

## **Feedback – Digital Fairness Act**

### **About us**

Sveriges Annonsörer (eng: Swedish Association of Advertisers) is the industry association for Swedish advertisers and was founded in 1924. Sveriges Annonsörer has about 400 member companies/organizations, which together account for more than half of the total advertising and media investments in Sweden. As an interest organization, we support our members in working with responsible and ethical marketing that creates value for their brands. Sveriges Annonsörer is a member of the World Federation of Advertisers (WFA).

### **The scope of the feedback**

As the industry association of Swedish advertisers, this feedback will focus primarily on issues relating to marketing. This document supplements the response to the associated survey.

### **Summary**

Marketing, when done responsibly, benefits both consumers and the economy by helping consumers identify relevant products and make informed purchasing decisions. EU policy should therefore value both consumer protection and a well-functioning, competitive market. There is no general legislative gap relating to marketing in a digital environment. On the contrary, many of the practices highlighted are already addressed under the Unfair Commercial Practices Directive (UCPD), Digital Services Act (DSA) and other existing acts. The priority should therefore be effective enforcement, harmonized guidance and improved self-regulation. Additional layers of detailed rules should, as a result, only be introduced if absolutely necessary or clearly beneficial for both consumers and the industry.

### **More legislation is not always the answer**

From a consumer protection perspective, problems can for example arise when marketing is unfair or aggressive and leads consumers to make poorly informed decisions. Such shortcomings may stem from unclear boundaries between lawful and unlawful marketing or from unethical actors deliberately disregarding existing rules. To address market shortcomings, the Commission needs an approach based on the root causes, whether they relate to lack of guidance, enforcement, regulation, or self-regulation. In general, we see a need for national enforcement authorities and the Commission to do more, particularly in providing guidance under existing rules.

### **General comments on the highlighted areas in the consultation**

A few areas are highlighted as problematic in the consultation. We share the Commission's view that consumer issues exist in a few of these areas and we share the view that more action has to be taken, both by the industry as well as by the authorities.

The industry itself has a key part in improving the ethical level of marketing. Sveriges Annonsörer works, as an example, actively with the self-regulatory body Reklamombudsmannen and with industry and trade associations such as Sveriges Kommunikationsbyråer and IAB Sweden to raise standards in the Swedish influencer market. The key in actually making a difference has been for the relevant industry bodies to collaborate to create common standards and recommendations. The national initiative is related to the EU-broad AdEthics led by the European Advertising Standards Alliance (EASA).

The commission has earlier shared the sentiment that it is unclear how existing consumer rules apply in the digital market, resulting in for example dark patterns and misleading influencer marketing. Sveriges Annonsörer does not share the view that the application of existing consumer rules, particularly the UCPD, is unclear or generally insufficient in relation to most of the issues listed in the current consultation. Most practices highlighted can, to a large extent, be addressed under existing law through the general, technology-neutral provisions of the UCPD as well as under other existing acts. The focus should therefore primarily be on more effective enforcement and harmonized guidance to bring further clarity rather than new detailed regulations.

### **Promote and support self-regulation**

We advocate for marketers, and the marketing landscape, to maintain high ethical standards. The challenges marketers face can generally be addressed through self-regulation. Self-regulatory measures are often a simpler, cheaper, and faster solution than rigid and reactive legislation. We therefore believe that high ethical standards are often better achieved through self-regulation rather than through legislation. All actors, including the European Commission, should act in a way that supports self-regulation and work towards improving, expanding, and supporting self-regulation. We would like to particularly highlight the updated ICC Code by the International Chamber of Commerce that provides concrete global standards on influencer marketing, environmental claims and communications to children and teens. We encourage the Commission to recognize and support self-regulation wherever possible. It is important that the industry, together with the Commission and national authorities, foster a culture of self-regulation to proactively set high ethical standards in marketing without the need for crisis-driven, reactive legislation.

### **When additional legislation may be warranted**

Additional legislation can be necessary and warranted, but that should only be the case in situations where existing rules are insufficient despite effective enforcement and clear well-communicated guidance and where self-regulation hasn't had sufficient impact. In other words, where the fundamental issue lies with the legislation. In a large number of cases however, we believe that the shortcomings are not due to legislative gaps but as a lack of clear and well-communicated guidance, enforcement or self-regulation.

### **Utilize existing rules**

In cases where there are existing rules, we see a need for authorities, including the EU-commission, to utilize the current existing rules in a way that does them justice. For example, the consultation implies that the rules on influencer marketing are lacking when it comes to transparency. We question whether such a statement is justified in situations where there has been zero or very few cases tried in the EU-court and where there is still room for clarity through the development of case law and through other guidance. In some cases, you could say that the Commission compensates for a lack of sufficient enforcement and clear guidance, normally provided through case law and guidance by the authorities, by instead proposing additional detailed rules. The lack of solid development of clarifying case law and sufficient guidance has the effect that both current and future legislation will be characterized by legal uncertainty. This also harms the harmonization within the union since case law from the EU-court, together with sound guidance from the Commission, is essential for a clear and similar interpretation among actors in different members states.

