

Newsletter

IP / Media

May – June 2025

Autonomous sub-categories of goods and services in trademark revocation disputes

The French Supreme Court imposes an analysis of the effective use in all sub-categories of goods/services otherwise trademark registration is revoked for unused categories

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NEWS INTELLECTUAL PROPERTY

Licensing agreements do not provide a means of avoiding revocation

CJEU, Judgment of the General Court, Xilin Gol League Xiyang Mutton Industry Co Ltd v EUIPO, 26 March 2025

On March 26, 2025, the General Court of the European Union annulled an EUIPO decision that partially upheld the rights of Baidu Europe BV to the word mark "baidu", registered for software (class 9) and telecommunications services (class 38).

The Chinese company Xilin Gol League Xiyang Mutton Industry had applied for the revocation of this mark, taking the view that it was no longer being used in a serious manner, as required [by Regulation \(EU\) 2017/1001](#). The Court upheld this analysis, finding that Baidu Europe had not provided sufficient evidence of genuine use of the mark for the goods and services at issue.

The company claimed to provide audiovisual content broadcasting services via its 'Baidu TV' application.

"Baidu TV" application, but the evidence produced (invoices, screenshots, testimonials) did not demonstrate that Baidu Europe itself broadcast the content, a necessary condition for classification in class 38 (telecommunications).

The Court noted that the royalties invoiced by Baidu Europe to its customers (television channels or operators) could just as well correspond to licensing services for content or software technology. However, this type of activity (licensing) legally falls within class 42 (legal or IT services) and not class 38.

In short, Baidu Europe seemed to be acting more as an intermediary or distributor of content created by third parties, by granting rights of use over this content or over technological tools, rather than as a content distributor in the strict sense. This distinction weighed heavily in the legal analysis, since the company had not proved use of the trademark in the classes initially protected.

The Court therefore declared that the rights in the "baidu" trade mark had lapsed in respect of classes 9 and 38.

SUPERMAN not used as a trade mark

EUIPO, DC Comics c/ M. Guillaume Mariani, 13 May 2025, OP n° 3 143 756

By decision of May 13, 2025, the European Union Intellectual Property Office (EUIPO) rejected the opposition filed by DC Comics against European Union trade mark application No. 18 355 015 "SUPERFAN", filed by Mr. Guillaume Mariani. The opposition was based on a set of earlier "SUPERMAN" trade marks held by DC Comics in the European Union and several Member States, as well as on unregistered rights.

The EUIPO examined in detail the evidence of use provided by DC Comics, including a wide range of documents intended to demonstrate the reputation of the "SUPERMAN" mark in the audiovisual, publishing and merchandising sectors. However, the Office concluded that the evidence of use did not establish use of the earlier trade marks as an indication of commercial origin for the goods and services in question.

The argument that the name "SUPERMAN" would function as a trade mark was rejected on the grounds that its use was essentially descriptive, referring to the fictional character or the title of audiovisual and literary works. In addition, the examples of co-branding with third party trademarks (e.g. Coca-Cola, Burger King) were interpreted as decorative or promotional uses, with no distinctive function of their own.

Consequently, the opposition was rejected in its entirety.

NEWS INTELLECTUAL PROPERTY



More flexible case law on the validity of purchase reports

[Court of Cassation, mixed chamber, 12 May 2025, no. 22-20.739](#)

In a ruling handed down on 12 May 2025, the Court of Cassation made a significant change to its case law on bailiff's statements of purchase, particularly in counterfeiting cases.

The case pitted Rimowa against Intersod, which was accused of marketing a suitcase under the brand name 'Bill Tornade' that imitated the German brand's iconic model. Rimowa appointed a bailiff to carry out a purchase report, assisted by a trainee from its law firm, in order to document the act of counterfeiting. Intersod challenged the validity of this report, arguing that the third-party buyer was not independent.

The Court reversed its previous case law ([Civ., 1re 25 January 2017, no. 15-25.210](#)), ruling that the lack of independence of the third party who assisted the bailiff was no longer sufficient in itself to invalidate the report. It is up to the trial judge to assess whether this defect affects the probative value of the report in the light of the circumstances of the case. The Court thus draws a distinction between a purchase report and a counterfeit seizure, the latter being subject to stricter requirements due to its intrusive nature and the sensitivity of the data potentially collected.

