



Die Werbewirtschaft

Zentralverband der deutschen Werbewirtschaft ZAW e.V.

Contribution of the German Advertising Industry to the Consultation on the Digital Fairness Act

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1. Introduction

The German Advertising Federation (ZAW) is the national association of the advertising industry in Germany. It forms a large, dynamic network of 43 member organisations through which it represents all sectors and disciplines in advertising.

We urge the European Commission to prioritise the consistent application and robust enforcement of existing legal instruments (in particular the Unfair Commercial Practices Directive (UCPD), the Digital Services Act (DSA) and the General Data Protection Regulation (GDPR)) before introducing new legislation. Experience shows that the effectiveness of the EU's regulatory framework is hindered less by the absence of rules than by gaps in implementation, guidance and enforcement. Ensuring strict and harmonised application of these existing provisions would not only provide legal certainty, but also strengthen the trust of consumers and businesses, avoid regulatory duplication, and enable a more efficient use of Member States' resources. We believe that the issues addressed in the questionnaire are already covered by existing legislation, a point we will set out in detail in our response. Therefore, this position paper follows the structure and order of the questions set out in the consultation questionnaire.

2. Section I of the questionnaire: Dark Patterns

We believe that no new binding EU legislation is required in the area of dark patterns. The UCPD already provides a solid and flexible legal framework to address misleading or aggressive interface design practices, including so-called dark patterns.

The UCPD is technology-neutral and has proven to be adaptable to evolving digital business models. Many of the practices commonly referred to as dark patterns — such as misleading default settings, pressure tactics like countdown timers, or the concealment of important information — can already be addressed through the UCPD's general clause on unfair practices (Articles 5–9) and its blacklist of prohibited actions in Annex I.

Rather than introducing new rules, we would recommend:

- Improved enforcement of the existing UCPD framework by national enforcement bodies;
- Targeted guidance at EU level (e.g. via the Consumer Protection Cooperation Network or the Commission), to clarify how UCPD provisions apply to interface design;
- Better awareness among both traders and consumers about the applicability of consumer law in the digital sphere.

In our view, additional regulation would risk fragmentation, increase compliance costs for businesses, and potentially duplicate existing legal provisions — without delivering significant added value for consumers.

Clarifications regarding examples from the public consultation

Furthermore, many of the specific examples listed in the consultation questionnaire can already be effectively addressed under the current UCPD framework:

- Click fatigue: While interface designs that require users to click through multiple steps may reduce usability or transparency, such patterns are highly context-dependent and difficult to regulate uniformly. Attempting to define legally acceptable levels of interaction would risk overregulation and fail to account for legitimate differences in UX design.
- Creating a false impression that the consumer has no other option: This is a clear case of misleading action under Article 6(1) of the UCPD. Any commercial practice that falsely suggests that a consumer must make a purchase (e.g. by concealing the option to decline) is already prohibited and can be sanctioned by enforcement bodies. The judgment of the Regional Court of Munich I (33 O 14776/19, 29 November 2022) illustrates this point in the context of cookie consent mechanisms. The court found that a banner which presented “accept” on the first layer while relegating the “reject” option to a second layer violated § 25 TTDSG (Telecommunications-Telemedia Data Protection Act), as it deprived users of genuine choice. This design was deemed a classic example of a dark pattern, steering users toward consent by hiding the alternative. § 25 TTDSG transposes already existing European legislation (Art. 5 III ePrivacy-Directive) into national law.
- Pressuring the consumer (e.g. through countdown timers): Fake countdown timers that create a sense of urgency, for example by resetting themselves or presenting the same offer after the time has expired, are often classified as aggressive commercial practices under Articles 8 and 9 of the UCPD because they exert undue psychological pressure on consumers. Some scholars and regulators also view them as falling within Annex I, point 7 of the UCPD, which prohibits falsely claiming that a product will only be available for a very limited time in order to elicit an immediate decision. The legal characterisation may therefore depend on the circumstances. If the design involves an explicit false statement about availability, Annex I applies directly; if it merely relies on manipulative time pressure without such a statement, Articles 8 and 9 provide the basis for intervention. Before the term “dark pattern” was used by German legislation, courts had already considered it misleading when companies employed urgency patterns, such as fake countdown timers, to pressure consumers (see, for example, Regional Court Bochum, judgment of 10 September 2015 – 14 O 55/15).

In practice, enforcement bodies have treated such designs as clear violations of EU consumer protection law. In 2024, the Dutch Authority for Consumers and Markets (ACM) imposed a €1.125 million fine on Epic Games for using artificial time pressure and deceptive scarcity mechanisms in Fortnite’s in-game store. The ACM found that these practices were particularly manipulative towards children. In the same year, the Polish Competition and Consumer Protection Office (UOKiK) fined Amazon for misleading delivery countdowns, unclear contract formation rules, and hidden conditions for “guaranteed delivery” on Amazon.pl, relying on provisions transposing the UCPD into Polish law.

