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Judgment of the General Court in Case T-367/23 | Amazon EU v Commission

DSA: Amazon's action against the Commission's decision designating the platform Amazon Store as a 'very large online platform' is dismissed

The Digital Services Act (DSA) ¹ imposes specific obligations on providers of certain services designated by the European Commission as 'very large online platforms' or 'very large online search engines' once they exceed the threshold of 45 million users in the European Union (that is to say, 10% of the Union population). Amazon EU Sàrl, which operates the platform Amazon Store, sought the annulment of the Commission's decision designating that platform as a 'very large online platform' under the DSA.

Amazon contests the lawfulness of the provision in the regulation that specifies which online platforms, including marketplaces, are to be designated as very large online platforms and imposes on them specific obligations of transparency, cooperation and access to data. According to Amazon, that provision infringes several fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, including the freedom to conduct a business, the right to property, the principle of equality before the law, freedom of expression and information, and the right to private life and the protection of confidential information.

In today's judgment, **the General Court of the European Union dismisses the action.**

With regard to **freedom to conduct a business**, the Court notes that it is true that the obligations imposed by the DSA constitute an interference with that freedom, in so far as they may entail significant costs, affect the organisation of activities and require complex technical solutions. However, that interference, which is provided for by law and does not affect the essence of the freedom to conduct a business, is justified for the purpose of the Charter of Fundamental Rights. The EU legislature, which has a broad discretion, did not commit a manifest error in considering that very large online platforms, including marketplaces exceeding the threshold of 45 million users, could pose systemic risks to society, in particular by disseminating illegal content or infringing fundamental rights, including consumer protection. The obligations imposed on those platforms, such as those relating to the option of a recommender system which is not based on profiling, the public repository of advertisements or researchers' access to certain data, are intended to prevent those risks, even if they entail significant financial burdens for those platforms.

As regard **the right to property**, the Court notes that the obligations imposed by the DSA mainly constitute administrative burdens which do not deprive providers of very large online platforms of ownership of their platforms. Furthermore, even if an interference with that right were established, it would be justified by the objectives of preventing systemic risks pursued by the EU legislature.

On the **principle of equality**, the Court notes that the EU legislature had a broad discretion to treat very large online platforms, including marketplaces, in a uniform manner since the latter may also present systemic risks to society. Furthermore, the distinction made in the DSA between online platforms based on their number of users is neither arbitrary nor manifestly inappropriate for the objective of preventing such risks, since online platforms with more than 45 million users may expose a large number of persons to illegal content.

With regard to **freedom of expression and information**, the Court notes that the obligation imposed on very large online platforms to offer a recommender system option which is not based on profiling may restrict the way in which products marketed on those platforms can be presented, but that such interference is justified. That measure, provided for by law, does not affect the essence of the freedom of expression and pursues a legitimate objective of consumer protection. Accordingly, the EU legislature was able, without exceeding its broad discretion, to weigh up the freedom of commercial expression of those platforms and consumer protection.

With regard to **the right to private life and the protection of confidential information**, the Court notes that the obligations of advertising transparency and of access by researchers to certain data do indeed constitute an interference with that right, but that they are provided for by law, proportionate and justified by an objective of general interest, namely the prevention of systemic risks in order, inter alia, to contribute to a high level of consumer protection. It emphasises that the public nature of the repository is strictly regulated, while researchers' access is subject to strict security and confidentiality guarantees.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU 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 points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Regulation \(EU\) 2022/2065](#) of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Regulation).