

Protecting Minors in European Law: Consumer Regulation in Gaming

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The present work analyzes the profiles of legal and operational vulnerability that characterize the protection of minors in the gaming sector, with specific reference to contractual aspects and European consumer and data protection legislation. The examination of recent rulings by supervisory authorities highlights how the integration of manipulative schemes during the design phase, such as dark patterns and loot boxes, alters the users' contractual will and violates the principles of transparency and withdrawal. These mechanisms, aimed at prolonging gaming sessions, further promote the massive collection of data for aggressive commercial profiling, in stark contrast to the special protections reserved for minors by the GDPR. Having identified the limitations of parental responsibility and the power asymmetries caused by manipulative design, the remainder of the contribution will examine the remaining issues and the regulatory perspectives currently under consideration by the EU legislator.

Keywords: minors; consumers; dark patterns; data protection; digital fairness.

The Opportunities Offered By Gaming

Video games represent a significantly widespread entertainment worldwide, a factor of cultural expression and aggregation in large communities. However, beyond the apparently exclusively playful aspect, it is an area that hides behind it a fascinating world full of opportunities.

Indeed, its extraordinary economic and social vitality is confirmed by recent data attesting to its continuous expansion. In key European markets, revenues reached €26.8 billion, an increase of 4% compared to 2023. On the diffusion side, video games are now a mass phenomenon involving 54% of the European population between 6 and 64 years old. It is also necessary to dispel the stereotype that sees the *gamer* as a male teenager: the data reveal that 45% of gamers are women and that as many as 75% of users are adults, with an average age of 31 years old¹.

The implications on the employment front are also very interesting, with a growth of 1.8%, employing 116,419 professionals, with a female representation that constitutes 24.9% of professionals.

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¹See the results of the 2025 report released by the Video Games Europe and European Games Developer Federation "All About Video Games" associations, which offers a complete and definitive picture of the video game sector in Europe, in terms of turnover, employment and number of players. The report is available at the following link https://www.videogameseurope.eu/wp-content/uploads/2025/10/VGE-2024-Key-Facts-Report_102025.pdf

This sector therefore represents a crucial link, straddling the digital and cultural sectors, accounting for more than 50% of the added value of the overall EU market for audiovisual content. Thanks to the constant growth and the consistent increase in terms of turnover, great attention is paid to this sector, including by the EU institutions, which in 2022 led to the development of a project focused on this area, "Understanding the value of a European gaming society".²

The real peculiarity of the video game industry is in the intimate connection with the themes of innovation, as well as in the bivalent nature, placed between high tech and the creative sector. The creation and development of such systems require the use of increasingly sophisticated technologies and infrastructures with increasingly high-performance and technological performance, whose skills pertain to increasingly vast sectors such as design, retail, education, marketing, virtual/augmented reality as well as online sales, a fundamental part of the sustainability of online business.

It is therefore a sector that has the undoubted merit of promoting innovation in Europe, the development of new technologies, such as artificial intelligence and virtual and augmented reality, contributing to the growth of digital infrastructures and skills. The related implications therefore do not remain tied to a purely recreational area, but instead find application in contexts such as education and training, where they contribute to developing creativity, critical thinking and technical knowledge.

As anticipated, the sector embraces a large category of users, contexts and age groups, but it is above all with respect to minors that it presents a greater factor of involvement. In the most recent report released by the Video Games Europe associations and the European Game Developer Federation³, the number of gamers between 6 -10 years old (69%) and between 11 and 14 (85%) emerges, therefore belonging to sensitive categories and recipients of special protection. For this reason, specific reflections are necessary. For this category, in fact, gaming represents a real right. It is worth recalling⁴ that Article 31 of the United Nations Convention on the Rights of the Child⁵ establishes that children's rights include the right to play, to

²For details of the project see <https://digital-strategy.ec.europa.eu/en/policies/value-gaming> The project "Understanding the value of a European video game society" provides insights into the many economic, cultural, financial and social impacts that video games have on our society and how this industry affects a range of policy areas. The related activities were developed in 2022 and had two main objectives: 1) to deepen the understanding of the video game sector in order to identify future policy options; 2) to create and nurture a network of actors and experts in the EU video game industry sector, in order to facilitate future exchanges and support its growth.

³All about Video Games, culture - creativity - technology european key facts 2024, available at:https://www.videogameseurope.eu/wp-content/uploads/2025/10/VGE-2024-Key-Facts-Report_1_02025.pdf

⁴Reference is made to the clarifications of the European Parliament, which reiterates and reports the contents of these rights, confirming them as fundamental in the harmonious psychophysical development of the child, cf. Consumer protection in online video games: a European single market approach, European Parliament resolution of 18 January 2023 Consumer protection in online video games: a European single market approach (2022/2014(INI)), recitals Q and P https://www.europarl.europa.eu/doceo/document/TA-9-2023-0008_IT.html

⁵ The UN Convention on the Rights of the Child (CRC) was approved by the United Nations General Assembly on 20 November 1989, and ratified by Italy on 27 May 1991 with Law No. 176. It consists of 54 articles and the text is divided into three parts, the first contains the statement of rights (Articles 1-41), the second identifies the bodies responsible for improving and monitoring the Convention (Articles 42-45), while the third describes the ratification procedure (Articles 46-54), source: <https://www.unicef.it/convenzione-diritti-infanzia/articoli/>

participate freely and fully in life and cultural activities appropriate to their age, to be part of the digital world in a way consistent with the evolution of their abilities. Play, therefore, as a factor of creativity and inclusion, which intervenes in an indispensable way in the cognitive and developmental training of the minor, in an immersive and inclusive way.

However, these great advantages also involve possible risks. With regard to the sector we are specifically dealing with, when gaming, from a simple leisure parenthesis, begins to dominate and control the player's life, the pastime turns into an enemy and can become the cause of further macro categories of disorders, also common to contexts other than video games, such as messaging apps⁶ and social media, for which recent American court cases have inevitably attested to the harmful effects deriving from the use of the same⁷. These effects can also lead to psychic distress that the WHO has defined as "gaming disorder", corresponding to pathological addiction characterized by altered control over gaming and the normal management of one's life⁸. For a child, the typical symptoms of this pathological phase can manifest themselves in toxic behaviour, also deriving from possible exposure to inappropriate, sexist or racist content sometimes present in video games.

Furthermore, since it is a more sensitive category than that of adults, it is particularly susceptible to commercial techniques that aim to guide their behaviour or manipulate their emotions, through computer architectures that artfully guide the will of buyers.

In addition, the possible commercial influence, inserted in the flow of the game, can be malevolent with respect to vulnerable categories, such as minors, on whom this discussion will focus. These subjects are more sensitive to certain types of stimuli and can then suffer serious consequences. The basic concept is that becoming a user's habit is an essential factor for the survival of an app. For this reason, the goal of developers is to implement mechanisms that encourage its use and increase the terms of permanence and interaction.

To achieve this result, systems calibrated and studied on our brain structure are designed, with the application of the most proven principles of neuroscience. In a nutshell, mechanisms are exploited that increase the levels of dopamine, a neurotransmitter associated with the perception of pleasure. In addition to this, there are more or less random reward mechanisms that further stimulate this neurochemical response⁹.

