



22 October 2021

## Joint Industry Statement on Targeted Advertisement and the DSA

### Introduction

The undersigned EU trade associations have been closely following and proactively engaging in the legislative process of the Proposal for a Regulation on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

As representatives of the wider retail sector, we believe the Digital Services Act (DSA) is of utmost importance for retailers in Europe to be able to increasingly operate cross-border, profit from a well-functioning Single Market and be supported by a harmonised and futureproof legislative framework. In particular due to the digital transformation of the industry, further accelerated by the outbreak of COVID-19, we believe that European policymakers should prioritise digitalisation and facilitate the continued uptake of digital solutions in the retail sector.

In that context, the undersigned would like to provide the perspective of the retail sector on the ongoing discussions on targeted advertisement. Following the publication of the DSA proposal with its new transparency obligations on online advertising, concerns have been raised about targeted advertising. As the negotiations are advancing in the European Parliament, the discussion on targeted advertisement has become a prominent element of the debate. Several Members of the European Parliament have advocated for the introduction of a ban or very strong restrictions on targeted advertising.

While the undersigned associations generally support increased transparency in online advertising, 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.

### Key points

This joint paper outlines in detail several areas of concern of the co-signatories, namely:

- The proposed ban on or severe restriction of targeted advertisement, including an opt-in requirement, **go beyond the objective and scope of the DSA proposal**. The DSA is not intended to revise existing data protection rules.
- A ban on targeted advertisements would have **far-reaching negative consequences for the competitiveness of SMEs**, and thus the opposite effect of what some have argued.
- The legal ground required for 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 advertisements are 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.

All these points are further developed in the following pages.



### *Importance of targeted advertising for SMEs*

The undersigned associations generally welcome the provisions' objectives in the Commission's DSA proposal introducing further transparency obligations regarding online advertising for intermediary service providers. We believe these provisions can help to establish a fairer and more transparent advertising market. However, we fear that current discussions are placing a disproportionately strong focus on the potential negative aspects of targeted advertising. We would therefore like to provide some nuance to the discussion and demonstrate the impact of a potential ban.

Targeted advertisements and audience services are an important tool for retailers of all sizes to be able to reach consumers to offer their products and services, ensuring that consumers are met with relevant advertisements, instead of irrelevant and irritating ads for products and services, which is of no interest to them. In particular, following the outbreak of COVID-19 and the subsequent acceleration of digitalisation, a shift has taken place in which customer interactions have increasingly moved from an offline to an online environment. In that perspective, online advertising is essential for smaller retail businesses to interact with consumers that no longer visit physical stores to the same extent as before.

We consider it very important to ensure resilience across the wider supply chain. We would therefore like to point out that a ban or very strong restrictions on targeted advertising would in particular have a significant negative impact on the competitiveness of smaller retailers, which already comply with privacy and data protection rules and other relevant legislation. In the context of the DSA, personalisation is often confused with profiling and the spread of misinformation and fake news has been confused with advertisements for products, which are crucial for retailers and the functioning of the internal market.

SMEs use targeted online advertising to reach relevant consumers and measure return on investment in advertising carefully. Unlike larger companies, SMEs often operate on much smaller budgets, and do not have the resources or brand recognition that larger, more established companies have. In addition, a ban would increase the competitive advantage of bigger companies vis-a-vis SMEs, as large corporations would already have significant amounts of (potential) customers within their ecosystem. In contextual advertising, the content of a website is scanned for keywords or other environment parameters (e.g. images, videos) to be able to identify the interests of the user and link the advertising to that. As the advertising would only be linked to relevant contexts and not to the customer, it makes it much harder to reach new audiences and build and/or expand a brand.

As a result it is much harder for new small market entrants to compete with large and well-established competitors. Contextual advertising as an alternative has thus simply proved ineffective and unaffordable for many smaller companies, as they cannot afford the more extensive advertising campaigns that would be required (in the absence of targeted advertisement) to reach the same relevant audience. This is confirmed by a study from Deloitte from May 2021 which polled more than 30.000 SME founders/owners/managers in 18 countries<sup>1</sup>. In addition according to a study by Ipsos<sup>2</sup>, the importance for SMEs is also recognised by users, of which a majority (68% in the EU) thinks personalized ads help local small businesses connect with customers who find their products and services useful, and can help them attract more customers.

