

In-person event

# TO EMPOWER, NOT TO WEAKEN:

Rethinking digital consumer  
protection in the digital world

27 September 2022, 09:00–17:00



9:30

**Opening address from BEUC President Arnold Koopmans**

9:35

**Introduction: consumer protection in the digital world - the asymmetries of power**

- Hans-Wolfgang Micklitz (European University Institute)
- Florencia Marotta-Wurgler (New York University)

10:00

**Keynote: Executive Vice President Margrethe Vestager, European Commission**

10:15

**Framing panel: Digital asymmetry as the new normal**

Topics: 'digital fairness' fitness check – digital asymmetry and fairness – protection of choice – duty of care – burden of proof

**Speakers:**

- Blanca Rodriguez-Galindo (Head of Unit, DG JUST, European Commission)
- René Repasi MEP
- Léon Mölenberg (Ecommerce Europe)
- Florencia Marotta-Wurgler (New York University)
- Hans-Wolfgang Micklitz (European University Institute)

11:25

**Panel 2: Consumer protection in the age of AI**

Topics: prohibited practices – cross-cutting obligations – futureproofing the AI Act

**Speakers:**

- Kilian Gross (Head of Unit, DG CNECT, European Commission)
- Sergey Lagodinsky MEP (Shadow rapporteur on the AI Act)
- Marc Rotenberg (President, Centre on AI and Digital Policy, U.S.)
- William Vidonja (Head of Conduct of business, Insurance Europe)
- Lina Ehrig (vzbv, Germany)

12:35

**Lunch break and networking**

14:00

**Keynote: Sam Levine, Federal Trade Commission**

14:15

**Panel 3: Empowered by data: consumers in control?**

Topics: data governance – consumer data access and use – data sharing – IoT: privacy, choice and remedies

**Speakers:**

- Antonio Biason (DG CNECT, European Commission)
- Miapetra Kumpula-Natri MEP (Shadow rapporteur on the Data Act)
- Paul Keller (Openfuture)
- Wolfgang Kerber (Marburg University)
- Daniela Zimmer (Arbeiterkammer, Austria)

15:25

**Coffee break**

15:45

**Keynote: Shoshana Zuboff, Author, The Age of Surveillance Capitalism and Professor Emeritus, Harvard Business School (online)**

16:00

**Panel 4: Enforcement in the digital age**

Topics: digital enforcement / enforcing against Big Tech / cross-border and cross-sectoral collaboration

**Speakers:**

- Alberto Bacchiega (Director, DG COMP, European Commission)
- Dries Cuijpers (Autoriteit Consument & Markt, NL)
- Ventsislav Karadjov (Deputy Chair, European Data Protection Board)
- Alexandre de Streeel (Namur University, CERRE)
- Ursula Pahl (Deputy Director General, BEUC)

17:10

**Closing – Monique Goyens, BEUC Director General**

# From digital asymmetry to digital fairness

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## What is digital asymmetry?

The consumers of today face an array of challenges that were largely unknown before the digital era. From extraction of data processing consent to commercial surveillance and loss of privacy, from personalised persuasion to artificially created engagement; from deprivation of autonomy to distortion of choice, to algorithmic discrimination – existing legal protections are being put to the test by business practices which give headaches to consumers and enforcers alike.



All consumers are constantly subjected to practices which erode their freedom. The wholesale data collection by businesses is impossible to opt out of and hands the keys to our lives to platforms which care nothing for the condition of our society, our fundamental rights or mental health. Research by BEUC members has shown that privacy controls are too difficult to use in practice and consumers have a very limited grasp of the actual extent of the data collection going on.<sup>1</sup>

Research identifies the common denominator and the central piece of this jigsaw as **digital asymmetry** – the profound imbalance of power that is common to digitalised environments, rendering it nearly impossible for consumers to maintain their autonomy and privacy.

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<sup>1</sup> See research by BEUC members: the Norwegian Consumer Council (2020) 'Out of control. How consumers are exploited by the online advertising industry' and Which? (2021) 'Are you still following me?'

## Why this is problematic for consumers in an increasingly digitalised world

These practices cause a wide array of harms to consumers. For example, in a world of near-omnipresent personalisation (often based on the same persuasion profile, exchanged among traders) a consumer shopping for products or services will end up seeing a similar set of offers across different services, while being prevented from seeing others. Knowing a consumer's pressure points and emotional states means it is just as easy to manipulate people into buying something as it is to deny them access to certain products or services when they do not meet e.g. the desired race/gender profile.



For consumers looking for news and information, businesses deploy content ranking mechanisms that monetise user attention and engagement that will not shy away from offering content that the profiled individual is most likely to respond to. With ever more people deriving their news of the world from online services, replacing information with emotion-arousing clickbait has already been shown to have devastating effects on societies and democracies of the world.

## Consumers feel powerless

Studies have shown consumers are bombarded with too long, too complex and often meaningless disclosures and nagging consent requests. When queried, they describe how powerless they are when a trader providing services of essential importance deploys invasive practices that they must accept for want of a better alternative. When they finally click 'I agree', the button should rather read 'I give in'.

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## What should policy makers do?

In response to the different aspects of the problems at hand, the European Commission has been putting forward legislative proposals to address the challenges posed by the rise of artificial intelligence (AI Act), online intermediaries and very large online platforms (Digital Services Act), digital gatekeepers (Digital Markets Act) or the data generated by connected devices (Data Act). These are much needed and welcome.



This should go together with horizontal legislation: data protection, competition and consumer law, setting the general boundaries for what is allowed and what is not in their respective areas. With the European Commission's 'digital fairness' fitness check underway, there is a unique opportunity to build a universally applicable legal framework for consumers in the new economic reality, going beyond the traditional disclosure-based protection model. Consumers should be able to rely on a legal system that mandates **protection by design and by default.**

**We need not only an equal level, but more protection online than offline:** digital asymmetry means that businesses can deploy digital technologies to undermine the rights of consumers in ways that the offline world cannot. This is particularly important for modelling the future consumer protection rules and enforcement mechanisms.

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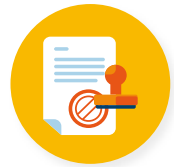
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## We need to implement a model of consumer protection by design and by default

Under conditions of digital asymmetry, the **burden of proof** of compliance must rest on traders deploying the technology. Consumers cannot be realistically expected to **prove** unfairness e.g. by recording the behaviour of the changing online interface or tracking and analysing every change in obscure terms of service. We also need to:

- **Impose on traders a duty of care** to ensure consumers' choice autonomy is not upset by the design or operation of the service (**fairness by design**). This would also oblige traders to prevent known decision-making biases (such as e.g. a tendency to click buttons on one side of the page or to click the top one if they are stacked vertically).
- **Outlaw certain particularly harmful practices** such as profiling used for emotional/psychological pressure or to personalise prices, or use of personal data which traders (should) know was obtained unlawfully.
- **Improve effectiveness of enforcement** and strengthen its interdisciplinary dimension, which is key for future effectiveness of consumer protection, including a cooperation framework with data protection authorities, competition authorities and sector regulators.
- **Ensure consumer law remains applicable alongside protection measures in major digital laws**, i.e. the Digital Services Act, the Digital Markets Act, the Digital Governance Act, and the Artificial Intelligence Act, to provide a high level of consumer protection.



**Find out more:** [beuc.eu/projects#EUCP](https://beuc.eu/projects#EUCP)



## The European Consumer Organisation



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