

Arcep's contribution to the European Commission's public consultation on future legislation on digital fairness ("Digital Fairness Act")

Arcep – October 2025

Digital technology now plays a decisive role in the economy and society and the European Union has developed a coherent digital strategy and legislation that is adapted to these new challenges. The initiative to complement this with a legislation on digital fairness provides an opportunity to address **persistent concerns in digital markets**. Arcep welcomes the ambition of the Digital Fairness Act (DFA) to supplement current legislation in order to protect consumers against unfair online commercial practices and the addictive design of digital products. Arcep also welcomes the objectives of the legislative proposal, which aim to ensure fair competition for online businesses and offer greater freedom of choice to online users.

The implementation of digital regulation in Europe that **promotes the availability of digital infrastructure¹, the opening up of digital markets² and the reduction of the environmental impact of digital technology³ is at the heart of Arcep's strategy**. Its work has led it to formulate a number of proposals, which are set out below.

1 Combating addictive design

"Dark patterns" and addictive design manipulate users by encouraging them to spend more time online, consent to intrusive practices or make unwanted purchases. **These strategies directly harm consumers by limiting their freedom of choice and compromising their well-being**. The European Commission's proposal for digital fairness legislation, which aims to regulate these practices more strictly, is therefore welcome.

Arcep has conducted several studies on the subject of the attention economy, particularly in connection with the development of the General Policy Framework for the Eco-design of Digital Services ("RGESN")⁴. This document, published in May 2024, presents design practices that give users back control over their usage, in particular by limiting infinite scrolling interfaces and autoplay content.

¹ In particular, thanks to the provisions of the [European Electronic Communications Code](#) and the upcoming initiative on AI and the cloud (Cloud and AI Development Act).

² Based in particular on [Regulation \(EU\) 2015/2120 laying down measures concerning open internet access](#) and [Regulation \(EU\) 2022/1925 on contestable and fair markets in the digital sector](#).

³ Digital services rely on physical infrastructure that is essential to the operation and use of networks and the internet (antennas, data centres, terminals, etc.). From their design to their use, while they can contribute to the decarbonisation of other sectors, they themselves have an environmental footprint. Digital technology accounts for nearly 4% of global greenhouse gas emissions. In addition to its ever-increasing carbon footprint, it also has other environmental impacts, such as water consumption and the increasing scarcity of metals and minerals. In France, if nothing is done to curb it, Arcep estimates that the carbon footprint of digital technology could triple by 2050 compared to 2020.

See: 'The Shift Project, Lean ICT: Towards digital sobriety, October 2018'; 'GreenIT.fr, Global digital environmental footprint, September 2019'; 'CGE, Reducing digital energy consumption, December 2019'; and: 'ADEME-Arcep study: assessment of the digital environmental footprint in France in 2020, 2030 and 2050, Press kit, March 2023', https://en.arcep.fr/uploads/tx_gspublication/press-kit-study-Ademe-Arcep-lot3_march2023.pdf.

⁴ [General policy framework for the eco-design of digital services \(RGESN\)](#). It was produced by Arcep and Arcom, with the support of ADEME, DINUM, CNIL and Inria.

This work highlights that combating addictive service designs also has societal and environmental benefits, by preventing online overconsumption by internet users and removing inherently burdensome features from service designs (e.g. the underlying preloading of videos with infinite scrolling). This illustrates the strong synergies between reducing the environmental impact of digital services and protecting users.

Arcep has identified a number of proposals for concrete measures, included in the “RGESN”, which support the **eco-design of digital services while offering greater protection for users**. These proposals for action, identified at national level, should be (i) made more binding and (ii) applied at European level, for example within the framework of the DFA.

