From Disclosure to Loyalty

A European Duty of Loyalty for Consumer AI Agents

2026

Executive Summary

The Unfair Commercial Practices Directive, the Consumer Rights Directive and the Unfair Contract Terms Directive each assume an attentive consumer who reads, deliberates and contracts. That assumption is currently failing. Consumers increasingly delegate search, comparison, subscription, cancellation and purchase to AI agents that act on their behalf. Where a trader supplies, controls or materially configures such an agent, the operative choice migrates upstream into ranking logic, optimisation parameters, conflict-management rules and monetisation incentives. Disclosure addressed to a human reader can no longer constrain the software that actually decides.

The paper argues that the European Union should adopt a limited duty of loyalty for consumer-facing AI agents. The duty would not transplant the equitable fiduciary regime into mass-market consumer law. It would establish a best-interest default. Where the agent acts on the consumer's behalf, its supplier must prioritize the consumer's stated or reasonably inferred objectives and must not optimise the system in ways that secretly favour the supplier, an affiliate or any third-party offering remuneration. The default would be supported by a conflict-free mode, a specific opt-in for conflicted operation, machine-readable logs, and override and exit rights. Remedies would include termination, restitution, damages and a rebuttable presumption of distortion in downstream contracts.

The 2024 Digital Fairness Fitness Check supplies the political and evidentiary basis: it documents EUR 7.9 billion in annual digital consumer detriment, finds the existing acquis only partially effective online, and identifies a missing incentive for digital fairness by design. The European Law Institute's Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts already contain disclosure, non-manipulation, conflict and documentation duties. The proposal completes that architecture by replacing pure disclosure with substantive loyalty for delegated tasks. The forthcoming Digital Fairness Act is the natural vehicle.

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List of Abbreviations

ACM	Authority for Consumers and Markets (Netherlands)
AGCM	Autorità Garante della Concorrenza e del Mercato (Italy)
AI Act	Regulation (EU) 2024/1689 on artificial intelligence
AILD	Proposed AI Liability Directive (withdrawn 2025)
BEUC	Bureau Européen des Unions de Consommateurs
CERRE	Centre on Regulation in Europe
CJEU	Court of Justice of the European Union
CRD	Consumer Rights Directive 2011/83/EU
DGA	Data Governance Act, Regulation (EU) 2022/868
DSA	Digital Services Act, Regulation (EU) 2022/2065
ELI	European Law Institute
GDPR	General Data Protection Regulation (EU) 2016/679
IDD	Insurance Distribution Directive (EU) 2016/97
LLM	Large Language Model
MiFID II	Markets in Financial Instruments Directive 2014/65/EU
PLD	Product Liability Directive (EU) 2024/2853
UCPD	Unfair Commercial Practices Directive 2005/29/EC
UCTD	Unfair Contract Terms Directive 93/13/EEC

1. Introduction

EU consumer law is built around an average consumer, reasonably well-informed and reasonably observant, who receives information and converts it into a transactional decision. That figure, which has carried much of the doctrinal weight of the acquis, now meets a problem it was not designed to solve. Since OpenAI released Operator in January 2025,[1] followed within months by comparable systems from Perplexity, Amazon and Google, consumers have begun to delegate the act of purchase itself to AI agents that browse, compare, subscribe and conclude contracts on their behalf — agents trained, configured and commercially incentivised by the traders who supply them.[2] The decisive choice migrates upstream, from the consumer's screen to the agent's design parameters. A disclosure addressed to a reader who never sees the page cannot reach it.

The horizontal acquis, namely the UCPD, the CRD and the UCTD[3], was drafted before that displacement, and the Commission's Digital Fairness Fitness Check does not yet fully address it.[4] The forthcoming Digital Fairness Act offers the first realistic vehicle for legislative reform.

