

A Moratorium on EU Digital Legislation Is Not a Solution

The German government should support the Digital Fairness Act

In its recommendations for action, the Competition & Artificial Intelligence Commission, established by the Federal Ministry for Economic Affairs and Energy, calls for a moratorium on EU digital legislation and recommends that the German government should not support the planned Digital Fairness Act (DFA). The Advisory Council for Consumer Affairs (SVRV) does not share this assessment and advocates for support of the DFA.

After six months of deliberations, the Competition & Artificial Intelligence Commission, established by the Federal Ministry for Economic Affairs and Energy, presented its final report at the end of April 2026.¹ The report contains a series of recommendations aimed at strengthening Germany and Europe in the field of artificial intelligence (AI) and to safeguard digital sovereignty in the long term.

A moratorium would do more harm than good

In addition to calls for strengthening AI expertise, simplifying business formation, and promoting open-source solutions – proposals that generally deserve support – the AI Commission's twenty recommendations also include a call for deregulation and a 'moratorium on EU digital legislation'. It is argued that businesses require 'regulatory breathing space'. This wording may sound good; it is, however, a misleading proposition that does more harm than good to consumers and businesses.

The AI Commission's recommendations are based on a catalogue of seven principles that should guide innovation-friendly digital policy. Under the heading 'Strengthen competition, reduce bureaucracy', the Commission calls, among other things, for the Federal Government to strictly distinguish between (i) regulation that promotes competition and (ii) regulation that serves other objectives and imposes disproportionately high bureaucratic burdens on companies.

Consumer protection strengthens fair competition

The AI Commission specifically includes the Digital Markets Act (DMA) and antitrust law in the first category; the General Data Protection Regulation (GDPR) and the AI Regulation are cited as examples of the second category. However, such a schematic division of the legal system into 'competition-promoting' and 'bureaucratic' regulation is not convincing. The binary regulatory model ignores that numerous regulations, which the AI Commission hastily dismisses as 'bureaucratic', play an important supporting role in strengthening competition.

For instance, the approach fails to recognise that effective data protection safeguards consumers' informational self-determination and thereby contributes to fair competition in the data economy. The AI Commission also overlooks the competition-promoting role of consumer law. Consumer protection, which ensures

¹ Competition & Artificial Intelligence Commission, AI, Competition, and Competitiveness, Final Report, April 2026 (hereinafter: AI Commission, Final Report)

free and informed contractual decisions, strengthens consumer confidence and provides effective safeguards against market failure.

The Digital Fairness Act aims to modernise consumer law

Based on its binary model of regulation – competition good, bureaucracy bad – the AI Commission has already identified a first potential ‘victim’ of the proposed moratorium on EU digital legislation. The German government is expressly urged not to support the proposal for a DFA announced by the European Commission for the end of 2026.

The SVRV does not share this view.² Contrary to the AI Commission’s portrayal, the planned DFA is not about introducing additional bureaucratic burdens or reporting obligations. Rather, the DFA aims to consolidate and adapt the partially outdated rules of EU consumer law to the new reality of digital markets. The adjustments concern, among other things, rules against the manipulative design of websites and apps (dark patterns), addictive features in online games, and clearer rules for influencer marketing.

By protecting consumers against digital manipulation, the DFA serves to strengthen fair competition. In a competitive market, providers who offer good products at attractive prices should prevail, not those who are particularly skilful at manipulating their customers. In this sense, enforcing consumer law serves the interests of both consumers and businesses alike.

The Digital Fairness Act strengthens the Single Market

The AI Commission’s assertion that the practices targeted by the DFA are already covered by existing law is inaccurate. The DFA specifically aims to close existing regulatory gaps and address practices that are currently unregulated, or only vaguely regulated. For example, the Digital Services Act (DSA) applies only to online platforms and other digital intermediaries. Online shops and many online games are currently not covered by the DSA. Here, the proposed DFA can close regulatory gaps and ensure a level playing field.

Furthermore, the ‘breathing space’ called for by the AI Commission is intended to apply only to EU digital legislation. This overlooks the fact that, at the member state level, the number of regulations is increasing, for example in the areas of influencer marketing, in-game purchases, and online subscriptions. The resulting regulatory patchwork weakens the Single Market and the competitiveness of the European economy. In contrast, harmonised rules provided by the DFA will prevent further fragmentation and create legal certainty for businesses and consumers. Against this backdrop, in December 2025 the German Bundestag called for a horizontal ban on dark patterns within the framework of the DFA.³

An asymmetric approach to consumer protection is not convincing

The AI Commission’s call for ‘asymmetric regulation’ is only partially convincing. Under this approach, small and medium-sized enterprises would face fewer burdens than large companies. This is certainly the right approach for compliance and reporting obligations. In the area of consumer protection, however, an asymmetric approach would be misguided. In practice, this would mean that consumers would have fewer rights when purchasing goods and services from smaller providers.

² See also *Advisory Council for Consumer Affairs*, Perspectives for a Digital Fairness Act, September 2025.

³ BT-Drs. 21/3327, p. 4. (“The German Bundestag calls on the Federal Government to advocate for a horizontal ban on dark patterns in the upcoming negotiations on the Digital Fairness Act announced by the European Commission.”)

The model is also unconvincing from a competition policy perspective. A tiered system of consumer rights could even give large providers a competitive advantage over small and medium-sized enterprises and startups, as consumers would be in a more favourable legal position when purchasing from large providers. A risk-based model – one that differentiates not by company size but by type and extent of the risk to consumers – is far more convincing.

For the reasons stated above, the Advisory Council for Consumer Affairs recommends that the Federal Government should support the proposed Digital Fairness Act.

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The Advisory Council for Consumer Affairs is an independent body tasked with advising the Federal Ministry of Justice and Consumer Protection on consumer policy on the basis of scientific evidence and practical experience.

The Advisory Council has nine members. The Chair of the Advisory Council is Professor Christoph Busch.