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Escher's Relativity—Consumer Law as Surreal Staircase?

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If one were looking for an image to visualise the transformation of European digital consumer law, M.C. Escher's relativity comes into mind. This famous lithograph by the Dutch artist depicts a surreal staircase. Some stairs lead up, some sideways, upside down, or nowhere. People—all alike, no faces, blank canvases waiting to be coloured—move casually on their way somewhere. As a construct, the staircase is arranged around not one, but three orthogonal centres of gravity. European digital consumer law is also an increasingly complex construct, with different paths towards a unifying goal: protecting and empowering the European digital consumer. There is, on the one hand, traditional consumer law, including the Unfair Commercial Practices Directive, the Unfair Terms Directive, the Product Liability Directive, and the regulation of consumer services in regulated markets (finance, telecom, energy, transport).

On the other hand, the European Commission has been hard at work over the past 5 Years to create an entirely “new order” of rules designed to protect European consumers in the digital environment, in the form of the Digital Services Act, the Digital Markets Act, the AI Act and the (retracted) AI Liability Directive. Together, the rules must ensure a fairer and trustworthy environment for digital consumers, but there are very different pathways leading to that goal. Similar to Escher's staircase, European digital consumer law appears to be shaped by at least three centres of gravity.

The first centre of gravity driving modern digital consumer law is the changing commercial context in which digital consumers move and go about their business, and here in particular, the rise of platforms. Traditional consumer law, such as the rules regarding unfair contract terms or unfair commercial practices, operates under the assumption that consumers move through shops, malls, and online marketplaces to acquire desired products and services in commercial transactions with respective sellers. The objective of the provisions on unfair commercial terms or unfair contract terms is to provide benchmarks for

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assessing the fairness of these transactions and to give consumers concrete rights to protect their legitimate interests vis-à-vis sellers. In an increasingly platformized digital marketplace, shopping malls are making way for digital choice infrastructures that are carefully designed to guide digital consumers toward the services and offers that are most profitable for the platform (Esposito & Ferreira, 2024; Sax, 2021; Susser (Daniel) & Roessler, 2020). Or, to stay with Escher, consumers are moved with the help of fully automated and hyper-intelligent escalators that keep rearranging themselves dynamically—Harry Potter style—and are fuelled by users' data and content. Importantly, the actors of platformed commercial transactions are changing. Instead of consumers closing deals with sellers, consumers are the deal. In the two-sided market of the platform economy, both consumers and sellers, or advertisers, are ultimately clients in a business relationship that ultimately serves the platform (Poell et al., 2021; Rochet & Tirole, 2003; Zard & Sears, 2023; Zuboff, 2019). Here, the staircase leads to a casino, where “in the end, the platform always wins.”

The changing commercial context in which digital consumers operate is reflected in the design of a new digital European consumer law order. Over the last 5 Years, the European Commission has adopted a comprehensive set of new rules that, among other things, aim to protect the digital consumer in an AI-driven platform economy (de Elizalde, 2025; Kas et al., 2024; Namysłowska, 2025). Where traditional consumer law was designed to balance differences in negotiation power and ensure the fairness of commercial transactions between buyers and sellers, the core objective of the new set of rules, including the Digital Services Act, the Digital Markets Act or the AI Act, is not so much to ensure the fairness of commercial transactions, but instead to make sure that the Digital Market Place itself is “safe and trustworthy.” The market needs protection to function properly. Examples are the ban on deceptive or manipulative interface design (Art. 25 DSA, Art. 5 AI ACT) and compliance by design (Art. 31 DSA), the provisions on recommender transparency and the right to receive non-personalised recommendations (Art. 27 and 38 DSA), the systemic risk monitoring obligations for VLOPs and Very Large GenAI providers (Art. 34 and 35 DSA and AI Act), or the responsibility to design digital platforms in a way that consumers can export and move their data or change default settings (DMA). Notably, in this new digital order, consumers are hardly afforded any direct rights vis-à-vis platforms and technology developers. Instead, consumer rights have given way to complaints to administrative agencies, and the focus of regulatory efforts has shifted from governing the consumer-seller relationship to regulating the design of the marketplace and the authority-platform relationship.