Where a trader supplies, controls or materially configures a consumer-facing AI agent, EU consumer law should impose a limited duty of loyalty. The agent must act in the consumer's stated or reasonably inferable interests, must not engage in undisclosed self-preferencing or commission-driven steering, and must grant the consumer effective override, with disclosure retained in a supporting role. What follows diagnoses the inadequacy, grounds the duty in good faith, professional diligence and existing sectoral conduct rules, sets out its operative content, answers objections, and offers a draft article ready for legislative use.

2. The Agentic Shift and the Limits of Disclosure

2.1. From Human Consumer to Algorithmic Delegate

The benchmark of the average consumer, reasonably well-informed and reasonably observant, has guided fairness analysis since *Gut Springenheide*.[5] The Court of Justice has refined that figure through

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[1] OpenAI, 'Introducing Operator' (OpenAI, 23 January 2025) <https://openai.com/index/introducing-operator/> accessed 24 April 2026.

[2] Christoph Busch, 'Consumer Law for AI Agents' (2026) 26 *German Law Journal* 1367, 1369–72.

[3] European Commission, *Commission Staff Working Document, Fitness Check of EU Consumer Law on Digital Fairness* SWD(2024) 230 final, 36, 146–203.

[4] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices [2005] OJ L149/22 (UCPD); Directive 2011/83/EU of 25 October 2011 on consumer rights [2011] OJ L304/64 (CRD); Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts [1993] OJ L95/29 (UCTD).

[5] Case C-210/96 *Gut Springenheide GmbH and Tusky v Oberkreisdirektor des Kreises Steinfurt* [1998] ECR I-4657, paras 30–31.

Trento Sviluppo, broadening the concept of 'transactional decision' beyond the purchase itself,[6] *Canal Digital Danmark*, condemning salience-based partitioning of price information,[7] and most recently *Compass Banca*, which held that cognitive biases may inform whether a practice materially distorts the average consumer's behaviour.[8] Each ruling still imagines a diligent human at the keyboard.

That figure no longer matches commercial reality. As Christoph Busch shows, generative-AI chatbots are giving way to agentic systems capable of multi-step autonomous action. The 'custobot economy' is no longer a hypothesis.[9] In agentic commerce the human consumer configures the agent and authorizes broad parameters, the agent then searches, ranks, compares, negotiates and concludes. Christian Twigg-Flesner has called this figure the 'digital delegate'.[10]

2.2. Why Information Rules Underdetermine Agentic Outcomes

European consumer law has long privileged information as its principal corrective.[11] Yet the Digital Fairness Fitness Check itself acknowledges that consumers online are 'less likely to pay attention, to read contract terms carefully' than the rational reader presupposed by the directives.[12] The Commission estimates EUR 7.9 billion in annual digital detriment and finds that the broad principles of the directives are insufficiently specific to govern concrete development decisions in interfaces, software and infrastructure.[13]

When the consumer delegates, three asymmetries deepen. First, the disclosure recipient is no longer the operative decision-maker. Information addressed to the human reaches the human after the agent has already filtered, ranked or executed. Second, the economically decisive choices, namely which merchants are connected, how objectives are weighted and whether commissions affect ranking, are made upstream by the supplier of the agent through optimization logic that the consumer can rarely

