

## Policy Update: Agencies and the Digital Services Act

### What is the DSA?

The DSA sets a legislative framework for the European Digital Single Market, building on 2001's eCommerce Directive. Over the last twenty years, online platforms have become vital players in the digital space. They have allowed consumers to purchase goods and services, as well as to communicate and share content across borders. The DSA addresses these changes by establishing clear rules for content moderation, platform accountability, illegal products and online advertising.

### How does the DSA impact online advertising?

The DSA addresses various transparency obligations on platforms (1) which foster awareness and allow ad recipients to make **informed choices on the use of their personal data** (2). Moreover, the DSA introduces a **ban on targeted advertising** which processes **personal data of minors and bans the processing of sensitive data** as encompassed by article 9 GDPR (3). Likewise, the DSA introduces a ban of so-called “**dark patterns**” (4). Finally, the DSA encompasses enforcement mechanisms which can ultimately lead to sanctions for the online advertising ecosystem including agencies (5).

#### 1. Enhancing advertising transparency towards consumers

One of the aims of the DSA is to ensure that consumers are aware of the content they see online. The Commission hopes that this higher level of transparency will curb the rise of disinformation and promote consumer trust in online spaces via the two following measures :

a) Labels on displayed ads:

For this, the DSA imposes a series of obligations on online platforms in relation to advertising. Among others, platforms will have to clearly display to their users:

- when a content is an ad;
- who is behind the ad;
- who finances the ad.

b) Public ad repositories

Very Large Online Platforms (VLOPs) should ensure public access to repositories of ads presented on their online interfaces to facilitate supervision and research into emerging risks brought about by the distribution of advertising online. VLOPs will be required to display the ads within the repository until one year after the ad was presented for the last time on their online interface.

## 2. Enabling consumers to control the use of their personal data

The DSA provides obligations for platforms that will allow consumers to get better information about how they are being targeted for online advertising.

Platforms will have to provide information for each ad that a consumer sees:

- on the method used for presenting the ad (i.e. whether it is contextual or other type of advertising);
- on the main profiling criteria used;
- on means available for the recipient of an ad to change such criteria.

## 3. Prohibition of targeted advertising based on minors' and special categories of personal data

### a) Targeted ads to minors:

Online platforms will be prevented from presenting advertisements based on profiling using personal data of the recipient of the service when they are **aware with "reasonable certainty" that the recipient of the ad is a minor.**

However, in accordance with the GDPR and its principle of data minimisation, this prohibition **should not lead online platform to maintain, acquire or process additional personal data to assess if the recipient is a minor.**

It is yet to be determined how "reasonable certainty" will be interpreted. This provision will presumably be backed by several age verification systems the European Commission is currently developing. More specifically, the Commission wants to take the following actions:

- Encourage and facilitate the design of a comprehensive EU code of conduct on age-appropriate design building on the framework of the DSA, by 2024;
- Issue a standardisation request for a European standard on online age assurance / age verification in the context of the eID proposal, from 2023;
- Support the development of an EU-wide recognised digital proof of age based on date of birth within the framework of the eID proposal, from 2024.

### b) Targeting based on special categories of personal data

The DSA will ban the use of **sensitive personal data in targeted advertising.** Defined by the GDPR, sensitive personal data are information pertaining to a person's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic and biometric data, data concerning health or a person's sex life or sexual orientation.

#### 4. Protecting consumers from “dark patterns”

The DSA reiterates the ban on so-called “dark patterns” which are practices that **distort or impair the ability of consumers to make autonomous and informed choices**.

Providers of online platforms shall not design, organise or operate their online interfaces which are necessary to comply with the obligations under this Regulation in a way that either purposefully or in effect deceives or manipulates recipients of the service, by subverting or impairing their autonomy, decision-making or choices.

The difference between dark patterns and the well-established legal concept of unfair commercial practices is far from clear at this stage. Indeed, recent Commission guidance outlines that Article 6 of the Unfair Commercial Practices Directive already covers any misleading actions that deceives or is likely to deceive the average consumer and is likely to cause him or her to take a transactional decision that he or she would have otherwise taken.

#### 5. Enforcement of the DSA provisions

The new enforcement mechanism follows a similar concept to the GDPR, with national and EU-level cooperation. Each Member State will appoint a Digital Services Coordinator (DSC), an independent authority which will be responsible for supervising the intermediary services established in that Member State.

The DSC will supervise how online intermediaries (including agencies) adapt their systems to the new requirements and will have the power to impose penalties (decided by the Member State), including financial fines. For the case of very large platforms, the European Commission will have direct supervision powers and can, in the most serious cases, impose fines of up to 6% of the annual global turnover of a service provider.

The Digital Services Coordinator and the Commission will have the power to require immediate actions where necessary to address very serious harms, and platforms may offer commitments on how they will remedy them. For rogue platforms refusing to comply with important obligations and thereby endangering people’s life and safety, it will be possible as a last resort to ask a court for a temporary suspension of their service, after involving all relevant parties.

For further information, please reach out to us:

**Alexis Bley**

Public Affairs Manager

[EACA – European Association of Communications Agencies](#)

+32 2740 07 18 | [alexis.bley@eaca.eu](mailto:alexis.bley@eaca.eu)

**Claudie Moreau**

Public Affairs Assistant

[EACA – European Association of Communications Agencies](#)

+31 6 15 08 32 82 | [claudie.moreau@eaca.eu](mailto:claudie.moreau@eaca.eu)