

Booking.com contribution to the public consultation on the future Digital Fairness Act (DFA)

Booking.com welcomes the opportunity to contribute to the European Commission's consultation on the future Digital Fairness Act.

As a global travel platform, founded and headquartered in the Netherlands, we share the European Commission's objectives to ensure a trusted and safe online experience. Offering an online travel platform that consumers can trust has been key to Booking.com's growth. Our goal is to offer consumers a seamless experience tailored to their needs, built in compliance with the diverse legal frameworks that govern digital services.

In fact, **there are many pieces of legislation governing the design and presentation of our platform to consumers.** These result in very burdensome compliance efforts from a business perspective with mixed results as to whether they ultimately enable informed-consumer choice. Indeed, changes triggered by enforcement actions often require the presentation of detailed and lengthy (often legal) language that overloads consumers with information which is at risk of producing the opposite effect of effectively informing them.

We are concerned that **further legislative action risks adding inconsistency and another layer of obligations.** In fact, many topics raised in the public consultation are regulated in laws that have been adopted or started applying in the past five years (for example, DSA, DMA, AI Act or the Modernisation Directive). It is critical to allow time for these new rules to take root and show their effect before proceeding to the adoption of new legislation. This would also be in line with the objectives of the current mandate of the European Commission, namely, seeking to boost competitiveness in line with the recommendations of the Draghi report

We would also **caution against a "one-size-fits-all" approach** to different business models/services which risks leading to unintended consequences and further increasing compliance burdens with not much incremental consumer benefit. Instead, in our view, it would be more beneficial to redirect efforts to strengthen the application of the existing rules in a modernised context by enabling a more coordinated and harmonised enforcement of consumer and other relevant rules across the EU.

This is where the **real challenge lies in our view: currently, we see varying and uncoordinated enforcement** actions between authorities looking at the same topic from different perspectives (e.g. personalisation looked at by consumer authorities, data protection authorities and DSA coordinators) in one Member State, but also between those authorities across the EU. This multifaceted approach reduces legal predictability for businesses and underlines the need for more cooperation between different relevant authorities within Member States and authorities across the EU. In this context, Booking.com supports the

revision of the CPC Regulation as a means to ensure consistent interpretations and better coordinated enforcement.

Looking into the specific areas of potential action as outlined in the questionnaire:

1. Dark patterns

Dark patterns are already regulated (and banned) by different pieces of legislation, covering the topic from various perspectives. We note that there are at least 5 pieces of regulation relevant to Booking.com addressing dark patterns:

- UCPD: Art. 6 and 7 on misleading practices and Art. 8 and 9 on aggressive practices effectively combat “dark patterns”, including those based on harassment, coercion or other undue influence. In addition, the UCPD Annex lists a number of practices that are considered misleading and therefore prohibited.
- Consumer Rights Directive (CRD): Particularly Art. 6 on information obligations and Art. 8 on the formal requirements, prevent material information from being obscured or ambiguous.
- GDPR: Particularly the data protection principles under Art. 5(1), related to transparency and fairness, Art. 25 on data protection by design and default or Art. 4(11) and Art. 7 regarding the conditions of consent create a framework preventing dark patterns. Consent must be freely given and data processing needs to occur in a lawful and transparent way. Any use of “dark patterns” goes contrary to that requirement that seeks to ensure that data subjects must have clear, transparent information about their rights. In practice, the UCPD obligation not to omit important information is connected to a “freely given, informed and unambiguous” consent under GDPR.
- DSA: Article 25 expressly prohibits the design of an online interface "in a way that deceives or manipulates the recipients" of a service "in a way that otherwise materially distorts or impairs" the ability of users "to make free and informed decisions". The DSA therefore captures all “dark patterns” that may not have been covered by the UCPD or the GDPR.
- Further, the DMA (Art. 5(2) and Art.13), the AI Act (particularly Art.5(1)(a) and (b)) and the Data Act (recital 38) include provisions that, combined with the above, create a robust and already very comprehensive framework to prevent design choices that can amount to consumer manipulation.

Against this backdrop, **it is our view that further action to regulate dark patterns is unnecessary.** Different scenarios that could be seen as a “dark pattern” are already covered in this comprehensive regulatory regime, including those mentioned in the Commission’s questionnaire (for example, availability messages, withdrawal from contracts, misleading language or misleading design). Further legislative action would make this regime even more intricate than it already is today, adding uncertainty and increasing compliance costs.

Importantly, an overly prescriptive approach to what is a “dark pattern” could also result in adverse effects for consumers (e.g. excluding useful information or leading to a worse consumer experience).

- Practices such as availability or scarcity messages can provide important information to the consumer before making a choice. 84% of consumers find messages on availability

appearing on our platform helpful, as per a September 2025 Statista survey of nearly 8,000 participants across 8 member states.

