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Editorial

Towards the Next Generation of Consumer Law: the ELI Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts

Following the launch of ChatGPT in late 2022, the buzz around artificial intelligence (AI) has not faded. Generative AI (GenAI) has caused considerable excitement as well as equally considerable concerns,[1] and has pushed AI technologies firmly onto the agenda for lawmakers around the Globe, not least in the EU.[2] As well as causing excitement about the potential impact of recent advances in AI technologies, long-running academic discussions have been given fresh impetus. One such discussion is the potential of digital technologies for the automation of contracting, including the crucial process of contract formation.[3] The legal implications of such a development have been discussed extensively for the best part of three decades,[4] but the state of digital technologies, including AI, that has now been reached has made contract automation a more realistic prospect. In particular, consumers might soon have the opportunity of acquiring a digital assistant that can take over some of their routine contracts (e.g., weekly groceries) or undertake specific tasks (e.g., booking travel arrangements). Whilst the development of such applications is still in its infancy, some progress can be expected soon, not least because of the wider focus on the potential development of "AI Agents" for the automation of a variety of increasingly complex tasks in a proactive and more autonomous manner.[5] As this technology evolves, additional questions might arise, e.g. whether the consumer image of the "reasonably well-informed, observant and circumspect consumer" in EU Law would still be relevant once consumers are able to use AI agents with advanced information gathering and processing capabilities.[6]

With such a development on the horizon, there is, for once, a unique opportunity to ensure that consumer law is not only ready for the arrival of contract automation through digital assistants,[7] but

1 Including for consumer law scholars: see e.g., Jan Trzaskowski/Marie Jull Sørensen, 'Generative AI and Consumer Protection' in Philipp Hacker and others (eds), *The Oxford Handbook of the Foundations and Regulation of Generative AI* (online edn, Oxford Academic, 22.4.2025, forthcoming).

2 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial (Artificial Intelligence Act) (2024) OJ L 2024/1689.

3 Christian Twigg-Flesner, 'Consumers, Digital Delegates, Contract Formation and Consumer Law' in Larry DiMatteo/Cristina Poncibò/Geraint Howells (eds), *The Cambridge Handbook of AI and Consumer Law: Comparative Perspectives* (CUP 2024).

4 Seminally, Tom Allen/Robin Widdison, 'Can Computers Make Contracts?' (1996) 9 Harv. J.L. & Tech 26.

5 Teresa Rodriguez de las Heras Ballell, 'Human Autonomy and Artificial Intelligence Agency. A New Dilemma for Contract Law: Automated Contracting or *Intuitu Homini* Contracts' (2025) ItaLJ (forthcoming).

6 Teresa Rodriguez de las Heras Ballell, 'Digital Vulnerability and the Formulation of Harmonised Rules for Algorithmic Contracts: A Two-Sided Interplay' in Alberto De Franceschi/Camilla Crea (eds), *The New Shapes of Digital Vulnerability in European Private Law* (Nomos 2024).

7 See generally, Christian Twigg-Flesner/Geraint Howells 'Adapting Consumer Law to New Technologies' in Roger Brownsword/Larry DiMatteo (eds), *The Cambridge Handbook of the Governance of Technology: Discontent, Disconnect and Disruption* (CUP 2025).

also, able to set the requirements to ensure that enabling the development of a market for digital assistants does not jeopardise consumer protection.[8]

Over the last three years, we have served as the co-reporters for the European Law Institute's project on Algorithmic Contracts. Initially conceived as a project that would focus on general contract law, it soon focused on the specific implications for consumer contracts. This has now resulted in the project's final output, the *ELI Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts* (DACC). The DACC were adopted by ELI on 15 April 2025 and can be accessed on the project's webpage.[9]

The DACC comprise eight guiding principles and 25 Articles, divided into five chapters. Although all of us are European consumer law scholars, the DACC are not specifically targeted at the EU/UK[10] but should be of wider relevance for jurisdictions around the world interested in ensuring that their consumer laws are ready and fit for the arrival of digital assistants. Importantly, the DACC present an innovative approach to regulation through a combination of detailed design requirements to be met by digital assistants to be supplied to consumers with private law rules in respect of both the contracts under which digital assistants are supplied and the contracts concluded through the use of a digital assistant. Indeed, the use of various design requirements are the most innovative aspect of the DACC, as we will explain shortly.

For the purposes of the DACC, a 'digital assistant' is an application incorporating algorithmic systems that can be used for automating one or several stages in the consumer contract lifecycle. Importantly, the notion of a 'digital assistant' covers all types of automated systems, i. e., it does not presuppose the use of any particular type of algorithm. It encompasses both deterministic and non-deterministic ones. Whilst AI was clearly in our mind when drafting the guiding principles and model rules, we did not assume that digital assistants would be based on GenAI nor any other form of AI technology. A digital assistant might be supplied as a standalone application, integrated with a smart product (such as the apocryphal smart fridge), or integrated into an e-commerce website. It is assumed that there could be a wide variety of digital assistants, with some limited to acquiring specific items from one supplier (e. g., automatic reordering of coffee pods for a smart coffee maker) at one end of the spectrum, to others capable of concluding a wide range of contracts based on a consumer's profile at the other end.