This shift also has implications for the conceptualization of “the consumer” (Mak, 2024). Earlier, the prototype of European consumer law was the “reasonably informed and circumspect” consumer who, supported by consumer law, is empowered to defend her legitimate interests and vote with her purse. The exception to that rule was the vulnerable consumer who, because of age, infirmity or limited mental capacities, was less empowered and in need of extra protection. The new digital order has largely given up on the idea that a single consumer can negotiate a fair deal vis-à-vis powerful digital platforms. Due to the immense asymmetries of power and information, scholars have argued that consumer vulnerability is the norm (Helberger et al., 2022; Rebrean & Malgieri, 2024). Regulatory frameworks like the DSA or the AI Act have internalised this idea and even extended the concept. In the AI Act, for example, the traditional notion of consumer vulnerability is extended to new dimensions and typologies of vulnerable users, including migrants, persons living in poverty, ethnic or religious minorities, and people applying for or receiving public benefits. The broadening of vulnerability triggers the need to think about vulnerability as a general concept outside and beyond consumer law (Crea & De Franceschi, 2024;

Helberger et al., 2022; Rebrean & Malgieri, 2024). Certain consumer-facing applications of AI are banned because of their potential to make consumers vulnerable. And also the DSA's ban on manipulative interface design is motivated by the idea that the design of digital choice architectures can make consumers vulnerable to unfair commercial practices.

The second centre of gravitational pull is a shift in regulatory power, i.e., in the entities that make and enforce digital consumer law. After a first shift from member states to the European Commission, it is now private actors, and in particular, the owners of digital choice architectures themselves that are expected to play an increasingly central role in protecting the European digital consumers in so doing, private entities, and platforms in particular exercise regulatory functions that were previously reserved for regulators and regulatory authorities in at least three ways. First, platforms act as regulators: in addition to mandatory public law, the law of digital platforms is comprised of Terms of Use and Usage policies that determine what users can do and what they can legitimately expect on platforms (Ben-Shahar, 2014; Cauffman & Goanta, 2021). Second, as enforcers who monitor compliance with these policies and even formal laws (e.g., the obligation to mitigate any systemic risks from the dissemination of illegal content (Art. 34 (1)(a), or design their platforms in a way to enable sellers to comply with their legal obligations). And third in their role as judges. The DSA, but also the AI Act, operates based on self-certification. In other words, it is in the first place up to a Very Large Online Platform to monitor its recommendation, content moderation, and ad auctioning algorithms for any systemic risks to a high level of consumer protection (Art. 34 (1)(b) DSA). This obligation also involves determining in which cases their algorithmic design, terms of use, or data-related practices pose a risk to consumers.

Another example is Article 14(4) DSA, which stipulates that platforms, when enforcing their terms of use, must have due regard for the rights, legitimate interests, and fundamental rights of consumers (Quintais et al., 2023). In the case of Meta, this has even led to the creation of a court-like system, the Oversight Board. Through its provisions, regulations like the DSA further institutionalize and legitimize this new digital *trias politica*, without, however, requiring a division of power. The growing reliance on self-regulation, the outsourcing of substantive interpretations of the provisions in the DSA and the AI Act to “multi-stakeholder”-generated codes of conduct and practice, as well as the pivotal role of private standardization organizations (Ebers, 2022; Micklitz, 2023) further reinforce and institutionalize the privatization of consumer law. When it comes to conflicts, the DSA establishes internal digital complaint mechanisms and, if necessary, online dispute settlement procedures (Art. 20 and 21). This is where the political wind blows. Courts are becoming a last resort, expected to deduce the minimum standards of protection from fundamental rights.

Finally, a third centre of gravity is the values that digital consumer law must protect. Also here, significant shifts can be observed. The example of consumer vulnerability is instructive. Once this was a concept to protect the commercial interest of consumers (transparency, fair value for money, choice, being free from harm and damage) against unfair misleading practices. Now, both the DSA and the AI Act discuss consumer vulnerability in the face of manipulative practices, also in the context of being susceptible to violations of their fundamental rights, like the right to non-discrimination. This further extends to their political rights, to make political decisions and exercise their voting rights. The DSA's systemic risk provisions mention risks to a high level of consumer protection alongside freedom of expression, media pluralism, or the rights of the child. Consumer harms are also no longer exclusively discussed in an individual context, but from the perspective of the implications of society and systemic risks for consumers

and society. For example, Recital 69 DSA reads: “In certain cases, manipulative techniques can negatively impact entire groups and amplify societal harms, for example, by contributing to disinformation campaigns or by discriminating against certain groups. Online platforms are particularly sensitive environments for such practices, and they present a higher societal risk.”