[6] Case C-281/12 *Trento Sviluppo srl and Centrale Adriatica Soc coop arl v Autorità Garante della Concorrenza e del Mercato* ECLI:EU:C:2013:859, paras 35–38.
[7] Case C-611/14 *Canal Digital Danmark A/S* ECLI:EU:C:2016:800, paras 51–62.
[8] Case C-646/22 *Compass Banca SpA v Autorità Garante della Concorrenza e del Mercato* ECLI:EU:C:2024:957, paras 51–53.
[9] Busch (n 2) 1369–70; see also Christoph Busch, 'Enabling Innovation and Protecting Consumers in the Agentic Economy: Why the Digital Fairness Act Should Regulate Agentic AI' (SSRN, 24 July 2025) <https://ssrn.com/abstract=5369055> accessed 26 April 2026, 2–3.
[10] Christian Twigg-Flesner, 'Consumers and Digital Delegates' in Larry A DiMatteo, Cristina Poncibò and Geraint Howells (eds), *The Cambridge Handbook of AI and Consumer Law: Comparative Perspectives* (CUP 2024) 75, 86.
[11] Geraint Howells, Christian Twigg-Flesner and Thomas Wilhelmsson, *Rethinking EU Consumer Law* (Routledge 2018) ch 4; Norbert Reich and Hans-W Micklitz, 'Economic Law, Consumer Interests and EU Integration' in Norbert Reich and others (eds), *European Consumer Law* (Intersentia 2014) 21.
[12] Fitness Check (n 3) ss 5.2–5.3.
[13] *ibid* s 6; European Commission, *Executive Summary of the Fitness Check of EU Consumer Law on Digital Fairness* SWD(2024) 231 final.

inspect.[14] Third, traditional dark patterns may give way to 'agentic dark patterns', such as prompt injection, adversarial inputs and incentive-corrupted ranking that no consumer warning can detect.[15] Terryn and Marquez make the same point through the dark-patterns case study, showing that the open norms of the UCPD struggle to keep pace with combined AI-and-personalization tactics; the cure cannot be more disclosure of the same kind.[16]

3. The Current European Framework: A Diagnosis

3.1. The Horizontal Acquis

The UCPD prohibits unfair commercial practices, defined in Article 5 by reference to professional diligence and material distortion of consumer behaviour, and supplemented by the misleading and aggressive practice categories in Articles 6 to 9.[17] The 2021 Commission Guidance treats algorithmic ranking, hidden remuneration and choice architecture as candidates for misleading omissions.[18] *Ving Sverige* extended the concept of 'invitation to purchase' upstream;[19] *Orange Polska* read undue influence in light of contextual pressure.[20] All of these doctrines presuppose communicative practices addressed to a perceiving human.

The CRD imposes pre-contractual information duties and harmonizes distance-contract rules.[21] After the Modernization Directive, traders must disclose personalized pricing based on automated decision-making and the main parameters of search ranking.[22] These provisions assume that the consumer reads. They do not require that a system acting for the consumer act in the consumer's interest.

The UCTD invalidates terms that, contrary to good faith, create a significant imbalance in the parties' rights and obligations.[23] *Aziz* requires national courts to ask whether the seller could reasonably

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[14]Federica Galli, *Algorithmic Marketing and EU Law on Unfair Commercial Practices* (Springer 2023) chs 4–5; Evelyne Terryn and Sylvia Martos Marquez, 'AI and Consumer Protection: An Introduction' in DiMatteo, Poncibò and Howells (n 11) 192, 196–198.

[15]Kai Greshake and others, 'Not What You've Signed Up For: Compromising Real-World LLM-Integrated Applications with Indirect Prompt Injection' (arXiv, 2 May 2023) <https://arxiv.org/abs/2302.12173> accessed 24 April 2026; OWASP, 'LLM01: Prompt Injection' (2024); Busch (n 2) 1377–78.

[16]Terryn and Marquez (n 15) 205–209 (mapping dark patterns onto UCPD open norms and showing the inadequacy of disclosure remedies).

[17]UCPD (n 4) arts 5–9.

[18]Commission Notice, Guidance on the Interpretation and Application of Directive 2005/29/EC [2021] OJ C526/1, paras 4.2.7, 4.2.6.

[19]Case C-122/10 *Konsumentombudsmannen v Ving Sverige AB* [2011] ECR I-3903, paras 28, 32–33.

[20]Case C-628/17 *Prezes Urzędu Ochrony Konkurencji i Konsumentów v Orange Polska SA* ECLI:EU:C:2019:480, paras 40–50.

[21]CRD (n 4) arts 5–6.

