

Contribution to discussion in the EP and Council on the Digital Services Act

No ban on targeted advertising

EuroCommerce supports increased transparency in online advertising, but we believe a ban on targeted advertising would lead to negative consequences for both businesses and consumers and is therefore neither justified nor desirable. The DSA is also not the appropriate instrument to regulate online advertising. Click [here for the retail industry statement](#) on targeted advertising.

- The proposed ban on, or severe restriction of, targeted advertising, including an opt-in requirement, **goes beyond the objective and scope of the DSA proposal**, which was not designed to revise existing data protection rules.
- A ban on targeted advertising would have **far-reaching negative consequences for the competitiveness of SMEs**, and thus the opposite effect of what some have argued.
- The processing of personal data for targeted advertising is already **sufficiently regulated in Article 6 of the GDPR and Article 5.3 of the e-Privacy Directive**. The DSA should be aligned with the GDPR and e-Privacy Directive and not repeat already existing rules.
- **Targeted online advertising is also already regulated by other relevant legislation**, such as Unfair Commercial Practices Directive (UCPD), the Consumer Rights Directive (CRD), the e-Privacy Directive and the Directive on Misleading and Comparative Advertising (MCAD).
- Rather than adding new rules on online advertising to another piece of legislation in an already complex legislative landscape, the **focus should be on ensuring that existing rules are properly executed and enforced** at Member State level.

Recommender Systems

Eurocommerce members are very concerned about the way the current debate on “recommender systems” has evolved. In the current debate discussions on digital advertising are directed towards and dominated by issues related to newsfeeds and social media, while the provisions currently apply far more widely. The definition proposed by the European Commission is already very wide and existing proposals to extend it even further will create additional confusion. Transactional platforms like online marketplaces use recommendations to help customers navigate through virtual shelves and choose among hundreds of millions of items. These systems are related to the transactions made and are not advertising. The Platform to Business Regulation already covers the need to explain the main features of ranking systems and any other areas where algorithms are used in ordering content. As online marketplaces are already covered by the scope of the P2B regulation and UCTP we believe that any existing issue, if any, should be dealt with through effective enforcement and not by creating additional layers of obligations. For a that purpose we believe that marketplaces should be excluded from the definition of “recommender systems”.

Trusted flaggers should represent a collective interest

We share the view that a more harmonised and better notice and action system will lead to a safer and more trustworthy online environment. However, we remain very sceptical about the concept of

‘trusted flaggers’, which would prioritise notices of any alleged IP infringement that need to be treated with priority no matter how legally complex or over-reaching, while other notices of regular platform users of clearly unsafe products need to be treated with lower priority. Additional safeguards are necessary to ensure such trusted flaggers are efficient and act solely in the interests of society and are not influenced by commercial motives. Therefore, the term ‘collective interest’ must be maintained and further clarified. For example, big brands should not be able to create trusted flaggers that flood platforms with notices of counterfeit products making these a priority over notices of regular platform users flagging clearly unsafe products which can cause real harm. Thus, only qualified institutions with adequate professional and financial resources and able to carry out their activities impartially and free from a profit or other motive should be considered as trusted flaggers. The sole objective of trusted flaggers should be to reduce the online marketing of non-compliant products, and not allow to be exploited for other objectives.

Internal compliant handling mechanisms & out-of-court dispute settlement must be fit for purpose

We are very concerned about recent suggestions made by the Council and the EP IMCO Committee that a platform must provide free of charge to a recipient of the service and any individual or entity that have submitted the notice, the possibility to complain on the grounds for a decision whether or not to remove or block online content. This opens the door for abuse, as logically, one of either party will be dissatisfied with the decision taken by the platform: the recipient of the service, because its content is removed or blocked, or the person submitting the notice because the content has not been removed or blocked. A system which is free of charge could lead to endless and repeated complaints to the out-of-court dispute settlement body, all at cost of the online platform. This seems particularly unfair to smaller platforms faced with complaints from larger brands. We suggest deleting in both Article 17 and 18 the suggested text *‘and individuals or entities that have submitted a notice’*.

In addition, out-of-court dispute settlement is already regulated in a number of EU measures with whose provisions the DSA proposal overlaps, such as the P2B Regulation. It is not clear whether additional dispute resolution mechanisms are needed, and we urge the EU institutions to harmonise these requirements, as well as ODR and ADR bodies for business-to-consumer disputes.

Definitions of ‘active users’ and ‘recipient of the service’ should be consistent between DSA and DMA

The debate on how to define active users, and when an online platform is considered a very large online platform (VLOP) raises serious concerns. In our view an active user of an online marketplace offering products should be someone who has concluded a monetary transaction or purchase through an online marketplace. Individuals visit many different online marketplaces before concluding a purchase. That cannot, however, in itself establish active relationship with each of the marketplaces he visits. That can only occur when the user takes the further step in actually making a purchase. We therefore suggest a separate definition of ‘active user’ for marketplaces offering products online, to avoid almost every sizeable EU platform being considered as a VLOP based solely on the number of visits it receives. The obligations for VLOPs will be very burdensome for smaller players and start-ups. This risks smothering the growth of a robust EU-based platform economy, leading instead to less innovation, less competition and less choice for consumers.

Requirements on Terms & Conditions

These proposed amendments are out of place in the DSA and will create significant legal uncertainty. If, after the adjustments made in the P2B Regulation and the Omnibus Directive, there is still a need for further tightening in consumer law, the Unfair Contract Terms Directive and Consumer Rights

Directive present much more suitable vehicles for such changes. The present proposals risk certain consumer protection provisions covering T&Cs only applying to online marketplaces, but not to traditional online shops, creating uncertainty and no level playing field. We suggest the deletion of these amendments.

Delete CA 22c to provide information on sustainable consumption

EuroCommerce supports transparency about sustainability. Adding such a provision to the DSA is however unnecessary and any approach applied should be science-based in order to have effective measures which eventually lead to more sustainability across businesses, not just online intermediaries covered by the DSA. This would therefore fit better in the dedicated legislation on green consumption planned for the end of 2021. The provision would also create inconsistency in regulation between online and physical sales. No physical shop has currently to inform customers about the sustainability of its packaging or whether it is more sustainable to get home from the shop by car, bus or bicycle.

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