⁶European Commission, Understanding the value of a European Video Games Society Final Report, 2023, ISBN 978-92-68-04965-5 doi: 10.2759/332575

⁷With regard to the potential adverse effects of social media, reference should also be made to the recent judgment of 26 March 2026, in which a Los Angeles County Superior Court jury found that Meta and Google were liable in negligence for deliberately designing platforms that trapped the Plaintiff, a young woman who begun using Meta's Instagram app and Google's You Tube app as a child, in a cycle of addiction causing her mental health harms. <https://www.lboro.ac.uk/news-events/news/2026/march/us-social-media-case-meta-google/>

⁸According to the World Health Organization, "gaming disorder" consists of a series of persistent or recurrent behaviors that take precedence over other interests in life and has included it in the International classification of diseases (ICD) or the official list of mental pathologies. <https://www.who.int/news-room/questions-and-answers/item/addictive-behaviours-gaming-disorder>

⁹Koepp, M., Gunn, R., Lawrence, A. et al. Evidence for striatal dopamine release during a video game. *Nature* 393, 266–268 (1998). <https://doi.org/10.1038/30498>; Aviv Malkiel Weinstein (2010) Computer and Video Game Addiction—A Comparison between Game Users and Non-Game Users, *The American Journal of Drug and Alcohol Abuse*, 36:5, 268-276 (1998).

The brief framework examined indicates the presence of two essential factors that are the basis of those dynamics: the attempt to make the player remain within the virtual environment, to increasingly retain the user and promote purchases within the game; the opacity inherent in the design, which as we will see, follows logics that are sometimes not legitimate to favor the business model linked to the game and the massive collection of data, including personal data, of users.

This contribution therefore aims to examine the problematic profiles that characterize online gaming and the most frequent practices that present risk profiles, such as loot boxes and reward mechanisms for the monetization of data and user attention.

In this perspective, this paper aims to verify whether the current European regulatory framework is actually suitable to ensure the protection of minors from manipulative practices present in digital gaming environments, or whether the presence of any structural gaps makes further regulatory intervention necessary, also in view of the future Digital Fairness Act.

With the analysis of the current European legislation, mainly consumer, privacy and the Digital Services Act, as well as the comparison with the rulings of European and foreign authorities, the possible presence of structural gaps with respect to consumer protection, especially of the most vulnerable categories such as minors, will be assessed.

In the hypothesis of a current framework that is actually insufficient, possible options for intervention will be evaluated, such as strengthening the existing framework, including through self-regulatory instruments such as PEGI, or integration through the previously announced Digital Fairness Act, on the table of the European Commission to integrate the framework for the protection of the digital environment.

Contractual Protection of Consumers in Gaming Purchases

The value of video game-related purchases is constantly growing on a global scale. According to a US survey, total revenue will reach \$225.30 billion, with an annual growth rate of 8.35% and a projected market volume of \$352.10 billion by 2027.

With specific regard to revenues from in-app purchases, these are expected to reach \$145.30 billion and a value of \$1.25 billion compared to the revenue generated by paid apps¹⁰.

In recent decades, the world of gaming has revolutionized its business model by moving from a product logic, in the then arcade and boxed, to a service logic with so-called pay-to-win features or with different levels of free use. In this scheme, the freemium model is mainly detached¹¹, based on a dual type of offer: the concession of the game is free of charge but within the game there are features, advantages or other game options that require payment. This arrangement certainly has the undoubted

¹⁰Data collected and processed through reports and <https://www.statista.com/analysis>

¹¹https://www.meeple.com/en_us/topics/game-monetization/freemium-game-models H. E. (Grace) Park, Designing engagement: Exploring affordances in freemium digital games, *Technology in Society*, Volume 81, 2025, 102840, ISSN 0160-791X, <https://doi.org/10.1016/j.techsoc.2025.102840>. The author explores the different levels of involvement in the various gaming experiences and the different design features, also highlighting the business models that underpin them and that have in fact pushed the evolution of digital video games. Especially the concept of freemium gaming, characterized by a first level of free use and a second level of payment.

advantage of gathering a large number of players, given the initial absence of a payment, which represents an important source of business, thanks to the remuneration deriving from sales elements.

The market is constantly increasing and the gaming industry does not stop implementing new and profitable features such as multiplayer modes, augmented and virtual reality, subscriptions and other commercial strategies. Particularly flourishing is the area of purchases of gaming benefits such as: "skins" or aesthetic elements; tools to advantage in the game and to avoid advertising; the elimination of cool-down timers or waiting times; elimination of "grinding".¹² These features are then purchased by players through microtransactions, in apps or on the platform, which represent the real form of income in this sector, especially for free games¹³.

The purchasing dynamics, often highly accelerated within the authenticated areas, in many cases escape the strict parameters provided for by current legislation. Specifically, the pre-contractual approach and the dynamics that distinguish purchases related to video games are often characterized by a certain opacity, as they are not very exhaustive or inaccessible to consultation. These inaccuracies concern both the pre-contractual phase and that of the management of the same contract, in contrast with the robust system of protection established at European level, among other things, by the requirements dictated by EU regulations. Among these, Directives No. 2011/83/EU (Consumer Rights Directive - CRD)¹⁴ and No. 2005/29/EC¹⁵ (Unfair Commercial Practice Directive UCPD), later transposed by the various national legal systems, deserve¹⁶ specific mention.

In particular, art. 6 CRD, in prescribing the mandatory information to be provided to consumers in the event of distance purchases or negotiated away from business premises¹⁷, states that the same "must be appropriate to the communication technique

¹²See definition in [https://it.wikipedia.org/wiki/Grind_\(video_games\)](https://it.wikipedia.org/wiki/Grind_(video_games)): term used in the field of video games, in particular in MMORPGs and J-RPGs, to indicate the repetitive execution, by the player, of primary or secondary quests with the sole purpose of growing the character, increasing its level or unlocking new content faster, so as not to be led to spend real money, often even at the expense of fun.

¹³A. Fachechi, *Aggressive Marketing and in-game microtransactions: protection models*, in *Il Nuovo Diritto delle Società*, Fascicolo Straordinario 2025, Giappichelli – ISSN 2039-6880.

¹⁴[DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council](#)

¹⁵[Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation \(EC\) No 2006/2004 of the European Parliament and of the Council \('Unfair Commercial Practices Directive'\)](#), namely Article 7(1) which governs as misleading: a commercial practice which, in the specific case, having regard to all the characteristics and circumstances of the case, as well as the limitations of the means of communication used, omits material information which the average consumer needs in that context in order to make an informed transactional decision and thus causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

¹⁶In the Italian legal system, the matter is regulated within the so-called consumer law, Legislative Decree 6 September 2005, no. 206.

¹⁷Information requirements for distance and off-premises contracts: 1. Before the consumer is bound by a distance or off- premises contract, or any corresponding offer, the trader shall provide the

used and expressed in a clear and understandable manner, also taking into account the manner in which the contract is concluded or the characteristics of the sector", such as to ensure awareness. In specifying that the provision of information is appropriate to

consumer with the following information in a clear and comprehensible manner: (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services; (b) the identity of the trader, such as his trading name; (c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting; (d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints; (e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided; (f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate; (g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy; (h) where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex I(B); (i) where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods; (j) that, if the consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3); (k) where a right of withdrawal is not provided for in accordance with Article 16, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal; (l) a reminder of the existence of a legal guarantee of conformity for goods; (m) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees; (n) the existence of relevant codes of conduct, as defined in point (f) of Article 2 of Directive 2005/29/EC, and how copies of them can be obtained, where applicable; (o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract; (p) where applicable, the minimum duration of the consumer's obligations under the contract; (q) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader; (r) where applicable, the functionality, including applicable technical protection measures, of digital content; (s) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of; (t) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it. 2. Paragraph 1 shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium. 3. In the case of a public auction, the information referred to in points (b), (c) and (d) of paragraph 1 may be replaced by the equivalent details for the auctioneer. 4. The information referred to in points (h), (i) and (j) of paragraph 1 may be provided by means of the model instructions on withdrawal set out in Annex I(A). The trader shall have fulfilled the information requirements laid down in points (h), (i) and (j) of paragraph 1 if he has supplied these instructions to the consumer, correctly filled in.

the context in which the contract is concluded and to the characteristics of the sector, an important rule of conduct for operators is already being specified.