Furthermore, as the recently published European E-Commerce Report 2021<sup>3</sup> shows, the number and share of e-shoppers has increased significantly in the last years, and in particular in the year 2020. This

---

<sup>1</sup> [In this study, 52% stated that traditional advertising does not reach their target audience in an effective way, 33% considered traditional advertising methods to be unaffordable for their business, while 76% using personalized ads reported that they were effective in finding new customers for their business. See Deloitte \(May 2021\) Dynamic Markets Unlocking small business innovation and growth through the rise of the personalized economy.](#)

<sup>2</sup> Ipsos/Facebook (June 2021) [People Globally View Personalized Ads as a Valuable Tool for Finding Relevant Goods and Services.](#)

<sup>3</sup> Lone, S., Harboul, N. & Weltevreden, J.W.J. (2021). 2021 European E-commerce Report. Amsterdam/Brussels: Amsterdam University of Applied Sciences & Ecommerce Europe. (Jointly [launched](#) by Ecommerce Europe & EuroCommerce)



means that consumers increasingly find retail companies and their products or services online. **To ensure a level playing field and for SMEs to be able to compete on a European scale with larger companies, the use of targeted advertisements is thus essential.**

We would also like to add that targeted advertising for products and services can also be beneficial for consumers, as it can be more tailored to consumer needs (e.g., for a dog owner it does not make sense to get advertisements for cat food). It is also important to note that a ban on targeting advertising would not mean that consumers would no longer receive advertisements, instead, the consumer will only receive less relevant content which will likely not result in an improved online experience. In particular, according to a recent study conducted by BCG, customers increasingly prefer an easy and fast shopping experience that helps them make purchase decisions. Customers think less about personalization per se than they do about the benefits it can provide<sup>4</sup>. Moreover, targeted advertisement is not a phenomenon limited to the online world. The advertisements we see on TV or in printed magazines for example are also always targeted to a specific audience i.e., the readers or viewers of these media formats. In addition, in brick-and-mortar retail, when a shop consultant consults a customer on which suit to buy, he or she will also screen the customer and make recommendations based on his or her size, style and the perceived budget. It is therefore important to consider that banning or severely restricting targeted advertisement only for online channels, would lead to an unequal treatment of the different channels.

In the last years, there have been strong efforts from the industry to innovate and make advertising more transparent while respecting the consumers' fundamental rights. Our organisations believe that, these improvements could address many of the concerns that are currently being voiced in the European Parliament with regards to targeted advertising. In addition, it is crucial to ensure that any obligations are reflected throughout the entire supply chain, as all actors in the advertising ecosystem contribute to the advertising displayed to consumers. To ensure a high level of transparency, any new legislation should thus ensure that the entire supply chain is subject to such an obligation, otherwise it will be an impossible task for online platforms to reach a level of transparency that the consumers can easily understand. Moreover, we believe that including further rules on online advertising in the DSA will likely not have the intended effect, but instead stifle innovation and growth as start-up companies and SMEs will not have access to the same data ecosystem as larger companies. Instead of introducing a ban or severe limitations on targeted advertisements, legislation should focus on improving transparency, encouraging industry initiatives aimed at further transparency and ensuring equal competitive opportunities for businesses by stimulating proper enforcement of the existing rules.

#### ***Targeted advertising is already sufficiently regulated in more suitable legislation***

We believe that the DSA is not the right instrument to introduce any provisions on banning or severely restricting targeted advertisements for the whole market using online platforms. Most importantly, the objective and scope of the DSA is not to regulate the full online advertisements sector or to revise existing rules on data protection.

We would like to point out that targeted online advertisements are already regulated by other relevant legislation. With regards to commercial advertising of products or services, this is already sufficiently regulated in the Unfair Commercial Practices Directive (UCPD), the Consumer Rights Directive (CRD), the e-Privacy Directive and the Directive on Misleading and Comparative Advertising (MCAD). In addition, more specific sectors or elements of online advertising are further regulated in Audiovisual Media Services Directive, and the Platform-to-Business (P2B) Regulation. **Instead of introducing new provisions on targeted advertising in the DSA, policymakers should consider including a clarification in the current revision of the UCPD and CRD guidance documents and how such legislation applies to targeted advertisement practices, including case law.**

