

EASA feedback to the call for evidence

Digital Fairness Act

About EASA

The [European Advertising Standards Alliance \(EASA\)](#) represents and coordinates the advertising collective self-regulatory systems across Europe. Its membership is composed of 28 independent advertising self-regulatory organisations (SROs), which ensure the enforcement of advertising self-regulatory and co-regulatory codes of conduct at national level, 14 advertising industry associations (advertisers, agencies, the media) and two digital pure players, which all support these self-regulatory systems and commit to their principles.

Advertising self-regulation plays a major role in ensuring a high level of consumer protection. It supports industry stakeholders in maintaining and further developing ethical standards for commercial communications in response to technological developments and changing consumer behaviour. EASA and its network strive to achieve that all advertising practices must be legal, decent, honest and truthful, across all forms of marketing communications, mediums and platforms.

97% of all ads seen by the EU population are covered by our system. SROs in the EU ensure compliance and enforcement in 22 EU Member States. In 2024, European SROs dealt with more than 52'000 complaints, half of which concerned online advertising communications. EASA's network is handling 89% of the complaints brought up by consumers in less than a month. During the same year, SROs provided advice prior to dissemination for almost 98'000 advertisements.

National advertising codes are all inspired by the [International Chamber of Commerce's Advertising and Marketing Communications Code \(ICC Code\)](#), the global reference for advertising self-regulation. The ICC Code (last revised in 2024) applies to all kinds of advertising, including influencer marketing practices.

Several of EASA's SROs are [developing avatar-based and AI-driven tools](#) to monitor online advertising compliance with SR rules. This is a very promising field, in which EASA plays a crucial role for the exchange of best practices between SROs.

Comments and recommendations

EASA welcomes the objectives of a potential Digital Fairness Act (DFA) but firmly believes these are achievable without further legislation. In particular, EASA strongly recommends keeping the foundational concepts of the UCPD intact (Articles 5 to 10), which should remain the main regulatory tool for protecting consumers. Preserving the UCPD as a principle-based safety net is key to legal certainty. Its continued relevance despite technological transformation underscores the strength of principle-based regulation. The main provisions of the UCPD (Article 5 to 10), which already apply to influencer marketing, should be enforced without resorting to an expansion of the blacklist. Furthermore, the European Commission should look to enhance

influencers' awareness of this robust framework to enhance compliance, working hand in hand with self-regulatory organisations and EASA.

Among the different dimensions highlighted in the call for evidence, only influencer marketing appears clearly within EASA's competence. Our comments and recommendations will therefore mostly focus on influencer marketing.

How is influencer marketing covered by current rules?

It would be entirely mistaken to believe that influencer marketing is an unregulated field representing a regulatory gap. Influencers engaging in advertising practices are legally required to comply with the same rules as any other type of advertising. There is therefore no need for new specific rules tailored to influencer marketing, but rather a need for awareness-raising and improved enforcement.

EASA is adding a word of caution against any attempt to use blanket prohibitions to address the "potentially harmful products" and "specific types of claims by influencers" mentioned in the consultation survey. Blanket bans are too one-size-fits-all to proportionately address the wide variety of "potentially harmful" products.

The significant amount of applicable legislation (UCPD, AVMSD, DSA) has been complemented by advertising codes of conduct set up by self-regulatory organizations that cover digital media. Self-regulatory organisations' specific rules establishing how advertising content disseminated by influencers should be identified are in line with [EASA's 2023 Best Practices Recommendation on Influencer Marketing](#).

EASA has developed preventive tools to ensure responsible influencer marketing, such as the training and certification programme [adEthics](#), implemented by national self-regulatory organisations to help influencers understand their obligations when engaging in marketing practices. Already available in 11 European countries, and soon in several others, this programme has enabled the training of more than 5'000 influencers. Available data shows that such training and certification schemes are delivering results: in France, from 2020 to 2024, the rate of full compliance with disclosure obligations has jumped from 32% to 81%. When we include both full and partial compliance, the rate significantly increased from 73% to 95% over the same period ([ARPP's Observatory data](#)). The latest edition of the ARPP Observatory (new AI-based methodology) shows that certified creators commit three times fewer breaches than non-certified creators.

AdEthics is cited as a best practice in the Fitness check's final Staff Working Document (p. 173) and it has been endorsed by influencer representatives, industry representatives and by the Commissioner in charge of Consumer Protection, Michael McGrath. Further recognising such type of initiatives in the DFA would enhance their legitimacy and encourage broader participation. This would benefit consumers, content creators, brands and all other involved stakeholders.

How can consumer law be simplified?

Self-regulatory mechanisms can substantially contribute to simplification. Explicitly recognising and encouraging self-regulatory mechanisms would bolster their already significant uptake and result in a net win for all stakeholders, without any additional regulatory burden for companies nor any enforcement costs for public authorities. **This is why EASA calls for prominent and explicit recognition of self-regulatory mechanisms in the DFA.**

The digital fairness fitness check's final report also acknowledges the high effectiveness of the enforcement by private bodies, thereby underscoring self-regulatory networks such as EASA's and their added value in protecting consumers. For consistency with both this acknowledgement and the Letta report's call for horizontal instruments such as "self-certification and fast track procedure to deal with minor non compliances", the DFA should recognise the contribution of advertising self-regulatory mechanisms to consumer protection.

Simplification efforts led by the European Commission should be accompanied by a firm commitment from policymakers not to render the legal framework more complex. Indeed, we should keep in mind that the unfair Commercial Practices Directive (UCPD) fully applies to online commercial practices, including influencer marketing, which are covered by Articles 5 to 9 and by Annex 1 point 22. This is also clarified in the UCPD Guidance, explaining how an influencer must be considered as a "trader" when they carry out "promotional activities towards consumers", regardless of the size of their following. Such Guidance is useful and can be easily and swiftly updated.

The results of the digital fairness fitness check unveiled potential gaps in the implementation and enforcement of consumer law, rather than actual legal loopholes. All commercial practices are subject to the UCPD.

Substantial changes to the UCPD's fundamental concepts, or the insertion of additional restrictive provisions, would not help bridge the implementation and enforcement gap, while they would harm competitiveness and contribute to legal instability and uncertainty. We call for coherence in the shaping of the outcome following this consultation, to ensure that it complements rather than conflicts with existing and future legal instruments.

Finally, many pieces of legislation have been recently adopted or updated with the aim to contribute to digital fairness, in addition to consumer law: the DSA, DMA, the AI Act, the TTPA and the AVMSD. An additional regulatory layer would dramatically increase the likelihood of contradiction between the different legal instruments and the incurred legal uncertainty. We therefore urge to refrain from introducing any major new provisions in consumer law.

Preserving key concepts of consumer law

Whereas it may be that not *all* consumers are *always* well-informed, observant and circumspect when browsing online, it is reasonable to assume that *most of them* are – even more so as the use and availability of digital tools has now become widespread. Therefore, the current definition of the average consumer as someone who is reasonably "well-informed, observant and circumspect" is well-suited to ensure a future-proof protection of consumers. Any departure from this assumption would blur the boundaries with the concept of vulnerable consumer.

The concept of vulnerable consumer should stick to clearly defined and well-circumscribed categories, such as minors. Situational vulnerability is a highly subjective notion that is not suited for legal purposes and would create tension with data-protection law. Furthermore, dynamic real-time assessment of ever-changing consumer vulnerabilities is technically not feasible, short of considering invasive and costly methods.

EASA is therefore in favour of maintaining the current definitions and scope of the average and vulnerable consumers concepts, as expressed in Recital 18 UCPD.