- Sneaking products into the online basket: The Consumer Rights Directive requires the consumer's active and informed consent to any additional payments, meaning that costs cannot be added to the basket unless explicitly agreed. Likewise, the UCPD prohibits practices that mislead or omit material information, which includes surreptitiously adding items to an order. This ensures that no binding contract can arise without express consumer agreement.
- Unexpected outcomes: Features that lead to outcomes differing from what consumers would normally expect may constitute misleading commercial practices within the meaning of Articles 6 and 7 of the UCPD. In particular, where a digital interface gives consumers the impression that clicking a certain button or making a specific choice will produce a predictable result (but in fact triggers a different or unintended outcome) such design constitutes a clear case of deception as prohibited under EU consumer protection law.
- Ambiguous language: Article 7(2) of the UCPD explicitly prohibits presenting material information in an unclear, unintelligible, ambiguous, or untimely manner where this is likely to cause the average consumer to make a transactional decision they would not otherwise have taken. This provision applies directly to misleading consent mechanisms and subscription models, ensuring that unclear or manipulative wording is already unlawful.
- Framing and Nagging: Framing (the practice of presenting choices in a leading or biased manner) and nagging (the repeated prompting of users to reconsider a previously made decision) are already addressable under current legal frameworks, as demonstrated by a recent ruling of the Higher Regional Court (OLG) of Bamberg concerning the ticketing platform Eventim (OLG Bamberg, 5 February 2025, 3 U Kla 11/24 e).

In this case, the court found that Eventim had structured its checkout process in a way that pressured users into purchasing optional ticket insurance. The design combined visual framing — through prominent placement and colour emphasis — with a second, emotionally charged refusal button labeled "Ich trage das volle Risiko" ("I bear the full risk"), which the court deemed a form of undue psychological pressure. Without any need for new legislation, the court held that this design violated existing provisions of both German and EU law, specifically § 4a(1) no. 3 UWG (unfair commercial practices) and Article 25(1) of the Digital Services Act.

These examples underscore the view that the EU legal framework already equips enforcement bodies and courts with the necessary legal instruments to address dark patterns in a systematic and comprehensive manner. Rather than introducing new legislative measures, the current priority should be the strengthening of enforcement mechanisms and the consistent application of existing rules. Across the European Union, enforcement and judicial bodies have established a growing number of case law capable of addressing a wide range of manipulative digital design practices. Furthermore, the interpretative flexibility of the UCPD allows it to adapt to emerging technological developments through evolving jurisprudence and regulatory guidance. Adding new rules risks creating legal uncertainty, regulatory overlap, and inconsistent application across Member States, undermining the goal of a harmonised EU consumer protection regime.

Additional guidance on “dark patterns” is not only possible under the current framework — it already exists. The European Commission has issued interpretative communications and guidance under the Unfair Commercial Practices Directive, clarifying how manipulative interface designs fall within its scope. In the data protection field, the European Data Protection Board published Guidelines on dark patterns in social media interfaces¹, providing detailed examples of prohibited practices under the GDPR. Moreover, Article 25(3) of the Digital Services Act expressly empowers the Commission to issue guidelines on the application of the DSA’s provisions concerning online interface design. In other words, there is already a rich body of interpretative material available to support enforcement without the need for new substantive rules.

Recital 67 of the Digital Services Act (DSA) expressly prohibits the use of “dark patterns” in the design, organization, or operation of online interfaces and acknowledges that such manipulative practices are already addressed under existing Union law, including the Unfair Commercial Practices Directive, the Consumer Rights Directive, and the GDPR. The DSA provisions thus complement — rather than replace — the broader EU consumer protection and data protection acquis. This confirms that the legal framework to tackle dark patterns is already in place; what is required is consistent enforcement and, where useful, the further use of existing powers to issue guidance, not the creation of new substantive rules.

3. Section IV of the questionnaire: Unfair Personalization Practices

The **personalization of digital services** is of considerable importance for the digital economy as a whole – both for innovation and for the refinancing of digital services. Personalization primarily means adapting content, recommendations or services to individual interests and needs. Over the years, this has become a firmly established and desired principle, especially on the demand side (users, including consumers), for example in product recommendations, search results or editorial content. **In particular, personalized advertising** is highly beneficial for both sides of the market: it increases the relevance of advertising and contributes much more significantly to the financing of diverse, freely accessible digital services than non-personalized advertising formats.