### **Simplifications and the need to avoid overlapping and fragmented rules**

Today's regulatory framework for marketers is complex and places tough requirements on those who do their best to comply with the rules. It is therefore of utmost importance that rules are designed with simplicity in mind. To give an example, anyone working with influencer marketing within the EU must navigate three separate regulatory frameworks to determine how to disclose advertising (DSA, UCPD & AVMSD). We advocate for less fragmented and overlapping regulation and see great value in rules that are technology neutral in nature, clear and principle based, making them relevant not only for today's advertising landscape but also for tomorrows. Those qualities can be found in the general provisions in the UCPD.

### **Requirements must align with the needs of the average consumer**

Requirements that stem from legislation must be designed with a clear purpose in mind and thus designed to achieve the intended effect. In recent years, we have observed a trend towards an increase in legislation that mandates certain information in marketing. In our view, this is an example of legislation that might be designed with the consumer in mind, but that risks missing the mark. Information obligations that extend beyond what is essential for the consumer risk overwhelming the consumer with excessive information, thereby diverting attention from what is important for the consumers when making, for instance, a transactional decision. As an example, what value does a three-sentence legal disclosure in an advertisement have if its length causes the consumer to disregard it entirely due to its scope. Add that today's media and advertising landscape increasingly favors fast-moving, short-format content on for example social media, where consumers often scroll quickly and don't take their time to read lengthy informational texts.

Above is an example of where regulation may have legitimate underlying purposes, but where the requirements imposed do not result in benefits in practice for either the average consumer or the marketer due to the design of the rules. The design needs to be proportional and fit for purpose, taking both the consumer and the industry into account.

Against this background, we identify a few shortcomings in the Commissions proposed measures where the rules are not proportional or fit for purpose. One such example is found within the category “Horizontal issues”. For instance, the requirement that traders should operate according to “fairness by design” raises concerns. We strongly question whether the Commission should dictate operational methods when the only relevant fact is whether the consumer-facing outcome complies with consumer protection laws. Proposals of this nature contribute to excessive regulation of how businesses should operate on a daily basis and should be avoided. This is a clear example of proposals targeting how businesses operate, regardless of whether they act unethically or not, rather than addressing actual negative consumer outcomes. The same reasoning applies to other proposals in the consultation, for example the category “Unfair marketing related to pricing”. If pricing is misleading, it is already in breach of existing EU legislation. Therefore, regulating the type of pricing strategies that may be used, despite misleading pricing already being prohibited, amounts to prohibiting potentially ethical business models in a way that is neither appropriate, proportional or effective. The focus of marketers should be to create responsible and ethical advertising that creates effect for the marketer and to the benefit of the consumer, it should not be to figure out and implement complex unproportional, or even unnecessary, rules where this is no substantial benefit to the consumer.

### **Legislation must not be more burdensome than necessary**

New proposals should start with clearly identified problems and be assessed against consumer protection and market efficiency. We note a trend towards detailed and administratively burdensome rules (e.g. certain approaches under the Green Claims initiative). Where equal or better outcomes can be achieved through less burdensome means, enhanced enforcement, guidance, or self-regulation, that route should be preferred. We urge the Commission to systematically assess costs, consequences in practice and cumulative burden on marketers and to prioritize less burdensome and restrictive methods. There are also the risk that new, administratively burdensome rules fall primarily on the vast majority of operators who seek to comply, while the small minority of unethical actors the rules are intended to address may continue to ignore them. The result is a distorted level playing field in where responsible businesses face higher compliance costs and reduced competitiveness, whereas unethical non-compliant actors still dismiss the rules due to a lack of enforcement. The Commission needs to carefully consider how to best tackle bad actors without having unwanted consequences for those who behave well and comply with existing rules. One thing is clear, unnecessarily burdensome rules is not the way forward.

**A final comment on the consultation**

Finally, we would like to take the chance to highlight some difficulties that we have had with the structure and the questions in the consultation questionnaire which, in our view, can lead to the survey giving misleading answers. The questions in the survey risk leading the respondent in a way that makes it difficult to see how it is possible to draw well-founded conclusions from the survey results. For example, if you select “no actions are needed” on the introductory questions for each category of questions, you lose the chance to elaborate on your answer. You gain that opportunity, but no chance to elaborate in free text, if you select that actions are needed and in such case a list of suggestions for unethical business practices are shown and you are asked to select the practices which you consider in need of new EU action. You also have the opportunity to select “other” in this second question. The second question is not mandatory and can thus be skipped, but the structure of the questionnaire will certainly get people to click on several of the options proposed by the Commission, even though these respondents would likely never have given notice of these practices without first being directed to them by the Commission. These practices may very well be occurring issues, but the way the survey is structured may result in them being viewed as larger issues for the respondents than what might be fair to conclude. There is, as stated above, also no option or requirement to elaborate in free text on the initial answer on the need for new action and the survey will therefore include no reasoning on why there is, for example, a need for new legislation or more guidance. The answers are therefore unfortunately very unfounded in the survey, regardless of whether there are good arguments for them or not. In summary, the survey, as designed, does unfortunately not provide a good basis on which to base legislation or other measures.

Stockholm, 23rd of October 2025

Hanna Riberdahl  
CEO

Ulrika Wendt  
Lawyer

Jakob Rönnerbäck  
Lawyer