This expansion in the type and range of values that the new digital order must protect reflects another reality of the digital platform economy. When users navigate the automated escalators of the digital platform architecture, they do so as both consumers and citizens. Reading the news, listening to music, and debating with peers can be both commercial and civic activities at the same time. The example of political micro-targeting is instructive, as it is both a commercial and a political activity on platforms, utilizing the same data, ad auction algorithms, and logics for political advertising that also drive commercial advertising (Helberger et al., 2021). Against this background, it becomes clear why an important objective of the European Commission in adopting the new digital order was the creation of a “safe, predictable, and trusted online environment that facilitates innovation and in which fundamental rights enshrined in the Charter, including the principle of consumer protection, are effectively protected” (Article 1 DSA). The platform economy transcends the traditional distinctions between commercial and non-commercial transactions.

But fundamental and civic rights are only one dimension in which the new digital order is expanding traditional remits of consumer protection. In the DSA, DMA, and AI Act, values such as consumer protection are intermingled with a range of other values, including competition, fair market conditions, and safety. Elsewhere, Hans Micklitz has analyzed the interplay between EU consumer law and policy, as well as environmental law (Micklitz, 2025).

The gravitational pull of values that shape European consumer law may also be the one most susceptible to shifts in political mood. The new digital order, comprising the DSA, the DMA, and the AI Act, among others, was an important political priority of the first Van der Leyen Commission and was celebrated as a commitment by Europe to the protection of citizens’ and consumers’ rights in the European Union. Political priorities can change quickly. Where the first Van der Leyen Commission championed a strong regulatory framework to protect consumers and fundamental freedoms, the second Van der Leyen Commission is pivoting towards prioritizing competition and innovation. The cancellation of the AI Product Liability Directive, which was supposed to complement the AI Act and strengthen the position of consumers in case of AI-related harms, the withdrawal of the Green Claims Directive, and recent rumours to simplify or even pause the enforcement of the AI Act, or give private companies are greater say in the enforcement of the DMA, point to a new dawn of consumer protection philosophy—relying to an even greater degree on the forces of the market and the promise of innovation to benefit European consumers. Reading the AI Continent Action Plan is instructive, as the word “innovation” is mentioned 62 times, while the word “consumer” is only mentioned once.

In light of these shifts and dynamics, the theme that this special issue wishes to explore is more topical than ever. It debates the hypothesis that EU Consumer Law is being gradually dissolved or superseded by the EU’s digital policy legislation and explores the implications for the future of digital consumer law (de Elizalde, 2025; Kas et al., 2024; Micklitz, 2025; Namysłowska, 2025). The contributions in this special issue discuss the substance of future EU digital consumer law, its suitability for the digital economy, and the concrete changes required.

Theme 1: Contemporary Challenges for European Consumers

The first theme focuses on the contemporary challenges for European consumers, including the growth in connected products within the Internet of Things (IoT) and the challenges arising from detailed terms and conditions drafted by digital businesses based outside the EU.

As several other papers in this special issue demonstrate, the concerns addressed in EU Digital Law are primarily located in the online world, specifically in the interaction between consumers or users and the digital environment (mainly platforms). The online digital environment has already been shown to be the source of a new form of digital vulnerability (Helberger et al., 2022). Clubbs Coldron et al. add a further dimension to this in their analysis of “cyborg vulnerability,” arising from the fact that many of the physical items consumers use are connected and, via the internet, allow for the collection of more data about individuals, consequently providing a more extensive basis for targeting them. The detriment flowing from this additional layer of vulnerability already demands further policy and legal intervention to recognise the added impact of the IoT (Coldron et al., 2025).

Many digital business models, especially platforms, use their terms and conditions to regulate their respective ecosystems, i.e., in many instances, the terms and conditions specify what users may or may not do. Digitalization has taken a major step towards this form of private ordering, where the market power of business operators typically gives them the authority to set and alter the terms and conditions unilaterally. In the EU, consumers using such business models should benefit from the controls provided by the venerable Unfair Contract Terms Directive (93/13/EEC). Palka *et al.* provide a detailed empirical study that reveals unfair terms continue to be prevalent, but there are greater instances of non-compliance among companies headquartered outside the EU (Pałka et al., 2025). Whilst such terms might not be enforceable in court, their very existence may deter consumers from complaining about the service they have received. Bearing in mind the strong market power of consumers, the authors argue for changes in how the unfair terms regime is enforced.

Both contributions demonstrate that, despite the various efforts already made, challenges persist in the effectiveness of existing legal rules and in the conceptualization of fundamental aspects, such as consumer vulnerability.

Theme 2: How to Improve the Legal Standing of Digital Consumers

In the second theme of this special issue, we examine the underlying causes and dynamics that contribute to making consumers vulnerable, as well as possible ways forward to improve the position and agency of consumers in digital markets.