To this must also be added the greater extension carried out under the so-called Omnibus Directive¹⁸, which amended and supplemented the provisions of the sector directives¹⁹, further expanding the margins of protection in the field of digital services and content.

The aforementioned regulatory mandate requires that consumers have all the information relating to the electronic product and any goods that can be purchased within the game regarding their content. This information must be easily accessible and viewable in a clear and understandable way before the purchase of the game and on individual purchases, as well as transmitted to the consumer on a durable medium²⁰. In this sense, it is appropriate to recall the guidelines of the European Commission²¹ with regard to unfair commercial practices of companies towards consumers, which reiterate that pursuant to Articles 6 and 7 of the Directive, consumers must not be misled on aspects that may affect their decisions of a commercial nature". More specifically, Article 7(2) and Annex I, point 22), prohibit traders from concealing the commercial intent of the commercial practice".

Unfortunately, the current context of purchase within video games is characterized by several practices that are particularly in contrast with the current regulatory requirements. The most encountered problems relate to a lack of information on aspects relating, among other things, to subscriptions and the methods of renewal, withdrawal²², timing and methods of reimbursement. In addition, particular complaints concern commercial practices, objectively widespread for the great economic success to the benefit of the company's business, which openly violate the aforementioned regulations.

¹⁸Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC, Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of Union consumer protection rules <https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32019L2161&from=EL>, defined as the Omnibus Directive, transposed in Italy with Legislative Decree no. 26 of 7 March 2023, which makes amendments to the Consumer Code, integrating multiple provisions on unfair terms, unfair commercial practices, unfair competition, untruthful commercial communications, transparency towards consumers in addition to the applicable sanctions.

¹⁹See amendment to art. 2 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), transposed in Italy by Legislative Decrees No. 145 and 146 of 2 August 2007, integrated into the Consumer Code and Art. 2.11 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

²⁰In this sense, most recently, the recent introduction of art. 49-bis of the Consumer Code which integrates the additional information obligations specific to contracts concluded on online marketplaces, relating above all to purchases of digital goods on platforms.

²¹[Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market \(2021/C 526/01\)](#) of 29 January 2021.

²²M.L. Chiarella, "Algorithmic bargaining", pp.45 et seq., Giuffrè editore, Milan, 2016.

A significant example is that of the so-called loot boxes, which can be defined as "a particular set of microtransactions or in-game purchases"²³. They allow you to randomly obtain a certain amount of game elements, not previously known to the players, which can have a direct effect on game performance, or aesthetic or choreographic decorations without effects on the gameplay".

The peculiarity is that the player does not know the contents of the loot box until the moment of opening, therefore at a time after the payment or the behavior required to obtain it, with uncertainty about the reward or benefit deriving²⁴.

Loot boxes are present in different and common types of games such as cards, *esports*, role-playing games, even distributed by large channels such as video games for consoles, app marketplaces for smartphones and tablets²⁵. Loot boxes can be purchased with real currency, such as a microtransaction, with virtual in-game currency and, finally, as a reward for player behavior such as completing missions, obtaining milestones or passing levels.

The uncertainty about their actual content, and therefore the randomness that characterizes them, can be orchestrated by algorithmic systems, such as those of Dynamic Game Balancing²⁶, which decide on the assignment of content based on parameters related to the user, also piloting the outcome of the game or operating on the user satisfaction mechanism²⁷.

The often-obscure mechanism of operation of these loot boxes in the literature has led over time to associate their content with the dynamics of gambling. This juxtaposition is more frequent when the contents can be converted into cash or exchanged in the secondary market, giving rise to the phenomenon called *gambling-ification*²⁸. This reason has prompted several states such as Belgium to declare them illegal²⁹ under the national legislation on gambling law, providing for very high penalties in case of violation.

In addition, there are several rulings, EU and worldwide, that signal attention to this type of practice. Very recent, for example, is the decision of 16/6/2026 of the

²³[Provision of the Italian Competition Authority, Order no. 28368 PS11594 - ELECTRONIC ARTS-PURCHASES IN VIDEO GAMES](#)

²⁴A. Fachechi, "Aggressive marketing and in-game microtransactions: protection models" in which he literally talks about the "cost of luck" (par.0), *Il Nuovo Diritto delle Società*, Giappichelli, available online https://www.nuovodirittodellesocieta.it/Article/Archive/index_html?ida=1325&idn=198&idi=-1&idu=-1

²⁵See NCC report INSERT COIN How the gaming industry exploits consumers using loot boxes 31.05.2022 online at: <https://storage02.forbrukerradet.no/media/2022/05/2022-05-31-insert-coin-publish.pdf>

²⁶Y. Arifin, M. Mario, A. Levina, [A Review of the Trends, Methods, and Impacts of Dynamic Game Balancing](#), (2025) DOI: <http://dx.doi.org/10.62527/joiv.9.6.3436>

²⁷Interview with Prof. Antonio Gorgoni. The European Commission's Guidelines pursuant to art. 28 SLD: privacy and autonomy of the minor, blog Redazione Diritto Mercato e tecnologia, 9/1/2026, https://flore.unifi.it/retrieve/26bab3fe-6412-40b0-a9ff-220a72289660/Intervista%20al%20Prof.%20Antonio%20Gorgoni.%20Le%20Linee%20Guida%20della%20Commissione%20europea%20ai%20sensi%20dell_art.%2028%20DSA_%20privacy%20e%20autonomia%20del%20minore%20-%200Diritto%20Mercato%20Tecnologia.pdf

²⁸CERULLI-HARMS, Dr & Michaelsen, Frithjof & MÜNSCH, Marlene & THORUN, Christian & Hausemer, Pierre. (2020). Loot boxes in online games and their effect on consumers, in particular young consumers.; Francisco J. Sanmartín, Judith Velasco, Fátima Cuadrado, Juan A. Moriana The thrill of chance: Psychophysiological responses in loot boxes and simulated slot machines (2024) <https://www.sciencedirect.com/science/article/pii/S2451958824001787>

²⁹<https://www.bbc.com/news/technology-43906306> and <https://blog.promise.legal/loot-box-laws-gam-e-developers/>

Court for Children and Youth of the Federal District in Brazil, which condemned major video game companies and app store operators to pay damages in the amount of about 333 million Brazilian reais (65 million dollars)³⁰ for implementing unfair practices, based on addiction mechanisms, to the detriment of minors in particular.

The scope of this decision is part of a regulatory context of great prospects, given that in September 2025 Brazil adopted the 'Estatuto Digital da Criança e do Adolescente', so-called ECA Digital³¹. This legislation aligns with the European framework provided for by the DSA and imposes, among other things, the design of secure online services, the express prohibition of profiling, targeted advertising for minors, paid loot boxes for games that are aimed at or accessible to minors³². This is a particularly significant legislation, in terms of the protection of public health and children's rights, which aims to protect, with penalties of up to 10% of the turnover of the defaulting company, the psychological mechanisms affected by these practices, which especially for this category of users, represent an important node of vulnerability.

On the US side, the protection of minors is entrusted to the Children's Online Privacy Protection Act (COPPA) of 1998 but in terms of unfair practices, such as loot boxes, the picture appears more fragmented and structured on a sectoral basis rather than on an organic discipline, since there is no federal law specifically dedicated to these aspects. The most relevant aspects of the protection methods adopted emerge in terms of the decisions of the supervisory authorities. Among these, it should be noted that in January 2025 the Federal Trade Commission reached a \$20 million settlement with Cognosphere, the distribution company of Genshin Impact, for deceptive practices relating to the probabilities of loot boxes and for violations of COPPA regulations, with a ban on the sale of loot boxes to minors under the age of 16 without parental consent and the disclosure of probabilities in terms of current currency³³. On a regulatory level, it is also worth noting the legislative action of New York which, with bills A9044 and S10091 of 2025³⁴, introduced proposals to prohibit the sale of loot boxes to minors and impose transparency on the real chances of winning them. Also in 2025, other states, such as Utah, Texas and Louisiana have passed the App Store Accountability Acts, which also aim for user age verification mechanisms³⁵.