At the same time, personalization in advertising and the underlying data-based business models are already comprehensively regulated with regard to the handling of data. Any further, more extensive regulation of data-based business models would therefore only be justified if there were particularly serious reasons that outweigh the demonstrably positive benefits and the high demand on the consumer side.

The consultation bases its questions a priori on this assumption, albeit without evidence or further context.

¹https://www.edpb.europa.eu/system/files/2023-02/edpb_03-2022_guidelines_on_deceptive_design_patterns_in_social_media_platform_interfaces_v2_en_0.pdf

Accordingly, the **design of the questionnaire** raises methodological and substantive **concerns**. The section on personalization practices lists – sometimes specifically, sometimes in a more generalized manner – situations that are presented either as practices to be prohibited or as a basis for other regulatory measures. This creates a misleading impression, one that is largely suggestive of categorizing personalized advertising as unfair, without sufficiently taking into account the existing legal framework. In particular, recent legal acts such as the DSA, the DMA and the AI Act remain – as already noted in the Fitness Check – largely unconsidered, with the result that decisive, already applicable rules relevant for personalized business models are ignored.

In addition, the **potential consequences** of the proposed measures are not addressed – neither for consumers (especially in relation to additional opt-in or opt-out rules for personalized advertising and marketing), nor for digital services, media and advertisers, especially SMEs. Instead, the impression is created that the proposed measures could be implemented without costs or impact. In reality, however, the significant consequences for consumers and for the economic viability of data-driven business and European competitiveness are left unconsidered.

- In principle, further restrictions on data-driven, personalisation-oriented advertising and marketing business models would have significant consequences: **For consumers:** advertising would become less relevant and less user-oriented.
- **For publishers and broadcasters:** further restrictions of data-driven advertising business models would entail a risk of substantial revenue losses, endangering the refinancing of free content and the diversity of digital media. As a result, digital services, in particular media would be forced to shift towards paid subscriptions and paywalls.
- **For advertisers, particularly SMEs:** a central tool for targeted marketing communication and customer retention would disappear, weakening their competitiveness against large platforms and international providers, while also undermining innovation and media diversity in the long term.

Given the **gaps in the consultation's design**, especially when involving non-expert participants, the results should be considered with caution as a contribution to "Better Regulation". We therefore request that the Commission ensures a proper contextualization of the results. In addition, we ask the Commission to close the identified gaps and, in particular, to conduct follow-up assessments before drawing regulatory conclusions.

Importance of personalized advertising:

Numerous studies show that personalization in the form of data-based advertising is a necessary and, in many cases, indispensable financing model for the digital economy, including but not limited to digital media, a driver of market diversity, competitiveness and the innovative strength of the European economy as a whole:

- **European consumers value relevant advertising:** They accept personalized content and advertising when transparency and control are ensured. For example, a representative McKinsey study shows that 46% of German consumers actively seek personalized advertising.² In addition, more than 50% of European users prefer personalized advertising to generic ads, and 60% consider models such as “pay or consent” appropriate, provided the added value is communicated transparently.³ Consumers do not want irrelevant advertising – they want advertising that matches their interests. Policymakers should acknowledge this demand and support regulation that enables, rather than further hinders, responsible data-driven personalization.
- **SMEs directly benefit from personalized advertising:** For SMEs, personalized advertising is a decisive factor for competitiveness. According to the Centre for Information Policy Leadership (CIPL), 76% of the SMEs surveyed in Europe use this form of communication to compete with larger market players, and 86% reported direct revenue growth. Without personalized advertising, many SMEs would be forced either to drastically reduce their market activities or to rely on unprofitable generic advertising formats that cannot compete with the budgets of large corporations.⁴
- **Societal perspective:** Further restrictions of this form of advertising would significantly weaken the economic resilience of many SMEs and have negative effects on employment, innovation and consumer welfare.⁵ Advertising finances free access to high-quality information and communication services on the internet: the value of ad-financed content and services used by European consumers amounts to around €212 per month. The loss of this financing model would inevitably lead to paywalls and deepen the digital divide in society.⁶ An over-regulated advertising market could destabilize the advertising ecosystem and lead to a paywall culture that excludes large segments of the population.
- **Safeguarding innovation and competitiveness:** Excessive regulation of digital advertising undermines the innovative capacity of the European economy and disadvantages SMEs in global competition. Personalized advertising is a key tool for SMEs to compete in an increasingly globalized market. A regulatory strategy that systematically restricts or bans this form of advertising deprives European companies of competitive marketing tools. A smart regulatory approach should promote, not prevent, innovation and reconcile the legitimate interests of businesses, consumers and society.⁷

² [Marketing, Personalisierung, Werbung | McKinsey](#).

