



# ARTICLE

## DSA –AMAZON CASE: THE EU’S INTERESTS PREVAIL OVER COMMERCIAL INTERESTS

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On April 25th, 2023,[1] the European Commission designated Amazon Store (“Amazon”) as a “very large online platform” (the “Decision”) under the regulation of October 19th, 2022 on a single market for digital services (“DSA”).[2] As such, Amazon is subject to a number of specific obligations. Article 39 of the DSA requires it to publish an advertising repository containing detailed information, including the content of the advertisement, the identity of the recipient, the period during which the advertisement is presented, targeting parameters, commercial communications on major online platforms and the total number of recipients reached.

By application filed on July 5th, 2023 with the General Court of the European Union (the “General Court”), Amazon sought to have the Decision annulled. By separate document on July 6th, 2023, Amazon made an application for interim relief seeking suspension of the contested Decision in so far as it requires Amazon to (i) provide users with an option for each of its recommender systems which is not based on profiling under Article 38 of the DSA; and (ii) compile and make publicly available an advertising repository under Article 39 of the DSA.

By order dated September 27th, 2023,[3] **the General Court temporarily suspended the obligation to publish this repository.**[4]

By order dated March 27th, 2024[5] (the “Order”), **the Vice-President of the Court of Justice of the European Union** (the “Court of Justice”), **ruling on an appeal by the Commission, set aside “Point 1 of the operative part of the order of the President of the General Court [...]”** of September 27th, 2023. Point 1 ordered the operation of the Commission’s decision of April 25th, 2023 to be suspended “*to the extent that that decision requires Amazon Store to compile and make publicly available the repository required by Article 39 [of the DSA]*”.

As part of the balancing of interests, the Order noted:

- **First**, that: “[...] *Amazon’s revenue from its advertising activities represents only 7% of its overall revenue. Accordingly, the limitation of the possibilities of developing advertising strategies that could result from the application of Article 39 of Regulation 2022/2065 would have direct effects only on a limited part of Amazon’s activities, given that it has not been established that the indirect effects of such a limitation on Amazon’s other activities are significant.*” (para. 154);
- **Second**, that: “[...] *not applying certain obligations laid down by that regulation will lead to a delay, potentially for several years, in the full achievement of those objectives. Not applying those obligations will therefore give rise to a risk of potentially allowing an online environment which threatens the fundamental rights provided for in the Charter to persist and develop*” (para. 157).

The Order further observes that it stems from (i) recitals 75 and 76 of the DSA that “*the EU legislature considered, following an assessment which it is not for the judge hearing the application for interim measures to call into question, that very large online platforms play an important role in the digital environment and that they may give rise to risks for society which differ, in terms of their scale and impact, from those attributable to smaller platforms.*” (para. 159), and from (ii) recital 95 that “*the EU legislature considered that the advertising systems used by very large online platforms pose particular risks and require further public and regulatory supervision*” (para. 160).

This was the basis on which the Vice-President decided that “***the interests defended by the EU legislature prevail, in the present case, over Amazon’s material interests, with the result that the balancing of interests weights in favour of dismissing the application for interim measures***”.

Amazon is therefore obliged to provisionally comply in full with the obligations under the DSA, including publication of the advertising repository, until a decision on the merits of the case has been handed down. The case on the merits is continuing and, as a reminder, the judges on the merits are not bound by the assessment made on a provisional basis.



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[1] [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_2413](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2413)

[2] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2065>

[3] [https://curia.europa.eu/juris/document/document\\_print.jsf?mode=req&pageIndex=0&docid=277901&part=1&doclang=EN&text=&dir=&occ=first&cid=6859218](https://curia.europa.eu/juris/document/document_print.jsf?mode=req&pageIndex=0&docid=277901&part=1&doclang=EN&text=&dir=&occ=first&cid=6859218)

[4] For an analysis of this order see: [https://www.august-debouzy.com/en/blog/2027-dsa-what-is-the-significance-of-A-mazon's-temporary-relief?utm\\_source=Sarbacane&utm\\_medium=email&utm\\_campaign=AD%20EUROPE%20OCT.-NOV.%202023](https://www.august-debouzy.com/en/blog/2027-dsa-what-is-the-significance-of-A-mazon's-temporary-relief?utm_source=Sarbacane&utm_medium=email&utm_campaign=AD%20EUROPE%20OCT.-NOV.%202023)

[5] [https://curia.europa.eu/juris/document/document\\_print.jsf?mode=lst&pageIndex=0&docid=284262&part=1&doclang=EN&text=&dir=&occ=first&cid=6850760](https://curia.europa.eu/juris/document/document_print.jsf?mode=lst&pageIndex=0&docid=284262&part=1&doclang=EN&text=&dir=&occ=first&cid=6850760)

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