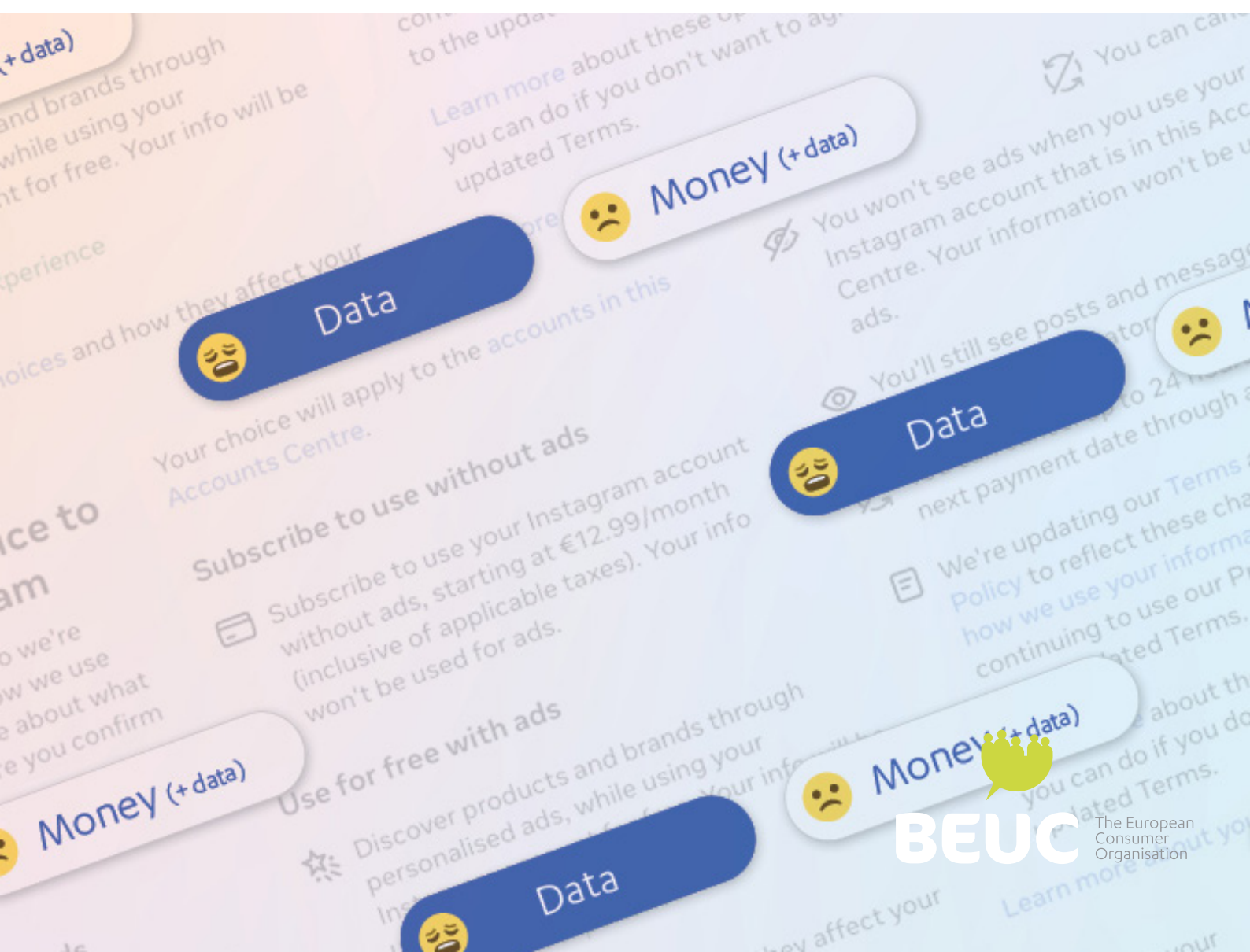


BEUC ASSESSMENT OF META'S LATEST PAY-OR-CONSENT POLICY FOR FACEBOOK AND INSTAGRAM USERS



The European Consumer Organisation
Bureau Européen des Unions de Consommateurs
Europäischer Verbraucherverband

Rue d'Arlon 80,
B-1040 Bruxelles
Tel: +32 (0)2 743 15 90
www.beuc.eu
Contact: digital@beuc.eu

January 2025



co-funded by the European Union

Views and opinions expressed do not necessarily reflect
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In January 2025, BEUC submitted an assessment to EU authorities of Meta's latest pay-or-consent subscription model from the perspectives of EU consumer (UCPD) and data protection (GDPR) law, as well as the Digital Markets Act. This document summarises the key take-aways and findings of that analysis.

