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ECJ: No additional obligations for online service providers established abroad

The European Court of Justice decided that a Member State may not impose additional obligations on an online service provider established in another Member State.

Background

In Italy, providers of online intermediation services and search engines are subject to certain obligations under national provisions. They were adopted with the aim of ensuring the adequate and effective enforcement of the regulation on promoting fairness and transparency for business users of online intermediation services. Providers of those services must, inter alia, be entered in a register held by an administrative authority, periodically forward to it a document on their economic situation, provide it with a series of detailed information and pay it a financial contribution. Penalties are provided for in the event of failure to comply with those obligations.

Several companies are challenging those obligations before an Italian court, on the grounds that the resulting increase in administrative charges is contrary to EU law.

ECJ decision

The ECJ held that EU law precludes measures such as those adopted by Italy and further provides some insight into the generally applicable principles regarding the application of Regulation 2019/1150 on promoting fairness and transparency for the benefit of users of online intermediation services and online search engines operated by traders.

Under the Directive on electronic commerce, it is the home Member State of the company providing information that regulates the provision of those services. Member States of destination, bound by the principle of mutual recognition, are required, save in exceptional circumstances, not to restrict the freedom to provide those services. Thus, Italy cannot impose on providers of those services established in other Member States additional obligations which, although required for the provision of those services in that country, are not imposed in their Member State of establishment.

According to the ECJ, those obligations do not fall within the exceptions permitted by the Directive on electronic commerce. First, they are, subject to verification by the Italian court, of general and abstract application. Secondly, they are not necessary to protect one of the objectives of general interest referred to in that directive.

Source: ECJ, **press release No 89/24** of 30 May 2024.

Keywords

electronic services, reporting obligation