- The number of clicks before a consumer decision should not be seen as equal to “click-fatigue”. It is defined with a view to build a smooth experience for the consumer and is thought out to provide the relevant information at the right moment to enable an informed choice.
- Similarly, consumer experience and smooth consumer journeys via our platform are determining factors to the design of our interface (and within the limits of the various applicable rules). To design our interface, we run many tests with consumers to understand what works and what doesn’t. Potential proposals such as regulating “brighter” colours or “larger” fonts as dark patterns (i.e. leading the consumer towards a certain choice) would negatively impact consumers and their experience as interface design is a key differentiating factor in the competitive landscape and linked to the company’s brand.

At the same time, taking a blanket approach over which design or design practices are “dark patterns” comes with risks that should not be underestimated, including undermining businesses’ legitimate interest to market their products through legitimate marketing practices, such as explaining the benefits of a contract. Those should not be seen as automatically misleading the consumer. In fact, the current regulations already prescribe a ban on preselection (CRD Art.22), comprehensive information obligations and button design elements that sufficiently address the same concerns.

There is a fine balance between prescriptive approaches and generic prohibitions which, in our view, the existing regulatory landscape manages well. The possibility of case-by-case assessments of practices introduces the necessary flexibility to avoid unintended consequences while ensuring high consumer protection.

2. Addictive design

We want to make our platform attractive, clear and user-friendly; this is an added value we provide to our customers and part of our success. Addictive design features should be distinguished from legitimate product features that promote effective engagement with digital services. This becomes even more relevant in the context of emerging technologies: With AI applications coming into the mainstream (such as AI conversations, chatbots, support agents or canvas tailoring), it is worth reflecting on the implications of new AI uses on concepts such as “scrolling” and ensuring that rules about today’s technology do not hinder innovative applications of tomorrow that will benefit the consumer.

In addition to the above considerations, travel is an infrequent product. It naturally doesn’t lend itself to “addiction” or “excessive use” of OTAs. We therefore urge the Commission to be aware of **unintended consequences from introducing broadly applying principles** and requirements in this area: different business models exist and the nature of various products and services should be taken into account.

3. Unfair personalisation practices

Tracking technology, profiling and other types of personalisation can be used for the benefit of consumers in various ways such as for fraud prevention and detection or for improving the overall user experience by showing relevant results to the consumer who uses our platform.

For example, detecting potential fraudulent payment activity benefits accommodations and other trip providers, consumers and also intermediaries such as Booking.com. Showing content we think a consumer will be interested in (like a property they have booked in in the past) or recommending a visit to the Louvre because a consumer has made a reservation on our platform for a hotel in Paris, are examples of tailoring a service to the benefit of the consumer. This is in line with the findings of the European Commission's fitness check report: the main perceived benefits of personalisation include seeing more relevant products and discounts, a reduction of irrelevant ads and allowing for 'free' online services to exist. Therefore, **blanket restrictions to personalisation would come to the detriment of consumers and businesses.**

In addition, existing laws (ie. GDPR, CRD, DSA, DMA) already regulate personalisation to overall ensure "fairness". They also address situations where consumers' vulnerabilities are systematically exploited to personalise commercial offers. More concretely:

1) GDPR

The GDPR applies horizontally to all data subjects thereby all consumers whose personal data is processed to facilitate personalisation, including for advertising. The GDPR also restricts the processing of sensitive personal data and through its fairness principle (Art. 5(1)) ensures that data processing activities based on personalisation, including advertising, do not lead to unfair outcomes. There is also EDPB guidance on automated decision making and profiling, specifically calling out that companies should refrain from profiling children for marketing purposes. Personalised pricing is regulated by art 22 GDPR as well.

So the GDPR already addresses the practices that the DFA would seek to address under the exploitation of consumers' vulnerabilities to personalise commercial offers. Additional guidance by the EDPB (in coordination with relevant consumer authorities or DSA coordinators if needed) could clarify how the GDPR applies to the processing of vulnerable individuals, taking into consideration the existing case law.

2) DSA

The DSA already bans profiling on the basis of sensitive data as defined by the GDPR. It also bans profiling of minors for ads on online platforms and requires VLOPs to offer the option to opt-out of recommendations based on profiling (Article 38). In addition, Article 26 DSA adds transparency obligations for online platforms for the advertisements displayed to consumers which includes information on who paid for it, what are the parameters used to select the ad and the possibility to change these parameters. At a more macro level, risks linked to personalisation, such as that algorithms may perpetuate biases and discrimination are addressed in the DSA, as well as the GDPR.

3) DMA

Art.15 DMA requires gatekeepers to submit an independently audited report to the European Commission regarding their consumer profiling techniques with the view to enhance transparency and accountability regarding the use of consumer data. This is an already resource-intensive compliance exercise that requires information on the application of other laws, GDPR in particular. In addition, Article 5(2)(a) DMA does not allow gatekeepers to process, for the purpose of providing online advertising services, personal data of travelers without consent.

4) Consumer Modernisation Directive - CRD

As part of the Modernisation Directive, the CRD was amended to include a specific information requirement to inform consumers when the price is personalised, on the basis of automated decision-making.

It flows from the above that existing legislation ensures that consumers have control over personalised offers and businesses have a firm regulatory framework based on which to operate in this area. Placing new and undue restrictions on personalisation is not justified in our view. It could complexify this solid legal framework and remove considerable benefits this practice yields for both consumers and businesses.