Arcep therefore invites the European Commission to:

- **Introduce a requirement to disable ‘autoplay’ for video, animated and audio content by default⁵**, thereby reducing the risk of consumers continuing to view content that they do not necessarily want to see;
- **Regulate the display of ‘infinite scrolling’ and the underlying preloading of content (e.g., avoid ‘content walls’, infinite suggestions or infinite content chains) to reduce the weight of the page used and optimise the user experience⁶**. This measure would also aim to reduce the risk of infinitely capturing the consumer's attention, keeping them in an addictive consumption of content;
- **Require video service providers to offer a listening-only mode to users⁷**.

2 Enhancing consumer protection and empowering European consumers through efficient environmental measures

Preserving consumer welfare also requires measures to protect their purchasing power and the environment.

For example, **combating software obsolescence is a major challenge on which the European Union has already made progress**. In line with existing eco-design rules for smartphones and tablets⁸, **Arcep supports setting eco-design requirements for operating systems to ensure that they are continuously updated throughout the lifetime of the devices⁹**. More generally, maintaining digital services that can be used on older devices, with long-term software support, helps to extend their lifespan. This benefits

⁵ See [RGESN](#) criteria 4.1, which includes the following measures: (i) as much as possible, do not use animated graphics that the user cannot control or only partially control (animated gifs in particular). In particular, auto-playing video and/or audio backgrounds should be avoided if they are purely aesthetic; (ii) for animations deemed essential to the service's functionality, offer the user the ability to pause these elements.

⁶ See [RGESN](#) criteria 4.2, which also includes the following measure: set up easy-to-use browsing that is proportionate to the context of use, where content is loaded at the user's request with (for instance, a "See more" button that allows users to continue browsing, or using pagination).

⁷ See [RGESN](#) criteria 5.5: provide an option for the user to simply switch to audio-only mode on the video player (and if possible, switch back to video mode, if they want to watch the video again). In audio-only mode, the video stream is no longer downloaded by the video player, which confines itself to the audio stream.

⁸ See [Regulation \(EU\) 2023/1670 laying down ecodesign requirements for smartphones, mobile phones other than smartphones, cordless phones and slate tablets](#).

⁹ See [Ecodesign and Energy Labelling for digital products - Contribution to the European Commission regulations under preparation](#), Arcep, July 2024.

consumers in many ways, in terms of purchasing power, protection against cybersecurity risks, and also in terms of the sustainability of electronic equipment consumption.

Like the fight against software obsolescence, **greater restraint in online video consumption is another major challenge**¹⁰. Playing high-definition video content when it is not necessary on small screens unnecessarily increases the terminal's energy consumption and the amount of data transferred over networks. Similarly, the use of inefficient codecs or video encoding increases the load of video streams downloaded by users, effectively increasing bandwidth consumption and their environmental footprint. Arcep maintains that **adjusting the default video definition to the device used, requiring the use of high-performance codecs or video encoding, or giving users the autonomy to limit the environmental impact of their usage by allowing them to reduce the video definition**, are environmental measures that will ultimately increase consumer well-being.

Reducing the environmental impact of digital services therefore promotes sustainability in consumers' choices regarding the online products or services they use, and ultimately increases consumer well-being overall. The European Commission has also pointed out that **damage to consumers can take the form of environmental impacts**¹¹.

All of these measures therefore contribute to consumer protection. In this sense, they deserve to be considered by the European Commission in the context of this future legislative proposal (or through other legislative proposals).

Arcep therefore invites the European Commission to:

- Promote eco-design in digital services, including a **requirement for major service providers to ensure that their digital services work on older devices** (7 years old for native applications; 10 years for web applications running in a browser)¹² and the implementation of eco-design measures for AI services to promote the use of more frugal models¹³;
- Promote eco-design in digital equipment¹⁴, with:
 - **a minimum compatibility period for operating system security updates** (10 years for computers, 7 years for phones, tablets and connected devices) **to combat software obsolescence**;
 - **the extension of European energy labelling and eco-design requirements to set-top boxes and routers.**

¹⁰ See <https://altimpact.fr/en/bonnes-pratiques/controlling-your-video-consumption/>.