From the comparison of the experiences of these states, it is possible to see that the US model is fragmented and reactive, in contrast to the prohibitions provided for by the regulatory line adopted by Brazil and by the transversality of the various regulatory

³⁰1ª Vara da Infância e da Juventude do Distrito Federal, decision of 9 June 2026; see Licks Attorneys, 'Brazil's First Loot Box Ruling: Key Takeaways for Digital Companies', 24 June 2026, <https://www.lickslegal.com/articles/brazil-s-first-loot-box-ruling-key-takeaways-for-digital-companies/>

³¹Law No. 15.211, of 9 September 2025 (Estatuto da Criança e do Adolescente Digital – ECA Digital).

³²P. P. Rodrigues Santos, Digital status of children and adolescents: regulatory and inspection challenges, *Ibero-American Journal of Humanities, Sciences and Education*, v. 11, n.10, out. 2025.

³³Federal Trade Commission, Press Release, January 2025, relating to the transaction with Cognosphere Pte. Ltd. (Genshin Impact) for misleading practices regarding loot box probabilities and violation of the Children's Online Privacy Protection Act (COPPA).

³⁴New York State Senate, Bill S10091/A9044, 2025/2026. The first on gamification and gambling has been postponed to the Senate Internet and Technology Committee in April 2026, while the path of the second, on loot boxes, appears more uncertain.

³⁵Utah S.B. 142 (App Store Accountability Act, 2025); Texas S.B. 2420 (App Store Accountability Act, 2025); Louisiana, App Store Accountability Act (2025).

instruments (DSA, GDPR, UCPD/CRD) provided for by Europe, the actual completeness of which will be returned to in the final chapter.

At the European level, and more specifically in the Italian context, reference can be made to two decisions of the Italian Competition Authority (AGCM).

The first concerns the proceeding³⁶ against Activision Blizzard, initiated in relation to the *Overwatch* and *Heartstone* video games. The disputes concerned omissions inherent in consumer provisions, especially those relating to transparency on the real characteristics of the offer by Activision Blizzard. The first concerns misleading and omissive information in games presented as "free to play", therefore without an initial cost to obtain their use, about the real presence of *in-game purchases*³⁷. Although, according to the clarifications provided, these *in-game purchases* were not necessary for the gaming experience or the actual completion of the sessions, their existence had to be properly explained and detailed in the terms set out in art. 6 CRD. This omission took on a more serious character under the circumstance that these games could be used by children and adolescents, for whom the obligation to make the information more comprehensible had not been complied with. With the aggravating addition that this lack of information could also affect the parents' decision-making awareness at the time of purchase.

Finally, further objections related to the presence of *loot boxes* and the presence of a design mechanism, aimed at inducing minors to make purchases or to solicit it from their parents, transmitting messages aimed at this purpose.

The procedure ended with the acceptance of the commitments by the company, which undertook to implement measures such as the clear and prominent display of PEGI pictograms³⁸, a digital labeling system that describes content and information on the recommended age to use a game, the introduction of a *Parental Control* systems that require the active consent of the parent for purchases, with clear transparency systems for *loot boxes* with an explanation of how they work.

More recently, the AGCM has launched two further investigations (PS13020-PS13039),³⁹ still ongoing, the contents of which are not yet disclosed, again against Activision Blizzard, this time for the video games "*Diablo Immortal*" and "*Call of Duty Mobile*". The investigations focus on alleged aggressive and deceptive commercial practices, in violation of the Consumer Code, with a focus on the *dark pattern*⁴⁰ to induce frequent gaming and unaware or unwanted purchases. The main critical profiles concern the opacity on the value of virtual currencies, limited-time offers, *Parental Control* functions pre-set in a way that does not protect minors and the

³⁶Compare AGCM Provision no. PS11595 - Activision Blizzard-purchases in video games - Provision no. 28452, published in the weekly bulletin no. 48 of 7/12/2020, available at the link <https://www.agcm.it/dotcmsdoc/bollettini/2020/48-20.pdf>

³⁷M. Magaldi, [*Electronic games between freedom of consent and health protection*](#), The New Law of Society, Extraordinary Issue 2025, Giappichelli – ISSN 2039-6880

³⁸As described in the provision referred to in paragraph 16, "The Pan European Game Information (PEGI) is an age-based video game rating system that uses five age categories and eight content descriptions. The PEGI rating examines the suitability of a game by providing a minimum age recommendation based on the content of the game. Established in spring 2003 to help European parents make informed decisions when purchasing computer games, the PEGI system has replaced several national age rating systems and has established itself as a single system in most European countries".

³⁹<https://www.agcm.it/media/comunicati-stampa/2026/1/PS13020-PS13039>

⁴⁰On these aspects, see the analysis that will be addressed in paragraph 4 of this article.

inadequacy of information on contractual rights and consent to data processing, including for profiling purposes. These investigations underline the Authority's constant attention to the protection of underage consumers in this sector.

Another useful case to better understand these issues correspond to the very recent coercive action⁴¹ brought by the Consumer Protection Cooperation Network⁴² (CPC), against Star Stable Entertainment AB for possible risks to the detriment of players of the Star Stable Online game. Following the complaint of the Swedish Consumer Association, the CPC has issued a common position⁴³ with key principles on the safety of gaming environments. The contested practices have possible harmful effects for minors such as: advertising content that persuades children to buy or convinces adults to buy virtual currency or in-game items; the use of pressure techniques to purchase such as offers with a limited time limit; lack of clear and transparent information, especially calibrated on the users of minors, in relation to the actual value of the virtual currency, with the consequence of making them spend more than they want; the company's control over the effective transparency of the informative content of influencers who promote the company's products and the absence of manipulative techniques to the detriment of minors.

The investigation is still underway, but the case already allows us to begin to frame fundamental principles in the design of the game environment, the purchase and use of virtual currencies.

These principles have been represented by the CPC in the guidelines "The Consumer Protection Cooperation Network's Key Principles on In-game Virtual Currencies"⁴⁴ which concern virtual currency and list seven criteria to be respected in contractual relations with consumers. These criteria have a very wide extension and offer useful criteria in terms of interpretation.

The first relates to the provisions of art. 6 (1) (d), 7 of the UCPD and art. 6 (1) (e)⁴⁵ CRD which requires the display of clear and transparent prices, also in relation to the exact correspondence with the legal tender currency. In addition, the price must be expressed

⁴¹See the European Commission press release of 21/3/2025 "Commission and national authorities take measures to protect children from harmful practices in video games" http://ec.europa.eu/commission/presscorner/detail/it/ip_25_831

⁴²It is an authority established by [Regulation \(EC\) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws \(the Regulation on consumer protection cooperation\) \(Text with EEA relevance\)](#) and whose powers were then extended by the subsequent [Regulation \(EU\) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation \(EC\) No 2006/2004](#), composed of the national authorities that are vested with competence in the field of consumer protection. The CPC operates under the coordination of the European Commission and addresses the various infringements of European legislation relating to consumer protection in the single market.