Meta's latest pay-or-consent subscription mechanism, which Facebook and Instagram users began seeing in November 2024* following heavy criticism of the first subscription mechanism the tech giant rolled out in 2023, is problematic and suspected of breaking several EU laws, according to the European Consumer Organisation (BEUC).

Meta requires Facebook and Instagram users to consent to invasive use of their data for advertising purposes or pay a reduced subscription fee to see a no-ads version of the service. The Silicon Valley company provides users, in a second step and once users consent to use of their data for ads, with the option of a 'less personalised ads' experience.

BEUC however believes that Meta's latest 'pay-or-consent' mechanism **continues to be in breach of EU consumer law** (the Unfair Commercial Practices Directive), **the General Data Protection Regulation** (the GDPR), and the **Digital Markets Act**:

Based on the research conducted, we call on:

- The Irish Data Protection Commission (acting as the lead data protection authority) together with the other authorities under the European Data Protection Board (EDPB) to further investigate Meta's compliance with the GDPR and to take swift and effective corrective measures.
- The CPC-Network and the European Commission to take further action as Meta has failed to make the necessary changes in due time and still conveys misleading and ambiguous information to consumers
- The European Commission to ensure that Meta fully complies with its obligations under Art. 5(2) DMA to protect the rights of consumers and ensure that the DMA's objectives of contestability and fairness are attained.

Effective and rights-protective enforcement requires cross-cutting dialogue and close cooperation between authorities and enforcement networks. Therefore, we urge the CPC-Network, the EDPB and the European Commission enforcing the DMA to work closely together to ensure consistency and complementarity between their approaches and subsequent decisions.

* Meta announced in November 2024 that the changes "will apply in the EU, EEA and Switzerland". At the time of finalising this report, it may be that the amended subscription model has not yet been rolled out to all users in the EU.



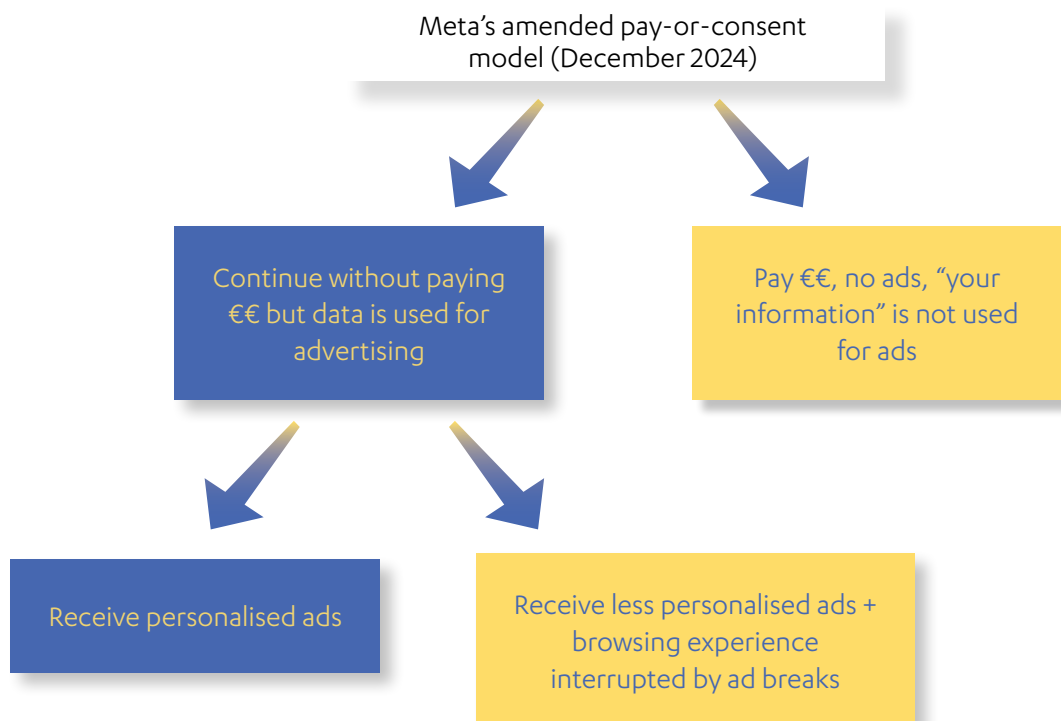
Data



Money (+ data)

BACKGROUND

On 12 November 2024, Meta announced changes to its model.¹ Under the amended pay-or-consent scheme, users have to make two successive choices:



Meta has justified its model and the changes by arguing that people “prefer personalised ads (...) which give [them] access to free online services” and that “personalised ads deliver more value for people and business”.²

Such statements can be misleading. Meta reported only consumer’s preference of personalised ads in relation to a false choice between paying with money or using personal data. Meta did not show what consumer’s perception of sharing personal data is and the consequences associated with it. This is essential when proposing personalised ads.

