to build self-sustaining, healthy, non-toxic communities that moderate themselves. Often, they have specific Codes of Conduct or Terms of Use in place to fight against toxicity on their services, whereby mechanisms are implemented to detect and sanction toxic players (including permanent banning) or educational programs are set up in order to ensure a fair and friendly gaming environment for their players.

Tools ensuring involvement of parents and caregivers

10. Parental consent is a key concept to ensure that the best interests of the child are considered in a digital environment and that appropriate safeguards are in place. The video games sector is at the vanguard of the development of sophisticated and robust parental control tools⁴ on a variety of devices and software applications. These tools allow parents to agree with their children, on the basis of their age and maturity, what type of video game content can be accessed, whether in-game spending will be allowed

³ Ipsos survey GameTrack Q4 2021

⁴ Information about the functioning of these tools can be found here: <https://pegi.info/parental-controls>

or limited, or if any data may be shared with others online. Parents are invited to set up accounts for their children providing parents with a significant degree of control over their children's online activities, including consenting to the processing of their children's data and managing with whom and how the child communicates and whether user-generated content may be shared.

11. Other market players are now adopting similar tools. For instance, Google launched Family Link in 2017 and recently introduced a significant update to Family Link to bring the tool's most-used controls to the forefront, while making it easier to set screen time limits, content restrictions, and to manage app data permissions.⁵
12. ISFE believes that these tools are best utilised by parents and children working together to understand games and game play, rules and boundaries. The video game industry has launched public awareness campaigns in 14 countries in local languages to inform parents about the tools they have access to in order to set fair rules, but importantly to also inform parents on how to start a dialogue and how to take an interest in their children's online activities⁶. We recommend that parents play video games with their children and attend events together. The video games sector partners with relevant institutions such as family organisations, media literacy organisations, and public authorities, to ensure that the right audience is reached, and that the information is relevant.

Enabling consumer redress and efficient enforcement

13. The PEGI system is committed to ensuring that players always have access to appropriate reporting mechanisms that allow them to submit complaints which can be heard by an independent complaints board. PEGI is overseen by a number of independent bodies. The PEGI Management Board is responsible for the day-to-day management of PEGI. The PEGI Council includes officially designated representatives of the European Member States and Institutions who are tasked with monitoring the operation and evolution of the PEGI System and proposing any changes necessary to take into account relevant social, legal, and political developments. The PEGI Experts Group is comprised of specialists and academics in the fields of media, child psychology, classification and technology who consider technological and content-related developments. And finally, there is a PEGI Complaints Board and an Enforcement Committee which is composed of independent experts who can hear consumer complaints and impose corrective sanctions or fines that can go up to €500,000.
14. The Complaints Board deals with complaints that are submitted by consumers or by publishers, while the Enforcement Committee oversees compliance with the provisions of the PEGI Code of Conduct. The PEGI Administrators receive a sizeable number of questions each month about the PEGI ratings. Should a complaint be received from a

⁵ <https://blog.google/technology/families/familylink-newlook/>

⁶ [Responsible gameplay in your country - ISFE](#)

consumer or publisher and no satisfactory settlement can be reached by the PEGI administrator through discussion, explanation or negotiation, the complainant may formally request the Complaints Board to mediate. Publishers using the PEGI system are bound by the decision of the Complaints Board. Consequently, they are obliged to carry out any corrective actions required and, in cases of non-compliance, are subject to sanctions as laid down by the code.

The European Consumer Protection Acquis is still fit for purpose.

15. The 2017 Consumer and Marketing Law REFIT was a comprehensive evaluation of six consumer rights directives. It concluded that *“the substantive rules of the evaluated directives are capable of addressing the existing consumer problems, including new infringements in the online environment even if they were adopted before the age of e-commerce kicked in”*, and that *“all Directives are still fit for purpose, even in the context of the digitalisation and expansion of online retail trade”*.⁷ The New Deal for Consumers, introduced during the previous Commission mandate, was developed in line with this careful assessment.
16. ISFE believes that this assessment still holds true. The existing European Consumer Acquis contains principle-based horizontal standards that allow for interpretations that can address all the issues under review in this consultation. These flexible rules can be applied to all sectors in off- and online situations and have, together with new strong enforcement competences introduced by the Omnibus Directive, been very effective in reaching their overall objective of ensuring a high level of consumer protection. In addition, unfair practices that are driven by data analysis can also be tackled by the data protection and privacy legal framework and related Guidelines by the national authorities.
17. In particular, the Unfair Commercial Practices Directive (UCPD) is sufficiently broad and flexible to cover and to sanction any practice which is deemed misleading, unfair, aggressive or has an undue influence on consumers’ transactional decisions. Several manipulative practices are already directly prohibited through the blacklist Annex I of the UCPD, such as bait and switch, nagging, false testimonials, disguised ads, and misleading urgency. Furthermore, articles 5 to 9 of the UCPD allow for an adequate assessment of fairness on a case-by-case basis as any commercial practices are already regarded as misleading where false or deceptive information leads consumers to take a transactional decision they would not have taken otherwise.
18. In the video game sector, the existing framework has demonstrated its ability to address consumer concerns in new digital environments. An example is the coordinated action