The DACC are based on the eight guiding principles, which, in summary, treat a digital assistant as a form of tool deployed by a consumer, with the effect that actions are attributed to the consumer and consumer law, including information duties, continue to apply irrespective of whether a digital assistant is used by a consumer for their contractual relations. Furthermore, consumers must retain some residual control over the contracting process, and there must not be manipulation of consumers using digital assistants. These guiding principles are then fleshed out in the various model rules.

Chapter 1 sets out the scope and key definitions, as well as a general right to use a digital assistant, particular for consumers. The biggest novelty is chapter 2, which contains various design requirements. These are effectively directed at developers of digital assistants, although within the DACC system, the legal duty to ensure compliance is placed on the supplier of a digital assistant to a consumer, consistent with the general approach in consumer law to impose liability for conformity issues on the final supplier of goods or services to a consumer. The design requirements are detailed and should provide those developing digital assistant applications with strong guidance to ensure consumer protection is maintained. Thus, digital assistant must allow consumers to set a range of parameters for the conclusion of contracts, to prevent the conclusion of a contract either through a negative "objection" model or a positive "confirmation" model before a digital assistant places an order, and ultimately to disable

8 On developing consumer law for AI agents, see Christoph Busch, 'Consumer Law for AI Agents' (2025) GLJ (forthcoming, preprint available on SSRN at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5187056> (accessed 4.6.2025)).

9 'ELI Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts', 19.5.2025, <https://www.europeanlawinstitute.eu/projects-publications/publications/guiding-principles-and-model-rules-on-digital-assistants-for-consumer-contracts/> (accessed 3.6.2025).

10 Our interim report, *EU Consumer Law and Automated Decision-Making (ADM): Is EU Consumer Law Ready for ADM?* (December 2023) focused specifically on the EU Consumer Law *acquis*. This report sets out the essential steps needed to ensure that there would be no gaps in EU consumer law regarding the use of digital assistants.

the digital assistant temporarily or permanently. Together, these design requirements balance the benefit of automation with the need to give some control to the consumer to manage the risk that contract automation invariably creates. Other design requirements are more specific, requiring automatic disclosure that a digital assistant is used, ensuring that consumers are not manipulated through the design of the user-interface of their digital assistant, nor by the trader's digital assistant, and some form of documentation function as to how decisions are made.

This is followed by two chapters dealing with the two contracts addressed by the DACC. In chapter 3, several rules are provided for contracts involving the supply of a digital assistant. This is not treated as a distinct contract type but rather akin to a contract for the supply of software, digital content or digital services, and the rules in this chapter supplement any existing rules for such contracts. This chapter covers information requirements and additional conformity requirements and a right to damages for losses caused by non-conforming digital assistants, but it also deals with potential conflicts of interests (requiring disclosure and granting a consumer the right to terminate a contract for the supply of a digital assistant where such conflicts arise), as well as the contractual implications of deactivating a digital assistant (e. g., where the supply contract is in the form of a subscription contract).

Chapter 4 then focuses on the contracts concluded between a consumer and a business through the use of a digital assistant (referred to as the 'algorithmic contract' in the DACC). The chapter first confirms the validity of contracts concluded through digital assistants and the continued application of consumer law, and the need to disclose the use of a digital assistant where this is not obvious. It then addresses the need to ensure that information can be processed by digital assistants, as well as instances when a legal obligation for a business to provide information to consumers can be met by making it available to a digital assistant. The most significant provision in this chapter is Article 22 concerning the attribution of the actions of a digital assistant to the person using it, as well as a limitation to this attribution where the action in question deviates from what a consumer might reasonably expect, assessed objectively. This limitation effectively deals with unexpected actions (such as unexpected contracts rather than merely unwanted or unintended contracts, for which the consumer has already been given controls through the functionalities to set parameters and prevent the conclusion of a contract) and provides a clear rule as to the instances when such contracts are not legally effective. The single provision in chapter 5 recognises that the effect of the limitation to the attribution to a consumer can result in financial losses to a business (e. g., where goods have already been despatched and need to be recovered subsequently) and provides a right of recourse against the supplier of the digital assistant to the consumer.

This is only a brief overview of the DACC, and there is a lot more detail in each of the Articles and the accompanying commentary. We would encourage readers to take a closer look at the model rules and the commentary to fully appreciate the richness of what has been put together.

It is worth noting that the DACC are not intended as a standalone model law on digital assistants for consumer contracts, but to interface with existing consumer (contract) law rules in the jurisdictions that adopt laws based on the DACC. In particular, at various points, the DACC refer matters back to the applicable law. Adopting legislation based on the DACC might therefore require some fine-tuning, although we hope that the bulk of our model rules would be attractive for adoption as they are.

We eagerly anticipate not only the reaction from consumer law scholars, but also from other stakeholders, particularly legislators and policy-makers.

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