In this respect, studies have shown that consumers are worried about the privacy risks triggered by personalised ads. Moreover, most consumers remain hesitant to share personal data for any form of personalisation.³

1 Meta, Blog post ‘[Facebook and Instagram to Offer Subscription for No Ads in Europe](#)’ (12 November 2024, accessed 8 January 2025)

2 Idem.

3 Baltag & Leszczynska ‘Can I have it non-personalised?’ An Empirical Investigation of Consumer Willingness to Share Data for Personalised Services and Ads’, *Journal of Consumer Policy*, volume 47, issue 3, 2024. A YouGov survey conducted in France and Germany has revealed that approximately only one in ten people (11%) is happy to have their personal data used for personalised advertising. A vast majority also do not want personalised ads at all. As the Norwegian Consumer Council (Forbrukerrådet) highlighted in another survey, 68 % of respondents believe that online tracking activity for tailoring advertisements is unethical. Only 29 % agree that providing more data leads to better products and service (Norwegian Consumer Council, Out of Control (www.forbrukerradet.no/out-of-control), p 44).

1) META SUSPECTED OF STILL INFRINGING CONSUMER LAW

Following a public outcry at Meta's introduction of a subscription model for Facebook and Instagram users in 2023, BEUC and 19 consumer groups⁴ that are part of its network submitted a complaint to the European Commission and the European network of national consumer Authorities (CPC-Network) for several suspected breaches of the Unfair Commercial Practices Directive.

The CPC-Network, under the coordination of the French Consumer Authority (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes - DGCCRF*) started a coordinated action against Meta and expressed concerns about several unfair practices and the use of unfair terms which made it difficult for consumers to exercise a free choice.⁵ The CPC-Network gave Meta until September 2024 to respond. To date, Meta has still not addressed the concerns raised by the authorities.

Based on the collection of screenshots documenting the consumer journey with the last pay-or-ok subscription model⁶, we believe that Meta still fails to provide users with true, clear and sufficient information allowing them to fully assess the implications of their decision about whether to pay or to accept the processing of their personal data for commercial purposes. Specifically:

Although Meta has slightly amended its wording from the 2023 version from "use for free with ads" to "use free of charge with ads" in its 2024 version, this

wording continues to be unclear and ambiguous. Facebook and Instagram users are still likely to be misled by the word "free" as they are paying for the service through the use of their data. There are nuances in the way "free" is used in some European languages, but in others⁷, there is little doubt about what Meta means by "free". The continued use of the word "free" is therefore misleading.

Meta uses terms such as "your info" on the choice screen, which remains vague and misleading, instead of referring to consumers' personal data. In addition, it does not clarify that users subscribing to the paid model may still be exposed to ads while engaging with content shared by other users of the platform.

In the "less personalised ads" option, Meta also fails to align the information presented in Meta's Help Center and on the choice screen. The Help Center, for example, remains very vague as to the type of personal data processed and used, while the choice screen fails to mention that "your device information, such as the device or browser you are using" will be used by Meta. Meta is not presenting users with full information.

Meta confuses consumers with its user journey. Users still need to navigate through various hyperlinks and screens to access different parts of the company's terms of service or privacy policy to understand how their preferences and personal data will be used for personalised ads.

2) META SUSPECTED OF BREAKING DATA PROTECTION LAW

In February 2024, eight consumer organisations in coordination with BEUC launched [complaints](#)⁸ before their national data protection authorities against Meta's illegal processing of users' personal

data under the GDPR. At that time, our analysis was based on Meta's [privacy policy](#) dated 3 November 2023.

⁴ The BEUC members participating in this action are: **Асоциация Активни потребители** (Bulgaria), dTest (Czech Republic), Forbrugerrådet Tænk (Denmark), UFC-Que Choisir (France), EKPIZO & KEPKA (Greece), Adiconsum (Italy), Latvijas Patērētāju interešu aizstāvības asociācija (Latvia), Vartotojų aljansas (Lithuania), Consumentenbond (Netherlands), Forbrukerrådet (Norway), Federacja Konsumentów & Fundacja Konsumentów (Poland), Spoločnosť ochrany spotrebiteľov (S.O.S.) Poprad (Slovakia), ZPS (Slovenia), Asufin & CECU (Spain), Sveriges Konsumenter (Sweden), Union Luxembourgeoise des Consommateurs (Luxembourg).

