COURT OF JUSTICE
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Advocate General's Opinion in Case C-376/22 | Google Ireland and Others

According to Advocate General Szpunar, platforms like Google, Meta Platforms and Tik Tok may not have additional obligations imposed on them in a Member State other than the one in which they have their registered office, except by measures taken on a case-by-case basis

EU law precludes restricting the freedom to provide information society services from other Member States by way of general and abstract legislative measures

Google, Meta Platforms and Tik Tok are challenging before the Austrian courts the purely declaratory statement of the Austrian Communications Regulatory Authority (KommAustria) according to which the Austrian Federal Law of 2020 on measures for the protection of users on communication platforms (KoPl-G [1]) is applicable to them, even though they are established in another Member State, namely Ireland.

That law is aimed at strengthening the liability of communication platforms. More specifically, it imposes a general obligation on providers of 'communication platforms', whether established in Austria or abroad, to put in place a system for notification and verification of allegedly illegal content. Moreover, under that law, those providers are also required to publish regular reports on the handling of such notifications. The obligations resulting from the KoPl-G do not require an individual and specific measure to be adopted beforehand. In addition, that law provides for fines in the event that the obligations arising from it are infringed.

Google, Meta Platforms and Tik Tok argue that the KoPl-G is incompatible with the Directive on electronic commerce, [2] and in particular with the country-of-origin principle. The Supreme Administrative Court of Austria referred questions to the Court of Justice in that regard. It seeks to ascertain whether a Member State may restrict the freedom to provide information society services from other Member States by adopting national measures of a general and abstract nature relating to a category, described in general terms, of given information society services ('communication platforms'), without those measures being taken on a case-by-case basis and identifying platforms by name.

In his Opinion published today, Advocate General Maciej Szpunar emphasises that his analysis is based on the premiss that the services provided in Austria by the three companies in question constitute information society services, as the Supreme Administrative Court of Austria maintained.

The Advocate General notes that, within the coordinated field, the Directive on electronic commerce prohibits Member States from restricting the freedom to provide information society services from another Member State.

[1] Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen (Kommunikationsplattformen-Gesetz) (BGBl. I, 151/2020).

[2] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

That directive in principle precludes, subject to derogations, a provider of an electronic commerce service from being made subject to stricter requirements than those provided for by the law in its Member State of origin.

Regarding derogations from the country-of-origin principle laid down by the directive, the Advocate General reiterates the position set out in his Opinion in *Airbnb Ireland*. [3] In his view, **a Member State other than the Member State of origin can derogate from the free movement of information society services only by measures taken on a 'case-by-case' basis, following prior notification to the Commission and after asking the Member State of origin to take measures in respect of information society services, which did not occur in this case**.

Furthermore, to take the view that a general and abstract provision applying to any provider of a category of information society services constitutes a 'measure' would be tantamount to authorising the fragmentation of the internal market by national regulations. Moreover, allowing different laws to apply to a provider would run counter to the objective, pursued by that directive, of eliminating legal obstacles to the proper functioning of the internal market.

Thus, the Advocate General considers that the Directive on electronic commerce precludes a Member State from being able to restrict, in such circumstances and in such a manner, the freedom to provide information society services from another Member State.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

The full text of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ✆(+352) 4303 3355

Pictures of the delivery of the Opinion are available from 'Europe by Satellite' ✆(+32) 2 2964106

[3] Opinion of 30 April 2019, *Airbnb Ireland*, C-390/18; see also Press Release No 51/19.