[22]Directive (EU) 2019/2161 of 27 November 2019 (Modernisation Directive) [2019] OJ L328/7, art 4(4) inserting CRD art 6(1)(ea); art 3(4) inserting UCPD art 7(4a).

[23]UCTD (n 4) art 3(1).

assume the consumer would have agreed to the term in individual negotiation.[24] Good faith is therefore already a substantive concept in EU consumer law. What it lacks is an operative agentic application.

3.2. The ELI Model Rules: A Bridge, Not a Destination

The European Law Institute's *Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts*, adopted in 2025, recognise the shift to agentic intermediation and translate it into operational duties.[25] Article 9 prohibits manipulation of free and informed decision-making.[26] Article 10 requires documentation sufficient to follow how a transaction was produced.[27] Article 11 mandates pre-contractual disclosure of parameters, defaults and any preferential treatment of of certain products or businesses.[28] Article 12 requires disclosure of conflicts of interest and grants a penalty-free termination right where a post-contractual conflict is disclosed late (14 days) or where any conflict is undisclosed.[29] Article 23 prohibits a business from using the design or operation of its online interface in ways likely to materially distort or impair the digital assistant's functionality, and allows the consumer to set aside any contract resulting from such infringement.[30]

These rules are sound but partial. The ELI reporters themselves describe them as designed to 'interface with existing consumer (contract) law rules' rather than to displace them.[31] Article 12 stops at disclosure of conflicts; it does not require their substantive avoidance or neutralisation. Once delegation is genuine, that omission becomes the central gap. The proposal that follows finishes the line that ELI began.

4. Doctrinal Foundations for a Duty of Loyalty

4.1. Good Faith and Significant Imbalance

The UCTD's good-faith standard, as elaborated in *Aziz*, already prohibits the imposition of terms that the trader could not reasonably expect a consumer to accept in individual negotiation.[32] An AI agent

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[24] Case C-415/11 *Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)* ECLI:EU:C:2013:164, paras 68–69.

[25] European Law Institute, *Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts* (ELI 2025); building on European Law Institute, *EU Consumer Law and Automated Decision-Making (ADM): Is EU Consumer Law Ready for ADM? – Interim Report* (ELI 2023).

[26] ELI Model Rules (n 30) art 9 (non-manipulation of consumers when using a digital assistant).

[27] *ibid* art 10 (documentation of decision-making).

[28] *ibid* art 11 (information to be provided to consumers).

[29] *ibid* art 12 (disclosure of conflict of interests).

[30] *ibid* art 23 (prohibition on impairing the digital assistant).

[31] Christoph Busch, Marie Jull Sørensen, Teresa Rodriguez de las Heras Ballell and Christian Twigg-Flesner, 'Towards the Next Generation of Consumer Law: The ELI Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts' (2025) 14 *Journal of European Consumer and Market Law* 89, 92–94.

[32] *Aziz* (n 25) paras 68–69; see also *C-26/13 Kásler* ECLI:EU:C:2014:282 on transparency as part of good faith.

secretly weighted toward the supplier's affiliated merchants imposes precisely such a structural imbalance. A hypothetical consumer in individual negotiation would not have agreed to a delegate that prefers its supplier's interests over the consumer's.

4.2. Professional Diligence and Transactional Decision

UCPD Article 2(h) defines professional diligence as the standard of special skill and care commensurate with honest market practice and the principle of good faith.[33] An agent supplier holding out a system as acting 'for' the consumer fails that standard when the system is configured to optimize for the supplier's revenue. *Trento Sviluppo* shows that a 'transactional decision' reaches preparatory choices.[34] In agentic settings the most consequential preparatory choice is the configuration of the agent itself.

4.3. Sectoral Analogies

EU law already governs conflicted intermediaries through stronger-than-disclosure duties. Under MiFID II, investment firms must 'act honestly, fairly and professionally in accordance with the best interests of [their] clients'.[35] The Insurance Distribution Directive imposes a parallel duty on distributors.[36] The Data Governance Act constructs neutral data intermediaries who may not exploit intermediated data for separate purposes.[37] These regimes show that the European legislature already knows how to require conduct, not merely candour, from conflicted intermediaries. A consumer-AI duty of loyalty is the natural extension of that pattern.