³ Optimisation over reform: Understanding EU consumers' perception and knowledge of the ad-funded internet and related privacy rights issues ([IAB Europe, 2025, pp. 10-13](#)).

⁴ The Impact of Digital Advertising on Europe's Competitiveness: A Study on the Role of Digital Advertising in Europe ([CIPL, 2025, pp. 7-9](#)).

⁵ Umsatz mit Programmatic Advertising in Europa bis 2026 ([Statista, 2022](#)).

⁶ Optimisation over reform: Understanding EU consumers' perception and knowledge of the ad-funded internet and related privacy rights issues ([IAB, 2025, pp. 3-5](#)).

⁷ The Impact of Digital Advertising on Europe's Competitiveness: A Study on the Role of Digital Advertising in Europe ([CIPL, 2025](#)).

- **AI leads to less tracking, with the same advertising impact:** Emerging technologies, such as AI-based PETs (Privacy Enhancing Technologies), already enable personalized advertising with significantly reduced intrusiveness. In the digital advertising market, AI opens up the possibility of moving away from comprehensive tracking and relying instead on aggregated signals and data. These signals are more privacy-friendly, less traceable and often anonymized. The advertising impact is maintained or even improved, while at the same time the processing of personal data is reduced.⁸ A restriction on personalized advertising would halt this innovation-driven progress.

Lack of viable alternatives: Non-personalized (data-based) business models are insufficient

In public debate, some stakeholders claim that there are sufficient alternatives to personalized business models, and that further restrictions or even bans would therefore be viable. However, such statements are neither empirically substantiated nor do they take economic and societal realities into account. The body of research makes clear in the absence of viable alternatives, further restrictions on personalized advertising would lead to significant disadvantages for both the supply side and the demand side (consumers).

- **Payment options and the “privacy trade-off”:** The limited uptake of paid versions under consent models reflects rational consumer decisions and the objective constraints of household budgets. Many users prefer to use services free of charge and, in return, accept personalized advertising. This form of “privacy trade-off” is socially established and – provided there is a choice between paid access and use financed by personalized advertising – not only legally permissible but also desirable as an expansion of consumer choice.⁹
- **The disinformation debate belongs elsewhere:** Issues of disinformation must be addressed where they belong – in platform regulation, journalistic integrity and political campaigning – not in the context of economically vital advertising models. Equating personalized advertising with manipulation undermines the debate about real influence and creates collateral damage for media and SMEs.¹⁰ Responsible advertising contributes to user satisfaction, finances independent content and strengthens the diversity of online offerings.
- **Contextual advertising is insufficient:** The assumption that contextual advertising alone is enough and can achieve the same effects as personalized advertising does not hold up to scrutiny. Research shows that publishers earn around 52% less revenue when users opt out of

⁸ CIPL/Public First: AI and privacy-enhancing ad technologies can enable compliance without sacrificing effectiveness ([CIPL, 2025](#)).

⁹ BVDW Marktüberblick Pay or consent ([BVDW Pay-or-Consent, 2024, pp. 6,10](#)); CJEU, *Meta Platforms Inc. and Others v Bundeskartellamt*, Case C-252/21, Judgment of 4 July 2023 – in particular para. 150: users who refuse to consent to certain data processing operations must be offered, “if necessary for an appropriate fee, an equivalent alternative not accompanied by such data processing operations.” See also [EDPB, Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models](#), 17 April 2024.

¹⁰ Consent or pay guidance impact assessment ([ICO, 2025, p. 5](#)).

usage-based advertising.¹¹ Contextual advertising can complement but not replace personalized advertising.

In summary, any pushback against personalized advertising would not improve the user experience but worsen it. It would lead to a flood of irrelevant ads – or to a significant rise in paywalls. By contrast, personalized advertising makes it possible to keep content freely accessible while making it user-friendly. Smart regulation should promote this balance, not disrupt it.

Asymmetric burdens and effects on competition must not be ignored:

We regret that the consultation makes no mention of the possible asymmetric effects of the respective proposals on competition (and thus ultimately also on users/consumers). From previous regulatory rounds at EU level, it is well known and well documented that general regulations can have very different impacts across digital markets. While the DSA essentially takes this into account by regulating addressees in a differentiated manner, the DMA is based precisely on this insight. This insight has also been widely confirmed in practice since the GDPR. Specifically: while large online platforms can absorb increasing regulatory requirements due to their resources, sheer scale (network and log-in effects) and corporate structures as highly vertically integrated companies and gatekeepers of digital ecosystems, the majority of digital services – not only SMEs and start-ups – are much more strongly affected. As a result, they are regularly placed at a competitive disadvantage. We therefore request that, in evaluating the consultation, these differing competitive effects are properly considered, since respondents were not made aware of them.

