

23 October 2025

## Contribution of the Bundesverband Digitale Wirtschaft (BVDW) to the Consultation on the Digital Fairness Act

### Executive Summary

The BVDW represents Germany's leading companies in the digital economy, focusing on digital advertising, creative agencies, technology, platforms, and innovative digital services. As a cross-industry organization, BVDW is committed to advancing a fair, innovative digital ecosystem, competitive markets, and robust consumer protections. The association calls for a harmonized, proportionate EU regulatory environment without overregulation or legal fragmentation.

BVDW's position is clear: first and foremost, the current legal framework can be strengthened through guidance and implementation. Existing rules already address many issues concerning the topics outlined in the consultation. Additional regulation risks overlap and unnecessary burdens without real consumer benefit. The priority should be simplifying and harmonising current laws, especially for SMEs, while ensuring effective enforcement, including for non-European actors. The Digital Fairness "Act" should therefore focus on improved enforcement and regulatory simplification, not new or duplicative legislative measures. We urge the EU to consolidate, clarify, and consistently apply existing rules, reducing overlaps and uncertainty, and to combine this with clear non-legislative guidance and dedicated capacity-building for all stakeholders.

### Section I: Dark Patterns

BVDW recognizes the growing importance of effective action against manipulative digital design ("dark patterns") to foster transparency, trust, and fairness in the digital environment. However, the BVDW strongly cautions against introducing new binding EU legislation at this stage.

The existing EU legal landscape including the Unfair Commercial Practices Directive (UCPD), Digital Services Act (DSA), GDPR, AI Act, and sector-specific laws already captures and prohibits a broad spectrum of misleading, aggressive, or manipulative interface designs. While definitions and scope are currently fragmented, and more coherence and practical guidance are needed, the BVDW believes that legislative inflation and duplicate regulation would increase uncertainty and costs without clear consumer benefit. Given the robust nature of the legal framework, BVDW recommends focussing on guidance and consequent implementation of the existing framework.

In summary, BVDW calls for a proportionate, evidence-based approach:

- Prioritise clarification, consistent enforcement, and filling real gaps before considering any new or broader legislative intervention.

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- Establish a unified definition of 'dark patterns' that carefully distinguish manipulative practices from legitimate, user-centric marketing and design, recognizing that not all user influence is inherently negative.
- Targeted EU-level guidance and enforcement tools for both regulators and business, helping to operationalize and harmonize the application of existing law across the EU.
- Enhanced awareness and capacity-building for businesses and consumers, so that rights, obligations, and remedies are transparent and effective in practice.

The BVDW explicitly warns of the risks of overbroad labelling, which could stifle responsible innovation and legitimate business models. Regulatory efforts should focus on clear, enforceable standards that close genuine legal or enforcement gaps, rather than creating further overlaps or contradictory obligations. The Digital Fairness "Act", if pursued, should address identified gaps and provide unambiguous, technology-neutral requirements without undermining the flexible, principle-based framework already in place.

> > > see the attached position paper on Dark Patterns.

## Section IV: Unfair Personalisation Practices

The consultation frames nearly all forms of personalisation suggestively as problematic, without substantive reference to the acquis of EU consumer or data protection law. The clustering of personalised pricing, content personalisation, and personalised advertising within the DFA consultation raises not only methodological concerns. By grouping these distinct practices together, the consultation risks oversimplifying and conflating areas that differ significantly in purpose, impact, and regulatory relevance. BVDW stresses the need for a more balanced, evidence-based approach. This would better reflect market realities and enable more effective policy considerations. BVDW stresses the need for a more balanced, evidence-based approach.

BVDW executed a study together with Kantar Media on how consumers value personalisation for different online services. The study is clear in that personalisation is already an integral part of everyday digital life, broadly appreciated and consciously used. While political debates often still circle around abstract risks, users themselves respond pragmatically and benefit oriented. Overall, 67% consider personalised content and services generally appropriate, especially in e-commerce (68%), social media (67%) and search (65%) personalisation is most relevant. And when it comes to advertising, only a small fraction of 20% prefers a generic option. Overall relevance is the primary value in using personalisation, 40% want to avoid irrelevant content, 38% appreciate time savings, 30% value convenience such as auto-login. Additionally, 75% are willing to share personal data when the benefit is clear.