4.4. Avoiding the Fiduciary Transplant

The American literature on 'information fiduciaries' and 'privacy loyalty' has powerful insights, but a wholesale transplant is unsuitable for mass-market consumer law. Equitable fiduciary duties are too rigid for low-risk software and too costly to police across the long tail of consumer applications.[38] The European response should borrow the fiduciary insight that hidden conflicts deserve special treatment, and graft it onto the existing structure of professional diligence, good faith and design-based regulation. Loyalty, on this model, is a default rather than a status.

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[33] UCPD (n 4) art 2(h).

[34] *Trento Sviluppo* (n 6) paras 35–38.

[35] Directive 2014/65/EU of 15 May 2014 on markets in financial instruments (MiFID II) [2014] OJ L173/349, art 24(1); see Niamh Moloney, *EU Securities and Financial Markets Regulation* (3rd edn, OUP 2014).

[36] Directive (EU) 2016/97 on insurance distribution [2016] OJ L26/19, art 17(1).

[37] Regulation (EU) 2022/868 on European data governance (Data Governance Act) [2022] OJ L152/1, arts 11–12.

[38] Jack M Balkin, 'Information Fiduciaries and the First Amendment' (2016) 49 *UC Davis Law Review* 1183; Neil Richards and Woodrow Hartzog, 'A Duty of Loyalty for Privacy Law' (2021) 99 *Washington University Law Review* 961; Noam Kolt, 'Governing AI Agents' (2025) 101 *Notre Dame Law Review*.

5. A Model Rule for the Digital Fairness Act

5.1. Trigger and Scope

The duty should apply where a trader, in the course of business, supplies, controls or materially configures an AI system that the consumer can reasonably rely on to search, compare, rank, recommend, negotiate, subscribe, cancel, conclude or materially manage business-to-consumer contracts with limited or no case-specific human review. Mere question-answering chatbots, clerical automation and non-commercial open-source agents fall outside.

5.2. Substantive Content

Where the trigger is met, the supplier must configure and operate the agent so that it prioritises the consumer's stated objectives and, in their absence, the consumer's reasonably inferable interests in price, quality, privacy, interoperability and switching costs. The supplier must not design, train or operate the agent so that material recommendations, rankings, negotiations or executions are distorted by the supplier's remuneration, an affiliate's remuneration, or third-party payments.

5.3. Conflict-Free Mode

Conflicted operation should be permitted only where (a) the conflict is disclosed clearly and separately before the relevant task; (b) an effective conflict-free alternative exists; and (c) the consumer has given a specific and revocable opt-in. This keeps business models open without normalising hidden steering. Loyalty is the default. A sponsored mode is available, but only by deliberate and reversible opt-in.

5.4. Logging and Override

The supplier must retain machine-readable logs of objective weights, merchant-affiliation flags, ranking reasons, override events and execution steps for a period sufficient to permit regulatory and judicial review. These logs need not amount to full source-code disclosure. The Data Act has shown that EU law can balance transparency with trade-secret protection.[39] The consumer must have a right to override individual decisions, deactivate the agent and exit subscriptions on terms no more onerous than those of activation.