On the specific proposals of the consultation:

Within the consultation, various courses of action are proposed that would result in new restrictions or additional safeguards in the field of personalized business models, including data-based advertising. From our perspective, there is no need for this: the existing legal framework (inter alia the UCPD, GDPR, DSA, DMA and AI Act) already creates a high protective standard. Any further measures would easily lead to further double regulation, legal uncertainty and significant negative consequences for consumers, businesses and competition. Specifically:

- **Section 4.2 action “Consumers should have more control over personalized advertising, e.g. to have a simple and effective way to refuse personalized advertising (opt out) or to have explicitly to agree to it (opt in)”:** If the consultation proposes making personalized advertising conditional on an additional prior opt-in by users, it should be pointed out that under current data protection law, almost all data-based measures for personalized advertising already require specific consent within the meaning of the GDPR. An additional opt-in regime would lead to excessive double regulation without creating any recognizable added value for consumers. Furthermore, at least from the standpoint of

¹¹ Consumer Privacy Choice in Online Advertising: Who Optes Out and at What Cost to Industry? ([Johnson et al., 2019, pp. 1–2](#)); BVDW Marktüberblick Pay or consent ([BVDW, 2024, p. 11](#)).

current law, there is effectively no room for a further opt-out regime as this would lead to systematic incoherence and further legal uncertainties. It is true, but unfortunately not mentioned in the consultation, that the current data protection regime *itself* should be revised. Therefore, new regulation is needed in precisely the opposite regard, namely to simplify data use for businesses and consumers, i.e. to replace the extensive consent requirements under the ePrivacy-Directive with a more appropriate risk based flexible regime.

- **Section 4.2 action “Personalized advertising using information about vulnerabilities should be restricted, e.g. personalized advertising that uses special categories of personal data (i.e. sensitive data, such as racial or ethnic origin, political opinions, religious or philosophical beliefs, or health data) or that uses information on consumers’ individual vulnerability (e.g. age, emotional or financial distress)”:** We see no need for additional restrictions on the use of personal data for personalized advertising. The GDPR already sets strict and effective horizontal limits with Articles 9 and 22(1) and (4) regarding the processing of special categories of personal data and automated decision-making. These rules are well-balanced, as they still allow for necessary, consumer-beneficial and neutral data processing in a risk-appropriate manner. In addition, the AI Act, where AI technologies are used, sets horizontal restrictions applicable to all sectors. This ensures comprehensive safeguards that guarantee a high level of protection. Extending the data categories would only be sensible if such rules could be designed to be legally certain, practicable and coherent with existing legal acts. This is not possible for vague categories such as “emotions” or “financial worries”. On the contrary, if the GDPR’s principle of data minimization is taken seriously, it would be practically impossible to reliably exclude the processing of such vague categories – because one would first have to identify them in order to exclude them. Additional restrictions would therefore not lead to greater legal certainty or consumer protection, but rather to regulatory ambiguity and lack of practical enforceability. The existing legal framework is sufficient to effectively prevent misuse.
- **Section 4.2 action “Personalized advertising that targets minors should be prohibited”:** Minors are already comprehensively protected under existing law. The GDPR sets out clear requirements in Article 8 on the capacity of children to consent: for children under 16, parental consent is required, with Member States allowed to lower the threshold to 13. For services specifically aimed at children, additional safeguards apply (see Recital 38). This already provides a high, horizontally effective level of protection. In addition, Article 28 of the DSA sets out specific obligations for online platforms. Among other things, they may not show minors advertising based on profiling, and they must ensure that their services provide a high level of privacy, safety and protection for minors. Extensive guidelines have already been drawn up in this regard. Any further blanket prohibition for all providers up to the age of 18 would therefore not only be incoherent, but also undifferentiated from a developmental psychology perspective and disproportionate.

4. Section V of the questionnaire: Influencer Marketing

We do not believe that new EU legislation is needed to regulate influencer marketing. While we acknowledge the growth of influencer-based commercial communication, existing consumer protection law (particularly the UCPD) already applies fully to this area and provides a solid basis to tackle misleading or non-transparent marketing practices.