⁷ [SWD\(2017\) 170 final](#). Commission Staff Working Document, Executive Summary of the evaluation, p2-3.

conducted by the CPC in the field of in-app purchases in games in 2013/2014. An additional example is the action taken in 2020 by the Italian Competition Authority, AGCM, following consumer complaints, which led to commitments from a video game publisher as regards clarity and transparency for consumers and parents about the information relating to in-game purchases, including loot boxes⁸.

19. The New Deal for Consumers has still not been transposed in all Member States today, while new and forthcoming legislation such as the Digital Services Act, the Digital Markets Act, the AI Act, the Data Governance Act and the Data Act will have a substantial impact on the functioning of the consumer and data protection frameworks in the digital environment. This will undermine the outcome of the Fitness Check of EU consumer law on digital fairness as it may be too early to assess how the new rules will complement the existing consumer protection law and recent 2021 Guidance.

Interplay with other legal instruments

20. Some of the practices that are under review in this consultation fall at the intersection of consumer protection, data protection, and other relevant instruments in the EU legal framework. The Fitness check and forthcoming guidelines must therefore pay close attention to and take into account the interplay with other legal frameworks and any overlapping requirements with consumer protection rules. They must provide clear and unambiguous definitions for key concepts that are used across different legislative environments and consistent interpretation of the rules to ensure legal certainty.
21. As legal frameworks become more and more interlinked, cooperation and coordination between enforcement authorities should become a standard practice which ensures a uniform application of the legal framework based on a coherent interpretation of the rules. A uniform application of the law is also key to address differences of implementation of the rules between Member States which have led to regulatory fragmentation, to the detriment of digital businesses that operate cross-border and often on a global basis. Continued and regular consultation with industry on how the legal frameworks have been implemented would be able to tackle many consumer concerns that are subject to this consultation.

Specific comments on the consultation

22. ISFE welcomes Commissioner Reynders' recognition expressed recently in the European Parliament of the importance of implementing existing rules, and the Commission's

⁸ AGCM, Electronic Arts, bulletin no. 41-20 5 resolution of 30 September 2020.

intention to conduct a thorough consultation with stakeholders to assess if changes to the current legislative framework are necessary also in view of recently adopted legislation at EU level⁹.

23. However, ISFE would like to urge caution when responses to the public consultation are evaluated as it can be argued that the drafting of the consultation questions seems to prompt responses in favour of new consumer protection rules rather than a means to genuinely assess possible regulatory gaps in consumer protection rules.
24. ISFE addresses below specific questions of relevance to the video game sector, namely a cancellation button; email confirmation when terminating a contract; more price transparency when buying virtual items with intermediate virtual currency; more transparency regarding the probability of obtaining specific items from paid content with randomised elements; set limits to the amount of time and money consumers want to spend when using digital services, and the notion of average and vulnerable consumers.

Cancellation button

25. The video game sector has always had a pro-consumer attitude as evidenced by its early adoption of voluntary self-and co-regulatory measures such as PEGI and parental control tools. Similarly, ISFE members that offer subscriptions have accessible and simple methods for cancelling such subscriptions. The consultation questionnaire does not provide any substantive information on which circumstances such a cancellation button would be beneficial, nor does it provide an evidence base highlighting specific problems or difficulties that consumers have encountered when cancelling contracts, and if so which types of contracts. From a general perspective, a proper process and impact assessment of such a proposal would be required as it may be financially and technically burdensome, create implementation issues and confusion, or simply bring no benefits to consumers. Many important aspects would need to be considered. For example, to which types of contracts such a button would apply, whether the perceived efficacy of providing consumers with a cancellation button that does not require consumers to log in to their account outweighs the significant security risks associated with enabling such functionality, and what learnings can be derived from the experiences of consumers and business operators in Germany who have either engaged with, or been required to implement, such a cancellation button as a result of the introduction by that Member State of a legal requirement to provide such functionality for subscription contracts. Our sector has seen almost no use of our new cancellation processes by consumers in Germany. For services like ours that can only be accessed by logging in, the existing process is far more convenient, easily understood and brings the

⁹ European Parliament Plenary Session 16 January 2023.

consumer much more benefits¹⁰. The Commission should first review the implementation and impact of the measure in Germany, and its scope, before considering any harmonised rule.