5.5. Remedies

Breach should produce four remedies: (1) termination of the agent contract without penalty; (2) restitution of any undisclosed commission or benefit obtained through disloyal steering; (3) damages for loss caused by breach; and, where disloyal configuration has caused the consumer to conclude a downstream contract, (4) a rebuttable presumption of distortion entitling the consumer to rescission or price reduction unless the counterparty proves the same outcome would have followed under

[39] Regulation (EU) 2023/2854 of 13 December 2023 (Data Act) [2023] OJ L, arts 4–5 (balancing access with trade-secret safeguards).

conflict-free operation. Public enforcement, including injunctions, parameter audits and representative actions, should run in parallel.[40]

7. Lege Ferenda: Draft Article X for Consumer-Facing AI Agents

Proposed insertion in the Digital Fairness Act, or alternatively in the CRD as Article 6b. The drafting draws on the French Code de la consommation, articles L111-7 and L111-7-1, on Dutch ACM and Italian AGCM enforcement, and on the ELI Model Rules.[41] [42]

> *(1) Where a trader, in the course of its trade, business, craft or profession, supplies, controls or materially configures an AI system within the meaning of Article 3(1) of Regulation (EU) 2024/1689 to perform any of the following on the consumer's behalf — search, comparison, ranking, recommendation, negotiation, subscription, cancellation, conclusion or material management of a business-to-consumer contract — without case-specific human review by the consumer, the trader shall ensure that the system gives priority to the consumer's stated objectives and, in their absence, to the consumer's reasonably inferable interests in price, quality, privacy, interoperability and switching.*
>
> *(2) The trader shall not design, train, configure or operate the system so that material recommendations, rankings, negotiations or contract executions are distorted by the trader's remuneration, the remuneration of an affiliated undertaking, or any payment or benefit from a third party, unless cumulatively:*
>
> *(a) the conflict is disclosed clearly and separately before the system is used for the relevant task;*
>
> *(b) the consumer is offered an effective conflict-free mode at no additional cost and without material reduction in the system's functionality; and*
>
> *(c) the consumer has given a specific and revocable opt-in to conflicted operation.*
>
> *(3) The trader shall provide effective override tools, the right to deactivate the system, and the right to exit on terms no more onerous than those of activation.*

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[40] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC [2020] OJ L409/1

[41] Code de la consommation, arts L111-7 and L111-7-1 (introducing the obligation of 'information loyale, claire et transparente' for online platforms and comparators).

[42] Authority for Consumers and Markets (ACM), *Guidelines on the Protection of the Online Consumer* (ACM 2023); ACM, *Decision: Epic Games (Fortnite)* (2024); Autorità Garante della Concorrenza e del Mercato, *Provv. n 30135 (Supermoney)* (2022).

(4) The trader shall retain, for a period of at least three years, machine-readable logs sufficient to permit a competent authority or court to assess compliance with paragraphs (1) and (2). Disclosure of those logs may be made subject to confidentiality and trade-secret safeguards modelled on Article 4(6) and Article 5(8) of Regulation (EU) 2023/2854.

(5) Breach of paragraphs (1) to (3) entitles the consumer to:

(a) terminate the contract for use of the system without penalty;

(b) restitution of any benefit obtained by the trader through the breach;

(c) damages in accordance with ordinary national rules; and

(d) where the breach has caused the consumer to conclude a downstream consumer contract, a rebuttable presumption of distortion: the counterparty must show that the same outcome would have occurred under conflict-free operation, failing which the consumer may rescind the downstream contract or, at the consumer's option, claim a proportionate price reduction.

(6) Any contractual term excluding or limiting paragraphs (1) to (5) to the detriment of the consumer shall not be binding on the consumer.

(7) Member States shall designate a competent authority empowered to issue injunctions, require parameter audits and impose effective, proportionate and dissuasive penalties. Directive (EU) 2020/1828 applies to infringements of this Article.

8. Conclusion

EU consumer law is unprepared for the agentic economy because its central regulatory technique, namely disclosure addressed to a human reader, is misaligned with the structure of delegation. Disclosure retains real value as evidentiary infrastructure, but it should be demoted. When the consumer entrusts contracting to a machine, the law's first question must be whose interest the machine serves. A limited duty of loyalty answers that question. The Digital Fairness Act offers the moment to embed it. The European Law Institute's Model Rules have laid the foundation. The next step is to put loyalty at the centre.

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