⁴³Common position by competent authorities under Article 19(3) of Regulation (EU) 2017/2394 and concerning the commercial practices of Star Stable Entertainment AB https://commission.europa.eu/document/download/030ff1d8-526e-4807-8a7e-1505f9e235d9_en?filename=Common%20Position%20on%20Star%20Stable%20Online%20.pdf&prefLang=it

⁴⁴CPC, The Consumer Protection Cooperation Network's Key Principles on In-game Virtual Currencies, <https://commission.europa.eu/document/download/8af13e88-6540-436c-b137-9853e7fe866aen?filename=Key%20principles%20on%20in-game%20virtual%20currencies.pdf>

⁴⁵See footnote 18 for the content of the article.

objectively, without false alterations due to currency exchanges, packages of offers or in general to any other parameter without certain references. The second, again in contrast with the regulatory references already mentioned, concerns the prohibition of currency obfuscation, with the use of multiple currencies or the request for multiple exchanges (e.g. buying gems to buy coins to buy the sword) which complicate the immediate understanding of the price actually paid for microtransactions carried out in the same game context.

The third principle, linked to the protection of Articles 5, 8 and 9 UCPD, concerns the prohibition of using strategies such as bundles of goods or currencies (so-called bundles) or linked to a minimum purchase (e.g. goods with a reduced cost but purchasable only after certain quantities are exceeded) which result, respectively, in forcing consumers to make unwanted purchases or excessive spending.

The fourth principle, in compliance with art. 6 CRD, requires clear and comprehensible pre-contractual information. This information includes, but is not limited to: the main characteristics of the in-game digital content or services or virtual currency; the identity and contact details of the professional; the price and value translated into real currency; the existence of the withdrawal conditions (referred to in the following principle); the legal guarantee of conformity required by law for digital content and services; payments and delivery.

The fifth principle relates to the right of withdrawal, referred to in Articles 9 to 16 of the CRD. Traders must clearly establish the rules for withdrawal, framed by the legislation in at least 14 days from the purchase in the case of unused currency. In this regard, it is interesting to mention the provisions of Directive (EU) 2019/2161⁴⁶, following the amendments introduced by Directive (EU) 2019/770⁴⁷ regarding the definition of digital content and services, where it imposes important clarifications on the guarantees that must accompany the right of withdrawal. It seems useful to recall recital (35) of Directive (EU) 2019/2161 where it specifies that in the provision of digital services through a non-material medium, characterized by a single supply by the trader to provide the consumer with one or more specific elements of the digital content, they remain subject to the exception to the right of withdrawal referred to in Article 16, first paragraph, letter m), of the CRD which provides that the consumer loses this right once the performance of the contract has begun. However, this assumption is valid provided that the consumer has given his prior express consent to start the performance during the period of the right of withdrawal and has accepted that he would thus lose his right. In the design phase, it is therefore essential to adequately

⁴⁶[Directive \(EU\) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of Union consumer protection rules.](#)

⁴⁷Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (Text with EEA relevance), the definitions set out in Art. 2 (1) 'digital content' means data produced and supplied in digital format; (2) 'digital service' means a service that enables the consumer to create, transform, store or access data in digital form; or (b) a service that enables the sharing of data in digital format uploaded or created by the consumer and other users of that service or any other interaction with such data; (3) 'goods with digital elements' means any tangible movable property that incorporates or is interconnected with digital content or a digital service in such a way that the absence of such digital content or digital service would prevent the performance of the functions of the good.

prepare the consent collection form. In addition to this, there is also what was introduced by Directive (EU) 2023/2673⁴⁸, which introduced specific requirements in Article 11 bis for the withdrawal of purchases made in the online environment, requiring the provision of an interface that aims to make the exercise of this right simple and intuitive.

Returning to the principles of the CPC, it is now appropriate to examine the sixth, which requires compliance with the principle of fairness of contractual clauses in compliance with the provisions of art. 3 (1) and (3) UCPD. Compliance with the principle of transparency and clarity in the wording of texts is strongly affirmed, which must be understandable by the diversified types of users who use these services. In addition, the absolute prohibition of preparing unfair terms, which unjustifiably prejudice the rights of users, is reiterated. In this regard, the guidelines prohibit the imposition of terms that are excessively unbalanced towards the trader such as: those that extend the unilateral right to terminate, modify or withdraw at any time, in an unfair manner, the digital content or services purchased or the virtual gaming currencies purchased; those that limit or deny the exercise of rights by consumers; those that allow professionals to be able to remove, unilaterally and without any limitation, content or features of the video game purchased by players; change the value of in-game currencies without any discrimination; prohibition of access to the game with limitation of the exercise of complaint rights by players.

The last principle relates to the protection of players, with specific regard to vulnerable individuals, with respect to whom it is forbidden to leverage their respective cognitive biases for the economic advantage of tech companies.

Another issue is related to the hypotheses of purchases by minors made outside the control of parents or guardians. Given the limits provided for by the legislation regarding the possibility for minors to conclude a contract⁴⁹, there are frequent cases in which they find themselves purchasing video games or related features, due to automatic payment mechanisms, outside of control or verification⁵⁰. For the general comparison of the responsibility of parents and guardians on the control of the activities of those subject to their respective control⁵¹, it should be noted that, although monitoring tools are available, to date there is a lack of integrated and truly effective solutions capable of implementing it in a stringent manner.

⁴⁸Directive (EU) 2023/2673 of the European Parliament and of the Council of 22 November 2023 amending Directive 2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC

⁴⁹Think of the reality of the Italian legal system, which links the case of voidability, for the provision of art. 1425 of the Civil Code, to contracts entered into by minors under 18 years of age, as they do not possess the capacity to act pursuant to art. 2 of the Civil Code cf., F. Gazzoni, *Manuale di diritto privato*, Milan, 2021.

⁵⁰With regard to the issue of the voidability of online purchases, see "Daily life of the online minor. Between protection needs and technological limits" in *Rivista di Diritto dei Media* n.1/2022 <https://www.medialaws.eu/rivista/vita-quotidiana-del-minore-online-tra-esigenze-di-tutela-e-limiti-tecnologici/>

⁵¹E. Andreola, *The minor's online purchases between invalidity of the act and parental responsibility*, in *Contr. e impr.*, 2, 2018, 953 ss.

Hacking the user: Dark Patterns and Consensus Bugs as Design Flaws

The pervasiveness of gaming contexts and the related unfair and aggressive commercial practices, mentioned above, is also expressed through the very designs of the video game, which conceal traps aimed at identifying and exploiting any situations of vulnerability of the player, especially where minor.

To frame the context of reference and examine those factors that materially lead the user to fall into these traps, it seems very useful to recall what was described by the European Parliament, in⁵² its resolution of 12 December 2023 on the design of addictive online services and consumer protection in the EU Single Market. The resolution first notes that "in today's attention-based economy, certain technology companies use the design and functionality of systems to exploit users' and consumers' vulnerabilities in order to capture their attention and increase the amount of time they spend on digital platforms; whereas many digital services, such as online games, social media, film, series or music streaming services, marketplaces or online stores, can be designed to ensure that users stay on the platform for as long as possible, so as to maximise the time spent there, the money spent by users, the amount of data collected, as well as the activity, interactions, content production, network development and data sharing; that this applies in particular to data monetization services". Therefore, the goal of the digital platform or service is to capture the user's attention, time, personal data, monetize it and develop the greatest possible dependency. In the resolution, the term "design" is declined in several high-impact variables such as "manipulative", "addictive" and "behavioural", all with the meaning of manipulations that involve risks such as digital addiction and induce piloted behaviours, leveraging the user's vulnerabilities.

The techniques described so far are the symptomatic expression of a larger and more insidious phenomenon, dark *patterns*⁵³. These are deceptive designs that aim to alter or circumvent the user's will for the benefit of the professional. To do this, "gamification" techniques are frequently used, i.e. behavioural designs based on reward mechanisms that reward the completion of certain tasks and give users the illusion of choice and control. Behind this curtain, however, lies a deliberately and carefully designed sequence of interactions.

These are not mere aesthetic or *bad design* choices, but real architectures, intentionally designed to subvert the user's decision-making autonomy, pushing him towards the already mentioned behaviours (purchases, data transfer, dwell time) that he would not have adopted in conditions of full freedom and awareness.