26. Further, the DCD, which applies to the sorts of digital content and services which are of key importance for this consultation, already includes detailed provisions on contract termination, providing consumers with additional rights that build on the EU's well-established consumer protection legislation. As the DCD is still in an early transposition phase, it feels premature to query whether these rights are sufficient.
27. It is therefore of concern to learn that amendments within the context of the current negotiations on financial services contracts concluded at a distance, would seek to expand the scope of the introduction of a withdrawal button beyond solely financial services contracts to all distance contracts concluded by means of an online interface. Considering that the proposal initially targeted distance contracts of financial services, relevant stakeholders have likely not yet been consulted on the implications of the extended scope, and it seems highly unlikely that a proper impact assessment of that proposed amendment has been carried out. ISFE recommends that this addition be withdrawn.

Email confirmation when terminating a contract

28. The video game sector has always had a pro-consumer attitude and ISFE members that offer subscriptions have accessible and simple methods for cancelling such subscriptions. Many providers of subscription services in the video games industry already provide players with an email or other notification confirming the cancellation of their subscription promptly following their receipt of such a cancellation instruction from the player.

Average consumer and vulnerable consumers

29. ISFE believes that the current definition in the relevant Directives allow for the needed flexibility and do not concur with the proposal to redefine these concepts. These are important principles that underpin much of the current consumer law acquis, and adding complexity to them risks creating broader confusion for businesses and legal uncertainty. In particular, any proposed shift towards defining the average consumer with regards to the specific recipient of a service in the case of personalised commercial

¹⁰ Logins allow to authenticate the user making sure that the person who sends the cancellation request is the owner of the account. They minimise the collection of personal data and allow to process a request instantly. Customer support may be provided more easily to a logged in consumer, for instance, to provide instructions on how to cancel a subscription.

practices feels like an incredibly onerous change that would make it very difficult to offer and then scale such personalised offerings in the Single Market, as such a change would make it impossible to ascertain, with any degree of certainty, whether a service has met its transparency and fairness obligations if the standard being used to measure compliance is subjective.

Subscriptions

30. The CRD today already stipulates that pre-contractual information must include information about the duration of the contract. The current framework allows for flexibility which is important as not all subscriptions have the same duration. Subscriptions with recurring monthly payments, for instance, already send a payment confirmation email each month.

Personalisation vs non personalisation

31. Non-personalised commercial offers are much less efficient in reaching the desired audience. Personalisation of offerings is already regulated in the existing data protection framework and the Digital Services Act, providing adequate consumer protection. To further regulate this area at this stage seems premature and could limit consumer choice.

More price transparency when buying virtual items with intermediate virtual currency

32. In-game currencies are not a new phenomenon and have been used for more than a decade in some games and are a well-established practice that is well-understood by consumers.
33. For many years, various safeguards have been in place for in-game purchases of digital content such as in-game currencies. These safeguards are in place to ensure that no unwanted transactions can be made, especially by minors.:
- a. Advance disclosure if a game includes the possibility to make in-game purchases;
 - b. (Any transaction, i.e., to buy digital content such as in-game currencies, requires multiple steps depending on the service, which can include the setting up of an account (a parent account and child account if a child is playing), a credit card number if a parent decides to allow spending, a pin code, a consent requirement, and is now often subject to 2 factor authentication.
 - c. A receipt of the transaction is always communicated to the holder of the account or to the credit card holder;
 - d. Parental control tools, available on all major video games platforms, allow players and parents to disable the possibility of spending any money, or to set

limits on the amount that may be spent, on, or in, the games that are available on those platforms. Data by Ipsos shows that 97% of parents supervise their children's spending in games, and that the vast majority of children (75%) are not allowed to spend money when playing games¹¹;

- e. Should any unintentional spending occur, lenient refund policies are already in place;
- f. If a video game company decides to no longer offer in-game currencies as part of their digital content offering, players are informed well in advance to ensure that they can use this content in the game before it expires.

34. Beyond these important safeguards, there is well-established best practice relating to the use of in-game currencies, based on prior regulatory advice. The most important principle is to maintain a separation between a commercial transaction in which real money is exchanged for in-game content, and the use of that content to interact with the game itself. Most commonly, such commercial transactions are kept in a separate and clearly labelled part outside of the game (typically a "shop"). This is the approach recommended in the UK by the OFT's Principles for Online and App-Based Games from 2014, which the industry has worked to adopt¹², and which was subsequently referenced by the European Commission as good practice.