Key reasons:

- Legal obligations already apply to influencers and brands:
Influencers who promote products or services in return for payment or other benefits are already considered traders under EU law, and are therefore subject to all relevant transparency and fairness obligations. Undisclosed advertising, misleading claims, or failure to indicate commercial intent are already prohibited under the UCPD.
- National enforcement and guidance are improving:
National authorities and other enforcement bodies are becoming increasingly active in enforcing the rules in the influencer space. Many have published specific guidance, clarified disclosure standards, and initiated enforcement actions. What is needed is consistent application and cooperation, not new rules. As also mentioned in the survey, Germany has set excellent examples by offering practical and user-friendly guidance for influencers. Notably, Germany's Wettbewerbszentrale published a concise guidance, explaining when and how promotional posts on Social Media must be clearly labelled to comply with disclosure rules.¹² In parallel, the joint Guidance Paper issued by the State Media Authorities (Landesmedienanstalten) includes a detailed "labelling matrix", offering tailored recommendations for different formats like videos, images/texts, blogs.¹³ Updated regularly, this paper dates back almost ten years when counting in the initial FAQ-style version. These resources are both concrete and scenario-based, providing practical examples and wording that influencers can directly use to ensure transparency and legal compliance. It would be very worthwhile for other Member States to draw inspiration from these tools, helping influencers to understand the rules.

In addition, Deutscher Werberat has launched the Influencer Training program for Germany in the fall of 2024, following similar initiatives already established in France and the Netherlands. To further support responsible influencer marketing across Europe, the European Advertising Standards Alliance (EASA) has relaunched its existing influencer education initiative under the new name AdEthics¹⁴. It offers a flexible, two-part framework

¹²<https://www.wettbewerbszentrale.de/wp-content/uploads/2024/08/270824-Leitfaden-der-Wettbewerbszentrale-Werbekennzeichnung-WBZ.pdf>

¹³ <https://www.die-medienanstalten.de/service/merkblaetter-und-leitfaeden/leitfaden-werbekennzeichnung-bei-online-medien/>

¹⁴ More information: <https://adethics.org/>

consisting of training and certification in some member states — with implementation tailored to national needs.

The training component is an easily accessible online course aimed at helping influencers understand the key principles of responsible advertising, including transparency, legal compliance, and social responsibility. As of now, this training is available in Germany, France, Austria, Belgium, Greece, Hungary, Italy, Romania, the Netherlands and Sweden. The certification component involves ongoing monitoring of influencer content, supported by artificial intelligence, to ensure continued compliance with advertising standards.

By combining education and accountability, AdEthics reinforces a pan-European approach to ethical influencer marketing. It complements national efforts and supports closer collaboration between self-regulatory organisations, authorities, and the influencer community—without the need for additional regulation.

- Risk of overregulation and lack of flexibility:
The influencer ecosystem is highly dynamic and diverse, with many small creators and constantly evolving platforms. New rigid rules risk being outdated quickly, disproportionately burdensome, and difficult to enforce in practice. A flexible, principles-based approach is better suited to this environment.
- Restriction of specific types of claims by influencers:
The Audiovisual Media Services Directive (AVMSD), national media laws, consumer protection legislation, and self-regulatory codes (such as those enforced by advertising standards bodies) already contain explicit restrictions on the marketing of tobacco, vaping products, alcoholic beverages, and food. There is no reason why there should be stricter rules for influencers. In Germany, Deutscher Werberat has set out specific guidelines for alcohol and food advertising, which also apply to influencer marketing, ensuring these promotions adhere to the same standards as other commercial communications.

In summary, we recommend strengthening enforcement, enhancing consumer and influencer education, and supporting voluntary initiatives, rather than creating new regulatory layers. The current legal framework already covers influencer marketing effectively.

5. Section VI of the questionnaire: Unfair marketing related to pricing

The issues that are described in this section of the survey (such as drip pricing, misleading “starting” prices, and vague reference price comparisons) are already comprehensively regulated under the provisions of the EU Price Indication Directive and the UCPD. These legal frameworks already prohibit misleading price information, require the disclosure of all mandatory costs and fees upfront, and set clear rules for price reductions and comparisons. In practice, German enforcement bodies and courts have established a robust body of case law ensuring that consumers are protected from the unfair practices described. Therefore, additional EU-level legislation would not provide substantial added value in this area, but might instead create duplication and legal uncertainty in a field where

harmonized rules already exist and are effectively applied. Moreover, the EU rules in this field, as set out in the aforementioned Directives, are already fully harmonized, leaving no room for divergent or stricter national provisions and ensuring a consistent level of consumer protection across all Member States.

6. Section VII of the questionnaire: Issues with digital contracts

Press publishers and broadcasters across Europe depend on digital subscriptions and advertising as their main sources of revenue. This model is essential for sustaining independent, pluralistic and high-quality journalism in the digital era. Any additional regulatory burden on digital subscriptions would directly affect their financial stability and ability to invest in reporting — ultimately weakening press freedom and media diversity.

Existing EU consumer law already provides strong protection, including transparency rules, withdrawal rights and safeguards against unfair commercial practices (the Consumer Rights Directive, the UCPD, the Digital Content Directive and the Consumer Omnibus Directive). New or overlapping regulation would create duplication, legal uncertainty and could undermine the viability of the current subscription model.