The Court based its relaxation on several factors: the limited role of the third-party buyer (who provides neither expertise nor interpretation), the strict supervision of his intervention by the bailiff, and the clarity of the information contained in the report. Lastly, it points out that [Article 3 of Directive 2004/48/EC](#) requires Member States to guarantee simple, effective and not excessively formalistic procedures for enforcing intellectual property rights.

This clarification is intended to ensure a balance between the requirement of fairness in the taking of evidence and the effectiveness of infringement actions. It is particularly welcome in litigation practice, providing greater legal certainty for statements of facts drawn up on the initiative of right holders.

However, the Court of Cassation partially overturned the appeal decision, sanctioning the legal error of combining a conviction for unfair competition with a conviction for infringement, without establishing separate facts, thus reiterating the established case law on the separation of the two regimes.

NEWS INTELLECTUAL PROPERTY

The Court of Cassation imposes an analysis of the sub-categories of goods and services in trademark revocation cases

Court of Cassation, Commercial Division, 14 May 2025, no. 23-21.296



In a ruling handed down on 14 May 2025, the Commercial Chamber of the French Supreme Court partially quashed a decision by the Versailles Court of Appeal in a dispute between Groupe Rousselet, owner of the "G-7" and "G7" trade marks registered in 1965 and 1995 respectively for transport services, and several independent companies that in 2014 adopted the name "G7" to carry on the business of refrigerated transport of goods. Taking the view that this use infringed its rights, Groupe Rousselet sued them for trademark infringement, unfair competition and parasitism.

In particular, the defendant companies applied for revocation of the trade marks on the grounds that they had not been put to genuine use for all the services covered. They argued that the transport services covered by the registration were too broad a category, and that only one sub-category (passenger transport by taxi) had actually been used. They therefore requested that the trade marks be revoked for the other unused sub-categories, such as the carriage of goods.

The Court of Appeal rejected this request, considering that proof of use for taxi services was sufficient to maintain rights for the entire "transport" class. The Court of Cassation overturned this analysis, pointing out that the court hearing an application for revocation must verify, even of its own motion, whether the services covered by the registration can be subdivided into autonomous subclasses, based in particular on the purpose and destination of the services, in accordance with the case law of the CJEU ([CJEU, Ferrari, 22 October 2020, C-720/18 and C-721/18](#)).

In failing to carry out this analysis, the Court of Appeal deprived its decision of a legal basis. As a result, the Court of Cassation overturned not only the rejection of the revocation, but also the convictions for infringement and unfair competition, which were based on an overly broad protection of the trade marks in question.

This ruling is in line with the demanding case law on genuine use and confirms that the protection conferred by a trade mark is only maintained for goods or services actually exploited in autonomously identifiable sub-categories.



NEWS INTELLECTUAL PROPERTY

Distinction between company registration and use as a trade mark

Paris Court of Appeal, 2 April 2025, no. 23/10089

In a ruling handed down on April 2, 2025, the Paris Court of Appeal upheld, for the most part, the ruling handed down by the Paris Court of First Instance in May 2023 in the dispute between AXA and AXAMED, now AXSCIENCE. AXA complained that AXSCIENCE had used the signs "AXAMED" and "Laboratoires AXAMED" to advertise its products.

"Laboratoires AXAMED" for medical products, in violation of its earlier trademarks.

The Court of Appeal recognised that these uses infringed the repute of the French "AXA" trademarks no. 1270658 and no. 4555424, in view of their proven reputation (presence in more than 30 countries, massive advertising investments, worldwide trademark ranking). The judges considered that the use of the term "AXAMED" in a health context created an unjustified link with the AXA trademark, thereby diluting its distinctive character and taking undue advantage of its reputation.

On the other hand, the Court of Appeal ruled out any infringement based on a likelihood of confusion between the signs, noting that the healthcare products marketed by AXSCIENCE were neither similar nor complementary to the insurance, medical assistance or reimbursement services covered by the AXA trademarks. It pointed out that the mere fact that insurance services reimburse medical products is not sufficient to establish similarity within the meaning of trade mark law.

