

Rules for a necessary update of EU consumer law in the Digital Fairness Act
Non-paper by the Federal Republic of Germany

The German Federal Government continues to support the conclusions of the Council of the European Union on the 2030 Consumer Agenda, which were approved on 26 February 2026. The Federal Government would like to take the opportunity to elaborate on its position as follows:

The **Digital Fairness Act** announced by the European Commission (COM) aims to address existing regulatory gaps, including with regard to enforcement and potential legal uncertainty, building on the findings of the Fitness Fairness Check of EU Consumer Law on Digital Fairness in order to further **strengthen the protection of consumers in the digital environment** against practices such as deceptive or manipulative interface design (dark patterns), addictive design features, problematic practices by influencers, unfair personalisation that exploits consumers' vulnerabilities, non-transparent dynamic pricing practices and other problematic features in digital products.

Accordingly, existing EU legislation – in particular the **directives on consumer protection** – should be amended, however, without creating a new horizontal legal act. The impact of EU regulations concerning the digital sector that have come into force in recent years should also be considered in this context, as should the possibility of improving their enforcement. Furthermore, **consistency must be ensured with existing EU legislation**, in particular the Digital Services Act (DSA), the Digital Markets Act (DMA), the Artificial Intelligence Act (AI Act), the General Data Protection Regulation (GDPR) and the upcoming revision of the Audiovisual Media Services Directive (AVMSD), as well as the Digital Omnibus and the EU KIDS Act. This will help to avoid regulatory duplication and legal uncertainty, as this could undermine enforcement and generate unnecessary burden for businesses.

The announced Digital Fairness Act aims to strengthen **consumer protection and digital fairness** while ensuring a level playing field and the simplification of rules for businesses in the EU. When addressing the existing regulatory gaps mentioned above, care should be taken to avoid undue new bureaucracy and placing a disproportionate burden on the economy. It must also be ensured that enforcement can be carried out in a practical manner, including for SMEs. Furthermore, a high level of consumer protection must be maintained.

The Digital Fairness Act could therefore **include the following rules**, although Germany does reserve the right to amend or expand upon its position as appropriate once the Digital Fairness Act has been presented:

Dark patterns:

- The principles of **fairness by design** and **fairness by default** must be made legally binding in order to establish fair competition with minimal bureaucracy and to close gaps in protection. One possible way of ensuring that the specific rules provide legal certainty and are workable in practice would be to incorporate the principles of 'fairness by design' and 'fairness by default' into the interpretation of 'professional diligence' in Directive 2005/29/EC on Unfair Commercial Practices (UCPD), establishing them as a specific standard and interpretation guideline for online interfaces. This should not include any specific fairness-related documentation, reporting or evidence requirements.
- Dark patterns should be effectively prevented, and a corresponding prohibition – such as the one in Article 25 DSA – should serve as a model for all digital applications and services. A **general prohibition clause that is based on Article 25 DSA and substantiated with standard cases** should therefore be included in UCPD. This would serve to specify the general clause of Article 5(1) UCPD by clearly defining and prohibiting 'manipulative commercial practices' in a new section in addition to 'misleading commercial practices' and 'aggressive commercial practices' (see Article 5(4) UCPD). **Based on Article 25 DSA, a new unfair commercial practice should be introduced here, specifying that via an online interface consumers must not be manipulated**, nor must their ability to make free and informed decisions be materially distorted or impaired in any other way. It would also be necessary, as a result of this, to distinguish between unfair practices on the one hand, and legitimate advertising and commercial practices that can improve the user experience (particularly in areas such as e-commerce and apps) on the other. Clear and practical guidelines should be drawn up to ensure that there is legal certainty regarding the distinction between unfair practices and legally permissible and legitimate commercial practices. With a horizontal rule, sector-specific provisions on dark

patterns – such as those set out in the Consumer Rights Directive – could then be repealed.

- In this context, it should be examined with regard to the UCPD to what extent **user decisions that are not directly transaction-related, but are nonetheless economically relevant**, should be included within the scope of legislation regarding unfair commercial practices (e.g. gamification during the e-commerce purchasing process). At the same time, it must be ensured that this does not result in pre-purchase activities in the digital sphere being covered indiscriminately.
- In addition, the **list of misleading, aggressive and – as a new addition – manipulative commercial practices** in Annex I should be expanded to include specific **dark patterns**.