35. The Dutch ACM has suggested that video game publishers that allow players to purchase virtual currency with real-world money should also include the real-world monetary value alongside any in-game purchases made with virtual currency. Rather than providing users with meaningful transparency around the cost of in-game purchases, this approach risks creating significant consumer confusion. In many cases, in-game virtual currency can also be earned through gameplay, not only through exchange for real-world money (e.g., earning it as a reward for completing certain in-game tasks). Players can simultaneously hold earned in-game virtual currency as well as paid-for in-game virtual currency. Requiring the display of "real-world monetary equivalence" or an "exchange rate mechanism" could lead players to believe that in-game virtual currency or digital items acquired through virtual currency have a real-world monetary value. Many Member States have already held that such virtual currencies and digital items are not money, money's worth, or things of value, for the purposes of their national gambling legislation. It would also require the sharing of publisher price information which gives rise to competition law concerns. Finally, the effort required to implement and maintain this across all games would be entirely disproportionate to any perceived benefits (which as noted above members consider would not in fact materialise, and to the contrary the ACM's suggestions risk making such transactions misleading and confusing). To suggest otherwise in Europe's

¹¹ <https://www.isfe.eu/wp-content/uploads/2021/12/GameTrack-In-Game-Spending-2020.pdf.pdf>

consumer protection framework would therefore be an incongruous position for the European Commission to adopt.

36. In sum, in-game currencies are digital content that are no different in terms of their real-world economic value to any other digital content available in-game. They are non-convertible, are used in closed loop systems, and have no real-world monetary value. Any transfer or exchange outside of the game itself is strictly prohibited (and those found to be engaging in any such practices are routinely banned from the relevant game by its publisher). In-game currencies are subject to the same rules that apply to digital content in the Digital Content Directive. They cannot be considered equal to, or be compared to e.g., vouchers in supermarkets which allow consumers to buy products that have value in the real world. We are happy to provide additional information, and to speak directly with interested stakeholders in the Commission or Parliament on this point, as we believe very strongly that a move towards any form of “monetary equivalence” or “exchange rate” requirement would be both unworkable in practice and a huge regulatory misstep for the European Union.

37. Instead, clarity must be achieved for the consumer where the actual financial transaction takes place (i.e., when the consumer buys a digital item in-game using real-world money, but not when in-game virtual currencies are subsequently used to acquire digital items), by displaying the purchase price of the digital item in real currency, and clarity as regards the purchase of any in-game bundles for real-world money. Further, it should always be clear to players how much in-game virtual currency the player holds and there should be a clear signpost in-game to where additional in-game virtual currency can be acquired. ISFE recommends that any Commission guidance on this point should mirror the recent guidelines adopted in the UK by the Committee on Advertising Practice, on advertising of in-game purchases, which outlines what applies in the various situations¹³. The guidelines were adopted after a public consultation with consumer protection advocates, academia, and industry. It would be desirable that the European Union does not end up applying different approaches.

More transparency regarding the probability of obtaining specific items from paid content with randomised elements

38. ISFE welcomes the recent Commission Guidance to the unfair commercial practices directive on this point. This guidance will ensure that the standard developed by the industry in 2020 will now apply to all market players. In August 2019, the industry announced a voluntary commitment to provide improved transparency for consumers regarding purchasable random content, such as “loot boxes”. That commitment consisted of two complementary parts: one by major console-makers – Microsoft Xbox,

¹³ [Guidance on advertising in-game purchases - ASA | CAP](#)

Nintendo, and Sony PlayStation – and a corresponding commitment by video game publishers. The commitment requires the disclosure of the relative rarity, or probability of obtaining randomised virtual items in paid loot boxes. The disclosure commitment applies to all new games and any updates made to existing games that subsequently add this type of in-game purchase. It should be made in a manner that is understandable and easily accessed. Since 1 October 2020, major console-makers – Microsoft Xbox, Nintendo, and Sony PlayStation – require publishers to disclose probabilities of paid random items (loot boxes, card packs) in new games and game updates. Some publishers began providing probability disclosures before 2019, and others are following suit after the voluntary commitment.

39. ISFE welcomes that the Commission Notice on Guidance to the Unfair Commercial Practices Directive is making the disclosure requirement a rule applicable to all, as well as the requirement to inform consumers and players ahead of purchasing a game when a game includes paid random elements. The guidance also states that traders should make use of parental controls at platform level to disable spending, which are important instruments to mitigate any unwanted spending, as well as managing playtime and online interactions. Further ISFE supports education campaigns directed towards parents, teachers and caregivers to inform them of the tools in place. This is an important way for governments to further digital literacy.