The Court also pointed out that the mere fact of registering a company under a name similar to a trade mark does not in itself constitute use in the course of trade capable of constituting an infringement. In this case, it was the active use of the AXAMED sign (domain name, website, packaging, communication) that enabled the infringement of the trademarks to be qualified.

The Court also recognised the existence of separate acts of unfair competition, due to the infringement of the corporate name 'AXA' and the domain names 'axa.com' and 'axa.fr'. However, it rejected the allegations of parasitism, as there was no evidence of an intention to follow in AXA's commercial footsteps.



NEWS INTELLECTUAL PROPERTY



A simple visual arrangement does not in itself constitute a patentable invention

Paris Court of Appeal, 26 March 2025, no. 23/07392

In a judgment handed down on 26 March 2025, the Paris Court of Appeal, ruling after the French Supreme Court, upheld the decision of the Director General of the INPI on 17 July 2018, rejecting patent application No. FR 10 04947 filed by Thales. This application related to a method of displaying the mission of an aircraft over time, with the aim of improving the display of flight stages via a time scale ("timeline").

Initially, the Paris Court of Appeal overturned this rejection decision in a ruling dated 21 May 2019, considering that the subject of the application included a sufficient technical contribution. However, this decision was overturned by the Commercial Division of the Cour de Cassation on 11 January 2023, on the grounds that the Court of Appeal did not show how the resources claimed were of a technical nature as distinct from the mere presentation of information. The case was therefore referred back to another panel of the Paris Court of Appeal.

In its referral judgment, the Court found that the various claims, although presented as processes, were essentially a mere presentation of information, without sufficient technical contribution to be considered as inventions within the meaning of the French Intellectual Property Code, nor did they provide a technical solution to a technical problem. In the absence of any technical means described in concrete terms, particularly in terms of display generation or man-machine interaction, and given the predictive (and not real-time) nature of the data represented, the application did not meet the patentability criteria.



Upcycling is not an exception to respect for intellectual property rights

Paris Court of First Instance, 10 April 2025, no. 22/10720

The Paris Court of First Instance ruled in favour of Hermès International and Hermès Sellier in a copyright and trademark infringement case against Maison R&C, Atelier R&C and their manager, Géraldine Lugassy Demri. The latter marketed denim jackets customised from scarves stamped "Hermès", sourced from the second-hand market and claimed to be overcycled.

Hermès was accused of unauthorised reproduction of original designs protected by copyright, as well as use of its trademark. The defence invoked exhaustion of rights, creative freedom and environmental protection as the basis for the upcycling practised.

The Court recognised the originality of several of the designs used in the scarves, validating their protection by copyright. It held that the cutting up and re-use of these graphic elements for commercial purposes infringed the economic rights of Hermès, without ecological or creative arguments being able to justify the infringement.

The companies and their directors were held liable, and ordered jointly and severally to pay damages and to publish the material. The ruling emphasised that artistic innovation and responsible approaches cannot be exempt from respect for intellectual property rights.

NEWS INTELLECTUAL PROPERTY

The use of romantic music in a romantic scene infringes the author's moral rights

Paris Court of Appeal, 7 May 2025, no. 23/14476



The case decided by the Paris Court of Appeal on 7 May 2025 concerns the use of the musical work *Ballade pour V*, composed in 1977 by M. P. K., in a particularly violent scene in the series *Narcos Mexico* (episode 10, season 2), broadcast on Netflix. After the composer's death, his two daughters, heirs and copyright holders, brought an action against Narcos Productions LLC, Gaumont Television USA LLC and Regent Music Corp, claiming infringement of their father's moral rights.

The appellants claimed that this use had been made without authorisation, and in disregard of the right to respect for the work, because of what they considered to be a distorting association between a sentimental composition and an extremely violent murder scene. They also claimed infringement of authorship rights, as the author was not credited in the credits, and that the integrity of the work had been altered by its fragmentation and modification. For their part, the defendant companies argued that a synchronisation licence had been granted by Regent Music, that the author had tolerated similar uses in the past, and that audiovisual industry practices, particularly on American platforms, did not systematically require authors to be credited in the credits.

