



Eingangsdatum : 21/03/2024



ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ  
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA  
TRIBUNÁL EVROPSKÉ UNIE  
DEN EUROPÆISKE UNIONS RET  
GERICHT DER EUROPÄISCHEN UNION  
EUROOPA LIIDU ÜLDKOHUS  
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
GENERAL COURT OF THE EUROPEAN UNION  
TRIBUNAL DE L'UNION EUROPÉENNE  
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH  
OPĆI SUD EUROPSKE UNIJE  
TRIBUNALE DELL'UNIONE EUROPEA

EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA  
EUROPOS SĄJUNGOS BENDRASIS TEISMAS  
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE  
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA  
GERECHT VAN DE EUROPESE UNIE  
SĄD UNII EUROPEJSKIEJ  
TRIBUNAL GERAL DA UNIÃO EUROPEIA  
TRIBUNALUL UNIUNII EUROPENE  
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE  
SPLOŠNO SODIŠČE EVROPSKE UNIJE  
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN  
EUROPEISKA UNIONENS TRIBUNAL

ORDER OF THE PRESIDENT  
OF THE SEVENTH CHAMBER OF THE GENERAL COURT

- 1180865 -

- 86 -

20 March 2024 \*

(Intervention – Interest in the result of the case – Representative professional organisation – Request for confidential treatment)

In Case T-367/23,

**Amazon Services Europe Sàrl**, established in Luxembourg (Luxembourg),  
represented by A. Conrad, M. Frank, R. Spanó and I. Ioannidis, lawyers,

applicant,

v

**European Commission**, represented by L. Armati and P.-J. Loewenthal, acting as  
Agents,

defendant,

supported by

**European Parliament**, represented by M. Menegatti, E. Ni Chaoimh and  
L. Taïeb, acting as Agents,

by

**Council of the European Union**, represented by E. Sitbon, N. Brzezinski and  
M. Moore, acting as Agents,

and by

**The European Consumer Organisation (BEUC)**, established in Brussels  
(Belgium), represented by A. Fratini, lawyer,

\* Language of the case: English.

interveners,

THE PRESIDENT OF THE SEVENTH CHAMBER OF THE GENERAL  
COURT

makes the following

**Order**

- 1 By its application based on Article 263 TFEU, the applicant, Amazon Services Europe Sàrl seeks annulment of Commission Decision C(2023) 2746 final of 25 April 2023 designating its platform Amazon Store as a very large online platform in accordance with 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) (OJ 2022 L 277, p. 1).
- 2 By document lodged at the Court Registry on 12 October 2023, Bundesverband E-Commerce und Versandhandel Deutschland eV ('BEVH') lodged an application to intervene in support of the form of order sought by the applicant.
- 3 By document lodged at the Court Registry on 7 November 2023, the European Commission submitted its observations on BEVH's application to intervene. It stated that it was opposed to that application.
- 4 By document lodged at the Court Registry on 11 December 2023, BEVH submitted its observations on those of the Commission. By document lodged at the Court Registry on 21 December 2023, the Commission requested that those observations by BEVH be removed from the file.
- 5 Under the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, applicable to the procedure before the General Court pursuant to the first paragraph of Article 53 of that statute, any person establishing an interest in the result of a case other than a dispute between Member States, between institutions of the European Union or between Member States and institutions of the European Union, may intervene in that case.
- 6 The concept of an interest in the result of a case, within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, must be defined in the light of the precise subject matter of the dispute and be understood as a direct, existing interest in the ruling on the forms of order sought and not as an interest in relation to the pleas in law put forward. The expression 'result' of the case is to be understood as meaning the operative part of the final judgment which the parties ask the Court to deliver. It is necessary, in particular, to ascertain whether the intervener is directly affected by the contested measure and whether its interest in the result of the case is established (order of