On the flip side, responsibility, transparency and communication are needed to ensure consumers trust in sharing their data. Trust is selective, not absolute. Transparency is the decisive criterion, 52% of the consumers surveyed want more insight into how data is used, 49% want more education on how personalisation works and 42% want further information from companies how

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they are using personalisation. Therefore, also from the consumers' perspective, there is more interest in guidance and education than new legislation. The full study is attached to the consultation.

Many proposals, such as new opt-in/opt-out regimes for personalised advertising, ignore that (nearly) all digital advertising models already require and operate under strict GDPR-based consent rules. Additional restrictions risk disproportionate, unworkable burdens, especially for European SMEs, and endanger the diversity and innovation capacity of European digital markets and plurality of Europe's media landscape. Personalised advertising remains crucial not only for supporting independent media, fostering a vibrant democratic discourse, and sustaining an open, accessible online ecosystem for all users. It is also necessary for small and medium-sized enterprises to bring their products and services to their customers cost effectively and efficiently to remain competitive in the global marketplace.

Our personalisation study shows that targeted advertising is increasingly expected and perceived as "normal" by consumers, reflecting their growing demand for specific search results and inspiration. This trend is further accelerated by development such as Generative AI, highlighting that European companies' ability to meet evolving consumer expectations is critical for their future competitiveness. Precisely for this reason, companies need to be able to continue to rely on personalised advertising, without complicating the current framework in place.

The existing GDPR, AI Act, and sectoral rules already set effective boundaries. Additionally, under the DSA, personalised advertising for minors has already been prohibited. The context-specific handling of sensitive data is robustly protected through legal principles such as data minimization and explicit consent. Ambiguous new categories (like "emotional state" or "financial worries") are not portraying the realities of how personalisation works, beyond the fact that it would be impossible to implement.

BVDW also developed a technical background paper on the realities of tracking in the digital economy. Tracking and personalisation are essential for the European digital economy, underpinning the financing of free content and digital services, supporting SMEs, and enabling relevant, user-focused experiences. Data-driven advertising and content recommendations improve usability, provide measurable outcomes for campaigns, and are critical for fraud prevention and platform security. Importantly, current technologies operate on aggregated group profiles, not on individual emotional states or vulnerabilities, which are technically not measurable or exploited in practice.

The digital economy relies on a complex ecosystem of advertisers, publishers, and intermediaries (such as DSPs, SSPs, Ad Exchanges, and Consent Management Platforms) that ensure efficient, transparent, and compliant ad delivery. This infrastructure allows European companies to compete in global markets, maintain innovation, and provide relevant services while respecting privacy rules. Tracking enables personalised experiences and campaign optimisation, but it does so by using pseudonymized or aggregated data, never by exploiting emotional or situational

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vulnerabilities. Therefore, the phrasing of the pre-formulated answers in the consultation is not reflecting the reality of the digital economy.

Effective enforcement of existing legal frameworks (e.g., GDPR, DSA) is more critical than introducing new restrictive measures. Many challenges arise from foreign or hard-to-reach players who do not comply with EU law, creating competitive disadvantages for European businesses. Strengthening enforcement would improve fraud prevention, ensure a level playing field, and maintain trust in digital services. A competitive, innovative, and fair digital economy depends on responsible data use, tracking, and personalisation—tools that are essential for users, businesses, and the broader European market.

Furthermore, BVDW would like to stress the importance of a fact based and balanced discussion on personalisation. An additional legal framework for personalisation as a whole or partially would be unproportionate. As mentioned above, the DFA should only close genuine gaps with clear, technology-neutral standards while avoiding overlaps or contradictions with the existing principle-based framework.

Finally, on the issue of personalised pricing, BVDW would only like to stress for a differentiated approach in personalised pricing that make it possible for companies to continue to use specific and targeted discount actions (i.e. on Mother's / Father's Day).

> > > see the attached study on consumers' attitude towards personalisation.

> > > see the attached background paper on tracking and targeting in advertising.

## Section V: Influencer Marketing

Influencer and content creators have become key players in the digital economy and society, shaping purchasing decisions, brand perception, and social trends. Given the commercial as well as cultural significance of influencer marketing and the responsibility for consumer protection, several Member States have already formed extensive regulatory frameworks. Existing EU and German regulations already cover influencer marketing under consumer protection, advertising transparency, data protection, and youth protection laws. In Germany and across Europe, comprehensive legal frameworks for influencer marketing already exist. From the perspective of the digital economy, rather than introducing new regulations, what is needed is a more consistent enforcement and better communication of existing rules.