⁵²[Designing addictive online services and protecting consumers in the EU Single Market European Parliament resolution of 12 December 2023 on designing addictive online services and consumer protection in the EU Single Market \(2023/2043\(INI\)\)](#)

⁵³M. Sameen, A. Rashid, Dark Patterns in Video Games: An Exploratory Study, <https://conpro24.ieee-security.org/papers/sameen-conpro24.pdf>; E. Veiga, N. Silva l b, B. Gadelha, H. Oliveira, T.Conte, Dark Patterns in Games: An Empirical Study of Their Harmfulness; S.Niknejad, T. Mildner, N. Z., Susanne Putze, R. Malaka, Level Up or Game Over: Exploring How Dark Patterns Shape Mobile Games, <https://dl.acm.org/doi/10.1145/3701571.3701604> (2024); T. Montefiore,P. Formosa Dark Patterns, Meet the Gamer's Dilemma: Contrasting Morally Objectionable Content with Systems in Video Games, https://journals.sagepub.com/doi/10.1177/15554120251319173?__cf_chl_f_tk=6Nd6X1zDFnQ7z4RBRjh5EC.6K6QZGs20zuSofuwUCBw-1782905997-1.0.1.1-NPV24qclwz3nbKUsواز5wrBN.125rGeWEmxs821M9hQ (2025)

In this scenario, the design of the interface can cease to be a neutral tool for the use of the service and become, legally, the tool through which a defect of consent is perfected⁵⁴.

From an analysis carried out by the European Parliament in the resolution on consumer protection in online video games⁵⁵, it emerges in this context the frequent use of *dark patterns*, such as manipulative and distorting designs⁵⁶, capable of compromising the consumer's freedom of choice. Think, for example, of the case in which designers leverage manipulative elements, such as the proposition, in critical phases of the game, of microtransaction offers of items to overcome critical phases of the game, as well as in the pervasive proposition of commercial offers, also through the use of visual or acoustic effects (increase in volume at particular moments) aimed at pressing the player.

Due to the obvious economic implications deriving from the use of these tools, the digital industry invests heavily in perfecting and expanding their functionalities. Over time, in fact, their capacity has increased and the predictive and analytical potential is enhanced thanks to the integration of algorithmic models, based on artificial intelligence. For this reason, the doctrine today speaks of tools enhanced by dark patterns or Hyperdarkpatterns⁵⁷, characterized by great pervasiveness and extreme precision.

In the aforementioned resolution, a specific section is then dedicated to how to ensure a safe online environment for users of online video games (par. 41 et seq.), highlighting the role of PEGI⁵⁸ and other parental control systems, as useful tools to also support the parental role and to create a safe environment for players.

To properly understand the reference context, the role of the additional applicable regulations cannot be overlooked, first of all the Digital Services Act (DSA)⁵⁹ which

⁵⁴G. Guerra The Impact of Dark Patterns on User Consent: the European Way to Address New Vulnerabilities. in [Giustiziavivile.com](https://giustiziavivile.com) In-depth analysis of 19 August 2022; G. Versaci, [Consent to the processing of personal data and dark patterns between optionality and conditionality](#), The new commented civil laws, 2022.

⁵⁵Consumer protection in online video games: a European single market approach- European Parliament resolution of 18 January 2023 Consumer protection in online video games: a European single market approach (2022/2014(INI)) (2023/C 214/03) <https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52023IP0008>

⁵⁶Staffan Björk -Chris Lewis-José P Zaga, Dark Patterns in the Design of Games, <https://core.ac.uk/reader/301007767>

⁵⁷A. Scaffidi, V. Forte [From Dark Patterns to Hyper-Engaging Dark Patterns: for a modern application of the prohibition pursuant to art. 25 DSA](#), Medialaws, 2/2025, pp. 430-442. The authors highlight the evolution from traditional *Dark Patterns* (static and graphic) to Hyper-Engaging Dark Patterns (HEDPs), dynamic tools designed to maximize interaction and induce unintentional behavior (e.g. impulsive purchases). With specific regard to art. 25 DSA, the authors denounce a lack of protection, due to the sanctioning restriction of misleading graphic interfaces, leaving HEDPs unpunished. The proposal is that of an extensive interpretation of the rule that prohibits any architecture, even of an algorithmic nature, capable of "compromising" the autonomy of the user, thus overcoming the current disparity of protection between large platforms (VLOP) and smaller operators.

⁵⁸To this end, the PEGI <https://pegi.info/it/controlloparentale> index is recommended as a good practice and a starting point for the development of new tools.

⁵⁹Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) <https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=CELEX:32022R2065>

aims to create a safe and predictable online environment, especially for the protection of minors. The DSA applies to all intermediaries and online platforms in the EU, small and medium-sized enterprises are exempt from some rules⁶⁰, with specific obligations for online platforms and very large search engines, so-called Very Large Online Platforms (VLOP) and Very Large Online Search Engine (VLOSE).

In this context, Article 25 of the DSA, located in the section dedicated to the provisions applicable to providers of online platforms, assumes fundamental importance⁶¹. regardless of the qualification of the latter as VLOPs⁶² or VLOSEs. The first paragraph of Article 25 introduces an express and wide-ranging prohibition, imposing an obligation on digital services providers not to design, organise or operate their online interfaces in such a way as to deceive or manipulate the recipients, or to materially distort or otherwise impair their ability to make free and informed decisions.

In the context of gaming, this provision becomes applicable in several circumstances. The first is the indirect intermediation of marketplaces or app stores (e.g. PlayStation Store, Steam, Nintendo eShop) which, as in the case of Apple Store and Google Play, can also be VLOPs. As online platforms⁶³, bound by the provisions of the DSA, they are prohibited from designing their interfaces in such a way as to deceive or in such a way as to manipulate the user. In the case of marketplaces, the mitigation obligations provided for by art. 34 and 35 DSA are particularly important, given their impact on minors. Platform operators may be held liable in the presence of violations of the duties of diligence and failure to manage the risks ascertained.

Even outside of these hypotheses, the DSA finds full application in the updated context of video games, which are increasingly real social ecosystems, characterized by public chats, open communication systems with the exchange of messages and links or where players can create and upload their own content (personalized maps, game skins, etc.). In fact, when platforms offer a hosting service for dissemination to the public, from simple software producers they become providers of online platform services⁶⁴, becoming directly subject to the obligations of the DSA and therefore to the obligations of algorithmic transparency, to reporting and removal systems, and with the aforementioned prohibition of dark patterns pursuant to art. 25. However, on the effective operation of these general prohibitions, it is necessary to clarify the subsidiarity clause contained in the second paragraph of Article 25.

This rule establishes that the prohibition introduced by the DSA does not apply if the conducts, practices or specific design configurations are already fully regulated by the sector provisions contained in the UCPD or in the General Regulation on the protection of personal data (EU) no. 2016/679⁶⁵. The rule does not simply seek to

⁶⁰M.L. Chiarella, Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment, Athens Journal of Law - Volume 9, Issue 1, January 2023 – pp. 33-58

⁶¹This is section 3 of the DSA, where there is, in Article 19, a partial exclusion for micro and small enterprises.

⁶²The list of VLPOs currently designated by the Commission is available at the following link <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses>

⁶³Article 3, letter i) of the DSA, subjects required to comply with the provisions of the DSA.

⁶⁴Pursuant to art. 3 lett.i) DSA

⁶⁵[REGULATION \(EU\) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL](#)

operate a division of jurisdiction but describes the field of action of the gaming sector, intensely crossed by various regulations. The provision has the function of limiting the competence of the DSA to all those cases where consumer legislation on the side of microtransactions does not fall, on the one hand, and the processing of personal data on the other.

