



Judgment of the General Court in Case T-134/24 | Technius v Commission

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Digital Services Act: the General Court dismisses Stripchat's action against its designation as a very large online platform

The General Court confirms that the data used by the Commission to support that designation are reliable

Technius Ltd operates Stripchat, an online adult entertainment platform. In February 2023, it stated that the average monthly number of active recipients (AMAR) of Stripchat in the European Union stood at approximately 31.8 million.

After examining the calculation method used by Technius, which was based on the data provided by the marketing analytics service Similarweb, the European Commission found that the reduction made on account of 'bounced visits' ¹ had led to that number being underestimated. According to the Commission, the average monthly number of unique visitors to Stripchat was in fact more than 62 million and, therefore, the threshold of 45 million set out in the Digital Services Act (DSA) ² had been exceeded. Accordingly, by decision of 20 December 2023, it designated Stripchat as a very large online platform, thereby subjecting it to additional and stricter obligations regarding transparency, risk management and oversight.

Technius applied to the General Court of the European Union to have that decision annulled, challenging in particular the reliability of the data used by the Commission and alleging infringement of the principle of legal certainty.

The General Court dismisses Technius' action in its entirety.

It considers, first of all, that the Commission gave adequate reasons for its decision. It is clear from that decision that the Commission relied on the same data, sourced from Similarweb, as the data relied on by Stripchat, and that it considered those data to be reliable. The Commission also transparently set out the methodology that it had used to calculate the number of unique visitors and adequately explained why the methodology used by the applicant was not capable of producing a reliable result.

As regards the reliability of the methodology used by the Commission, the General Court finds that the 'unique visitors' datum, as defined by Similarweb, **is already the result of a calculation method involving a filtering process that eliminates a significant number of bounced visits**. Consequently, the Commission was entitled to rely on that methodology, while disregarding the methodology followed by Stripchat, which artificially reduced the actual number of its active recipients in the European Union.

Next, the General Court notes that, after the contested decision was adopted, Similarweb corrected its methodology for estimating the number of unique visitors. However, although, according to the corrected methodology, the number of active recipients of Stripchat for the relevant period was only around 37.3 million, that does not call into question the legality of the decision. The legality of that decision must be assessed in the light of the facts and law as they stood at the time when the decision was adopted, on the basis of the data reported by the provider of the online platform. Moreover, neither the corrected data nor Similarweb's new methodology fell, on the date on which the contested decision was adopted, within any of the categories of data provided for in the last sentence of the first subparagraph of Article 33(4) of the DSA. ³

Furthermore, in response to Technius' argument that, without an act laying down a methodology for calculating the

AMAR, the designation of Stripchat as a very large online platform does not observe the principle of legal certainty, the General Court recalls that that principle does not require that every rule remove all doubt as to its interpretation or that a provision must necessarily prescribe a specific method for its application. Where there is no such act, it is for the operators concerned to choose a reliable method that complies with the requirement arising from that provision. The General Court holds that the DSA contains sufficient guidance relating to the concept of 'active recipients' to enable providers of online platforms to calculate their AMAR.

NOTE: An action for annulment seeks the annulment of acts of the institutions, bodies, offices and agencies 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.

Unofficial document for media use, not binding on the General Court. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

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 A 'bounced visit' refers to a visit during which the user enters a website but leaves it without having been exposed to any content disseminated on that site.

² [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 Act).

³ 'The Commission shall take [the decision designating as a very large online platform or a very large online search engine for the purposes of that regulation] on the basis of the data reported by the provider of the online platform or of the online search engine pursuant to Article 24(2), or information requested pursuant to Article 24(3) or any other information available to [it].'