4. Unfair marketing relating to pricing

Similarly to previous comments, we note that existing legislation protects consumers from misleading and unfair practices relating to pricing.

CRD, PID, UCPD require traders to communicate the total final price to the consumer at the moment of sale. There may be cases where certain charges are not accessible or calculable upfront, such as complex local tourist/city taxes that are collected and remitted at property level. It may also be that consumers make decisions through their ordering/booking process that could impact the final costs. This is different from intentionally misleading practices of “drip” pricing.

When it comes to dynamic pricing, CRD, PID, UCPD requirements already apply to dynamic pricing and prevent that dynamic pricing results in misleading practices. We should also keep in mind that **dynamic pricing comes in a wide range of forms** applied varyingly in different industries or business models. Therefore, **a broad restriction of the practice should be avoided** as dynamic pricing can have significant benefits for consumers and businesses. For example, it can lead to better and faster allocation of resources as it improves the matching of fluctuating demand and supply, lower prices for consumers, intensified competition between businesses, easier entry by new businesses by reducing the cost of setting and changing prices, and improved inventory management. As a result, there are many legitimate applications of dynamic pricing that ensure prices can fluctuate to react to various market factors.

5. Horizontal issues

Concepts such as ‘average’ and ‘vulnerable’ consumers, the reversal of the burden of proof, or the introduction of ‘fairness by design’ should be carefully considered in light of their potential impact on legal predictability and the EU’s competitiveness.

Concept of “vulnerable consumer”

The definitions of “vulnerable” and “average” consumers are well understood and hold significant value as a benchmark for policy making. Making a shift in the standard of consumer protection which is based on the concept of a “reasonably well-informed and reasonably observant and circumspect” consumer (ie. average consumer) can come with significant repercussions to legal certainty and stability as well as the interpretation and enforcement of existing principles and rules.

In addition, the notion of vulnerable consumers is already covered in key legislations (GDPR, DSA, Accessibility Act), providing legal certainty for companies. Broadening the scope, particularly with vague and subjective terms such as “emotional distress” or “negative mental state” risks diluting its impact and clarity. For example, identifying whether a consumer is “vulnerable” in that context would require the collection and processing of more personal data to identify at-risk consumers and could contradict the GDPR data minimisation principle. Instead, the focus should stay on specific at-risk groups, like minors, coupled with a risk-based approach that ensures protection, clarity and fairness.

Burden of proof and ‘fairness by design’

Reversing the burden of proof is a worrisome element as it would go against the principle of proportionality and could lead to increased compliance costs and legal uncertainty. A more effective approach would be to equip authorities with the right tools/experience to assess compliance and enforce rules. At a time when the EU is seeking ways to boost its competitiveness, it seems counterproductive to push businesses towards a more risk-averse mindset.

Similarly, the concept of “fairness by design” is very generic and could lead to a variety of interpretations from businesses depending on their own approach to compliance. Consumer protection (in the form of compliance with existing consumer law and jurisprudence) is already taken into account when developing new products, thus it is not clear what added value this new duty would have. In fact, Article 25 GDPR already encompasses a “fairness by design” principle in itself. It seems more reasonable to ensure laws include provisions that are implementable and enforceable and provide legal certainty and predictability.

In closing, As Booking.com, we pride ourselves in offering a trusted and secure platform to travelers that respects their privacy, increases transparency in travel offers and supports them in making their travel plans. As a regulated service under the DMA and a very large online platform under the DSA, we take our responsibilities towards end users and business users very seriously and already comply with a heightened standard of consumer protection. At the same time, we embrace regulation that is justified, evidence-based and proportionate.

We are concerned that an update of the consumer acquis with a Digital Fairness Act will **accentuate the complexity of the legal framework and come with unintended consequences** for businesses such as Booking.com. We understand the Commission's intention to create a "safety net" in consumer law. However, introducing new rules in areas that are already regulated elsewhere would create an incoherent set of rules rather than a safety net, particularly considering the complexities in the legislative adoption process.

It is also often argued that consumer law comes with minimal compliance burden and this is linked mainly to reporting requirements. As mentioned above, the compliance efforts to comply with the various relevant rules (consumer laws, privacy laws, platform laws) are significant, also considering national variations and enforcement actions. Concretely, adapting to legislative changes requires, beyond legal and compliance teams, a considerable number of product and engineering teams because it impacts different parts of the platform and this takes a lot of time from them, months of work, that impacts businesses' ability to continue to build innovative products and support European technology development and competitiveness.

In our view, if regulation is put forward, it should be targeted and proportionate to the level of risk of consumer harm and these principles should be top of mind in all stages of developing and adopting a potential new law. To explain, while a horizontal approach comes with advantages, an one-size-fits-all approach in this case comes with drawbacks that we shouldn't be ignoring. There is a huge variety of business models online that all come with different challenges - that is why some rules would work for one business model, might not work for another. A **balanced and proportionate approach** is important to limit unintended consequences to the detriment of EU competitiveness.

We look forward to contributing to the debate around the Digital Fairness Act and remain focused on providing inputs to support regulation that is balanced.