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Judgment of the Court in Case C-421/24 | AGCOM (Online gambling)

Multimedia platforms: Google may be held liable for the YouTube videos of a content creator with whom it has a commercial partnership

On 19 July 2022, the Italian Communications Regulator (AGCOM) imposed a fine of €750 000 on Google Ireland Ltd and ordered it to remove several YouTube videos which promoted online gambling, in breach of Italian law.

Those videos were uploaded by a content creator who had a commercial partnership agreement with Google providing, *inter alia*, for a sharing of the revenue generated by the advertising shown before each video. Before concluding that agreement, Google had reviewed the content of the videos, the theme of the channel, the most viewed or newest videos and the associated metadata.

Google brought an action against that decision before an Italian administrative court, relying on the EU law applicable to electronic commerce,¹ and specifically the exemption from liability which hosting service providers enjoy in respect of the content uploaded by third parties.² AGCOM submits that that exemption is not applicable in the present case because gambling activities are excluded from the scope of the EU legislation on electronic commerce.

The case was brought before the Council of State, Italy, which decided to refer questions for a preliminary ruling to the Court of Justice.

In its judgment, the Court notes, first, that EU law excludes gambling, and all activities linked to it, from the scope of harmonisation in electronic commerce because of the profound moral, religious and cultural differences between the Member States in that regard.

However, **the activity of online hosting is not intrinsically linked to gambling**, since it consists in storing, in a neutral manner, content provided by the user, without any promotional intent.

Consequently, **the hosting of advertising content relating to online gambling is therefore not covered by the exclusion** laid down in EU law and thus **falls within the scope of the EU legislation on electronic commerce**.

In addition, **in order to benefit from the exemption from liability in respect of the content published on a platform, the operator must** act as an 'intermediary service provider', that is to say **carry out a strictly technical, automated and passive activity, excluding any knowledge or control over the information** which is transmitted or stored.

That is not the case where an operator reviews, for the purpose of concluding a commercial partnership contract, the main theme of a video channel, that channel's most viewed videos or newest videos and the associated metadata.³ The operator thus acquires specific knowledge of the essential content of a set of videos and cannot therefore claim to act as an intermediary service provider.

It is for the national court to verify, in connection with the commercial partnership contract concluded with Google, whether the latter could reasonably have been unaware that the main theme of the YouTube channel in question was gambling and games of chance and that it contained videos promoting those games.

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 EU law or the validity of an EU 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.

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

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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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ [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').

² Article 14 of Directive 2000/31, which provides for an exemption from liability for hosting service providers where the provider does not have knowledge or awareness of the illegal content hosted or, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to that content.

³ The exemption from liability may not be relied upon, even where the operator does not become aware of the content of the platform because the processing is automated. The operator has previously defined, by means of an algorithm, the conditions for broadcast (the manner of broadcast, the order of priority, etc.) and thus exercises control over that content.