6 April 2006, *An Post v Deutsche Post and Commission*, C-130/06 P(I), not published, EU:C:2006:248, paragraph 8).

- 7 However, it is settled case-law of the Court of Justice that a representative professional association, whose objective is to protect the interests of its members, may be granted leave to intervene where the case raises questions of principle which are liable to affect those interests. Therefore, the requirement that such an association has a direct, existing interest in the result of a case within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union must be found to be fulfilled where that association establishes that it is in such a situation, irrespective of whether the result of the case is likely to alter the legal position of the association as such (see order of 10 March 2023, *Illumina v Commission*, C-611/22 P, EU:C:2023:205, paragraph 8 and the case-law cited).
- 8 Thus, an association may be granted leave to intervene in a case if, first, it represents a significant number of undertakings active in the sector concerned, if, second, its objects include the protection of the interests of its members, if, third, the case may raise questions of principle affecting the functioning of the sector concerned and if, fourth, the interests of its members may be affected significantly by the forthcoming judgment (orders of 10 March 2023, *Illumina v Commission*, C-611/22 P, EU:C:2023:205, paragraph 10, and of 21 July 2023, *WhatsApp Ireland v European Data Protection Board*, C-97/23 P, EU:C:2023:608, paragraph 15).
- 9 BEVH submits that each of the four conditions referred to in paragraph 8 above is satisfied in the present case.
- 10 In the first place, BEVH observes, in the application to intervene, that on 1 October 2023, it had 433 member undertakings in the online or mail-order sector in Germany and 130 other affiliated undertakings. It states, without being contradicted by the Commission, that it accordingly represents undertakings whose turnover accounts for roughly 90% of the business-to-consumer e-commerce turnover in Germany.
- 11 In those circumstances, as recognised, in essence, by the Commission, the Court finds that BEVH satisfies the first condition laid down in paragraph 8 above, namely that it represents a significant number of undertakings active in the sector concerned.
- 12 In the second place, BEVH submits in the application to intervene that it is apparent from its statutes that its objects include the protection of the interests of its members.
- 13 It should be noted in that regard that, under Section 2 of its statutes, BEVH ‘has the task of safeguarding and promoting the common ideational, legal, economic, labour market and socio-political interests of its members, ... both nationally and internationally’. Consequently, the Court finds that it fulfils the second condition

referred to in paragraph 8 above, which the Commission, moreover, does not dispute.

- 14 In the third place, BEVH observes in the application to intervene that Regulation 2022/2065 includes a set of provisions aimed at creating a safer online environment for consumers and companies in the European Union. It infers therefrom that, in so far as the applicant puts forward pleas of illegality in relation to a number of provisions of that regulation, the present case raises questions of principle affecting the functioning of the sector concerned.
- 15 Like BEVH, the Court finds, in that regard, that, first, online platforms are designated as very large online platforms within the meaning of Article 33 of Regulation 2022/2065 when they have a number of average monthly active recipients equal to or higher than 45 million and that, second, providers of those very large online platforms are subject to additional obligations to which other online platform providers are not subject, including those provided for in Articles 38 and 39 of that regulation.
- 16 Thus, in putting forward pleas of illegality in relation to Articles 33, 38 and 39 of Regulation 2022/2065, the applicant raises the issue of the scope and content of the obligations imposed on very large online platforms. The Court finds that such a question is one of principle affecting the sector concerned, which the Commission, moreover, does not dispute. Consequently, the Court finds that the third condition set out in paragraph 8 above is satisfied.
- 17 In the fourth place, BEVH submits in the application to intervene that the interests of its members may be affected significantly by the forthcoming judgment. It states that this is true both of the ‘group of members’ who are already subject to the obligations pertaining to very large online platforms within the meaning of Article 33 of Regulation 2022/2065, and other members who must anticipate the application of those obligations in so far as their online platforms might in future attain the number of average monthly active recipients to be designated as very large online platforms. It adds that, in that judgment, the Court could be led to clarify the concept of ‘active recipient’, which is also referred to in Article 24(2) of that regulation. It observes that the latter provision applies to providers of all online platforms, not just those of very large online platforms.
- 18 The Commission replies that BEVH has not shown that the interests of its members may be affected significantly by the forthcoming judgment. In its submission, the present case concerns only the obligations imposed on providers of very large online platforms within the meaning of Article 33 of Regulation 2022/2065. It observes, first, that BEVH acknowledges that only two of its members, including the applicant, are such providers and, second, that those two members have each brought an action against the decisions designating their respective online platforms as very large online platforms. Thus, the Commission submits that, by its application to intervene, BEVH intends to represent only the interests of those members, who already represent their own interests through the

respective actions lodged. It adds that the applicant does not raise the question of how the concept of ‘active recipient’ is to be interpreted.