Parental control tools

40. Similar to limitations on spending, parental control tools allow players and parents to set time limits for video game play that are appropriate for them or their children. ISFE has been measuring play time across all age groups since 2012 through GameTrack, a regular survey conducted by Ipsos in partnership with ISFE. GameTrack has found that the average weekly playtime is 9 hours, and that has remained stable since 2017, with a peak of 10.2 hours weekly during the strict lockdown period in 2020. Compared to video game play, social media use is higher and reaches a 14 hour weekly average use and TV watching reaches an average weekly viewing of 25 hours.
41. ISFE does not think that time limits should be subject to default settings but believes that the parental control tools that enable such limits to be set must be easy to use for those who wish to set such limits. ISFE strongly believes that imposing default settings is likely to reduce the engagement of parents regarding their children's digital activities. Furthermore, default settings are ineffective because they are easily changeable by the user and cannot be protected by a PIN or similar if parents are not involved in setting up of the parental control system. Informing consumers about the availability of such tools and ensuring they feel empowered with information and tools to manage their or their child's engagement is part of the education and information efforts that ISFE and

member companies engage in across Europe¹⁴. ISFE and our members engage in significant awareness raising activities and partner with the Safer Internet Centres to make sure that they have the right tools to reach out to their audience when they need to inform about video game play¹⁵. ISFE believes that the need for digital literacy campaigns should not be underestimated and must occur at all levels of the population and society.

Conclusion

Effective enforcement and coherent guidance are the most efficient ways to ensure fairness in B2C commercial practices

42. As stated above ISFE believes that the existing Acquis is still fit to address the issues related to digital fairness. The Commission's "Behavioural study on Unfair Commercial Practices in the Digital Environment" adopted as one of its conclusions that the *"effectiveness of the existing EU legal framework may be undermined by insufficient public and private enforcement"* and that *"this should be remedied by improving the resources and powers of enforcement authorities and by the use of collective redress..."*. ISFE supports this recommendation as a priority before any consideration of changes to the underlying law. Enforcement authorities need to be properly resourced as their important task – in addition to protecting consumers - also includes the provision of guidance to businesses to clarify the legal framework and to accommodate its swift implementation.¹⁶
43. The Commission's Guidance Notice on the interpretation and application of the UCPD is therefore an important tool for national authorities to use in their assessment of complaints. ISFE would like to comment on the published guidance, including areas in which the new guidance presents practical difficulties.
44. The Guidance included a specific chapter on "data-driven practices and dark patterns" detailing how principle-based provisions and prohibitions in the UCPD can be used to address unfair data-driven business-to-consumer commercial practices in addition to other instruments in the EU legal framework, such as the ePrivacy Directive, the GDPR or sector-specific legislation applicable to online platforms.
45. To the extent that this consultation reveals poor compliance with existing consumer law, ISFE strongly supports the issuing of further guidance at the European level as a

¹⁴ [Responsible Gameplay - ISFE](#)

¹⁵ [#SeizeTheControls | Home](#)

¹⁶ The UK Government is currently [assessing](#) the adequacy of consumer law enforcement and considering ways in which enforcement could be improved.

first step, before considering amendments to the underlying principled law. Guidance has been shown to promote a common understanding of the EU legislative framework and to provide a harmonised interpretation of key provisions in the Acquis. We therefore recommend addressing unfairness in B2C practices by developing specific guidelines and recommendations which allow businesses to determine ex ante whether the practices that they are considering may be unfair and how they can avoid infringements of the law. The guidelines should give concrete examples, including best case and worst-case examples for different scenarios, and contain best practices recommendations to facilitate an effective implementation of the consumer protection acquis.

About ISFE

1. The Interactive Software Federation of Europe (ISFE) represents the video games industry in Europe and is based in Brussels, Belgium. Our membership comprises national trade associations across Europe which represent in turn thousands of developers and publishers at national level. ISFE also has as direct members the leading European and international video game companies, many of which have studios with a strong European footprint, that produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and tablets.

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2. The purpose of ISFE is to serve Europe's video games ecosystem by ensuring that the value of games is widely understood and to promote growth, skills, and innovation policies that are vital to strengthen the sector's contribution to Europe's digital future. The games industry represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. The European digital single market area is the third-largest market for video games globally. All in all, there are around 5,000 game developer studios and publishers in Europe, employing over 98,000 people. In 2021, Europe's video games industry was worth €23,3bn.¹⁷

ISFE Secretariat, February 2023

¹⁷ [ISFE Key Facts from 2021](#) from GameTrack Data by Ipsos MORI and commissioned by ISFE.