This safeguard clause then allows the DSA to become applicable only when the UCPD, modernized thanks to the Omnibus Directive, and the GDPR, with the provisions that we will see shortly, fail to be applied.

The relevant element, however, is found in art. 28⁶⁶, which provides for the transition from the mere responsibility of the user to the so-called *safety by design*. On the part of online platforms accessible to minors, to implement appropriate and proportionate measures to ensure a high level of privacy, security and protection. This duty, focused on the child, interacts with the broader framework of systemic risk outlined by the DSA, since the risks to the protection of minors must be appropriately identified, assessed and mitigated by large online platforms and search engines. The scope of application of the rule follows a sector, which certainly also includes gaming platforms, in which the issue of the protection of users and in particular of minors becomes more complex and delicate. In this sense, the scope of the regulation is disruptive because it revolutionizes the system of protections and responsibilities in the control system: it is the platform that must be structurally secure, preventing upstream exposure to systemic risks such as hidden profiling or habituation mechanisms.

The explanation of this principle has found practical expression by the European Commission in the "Guidelines on measures to ensure a high level of privacy, safety and protection of children online, pursuant to Article 28, paragraph 4, of the DSA".⁶⁷ The purpose of the guidelines is to create an exemplary list of measures to protect children from exposure to possible online risks such as bullying, grooming for harm, sexual abuse or extortion, recruitment into criminal gangs, promotion of violence or terrorism. The measures are also provided for to prevent the risks associated with the inappropriate use of online platforms including with respect to gambling and video games⁶⁸.

[of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\).](#)

⁶⁶Art. 28 DSA provides: Online protection of minors 1. Providers of online platforms accessible to minors shall take appropriate and proportionate measures to ensure a high level of privacy, security and protection of minors on their service. 2. Providers of online platforms shall not present profiling-based advertising as defined in Article 4(4) of Regulation (EU) 2016/679 using the personal data of the recipient of the service on their interface if they know, with reasonable certainty, that the recipient of the service is a minor. 3. Compliance with the obligations laid down in this Article shall not oblige providers of online platforms to process additional personal data in order to assess whether the recipient of the service is a minor. 4. The Commission may, after consulting the Board, issue guidelines to assist providers of online platforms in the application of paragraph 1.

⁶⁷[Communication from the Commission – Guidelines on measures to ensure a high level of privacy, safety and security for minors online, pursuant to Article 28\(4\) of Regulation \(EU\) 2022/2065-C/2025/6826](#)

⁶⁸On the reconstruction of the structure of the guidelines, see the Interparliamentary Conference on "Towards a safer and more innovative Digital Europe: delivering on the promises of the Digital Services Act (DSA) for citizens and markets", Billund 3-4/11/2025.

In line with these guidelines, in order to meet the requirements of art. 28 par.1 DSA, adequate and proportional measures must be adopted to ensure a high level of security for the protection of minors. The rights to be protected are not only those relating to security, but also to the fundamental rights recognized to the minor, as enshrined in the Charter of Fundamental Rights of the EU and the United Nations Convention on the Rights of the Child. The affirmation of the protection of private life, privacy⁶⁹ and security by default is also fundamental, committing platforms accessible to minors to the integration of high standards of security and protection throughout the life cycle of the data. From the design to the provision of the service, it is also necessary to respect the peculiarities of the minor age with respect to the delicate developmental, cognitive and emotional process of minors.

A decisive point of these guidelines concerns the methods of age verification, understood as a necessary measure to ensure the protection and safety of minors, guaranteeing an authentication procedure that reserves them access only to places allowed to them but with respect for private life.

According to the Commission, the *age verification*⁷⁰ mechanism would be necessary in the event that the minor may come into contact with products or services that may represent a real risk, provided that there are no alternative protection measures. Among the cases expressly mentioned, in addition to the sale of alcohol or tobacco, access to any type of pornographic content and content related to gambling deserve a mention, due to the connection with the issue we are dealing with. Certainly, these aspects, which do not represent the "core" purpose of a gaming platform, can however constitute serious side effects, in the terms already observed.

Among the cases expressly mentioned, in addition to the sale of alcohol or tobacco, access to any type of pornographic content and content related to gambling deserve a mention. Recently, at the institutional level, the need to overcome this fragmentation has been met by the initiative of the European Commission, which has made available⁷¹, which consists of a common model called "Blueprint for an age verification solution to help protect minors online". This solution, conceived as an open-source tool harmonized at European level, aims to reconcile the protection of minors and the protection of personal data through a free age certification mechanism that is fully⁷² compatible with the future European Digital Identity Wallet. In compliance with the need to protect privacy, as also reiterated by the European Data Protection Board⁷³, the objective of age assessment is balanced by the confidentiality requirements provided

⁶⁹On the design requirements inherent in platforms and in particular compliance with data protection principles, the contribution of the essay by M. Bisceglia, A. Bonatti and F. Scott Morton REGULATING PRIVACY POLICIES ON DIGITAL PLATFORMS, Yale University, 2025, available online https://www.tse-fr.eu/sites/default/files/TSE/documents/sem2026/eco_platforms/bisceglia.pdf

⁷⁰S. Trozzi, The protection of minors in the prism of the protection of personal data. The age verification systems between personalism and the need to balance between rights, *Rivista Italiana di Informatica e diritto* n. n. 2/2024, pp. 340 ss.

⁷¹Project for an age verification solution to protect children online, European Commission <https://digital-strategy.ec.europa.eu/en/factpages/blueprint-age-verification-solution-help-protect-minors-online> updated on 29 April 2026, accessed on 4/7/2026.

⁷²European Commission, [Recommendation on a European approach to age verification technologies](#), 29 April 2026, 1035.

⁷³EDPB, Statement 1/2025 on Age Assurance, 12/2/2025.

for by privacy legislation, with a mechanism that manages age certification without further data interconnections.

However, the solution is not defined, since it is a system being tested, based on non-binding acts and therefore not providing for obligations for gaming platforms.

The Critical Role of Big Data: Profiling and Protection of Children's Privacy

This scenario of manipulation and capture of attention is made possible by the increasingly incremental volume of information generated and collected in the context of digital services. Even in the world of gaming, big data represents an exceptional source of information, fuelled by every interaction of players with gaming environments, by the volume and type of microtransactions, by the time spent on them, by gaming preferences and even by emotional reactions, which is constantly tracked.

The value of this data is very high from many points of view, because it allows developers to optimize the user experience, increasing engagement and improving service performance. However, on the other hand, these utilities are associated with a series of effects of a more distinctly commercial nature, such as the enhancement of data collected through profiling mechanisms, also based on artificial intelligence systems.

Since sometimes such processing turns out to be carried out in a manner that is not fully compliant with sector regulations⁷⁴, it is advisable to start from the reference for the protection of personal data, the GDPR, which offers natural persons an articulated series of guarantees with regard to the processing of personal data. The implementation of these practices integrate different processing purposes, even pervasive, on the personal data of players. First of all is profiling⁷⁵, described as the processing carried out for a more in-depth and systematic analysis of the person to analyse or predict aspects concerning professional performance, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements, at the basis of these project strategies.

The GDPR prescribes particular obligations in the case of the processing of personal data, governed by Article 5, among these mainly those of transparency and lawfulness, requiring the preparation of adequate information on the processing of

⁷⁴In this regard, see the fine of over half a billion dollars, imposed by the US Federal Trade Commission on Fortnite, one of the most famous video games worldwide. The decision following the ascertainment of violations of the Children's Online Privacy Protection Act (COPPA), of using "dark patterns", to induce millions of players to make involuntary purchases. The company has also been ordered to adopt strict default settings for the privacy of children and adolescents, ensuring that voice and text communications are disabled by default and to clearly present the presence of paid elements. <https://www.ftc.gov/news-events/news/press-releases/2022/12/fornite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>

⁷⁵art.4.4, profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

personal data, the provision of the legal basis of consent⁷⁶ and the collection of the related expression of will.