¹¹ See [Staff Working Document – Fitness Check on Consumer Law \(2024\)](#): “In the digital context, consumer detriment could be defined as a situation in which consumers experience negative outcomes when taking transactional decisions regarding different products and services online (as opposed to structural consumer detriment attributable to market failure or regulatory failure) [...] Detriment can take the form of financial harm, including direct financial costs, and nonfinancial harms, such as mental health harms, time loss, annoyance, disappointment, and broader harms, such as different degrees of negative environmental impacts, which could ultimately influence consumer well-being”.

¹² See [RGESN](#) criteria 2.2.

¹³ [RGESN](#) also presents measures relating to the eco-design of AI services, in particular on the training and inference of algorithmic models used for AI; see criteria 9.1 to 9.7 of the [RGESN](#). See also the [General framework for frugal AI An AFNOR SPEC to measure and reduce the environmental impact of AI](#), AFNOR SPEC 2314, June 2024.

¹⁴ See [Ecodesign and Energy Labelling for digital products - Contribution to the European Commission regulations under preparation](#), op. cit..

- Encourage video service providers to adopt **efficient codecs, offer an ‘energy-saving’ mode and implement definitions¹⁵ adapted to the size of terminals¹⁶** in particular to improve the environmental efficiency of video streaming services.

Furthermore, in order to identify effective environmental measures and to efficiently reduce the risk of harm to consumers, it is necessary to be able to objectively assess the environmental impact of digital services. Arcep therefore stresses the **need to involve public authorities, as neutral experts, more closely in assessing and measuring the environmental footprint of digital technology**, which is an essential step in developing ways to reduce it. This could take the form of various measures **at European level**, including **extending the powers of public authorities to collect data on the environmental footprint of digital technology¹⁷** and **establishing a public database**. Ultimately, the collection of this information and its accessibility to consumers will contribute to empower users and help them make relevant decisions when consuming digital services.

In line with several proposals already made in this regard, particularly in the context of the “Digital Networks Act” and the revision of the European Electronic Communications Code, Arcep also calls on the European Commission to:

- **Extend the powers of public authorities to collect data on the environmental footprint of digital technology;**
- **Establish a public, open-source database on the environmental impact of digital services and equipment at European level.**

3 Preserving internet openness to guarantee freedom of choice for consumers, particularly in the face of future technological developments

The opening up of digital markets and ecosystems guarantees consumers’ freedom of choice by ensuring the diversity of services available online and their interoperability. It gives them access to a wide range of online services without locking them into a single ecosystem, and promotes interoperability between everyday digital tools. This approach, which is central to the European Union's digital model, has already been enshrined in several pieces of European legislation, but requires constant vigilance to adapt to changing markets and technologies for the benefit of consumers. A first milestone was reached with the **Open Internet Regulation 2015/2120**, which enshrined in European law the principle of an open internet, characterised by the ability of internet

¹⁵ See [RGESN](#) criteria 5.4, 4.15 and 5.3.

¹⁶ For example, each generation of video codecs would bring a 30% reduction in energy consumption compared to the previous generation.

¹⁷ In this regard, it should be noted that collecting environmental data is essential to understanding phenomena – in this case, the environmental impacts of digital technology – and potentially proposing measures to mitigate them. For more information, see Arcep's annual survey ‘Towards sustainable digital technology’ ([available here in French](#)).

Measures promoting the collection of environmental data and the inclusion of environmental issues in regulatory objectives at European level are shared at European level through BEREC. See the following reports: *Report on Infrastructure Sharing as a lever for ECN/ECS Environmental Sustainability*, [BoR \(25\) 68](#) and *BEREC Report on ICT sustainability for end-users: Empowering end-users through environmental transparency on digital products*, [BoR \(24\) 82](#), as well as BEREC's recent responses to (i) the Commission's public consultations on the White Paper – *BEREC's input to the EC public consultation on the White Paper ‘How to master Europe's digital infrastructure needs?’*, [BoR \(24\) 100](#) – and (ii) the Digital Networks Act: *BEREC Input to the European Commission's Call for Evidence on the Digital Networks Act*, [BoR \(25\) 101](#).