⁵ European Commission, Press release '[Commission coordinates action by national consumer protection authorities against Meta on 'pay or consent' model](#)' (22 July 2024, accessed 8 January 2025). https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3862

⁶ The evidence and screenshots were taken in November-December 2024 and focuses on the English version. Some differences may exist depending on the language.

⁷ Such as French, where Meta refers to "*utiliser sans paiement avec des publicités*".

⁸ The BEUC members participating in this action are dTest (Czech Republic), Forbrugerrådet Tænk (Denmark), EKPIZO (Greece), UFC-Que Choisir (France), Forbrukerrådet (Norway), Spoločnosť ochrany spotrebiteľov (S.O.S.) Poprad (Slovakia), Zveza Potrošnikov Slovenije – ZPS (Slovenia) and CECU (Spain). Consumentenbond (Netherlands) sent a letter to the Dutch data protection authority.

In spite of the changes Meta made to its privacy policy in November 2024, BEUC has serious concerns about the [legality of Meta's data processing](#)¹⁰ in light of the GDPR¹¹. Here again, we reiterate the grounds of non-compliance made in the original complaints, which can be summarised as follows:

- Meta's personal data processing for advertising purposes lacks a valid legal basis because it relies on consent which has not been validly collected for the purposes of the GDPR.
- Some of Meta's processing for advertising purposes appears to rely invalidly on contract.
- Meta cannot account for the lawfulness of its processing for content personalisation since it is not clear – and there is no way to verify – that all of Meta's profiling for that purpose is (a) necessary for the relevant contract and (b) consistent with the principle of data minimisation.
- It is not clear – and there is no way to verify – that all of Meta's profiling for advertising purposes is necessary for that purpose and therefore consistent with the principle of data minimisation.
- Meta's processing in general is not consistent with the principles of transparency and purpose limitation.
- Meta's lack of transparency, unexpected processing, use of its dominant position to force consent, and switching of legal bases in ways which frustrate the exercise of data subject rights, are not consistent with the principle of fairness.¹²

Below we focus on two particular aspects of non-compliance in light of recent developments.

a) User consent is ambiguous, insufficiently informed, and neither specific enough nor freely given

In our view, **user consent cannot be freely** given because Meta continues to bundle consent for behavioural ads with the provision of its service (Facebook or Instagram), which goes against the European Data Protection Board binding decisions 3/2022¹³ and 4/2022,¹⁴ and the European Court of Justice of the European Union.¹⁵

Users are also unable to give separate consent for the processing of on-platform personal data and off-platform personal data, as required by the CJEU in the above decision.¹⁶

Additionally, consumers experience detriment when they decide to withdraw their consent, which does not comply with Article 7(3) GDPR. As the EDPB Opinion on the matter has highlighted, "when a data subject does experience detriment

when withdrawing consent, it can be concluded that consent was never validly obtained, and it is the responsibility of the controller to delete all personal data about the user that has been collected on the basis of such invalid consent."¹⁷

The user consent obtained by Meta is also **ambiguous, insufficiently informed and not specific enough, regarding the consent banner and Meta's current [privacy policy](#)**.

Furthermore, Meta is too vague with the information it presents users when they choose the 'less personalised ads' option in describing that the data collected includes "information about the content that [users are] viewing while [they] browse on [Meta's] Products" and "how [users] engage with ads" and "[users'] age, gender and location."

⁹ Meta, [Privacy policy](#), effective 14 November 2024.

¹⁰ BEUC, Report '[How Meta is breaching fundamental rights](#)' (February 2024).

¹¹ Compliance with specific elements of the GDPR is crucial for, and has repercussions on, compliance with the Unfair Commercial Practices Directive and the Digital Markets Act and vice versa (see the previous and following section).

¹² BEUC, Report '[How Meta is breaching consumers' fundamental rights](#)', February 2024.

¹³ European Data Protection Board, " (12 January 2023, accessed 8 January 2025).

¹⁴ European Data Protection Board, " (12 January 2023, accessed on 8 January 2025).

¹⁵ Court of Justice of the European Union, '[Judgment of the Court \(Grand Chamber\) of 4 July 2023. Meta Platforms Inc and Others v Bundeskartellamt](#)' (4 July 2023, accessed 8 January 2025).

¹⁶ EDPB, '[Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms Adopted](#)' (17 April 2024, accessed 8 January 2025).

¹⁷ EDPB, '[Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms Adopted](#)' (17 April 2024, accessed 8 January 2025).

b) Meta does not minimise the data it collects or for how long

The European court clarified in a [recent judgement](#)¹⁸ that companies like Meta must not engage in personalised advertising without any restrictions as to the time and **type of personal data processed**.

