

NOTE

Digital advertising - Discussions on Digital Services Act continue

From EASA's July 2021 newsletter

As previously indicated, the European Commission presented the Digital Services Act in December 2021 (sic, we assume 2020). The proposal will update the legislative framework governing digital services and impact certain advertising elements, such as transparency. The European Parliament must now find their own respective common positions ahead of the trilogue negotiations and adoption of the final version of the Regulation. The European Parliament appointed the Committee on Internal Market and Consumer Protection (IMCO) as a lead Committee to steer discussions and find a common approach. The Rapporteur that is responsible for the handling of the legislative proposal in the European Parliament already drafted an initial [draft report](#). Among others, the Rapporteur proposes updating the definition of advertisement and strengthening the provisions on online advertising transparency.

On 12 June, the IMCO Committee published a [research paper](#) on 'Online advertising: the impact of targeted advertising on advertisers, market access and consumer choice'. It examines the challenges and opportunities regarding digital advertising and made several policy recommendations, including additional transparency requirements and obligations in the DSA for personalised advertising. The study extensively refers to self-regulatory principles being implemented in numerous countries across the world to support consumer protection legislation when it comes to online advertising. It calls for a greater level of harmonisation at the EU level, especially with regard to the enforcement of existing legal frameworks and urges national authorities to use similar concepts and definitions for "advertising" and "commercial communication" and also "targeted advertising" in order to maintain consistency.

On 21 June, the CULT Committee published its [draft opinion](#) on the DSA proposal. It calls for enhanced transparency on online platforms and emphasises the importance of ensuring legal consistency with the [AVMSD](#), especially with regard to the regulation of VSPs, and of protecting editorial independence in the media sector. Furthermore, it highlights the fact that advertising provides great benefits by funding, in whole or in part, news and entertainment services.

On 22 June, The JURI Committee published its [draft opinion](#) on the DSA proposal. It aims to clarify the scope of the DSA in order to explicitly target 3 types of services that play a major role in the dissemination of content: search engines, live-streaming services of user-generated content and messaging services.

Furthermore, the opinion points out that the application of the "country of origin principle" could result, given the current establishment of content platforms in the EU, in a few national authorities being empowered to enforce the DSA and potentially not being able to fulfil their roles nor properly take into account national specificities for the regulation of content. The opinion, therefore, calls for the DSA to explicitly confer prerogatives of intervention upon the competent authorities of the country of destination.

On 1 July, a [study](#), commissioned by the JURI Committee, on "Regulating targeted and behavioural advertising in digital services" was published. It presents marketing methods and technologies deployed in behavioural and target advertising and analyses EU law on consent to the processing of personal data in connection with advertising practices. It discussed ways of improving the quality of consent as well as ways of restricting its scope as a legal basis for the processing of personal data.

You can find more information [here](#), and EASA's position paper on DSA can be accessed in the members' area [here](#).