In the case of minors, in addition to these provisions, further precautions are envisaged, due to the condition of particular fragility and immaturity of these subjects, who deserve specific protection due to their vulnerability⁷⁷. In this regard, it is useful to recall the cautions that have always been affirmed by the privacy authorities, both national and European, which affirm and call for increasing protection for minors who move in increasingly dangerous online environments, given the presence of dark patterns⁷⁸ and profiling, especially algorithmic.

Among the regulatory provisions, it is mentioned that Article 8 establishes strict conditions for the consent of minors in relation to information society services, requiring the authorization or consent of the holders of parental responsibility for minors under the age of 16, except for different limits that may be identified by the Member States, in any case not less than 13⁷⁹.

Concluding Remarks: Towards a New Regulatory Balance?

From the reconstruction just outlined, a regulatory framework of enormous opportunity emerges, in terms of technological evolution, skills and business. At this point, it is necessary to return to the question that guided this contribution, to verify whether the European regulatory framework is actually suitable for protecting minors in online gaming or whether there is still a need for further ad hoc intervention.

The lack of specific regulation for the video game sector has not led to a total absence of protection for users, by virtue of the current regulatory framework on consumer protection. However, the rapid development and variability of the technological context bring out its limits due to the very high level of risks that revolve around this world⁸⁰ and the regulatory misalignments deriving from the stratifications that have occurred over time. In this sense, the concerns expressed by the European

⁷⁶In this regard, compare the general principles on the processing of personal data referred to in art. 5 GDPR, precisely that of lawfulness, art. 6, par. 1 lit. a) GDPR for the legal basis of consent and art. 7 GDPR on the conditions of validity of consent.

⁷⁷Recital 38 GDPR: Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

⁷⁸See also in this regard the EDPB Guidelines no. 3/2022, Deceptive design models in the interfaces of social media platforms: how to recognize and avoid them, version 2.0, adopted on 14 February 2023. E. Pelino, The interaction between DSA and GDPR, in Digital Services Act and Digital Markets Act Definitions and first application of the new European regulations, edited by L. Bolognini E. Pelino M. Scialdone, 2023, Giuffrè Milano,

⁷⁹See, for example, the Italian legal system which identified, in art. 8 of Legislative Decree 196/2003, the limit of 14 years for the expression of the so-called digital consent.

⁸⁰The data of the latest Eubarometer (2026/6) [show https://europa.eu/eurobarometer/surveys/detail/3677](https://europa.eu/eurobarometer/surveys/detail/3677) that Europeans are very concerned about the risks of the online environment for children and that targeted intervention is needed.

Parliament⁸¹ regarding the consequences of a system that is not fully supervised appear to be shared.

A first problem derives from excessive regulatory verticalizations, as in the case of the DSA, especially with respect to the applicability of certain provisions to specific entities, when they should be provided for a greater panorama of operators. Other regulations do not offer a sufficiently supervised protection framework, if the AI ACT is more of a product regulation and is not objectively oriented towards the protection of rights, the GDPR and consumer legislation are not in step with the new trends of the technological context. With specific regard to a high number of Internet users such as minors - and in general vulnerable subjects - it is highlighted that consumer legislation has a particularistic view of vulnerability, considered a mere exception as opposed to the "average consumer".⁸² This creates a protection gap because the effects of vulnerability, such as the delicacy of the exposure of certain traps such as dark patterns, affect all categories of users indifferently. The demonstration of this shortcoming is given by the fact that the rulings of the different authorities continue to affect the same issues.

With regard to the aspects of transparency and the need for awareness of the choices made by the user provided for by the GDPR, also present in consumer legislation, there is the doubt, reasonably expressed in doctrine⁸³, that these obligations, rather than in support of the rights of the data subjects, operate mostly retroactively in the context of the sanctions issued by the supervisory authority.

Users must be able to act safely within the digital context, with awareness and an adequate level of training. In this sense, greater responsibility is needed for all those involved, starting with parents and educators. However, the increasingly evident difficulty of keeping up with the complexity of these ecosystems cannot be ignored. It cannot be denied, in fact, that the task entrusted to these figures is becoming increasingly complicated and unmanageable, making a general delegation on the supervision of these risks unrealistic⁸⁴. Moreover, entrusting this important mission to families risks turning into an alibi for the industry: true protection is achieved only when the project responsibility is assumed upstream by suppliers, freeing the 'small domestic legislators' from a technically unsustainable supervisory burden against intrinsically manipulative designs and objectively unsustainable technological rhythms.

While digital awareness, training, and literacy are very useful tools for proper interaction with digital environments, they cannot compensate for the asymmetry of power against algorithms designed to maximize engagement and contractual *revenue*.

To fill these gaps, the way forward is to find a regulation that fills these gaps and knows how to accompany the Union towards the new challenges it is planning and which will present increasingly complex technological challenges.

⁸¹CNF. The aforementioned report of the European Parliament

⁸²H. Can Aksoy, Empowering the Vulnerable in the European Union: Collective Redress Against Digital Exploitation, in Remedies to Digital Vulnerability in European Private Law, C. Crea and M. Infantino (eds.) (pp.125 e ss.) , 2025, https://doi.org/10.1007/978-3-032-19720-7_7

⁸³H. Can Aksoy, Empowering the Vulnerable in the European Union: Collective Redress Against Digital Exploitation, in Remedies to Digital Vulnerability in European Private Law, C. Crea and M. Infantino (eds.), 2025, https://doi.org/10.1007/978-3-032-19720-7_7 pg.130

⁸⁴De Leo, E. M. (2025). Video games, security and responsibility: from the myth of the "positive and safe" environment to regulatory governance. Law Market Technology.

It is in this context that the process of adopting a new legislative proposal—the Digital Fairness Act (DFA)—is taking place; expected by the end of 2026, it is presented by the European Commission as: “The legislative initiative is expected to tackle several problems consumers face online such as dark patterns, marketing by social media influencers, the addictive design of digital products and unfair personalisation practices, especially where consumer vulnerabilities are exploited for commercial purposes. The Digital Fairness Act will also aim to streamline obligations for businesses, notably by reviewing certain consumer information requirements in certain types of contracts.”⁸⁵

Specifically, as emerged during the preliminary consultation, the proposal aims to fill gaps and areas of legal uncertainty, acting in full complementarity with the existing legislation already mentioned. The aim is to expand the margins of protection that are currently missing, such as by generalizing the prohibition of dark patterns and other manipulative techniques that put pressure on and deceive consumers online.

Although the strongly transversal cut and the intention to integrate concrete protection tools, the DFA is located in a historical moment of deregulation and regulatory simplification, under the impetus of the Digital Omnibus reform package⁸⁶, which are in fact streamlining the European regulatory acquis. Therefore, the doubt that legitimately emerges concerns the actual need for a new act or rather the appropriate strengthening of the existing framework, further optimizing the structure, perhaps strengthening the sectoral self-regulation system, such as the PEGI.

Ultimately, the analysis conducted leads us to believe that the current framework offers partial protection of minors in the context of online gaming, which requires dedicated supplementary and regulatory intervention. The approval of a broader and deeper provision such as the one that could come from the DFA appears necessary, provided that it is not reduced to yet another regulatory overlap and that it is able to create a wide-ranging harmonized standard.

⁸⁵Proposal for a Directive/Regulation of the European Parliament and of the Council on strengthening consumer protection in the digital environment ([Digital Fairness act](#)).

⁸⁶European Commission proposed a new Digital Package to simplify EU digital rules and boost innovation. <https://digital-strategy.ec.europa.eu/en/faqs/digital-package> on 19/11/2025.