However, Meta does not seem to have introduced any **time limits** for the processing of personal data for the purpose of targeted advertising as mentioned by the CJEU.

The tech giant is also vague about how it limits the types of personal data processed in the ‘less personalised ads’ choice screen, while the privacy policy does not appear to reflect this at all. Meta is insufficiently transparent and does not inform

users about the personal data that it may still process well. For example, it is not clear whether information about the age, gender and location used for the purpose of ad personalisation is based on information provided by the user or inferred, or whether this is in-platform data or off-platform data.

It is also unclear which personal data might be processed under the categories of “how you engage with ads” and “information about the content that you’re viewing while you browse on our Products”, including which operations Meta may perform to profile users based on inference.

3) META SUSPECTED OF BREAKING THE DIGITAL MARKETS ACT

The Digital Markets Act imposes obligations on gatekeepers such as Meta, including a requirement to not process and use personal data in certain ways **unless end users have been presented with a specific choice and have given their consent in the way required under the GDPR**. BEUC submitted [criticism](#) of Meta’s first pay-or-consent

policy in 2024 to the European Commission on the basis that the tech giant was likely breaking the Digital Markets Act.

In our view, Meta’s latest pay-or-consent policy continues to raise non-compliance concerns on at least three counts.

a) Meta does not allow users to exercise freely given, informed consent

Beyond the points highlighted in section 2 on the GDPR, Meta’s **interface design** does not enable users to make “free”, “specific”, “informed” and “unambiguous” consent choices on the basis of information presented in an “explicit, clear and straightforward manner”. Meta’s latest pay-or-consent version uses interface design techniques to steer Facebook and Instagram users’ choices to Meta’s preferred option, which is to consent to data processing, in effect undermining users’ free choice to consent to the use of their personal data. For example:

As explained in section 1 under consumer law, Meta uses **misleading language** such as “info” rather than “personal data”, which is something that consumers associate with something worth protecting. Use of the word “**free**” also undermines consumers’ ability to exercise an informed choice.

The description of the data processing is vague and appears to omit important information as regards the use of personal data. This raises concerns under the GDPR as set out above.

Meta also uses design features to hinder users’ free choice, such as the **highlighting in green of “your current experience”** under the option to consent to personal data use for ads, which may have a priming effect. It does the same after users have consented to use of their personal data in a first screen and then have to select between the “personalised ads” and the “less personalised ads” options, where “your current experience” is highlighted in green under the “personalised ads” option. In both of these cases, the user is more likely to maintain the status quo given people’s tendency to loss aversion, a recognised behavioural bias.

¹⁸ CJEU, [‘Decision Maximilian Schrems v Meta Platforms Ireland Ltd Case C 446/21’](#) para 65. (4 October 2024, accessed 8 January 2025).

In addition, the **two-step process is confusing**, particularly given that the end user does not have

complete information about ad breaks at the moment of the first step.

b) Users receive a degraded service if they opt for the “less personalised ads” option

The Digital Markets Act requires Meta to provide a **less personalised but equivalent service that is not of a degraded quality** if users do not consent to their data being processed, when compared with the service users receive if they have consented.

However, Meta has introduced **ad breaks** in the less personalised option which cannot be removed. These ad breaks interrupt and block the user’s activity both when browsing the feed/another user’s profile and when browsing the “Stories” function.

The degradation in quality and the detrimental

effect of ad breaks is confirmed by users of Instagram. Testing users’ response to this new feature, a PRWeek survey found that 51% of Instagram users would **delete** the app rather than use it with repeated ad breaks.

Meta cannot argue that the degradation of service is a direct consequence of its inability to process users’ personal data, as the unavailability of certain data does not require the addition of ad breaks. Rather, it seems likely that this is a practice that will encourage end users to **abandon the degraded, less personalised service** in favour of consenting to the tech giant’s use of personal data.

c) Meta fails to ask for consent for certain types of data

Meta appears to process and use data which would require consent under the Digital Markets Act but **fails** to ask for it. This includes users’ data it receives from third parties using Meta tools (including Meta Pixel, Instagram Basic Display and Facebook Login), which include opening an app and logging in with Facebook, viewing content or adding an item to shopping cart and making a purchase.

It appears that Meta combines data gathered from users’ activity on third parties with the data it collects with the aim to provide certain functionalities on both its services. It may also use this personal data for advertising.

Both of these activities would not comply with the Digital Markets Act if users do not consent to the use of their data in these ways.



The Consumer Voice in Europe