users to access and share the content and services of their choice¹⁸. The **net neutrality** obligations set out in the regulation require internet service providers, the primary gateways to digital services, to ensure equal treatment of traffic, thereby promoting freedom of choice for internet users. However, preserving an open and neutral internet goes beyond the issue of networks alone¹⁹. **Large digital platforms are increasingly influencing the way users access information and services**. This is one of the aims of the Digital Markets Act²⁰, which includes several obligations and prohibitions on digital giants (known as ‘gatekeepers’) regarding the services they offer. A new challenge is emerging today with the **rise of generative AI, which is becoming an increasingly popular gateway to online content and services**. Unlike traditional search engines²¹, which provided users with links to third-party content, generative AI services offer summaries, sometimes without specifying the sources used. This ‘single’ response is conditioned by the underlying model parameters and the data on which generative AI is trained. Technical advances such as retrieval-augmented generation (RAG) make it possible to better reference sources, but their number remains limited.

The arrival of this new ‘algorithmic layer’ represents a **major innovation, with clear benefits for users**; however, **it poses new risks in terms of freedom of choice**, services, access and diversity of online content. Without configuration options, the time savings offered by generative AI can also be associated with a loss of user agency. A student seeking to explore a topic in depth may only obtain a generic summary, whereas a traditional search would have allowed them to consult a variety of analyses, some of which may even be contradictory. Similarly, a citizen seeking political information may be exposed to a partial view, shaped by the parameters of the model used.

That is why Arcep has launched an **assessment of the impact of generative AI on the openness of the internet**. The aim of this assessment is to ensure that these new services, while offering simplicity and efficiency, do not reduce the freedom of choice, nor the plurality of content and transparency that users need to remain in control of their digital usage. It is also a question of preserving the ability of innovators to offer new content and services to internet users, without the risk of discrimination from this new internet intermediary.

Finally, Arcep wishes to emphasise the importance of ensuring the openness of the generative AI market, since market concentration around a few ‘structuring content generators’ would increase the risk of locking in internet users. It is therefore important to ensure that the key resources of generative AI remain accessible to new entrants, under fair and non-discriminatory conditions. In this sense, the application of regulations on data (Data Act) and data governance (Data Governance Act) represents a major step forward in helping to create open, competitive and fair ecosystems. In light of these challenges, Arcep has already shared several recommendations²² and will publish a report in the coming weeks detailing the current assessment of the impact of generative AI on the openness of the internet and possible solutions. It calls on the European Commission to consider the new challenges relating to the open internet so that **new technologies do not limit users' choices** but, on the contrary, strengthen their freedom and autonomy on the internet.

¹⁸ See article 3 of Regulation (EU) 2015/20.

¹⁹ In line with the objectives of the European Declaration on Digital Rights and Principles for the Digital Decade.

²⁰ See Arcep's proposals in this regard as part of the revision of the DMA ([link](#))

²¹ While search engine interfaces, based on pagination, allow users to access a wide variety of content, their ranking and recommendation algorithms have long raised issues that are well documented in academic literature: risks of bias in the ranking of results, information bubble effects, and concentration of visibility on certain players. These issues are taken into account in the European regulatory framework, in particular by the Digital Markets Act (DMA).

²² See Arcep's contributions to recent European Commission public consultations in this regard: (i) [Arcep's contribution to the call for contributions on competition in generative AI](#) (March 2024); (ii) [Arcep's contribution to the European Commission's Call for evidence on a European Data Union Strategy](#); (iii) [Arcep's contribution to the European Commission Public Consultation on the Future of Cloud and AI Policies in the EU](#) (July 2025), as well as (iv) [Arcep's contribution to the European Commission's public consultation Consumer Agenda 2025-2030 and action plan on consumers in the Single Market](#) (July 2025).