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Judgment of the General Court in Case T-348/23 | Zalando v Commission

The General Court dismisses Zalando's appeal against the designation of its eponymous platform as a very large online platform

By decisions of 25 April 2023, ¹ the Commission designated, among others, the online shop Zalando, a platform that sells fashion items and beauty products, as a 'very large online platform' within the meaning of the Digital Services Regulation. ²

The Commission considered that the average monthly number of active recipients of the Zalando platform in the European Union exceeded the threshold of 45 million (or 10% of the EU population), namely more than 83 million.

Designation as a very large online platform means that the platform concerned is subject to additional obligations, in particular to protect consumers and combat the dissemination of illegal content.

Zalando challenged the designation of its platform as a very large online platform before the General Court of the European Union.

In today's judgment, **the General Court dismisses Zalando's action and thus confirms the Commission's decision.**

According to the General Court, the Zalando platform is an 'online platform' within the meaning of the Digital Services Regulation insofar as third-party sellers market products on it under the 'Partner Programme'. ³ By contrast, it is not an online platform in relation to the direct sale of products by Zalando itself ('Zalando Retail'). ⁴

In order to determine whether the Zalando platform should be designated as a very large online platform, it was necessary to determine its number of active recipients, which included, in particular, the number of persons who had been exposed to information from third-party sellers within the framework of the Partner Programme. ⁵

Since Zalando was unable to distinguish, among the more than 83 million people who used its platform (including Zalando Retail and the Partner Programme), those who were actually exposed to the information provided by third-party sellers under the Partner Programme from those who were not, ⁶ the Commission could consider that they were all deemed to have been exposed to it. The Commission could therefore consider that the average monthly number of active recipients of the Zalando platform amounted to more than 83 million, and not only around 30 million as Zalando claimed on the basis of the gross value of sales generated under the Partner Programme.

The General Court also rejects Zalando's arguments that the rules of the Digital Services Regulation relating to the classification of very large online platforms violate the principles of legal certainty, equal treatment and proportionality.

It emphasises in particular that marketplaces can be used to facilitate the marketing of dangerous or illegal products to a significant part of the Union's population, given that their average monthly number of active recipients is equal to or greater than 45 million.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to questions of law, may be lodged with the Court of Justice against the decision of the General Court within two months and ten days of its notification.

Unofficial document for media use, not binding on the General Court.

The [full text and, where applicable, the summary](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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¹ See Commission press release [JP/23/2413](#).

² [Regulation \(EU\) 2022/2065](#) of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Regulation).

³ The Zalando platform stores and disseminates information provided by these sellers, so that it is an 'online platform', namely a subcategory of hosting service. The fact that Zalando checks that the images and descriptions provided by these sellers comply with its commercial requirements, and that it modifies or supplements them, does not alter the fact that this information originates, at least in part, from third-party sellers.

⁴ The direct sale of products by Zalando as part of the Zalando Retail service does not constitute a hosting service, since that service does not store information provided by a recipient of the service, but only information originating from Zalando itself.

⁵ Including by taking note of the names of the products sold by third-party sellers, their manufacturers, their descriptions and their photographs.

⁶ For certain products sold by both Zalando and third-party sellers, the presentation of the products was always uniform and independent of the identity of the seller in question. There was only one product detail page containing identical information and images, and consumers only knew the identity of the seller once they had selected the specifications of the product in question, such as size for clothing, for example.