Legal form of the UCPD:

- In our view, the necessity of converting the UCPD into a regulation in order to improve enforcement in the case of serious cross-border violations (particularly those involving third countries) has not yet been sufficiently demonstrated. Solutions should be found that grant the COM the power to take direct enforcement action in such cases, while also ensuring that the established legal systems of the Member States are not endangered.
- In case of a conversion of the UCPD into a regulation there are technical concerns that would have to be addressed by means of corresponding opening clauses. At the very least, the following aspects must be safeguarded under EU law:
 - Preserving the national option to retain the established practice of low-bureaucracy private enforcement by competitors and associations;
 - Retaining a **national Unfair Competition Act**, including provisions for enforcement under civil law and provisions relating to the B2B sector;
 - Retaining the concept of **'gaining an advantage by breaching the law'** (section 3a of the national Unfair Competition Act), which has so far been enshrined only in national law and is intended to prevent companies from gaining a competitive advantage by breaching laws outside the scope of the Unfair Competition Act.

- The interpretation of general clauses should continue to be left to the independent courts. Against this background, **we reject any considerations to grant the COM the power** to adopt delegated acts or implementing acts, for example to update the 'blacklist'.

Addictive designs/gaming

- **Certain addictive settings**, in particular **autoplay and infinite scrolling**, should only be possible after an **opt-in** by users.
- **Specific addictive designs** should be added to the list of misleading, aggressive and manipulative commercial practices in **Annex I to the UCPD**.
- Consumers should be protected from **harmful practices and non-transparency concerning in-game purchases and loot box features**. For all games with in-game purchasing, the consumer should be asked to set a personally definable payment limit.
- Specific **transparency obligations** should be introduced for **in-game purchases** for loot boxes and the purchase of virtual items: amounts spent should be given **in real money**, where technologically feasible.

Personalisation

- Using user profiles for **personalisation** to take advantage of, for example, **addiction, dependencies or predicaments should be prohibited**.
- The personal data of **minors** – where it is sufficiently certain that the user is a minor – and special categories of personal **data** as defined in Article 9 of the GDPR should be completely excluded from use for profiling for advertising and for personalised offers and discounts.
- A coherent and legal certain distinction from the provisions of the GDPR must be ensured.

Influencer marketing

- A clear **legal definition** of influencer marketing (that also covers the phenomenon of virtual influencers) and clear, standardised requirements for transparency, and in particular an obligation for clear disclosure (**labelling requirement**).

- For clarity, the **definition of specific commercial practices** by influencers as unfair in the UCPD.
- Provisions to ensure (clarity on the fact) that existing **restrictions and bans on advertising** (for example for alcohol, gambling and tobacco) also apply to influencers. Any amendments should be implemented in the relevant legal acts, for example the AVMSD and the Tobacco Advertising Directive.
- An obligation on **businesses that commission influencers** to select them with care and to monitor their activities: provisions should define businesses' specific responsibilities.

Digital contracts and AI agents

- Introduction of a **cancellation button** under the EU Consumer Rights Directive together with effective penalties under civil law, in line with the German regulation to ensure a level playing field.
- When AI agents are used in e-commerce: to protect consumers and ensure fair competition, to the extent that there are gaps in the regulations, the COM should consider possible requirements on the necessary transparency (in particular on the financing model).
- Clarification in the UCPD that the **manipulation of tools** for the automated conclusion of contracts, for example **AI agent** manipulation by third parties, is an unfair practice.

Secondary ticketing market

- On the secondary ticketing market, it must be prevented that **abusive pricing and untransparent practices** put a strain on the relationship between organisers, artists and consumers. Europe-wide provisions are required in this area. At the same time, fair competition should also be promoted. Due consideration should be given to the legitimate business interests of market participants.
- Automated ticket purchasing by bots can lead to artificial ticket shortages on the primary market. When bots purchase large numbers of tickets, which are then offered for sale on the secondary ticketing market at abusive prices. This development should be addressed by **extending the ban on the use of automatic means (bots) under no. 23a of Annex I to the UCPD** to the purchase of tickets.

- There should be an obligation to **disclose the seller's identity on the secondary ticketing market** after purchase/at the latest upon default in performance, irrespective of whether the seller is a trader or consumer, and additional obligations should be introduced for platforms to disclose the original price/seating category.

Simplification measures

- **Information requirements** should be **simplified and reduced**, in particular for repeated transactions with the same business through a user account. The information requirements under Article 6(1)(n) of the Consumer Rights Directive should be removed.
- **Switch to digital information:** For off-premises contracts, the Consumer Rights Directive should also stipulate as a regular rule the digital format for the pre-contractual information requirements.
- Germany welcomes the fact that consultations on the Digital Fairness Act addressed a possible **exemption for goods which are liable to deteriorate or expire rapidly** from requirements under **Article 6a of Directive 98/6/EC** to indicate the lowest price applied over previous 30 days. Inconsistent implementation/application of this exemption by the Member States results in an avoidable burden. Foodstuffs (including drinks) should fundamentally be exempt from Article 6a as they can all become unsaleable because they have spoiled or expired.
- Germany reserves the right to propose further simplifications in the course of negotiations.