BVDW promotes self-regulation (also at EU-wide level, i.e. via the AdEthics initiative of the European Advertising Standards Alliance) through codes of conduct, certifications, training, and EU-level best practices, demonstrating that industry-driven initiatives contribute significantly to professionalism and compliance whilst maintaining national cultural flexibility.

Instead of introducing new regulations, BVDW advocates for consistent enforcement of existing laws, better consumer education on media literacy, targeted support for smaller influencers and

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SMEs, and adequate resources for regulatory authorities to ensure a fair and innovation-friendly ecosystem.

BVDW therefore supports enhanced enforcement and education over new rules. Additionally, there is a need for more and closer cooperation with self-regulatory bodies, federal administration and authorities. Overregulation would stifle innovation and be disproportionately burdensome for both large and small creators. Trust, consumer protection and a level playing field are best achieved via stronger enforcement, harmonized principles, and upskilling measures.

> > > see the attached position paper on Influencer Marketing

## **Section VIII: Simplification Measures**

BVDW does not see a need for new legislation to combat alleged single market fragmentation. Commercial communications and advertising are already harmonized at the EU level (i.e. UCPD, GDPR, DSA). Remaining divergences are best resolved with targeted EU guidance, clarifications, and enforcement and ultimately through CJEU jurisprudence, not new legislative interventions.

BVDW supports:

- Ending duplicative and conflicting obligations (e.g., multiple reporting, varying definitions) across digital regulation.
- Implementation of the “once-only” principle for compliance and reporting obligations.
- Consistent definitions across regulatory instruments, harmonized guidance, and clear timelines.
- Streamlined procedures and recognition of cross-border compliance, reducing overall administrative and legal costs for businesses.

## **Section IX: Horizontal and Cross-Cutting Issues**

BVDW expresses clear concerns on certain proposals introduced by the Commission in Section IX of the DFA Consultation.

- Presumption of Wrongdoing / Burden of Proof Reversal. A move in this direction is contrary to fundamental principles of law and fairness. This would disproportionately impact businesses, especially SMEs, and risks arbitrary enforcement.
- Redefining the Consumer Standard. The current definition (“reasonably well-informed, observant, and circumspect consumer”) is balanced and should not be changed. Indeed, more information provided does not always lead to a better-informed consumer. However, this should lead to more efforts on better information design, digital literacy, and robust enforcement, rather than lowering legal thresholds and increasing uncertainty.
- The study referenced earlier clearly shows consumers are already using personalisation widely. At the same time, responsibility and transparency are important to consumers, as they trust some companies more with their data. This clearly shows, consumers are

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capable to make informed decisions on what sharing their data means for increased convenience and reducing of non-relevant content.

- **Targeting Vulnerable Groups:** As mentioned above, BVDW prepared a technical background document on how tracking or targeting works in practice. Beyond the technical paper, the existing legal framework already set effective boundaries. Ambiguous new categories of vulnerabilities would be impossible to implement. The focus should remain on enforcement and practical digital empowerment.

## Additional Remarks

BVDW wants to furthermore highlight some methodological flaws in the consultation that risk biasing results in favour of new EU interventions. The consultation prevents respondents who oppose new actions from fully explaining their views, while the survey logic and pre-formulated options may prime answers and steer answers towards a bias. These design issues undermine the reliability of quantitative outcomes and may distort the policy evidence base. BVDW urges the Commission to acknowledge these limitations, complement findings with contextual analysis or additional sources, and transparently communicate uncertainties.

## Conclusion and Priorities

There is no immediate need for new legislative rules at EU level. The priority must be coherent and rigorous enforcement of the existing framework, supported by technical expertise, improved cross-border coordination, and practical guidance. A simplification-first approach should be the foundation, supporting legal certainty, competitiveness, innovation, and digital consumer empowerment across the EU.

Only a strategy of simplification, clarification, and harmonized application—rather than regulatory layering—will ensure the Digital Fairness Act delivers its promise for both consumers and the digital economy.

## Attachments:

- Position paper on Dark Patterns
- Position paper on Influencer Marketing
- Study on Consumer Attitudes towards Personalisation
- Background Paper on Tracking Practices and Personalised Advertising

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