The digital press market (including audio and AV media) already offers consumers a high degree of flexibility and choice. There is no evidence of systemic consumer protection issues that would justify further intervention. Additional rules would therefore be unnecessary and risk overregulating a well-functioning market — to the detriment of Europe's free and diverse press.

7. Section VIII of the questionnaire: Simplification Measures

In response to Question 7 of this section of the survey we see no need for new EU legislative action in the identified areas to reduce any alleged single market fragmentation. The suggestion that new legislation is required to promote the internal market due to divergent national rules or judicial interpretations must be firmly rejected in such general terms. In the field of commercial communications and advertising, the relevant areas are already governed by fully harmonised EU legislation, including but not limited to UCPD and the GDPR. While varying interpretations by national authorities and courts do occur, these can be effectively addressed through targeted guidance by the commission. Ultimately, it is the Court of Justice of the European Union (CJEU) that ensures uniform interpretation of EU law. Introducing new legislative instruments would risk reopening well-settled frameworks, thereby delaying legal certainty rather than advancing it.

8. Section IX of the questionnaire: Horizontal and Cross-Cutting Issues

- Age Verification in the DFA Context: We share and support the EU's goal of effectively protecting children from harmful content and dangerous practices in the digital space. While minor protection is a non-negotiable aim, its effectiveness depends on the specific design and proportionality of such protection:

- Existing obligations, including those under the DSA, the AVMSD or national implementation (i.a. in the German Interstate Treaty on the Protection of Human Dignity and Minors in Broadcasting and Telemedia (JMStV)) should continue to form the primary legal framework, as they are better suited to specific national circumstances and requirements. A blanket, undifferentiated additional platform-based age verification would not only unnecessarily duplicate the existing legal framework but complicate compliance and thus hamper the enforcement of regulations for the protection of minors.
 - Extending the existing obligations to protect minors on online platforms to all digital services and offerings must be avoided. Such a horizontal and undifferentiated provision across the open internet would be technically challenging, raise data protection concerns, and incur significant costs. It would also undermine without any justifiable reason the business models of the free press and media in the open internet, which generally is not targeted at minors but would be equally affected by such as horizontal and undifferentiated approach.
 - Particularly in terms of a strict age limit of 18, many member states (including Germany) already have differentiated age rating systems in place, which have proven to be an effective and differentiated means of protecting minors. Establishing a simple age limit of 18 risks excluding youth from relevant cultural, educational, or entertainment content suitable for their age and beneficial for development.
 - The DFA should refrain from establishing a one-size-fits-all solution and instead focus on enhancing existing self-regulatory systems such as the Freiwillige Selbstkontrolle Fernsehen e.V. (FSF), Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e. V. (FSM) or JusProg e.V. as they have already proven to effectively contribute to minor protection.
 - Furthermore, the proportionality of age verification systems is essential: The differentiation between journalistic-editorial content and harmful content is needed to allow youth access to reliable and informative/educational or entertaining content while also protecting them from real harmful content.
- Burden of proof reversal: It is already recognized under German procedural law that there are graduated levels of burden of proof and presentation, i.e., plaintiffs, such as consumer protection organizations, do not have to present circumstances that lie within the sphere of the defendant company, respectively, the company must dispute their non-existence in a qualified manner. Against that background we see no need for a general reversal of the burden of proof and presentation. Reversing the burden of proof as a general principle in consumer protecting law raises significant legal and practical concerns. First and foremost, such a shift would undermine a core principle of the rule of law: that the party asserting the claim must provide evidence to support it. Presuming a trader's wrongdoing unless proven

otherwise effectively treats them as guilty until they can prove their innocence, which is a dangerous precedent in any democratic legal system.

Furthermore, while information asymmetry is a legitimate concern in the digital economy, reversing the burden of proof is not a proportionate or balanced solution. It risks placing an unreasonable legal and administrative burden on businesses, particularly small and medium-sized enterprises, which may be forced to document and justify every aspect of their operations—often to prove a negative. This could lead to excessive compliance requirements, legal uncertainty, and a chilling effect on innovation and communication, especially in rapidly evolving sectors like digital services and advertising.

In practice, such a measure may also distort enforcement incentives. If authorities can rely on presumptions and no longer need to conduct thorough investigations, enforcement risks becoming less evidence-driven and more arbitrary. Over time, this could undermine trust in both regulators and the legal system as a whole.

- Rethinking the legal consumer standard in the digital context: We do not support a revision of the current legal definition of the average consumer as “reasonably well-informed, observant and circumspect.” This standard, as established by the Court of Justice of the EU and long embedded in consumer law, provides a balanced and workable benchmark that allows for consistent application across Member States. It reflects the principle of proportionality and ensures legal clarity across the internal market.

