

# GC: Designation of Amazon as VLOP Was in Line with Fundamental Rights



## News

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On 19 November 2025, the General Court (GC) delivered its judgment in *Amazon EU Sàrl v Commission (T-367/23)*, dismissing Amazon’s challenge to its designation as a Very Large Online Platform (VLOP) under the Digital Services Act (DSA).

### Facts of the case

The dispute arose after the Commission’s April 2023 decision designating Amazon Store as a VLOP on the basis of Art. 33(4) DSA. Amazon had reported more than 45 million average monthly active recipients in the EU – crossing the quantitative threshold set by Art. 33(1) triggering the enhanced obligations applicable to VLOPs.

Amazon did not dispute that it met the numerical threshold. Instead, it sought annulment of the decision by mounting an indirect challenge to the legality of the DSA’s VLOP designation mechanism itself, arguing that Art. 33(1) unlawfully subjects marketplaces to obligations designed for platforms that create “systemic risks”, such as social media platforms or search engines. It contended that the VLOP regime infringed several fundamental rights under the EU Charter.

In Amazon’s view, marketplace operators do not create the societal risks targeted by the DSA; hence imposing heavy risk-mitigation, transparency, auditing, and data-access obligations is disproportionate. It also argued that forcing platforms to offer non-profiling recommender options and publicly disclose advertising-related information harms its commercial interests and the interests of sellers.

### The General Court’s judgment and reasoning

The GC rejected Amazon’s action in its entirety, concluding that none of the invoked Charter rights had been violated and that the Commission’s decision was legally sound.

It first held that Amazon’s objections to the legality of Art. 33(1) DSA were admissible, because the provision forms the legal basis for the contested VLOP designation. It rejected procedural objections raised by the Council, the Commission, and the BEUC.

The Court found that Art. 33(1) DSA – linking enhanced obligations to a platform’s reach – was a proportionate and justified regulatory choice. The legislature enjoys a wide margin of discretion in designing a framework for managing systemic online risks, and the threshold of 45 million users reflects a legitimate

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concern: platforms with such a reach may amplify illegal content, facilitate harmful practices, and affect consumer protection and public security on an EU-wide scale.

The judges in Luxembourg repeatedly emphasised that marketplaces are not immune from systemic risks. They may disseminate illegal products, host harmful content in reviews or advertisements, and expose vast numbers of consumers to unsafe or misleading practices. Large size alone, they reasoned, justifies subjecting marketplaces to enhanced due-diligence obligations. With regard to the invoked violation of fundamental Charter rights, the GC concluded:

- Freedom to conduct a business (Art. 16 CFR): the Court recognised that the VLOP obligations impose heavy compliance burdens but found the interference justified and not manifestly inappropriate. The duties – risk assessments, audits, transparency obligations, data access for researchers, and non-profiling recommender options – are anchored in consumer protection and the mitigation of large-scale societal risks;
- Right to property (Art. 17 CFR): the GC held that the obligations constitute administrative burdens rather than a deprivation of property. Even if they interfere with the exercise of property rights, the interference would be proportionate for reasons similar to those advanced under Art. 16 CFR;
- Equal treatment (Art. 20 CFR): the GC rejected Amazon’s argument that marketplaces should not be treated like social networks or search engines and that smaller platforms or retailers should face the same rules. Marketplaces with very large user bases create risks different in scale and impact from smaller operators and are therefore not comparable. Nor are retailers comparable, since they do not host content from millions of third-party sellers;
- Freedom of expression (Art. 11 CFR): the Court accepted that the obligation to offer non-profiling recommender systems limits a platform’s commercial expression; however, that interference is minimal and justified by consumer-protection objectives. Providers remain free to design recommender systems, and users retain the choice to opt into profiling if they wish;
- Private life and confidentiality (Art. 7 CFR): the Court acknowledged that certain obligations – such as the public advertising repository and disclosure of data to vetted researchers – entail interferences. However, these are carefully circumscribed, exclude personal data of users, operate with safeguards, and pursue legitimate aims including transparency, consumer protection, and risk detection. As a result, the essence of the right is unaffected and the measures are strictly necessary and proportionate.

### Put in focus

**Amazon said** it was disappointed by the ruling. A spokesperson stressed that the company supports the EU’s goal of online safety and has long taken action against illegal products and content. However, Amazon insists that the Amazon Store does not create systemic risks, arguing that it simply enables the sale of goods and does not spread or amplify information or opinions. The company maintains that the DSA’s designation regime was designed for platforms whose business models rely on advertising and the dissemination of content, not for online marketplaces. Amazon may appeal the judgment to the Court of Justice on points of law.

On 3 September 2025, the German fashion retailer Zalando also failed in its lawsuit against the classification as VLOP before the General Court. According to the **GC’s judgment** in this case (**T-348/23**), the Commission could correctly consider that over 83 million people are actually exposed to Zalando’s online platform. The Court also dismissed Zalando’s arguments that the rules of the Digital Services Regulation relating to the classification of VLOPs violate the principles of legal certainty, equal treatment and proportionality. Zalando appealed the decision before the Court of Justice (referred as **Case C-724/25 P**).

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