- 19 First, it is common ground among the parties that the forthcoming judgment is liable to affect significantly providers of very large online platforms.
- 20 In that regard, contrary to the Commission’s assertions, the Court notes that BEVH has not stated that only two of its members were providers of very large online platforms. Although it only identified one of those providers by name, in addition to the applicant, it did state that it was only an ‘example’. It also categorised as a ‘group’ its members who were providers of very large online platforms accounting for 90% of the business-to-consumer e-commerce turnover in Germany. Thus, it is not apparent from the application to intervene that BEVH had only two providers of very large online platforms among its members.
- 21 Second, it is apparent from Article 24(2) and Article 33(4) of Regulation 2022/2065 that providers of online platforms are to publish, at least once every six months, information on the average monthly active recipients of those platforms for the purposes of potential designation of them as very large online platforms. It follows that that regulation provides for frequent designation of new very large online platforms, with the result that the list of those very large online platforms is liable to evolve regularly.
- 22 It should also be noted that, by its first plea, the applicant puts forward a plea of illegality of the criterion of 45 million average monthly active recipients, referred to in Article 33 of Regulation 2022/2065, with the result that it cannot be ruled out that the Court might be led to clarify the concept of ‘active recipient’, as correctly observed by BEVH. Furthermore, as follows from paragraph 21 above, such a clarification could enable providers of online platforms to determine whether they should be designated as very large online platforms.
- 23 Consequently, BEVH is correct in arguing that the forthcoming judgment is liable to affect significantly the interests of its members whose online platforms might in future attain the number of average monthly active recipients to be designated as very large online platforms. Moreover, given that the number of active recipients will evolve, BEVH cannot be criticised for not having identified precisely which of its members it could envisage were likely to reach that number.
- 24 In those circumstances, the Court finds that the interests of BEVH’s members may be affected significantly by the forthcoming judgment. It follows that the fourth condition set out in paragraph 8 above is satisfied.
- 25 It follows from the foregoing that the application to intervene lodged by BEVH in Case T-367/23 must be upheld on the sole basis of the information put forward in that application, with the result that it is not necessary to rule on the admissibility of the observations lodged by BEVH with the Court Registry on 11 December 2023 and, in essence, contested by the Commission.

- 26 Lastly, since the applicant has requested, pursuant to Article 144(5) and (7) of the Rules of Procedure of the General Court, that certain information of a confidential nature in the case file not be communicated to BEVH, the communication to that party of the documents served on the main parties must be limited to a non-confidential version thereof. A decision on the merits of the application for confidential treatment will, if necessary, be taken at a later stage in the light of any objections that may be submitted on that issue.

On those grounds,

THE PRESIDENT OF THE SEVENTH CHAMBER OF THE GENERAL  
COURT

hereby orders:

1. **Bundesverband E-Commerce und Versandhandel Deutschland eV is granted leave to intervene in Case T-367/23 in support of the form of order sought by Amazon Services Europe Sàrl.**
2. **The Registrar shall provide Bundesverband E-Commerce und Versandhandel Deutschland with a non-confidential version of each procedural document served on the main parties.**
3. **A time-limit shall be fixed for Bundesverband E-Commerce und Versandhandel Deutschland to submit any objections regarding the application for confidential treatment. The decision on whether that application is well founded is reserved.**
4. **A time-limit shall be fixed for Bundesverband E-Commerce und Versandhandel Deutschland to submit a statement in intervention, without prejudice to the possibility of supplementing it later, should the need arise, following a decision on whether the application for confidential treatment is well founded.**
5. **The costs are reserved.**

Luxembourg, 20 March 2024.

V. Di Bucci

K. Kowalik-Bańczyk

Registrar

President