Lowering this standard would create significant legal uncertainty and is neither practical nor fair. Traders would be forced to anticipate highly variable levels of consumer attention or understanding, while consumers themselves are increasingly digitally skilled and accustomed to navigating complex online environments. Redefining the standard downwards would therefore ignore this reality and risk disempowering consumers.

The focus should instead be on:

- Improving consumer information design, e.g. layered notices and plain language,
- Strengthening enforcement against misleading practices,
- Promoting digital literacy, especially among vulnerable groups, by providing targeted educational programs, practical guidance on safe and informed online behavior, and easy-to-understand resources that help users navigate complex digital services. This includes initiatives in schools, community centers, and through public awareness campaigns, as well as supporting tools that make digital practices more transparent and accessible.

The existing standard already allows enforcement bodies and courts to take into account specific vulnerabilities and contextual factors, where relevant. A complete redefinition is

unnecessary and potentially harmful to legal clarity and the functioning of the internal market.

- We acknowledge the importance of **protecting particularly vulnerable groups of consumers**. However, the existing legal framework is already clear and comprehensive: the GDPR, in Articles 9 and 22, sets strict limits on the processing of sensitive data (e.g. racial or ethnic origin, political opinions, religious beliefs, health data, or sexual orientation) and on automated decision-making processes, while the AI Act introduces additional horizontal restrictions on the use of AI. Thus, effective mechanisms already exist to ensure protection also in the digital environment.

An extension to vague or difficult-to-handle categories such as “emotions,” “financial worries,” or other personal vulnerabilities would neither lead to greater consumer protection nor to increased legal certainty, but rather create regulatory ambiguity and considerable enforcement challenges. To prevent abuse, no new statutory restrictions are therefore required. What matters instead is to effectively enforce the existing provisions and to strengthen their practical implementation.

9. Conclusion and Key Recommendations

We do not see the need for additional EU-level legislation in the areas addressed by the consultation. The existing legal framework — in particular the UCPD, the GDPR, the DSA, the DMA, and the AI Act — already provides comprehensive, technology-neutral rules to address unfair commercial practices, manipulative interface design (“dark patterns”), personalised advertising, influencer marketing, and pricing transparency.

Our key recommendations:

Enforcement over new rules: The priority should be consistent, coordinated and well-resourced enforcement of existing EU law across all Member States. New rules risk duplication, legal uncertainty and fragmentation.

Dark patterns: Current law (UCPD, DSA, GDPR) already prohibits manipulative interface design. Courts and regulators (e.g. ACM, UOKiK, OLG Bamberg) have shown that enforcement works in practice. Additional rules would not add value but create overlap.

Personalisation and advertising: Data-driven personalisation is vital for consumer relevance, media diversity, and SME competitiveness. It is already strictly regulated under GDPR, DSA, DMA and AI Act. Extra opt-in/opt-out regimes or blanket restrictions would undermine free, ad-financed digital services, harm SMEs, and risk a shift to paywalls.

Influencer marketing: Transparency and fairness rules already apply. National enforcement bodies and self-regulatory initiatives (e.g. German Wettbewerbszentrale guidance, Landesmedienanstalten

matrix, AdEthics programme) ensure practical compliance. EU-level overregulation would reduce flexibility in a dynamic market.

Pricing practices: The UCPD and Price Indication Directive already fully cover drip pricing, misleading reference prices, and vague discounts. New rules are unnecessary.

Cross-cutting issues:

- Age verification should build on existing frameworks (DSA, AVMSD, national systems) instead of imposing blanket new requirements.
- Reversing the burden of proof would undermine legal certainty and disproportionately burden SMEs.
- Lowering the “average consumer” standard would create legal uncertainty; the focus should be on digital literacy, transparency and enforcement, not on redefining consumer benchmarks.

Overall: Strengthen enforcement, ensure consistent guidance, and promote consumer literacy. Avoid duplicating or expanding regulation where effective instruments already exist. This approach will best serve consumers, businesses (especially SMEs), and the internal market.

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Der Zentralverband der deutschen Werbewirtschaft (ZAW) ist die Dachorganisation von 43 Verbänden der am Werbegeschäft beteiligten Kreise. Er vertritt die Interessen der werbenden Unternehmen, des Handels, der Medien, der Werbeagenturen sowie der Werbeberufe und der Marktforschung. Er ist die gesamthafte Vertretung der Werbewirtschaft in Deutschland. Zur Dachorganisation gehören auch die zentralen Werbeselbstkontrollen in Deutschland: der Deutsche Werberat und der Deutsche Datenschutzrat Online-Werbung.

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