The paper by Naudts, Helberger, Veale, and Sax focuses on the technological dimension and the impact of digital technology on consumers' ability to realize their legitimate rights and expectations (Naudts et al., 2024). The authors challenge the dominant notion that recommender systems on very large online platforms (VLOPs) are merely proprietary technologies, arguing that this view is too narrow. They argue that VLOPs provide and mediate the public information infrastructure and, as such, are integral to public interests and civic rights. It introduces a “right to constructive optimization,” arguing that people, not only in

their capacity as consumers but, more generally, as democratic citizens, have a legitimate claim to ensure that VLOPs respect their interests within optimization processes through the content policy strategies and recommendation technologies they employ. Drawing on Iris Marion Young's philosophy, the paper positions VLOPs as central to digital citizenship and explains why individuals and groups should have (political) agency to co-create or co-construct their digital environment under conditions of inclusive governance, rather than relying solely on commercial platform logics.

The article by Peter Rott then addresses a legal dimension of the growing digital asymmetry in which consumers operate (Rott, 2025). It demonstrates that the "black-box" nature of online platforms as infrastructure and their algorithms, combined with the traditional rule that claimants must shoulder the full burden of proof, makes it nearly impossible for consumers or consumer organizations to enforce their rights under EU law. By surveying EU case law and legislative precedents (e.g., product liability and AI liability directives), the author argues for a tailor-made regime in the Unfair Commercial Practices Directive that would trigger rebuttable presumptions of unfairness when claimants present basic factual evidence (such as simultaneous screenshots showing different prices); lower the standard of proof to "more likely than not" in complex digital cases; grant explicit rights to request meaningful explanations (and corresponding traders to ask for the necessary information, e.g., from website designers to be able to provide that information); and impose documentation duties. The paper also explores extending liability and redress to upstream actors (platform operators, web design providers) and recommends amending the UCPD, so that these measures rebalance digital asymmetries and make private enforcement of consumer rights both feasible and effective.

Common to both contributions is that they explore the role of law in addressing some of the sources of digital asymmetry and potential unfairness, whether due to algorithmic design or the concrete (im)possibility of enforcing consumers' rights and legitimate expectations vis-à-vis platforms. Both articles make concrete suggestions for legal reforms, for example, as part of a "Digital Fairness Act."

Theme 3: Quo Vadis Consumer Law

EU consumer law developed and expanded rapidly after the adoption of the Single European Act in 1985, which paved the way for majority decision. Over time, the EU shaped a kind of European code, built around the general part, rules on particular types of contracts and individual and collective redress. What is often overlooked is that the EU consumer acquis is intellectually grounded in the economy of the 1970s or 1980s, with consumer rights turning around sales contracts. There is only one directive that devotes attention to the dramatic changes in the digital economy and society: the Directive on Digital Content, which has been widely discussed already. One might go as far as arguing that EU consumer law missed the adaptation of the consumer law acquis to the service society. When the EU digital policy legislation was about to take shape through the DMA, the DSA, the AIA, etc., consumer law scholarship drew the attention to the conceptual deficiencies and the need for legislative action to adapt the existing consumer law acquis, insisting on the need to devote utmost attention to the digital services and the connected advertising and marketing strategies. The first van der Leyen Commission began testing whether three consumer directives—unfair terms, unfair commercial practices, and consumer rights—are still fit for purpose. The second van der Leyen Commission adopted the ambitious language of

consumer legal scholarship, advocating for a digital fairness act. The last three contributions are, in a way, united and governed by thinking in terms of digital fairness, however, far beyond the rather narrow scope of the Commission's initiative.

Namysłowska focuses on the silent dissolution of the EU consumer law *acquis*, through the erosion of the consumer, the lack of an overarching concept of fairness, and the enforcement gaps, and concludes by calling for a Digital Fairness Act as a twin to the Unfair Commercial Practices Directive (Namysłowska, 2025). Perhaps even more radically, Micklitz highlights the dependency of the successful rise of EU consumer law on the project to build the internal market, which rendered consumer law and policy vulnerable to political changes (Micklitz, 2025). Whilst the internal market remains unfinished, the EU regulation on the digital market shifts the focus away from the consumer as the politically needed beneficiary of the new technology, to the building of "ethical, secure, and trustworthy AI" as the necessary condition for its proper functioning, and more recently, to guarantee European competitiveness. In such a broader perspective, as De Elizalde convincingly demonstrates, consumer law and the consumer have lost the driver's seat and are now in the back seat (de Elizalde, 2025). He identifies a new digital private law gaining ground, one in which consumer law and the consumer still need to find their place.

Author Contribution Helberger wrote a first draft, all authors contributed, added text and edits and helped with the conceptualisation.

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Declarations

Competing Interests The authors declare no competing interests.

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