---

<sup>4</sup> Mark Abraham, Robert Archacki, Josep Esteve González, and Stefano Fanfarillo (June 4, 2019) [The Next Level of Personalization in Retail \(bcg.com\)](#)



### *Alignment with the GDPR*

The DSA should also be seen as complementary to existing legislation such as the GDPR and the ePrivacy Directive. The DSA proposal states that the requirements of the DSA on the provision of information relating to advertisement are without prejudice to the application of the relevant GDPR provisions. However, the proposals currently discussed in the European Parliament go beyond what is already well regulated in the GDPR. The Draft Report of IMCO Rapporteur Christel Schaldemose, proposes to include a provision stating that providers of intermediary services “shall, by default, not make the recipients of their services subject to targeted, microtargeted and behavioural advertisement unless the recipient of the service has expressed a freely given, specific, informed and unambiguous consent.” Our organisations believe that there already are suitable and sufficient legal grounds, required under Article 6 of the GDPR for the processing of personal data for targeted advertising and we are concerned about the proposals which seem to introduce consent into the DSA and partly re-write the GDPR.

Undersigned associations would therefore like to stress that it is crucial to first ensure proper enforcement of the rules under the GDPR, which we consider to be a proper protection of the fundamental rights of the data subjects, also with regards to targeted advertisements. The rules in the DSA on targeted advertisements should neither repeat already existing legislation, which could sufficiently address the concerns raised in Parliament when properly executed and enforced, nor aim to amend indirectly such legislation. We therefore urge policymakers to ensure the DSA respects, and is closely aligned with, the GDPR and e-Privacy Directive.

### *Focus on enforcement & proper impact assessment*

Furthermore, since many existing pieces of legislation are sufficiently covering online advertising and targeted advertising, we believe the priority should be to ensure that these rules are properly enforced at Member State level. Rather than adding another rule on online advertising to another piece of legislation in an already complex legislative landscape, policymakers should enhance cooperation and coordination between the wide range of relevant regulatory. Moreover, when introducing new provisions, it needs to be thoroughly checked that they do not conflict with existing legislation.

Our organisations are concerned about the stage of the legislative process during which these far-reaching measures are being discussed. We believe that before policymakers could introduce a ban or strict limitation on targeted advertisements, they would first need to thoroughly analyse the current situation to be able to properly identify if there are any specific problems. The EU institutions should adhere to their own EU Interinstitutional Agreement on better Law Making, and first carry out an in-depth impact assessment, supported by public stakeholder consultations before undertaking legislative action. Additionally, it is unclear what “targeted advertisements” in this context precisely entail. There are different practices that could be considered targeted advertisements, including for instance political advertisements, segmented advertising, contextual advertising, and behavioural targeting. It appears that many concerns are focused on the risks regarding political advertising, such as fake news and manipulation of elections. We understand these concerns, but believe that they can better be solved with a targeted approach, rather than via a horizontal ban on all targeted advertising, including for commercial purposes like the marketing of products.



#### **About Ecommerce Europe**

*Ecommerce Europe is the sole voice of the European Digital Commerce sector. As a result of [joining forces with EMOTA](#), Ecommerce Europe now represents, via its 24 national associations, more than 150,000 companies selling goods and services online to consumers in Europe. Ecommerce Europe acts at European level to help legislators create a better framework for online merchants, so that their sales can grow further.*

#### **About EuroCommerce**

*EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 31 countries and 5.4 million companies, both leading global players such as Carrefour, Ikea, Metro and Tesco, and many small businesses. Retail and wholesale provide a link between producers and 500 million European consumers over a billion times a day. It generates 1 in 7 jobs, providing a varied career for 29 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector.*

#### **About Independent Retail Europe**

*Established in 1963, [Independent Retail Europe](#) is the European association for groups of independent retailers in the food and non-food sectors. We represent retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer. Our members are groups of independent retailers, associations representing them as well as wider service organisations built to support independent retailers. Groups of independent retailers account for a considerable part of the EU retail market. Our 24 members account for 386.602 independent retailers, who manage more than 753.000 sales outlets, with a combined retail turnover of more than 944 billion euros and generating a combined wholesale turnover of 297 billion euros. This represents a total employment of more than 6.603.270 persons. Find more information on our [website](#), on [Twitter](#), and on [LinkedIn](#)*