In its ruling, the Court of Appeal partially overturned the first instance judgment. First of all, it recognised an infringement of the moral right to respect for the work, considering that the association of *Ballade pour V* with such a brutal scene of violence constituted a distortion of its spirit. The Court emphasised that this work, which was intimate in nature, had been used in a context contrary to the author's original intention, without his authorisation or even his knowledge. The mere existence of a contractual licence obtained through a sub-publisher was not sufficient to justify this use in terms of the requirements of moral rights.

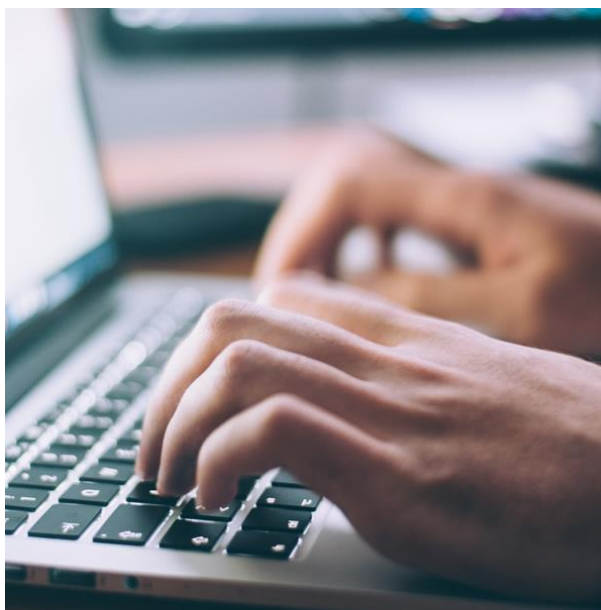
The Court also confirmed the infringement of the right to authorship, noting the absence of any mention of the author or title of the work in the credits of the episode. It pointed out that this right is absolute and protected under French law, regardless of foreign usage or supposed ease of identification by the public. On the other hand, the Court rejected the argument that the integrity of the work was undermined by the mere fact that it was fragmented. It held that this partial use was authorised by the publishing contracts entered into by the author, and that the minor changes made to the music did not constitute a substantial alteration.



NEWS INTELLECTUAL PROPERTY

Questions referred to the CJEU for preliminary rulings on infringement and AIs

[CJEU, reference for a preliminary ruling, 3 April 2025](#)



Reference has been made to the Court of Justice of the European Union by a Hungarian court (Budapest Környéki Törvényszék) for a preliminary ruling in a dispute between the Hungarian company Like Company, a publisher of news websites, and Google Ireland Limited, concerning the use by a chatbot based on a language model (Gemini, formerly Bard) of content from protected press publications.

The dispute concerns the reproduction, communication to the public and possible free use of this content by the generative artificial intelligence tool. More specifically, the issue is whether the fact that a chatbot displays, in its responses, substantial extracts from press publications constitutes an infringement of the related rights provided for in Article 15 of Directive (EU) 2019/790 and of reproduction rights within the meaning of Directive 2001/29/EC..

The referring court raises in particular the following questions:

- Does the referral by a chatbot of a text similar to a press publication fall within the scope of a 'communication to the public' requiring the publisher's consent?
- Does training the model from legally accessible content constitute reproduction? Can this use be covered by the text and data mining exception?
- Is a response generated at the request of a user, containing part of a press article, attributable to the service provider as an unlawful reproduction?

The applicant claims that the Gemini tool generated and distributed summaries or extracts of its articles without authorisation or compensation, thereby infringing its rights. Google, for its part, denies any infringement, arguing that the content generated constitutes neither a faithful reproduction nor a communication to a new public, and invokes the applicable legal exceptions.

This reference for a preliminary ruling therefore raises unprecedented questions about the application of EU law to the operation of generative AI, and aims to clarify the rights of press publishers in relation to these technologies.

To be continued...

NEWS INTELLECTUAL PROPERTY

Doctrine condemned for unfair competition

Paris Court of Appeal, 7 May 2025, no. 23/06063

In a ruling handed down on 7 May 2025, the Paris Court of Appeal found Forseti, publisher of the Doctrine platform, guilty of unfair competition against five legal publishers (Dalloz, LexisNexis, Lexbase, Lamy Liaisons and Lextenso). The dispute concerned the conditions under which Doctrine had built up an exceptionally large body of case law between 2016 and 2019, prior to the widespread introduction of open jurisdictional data.

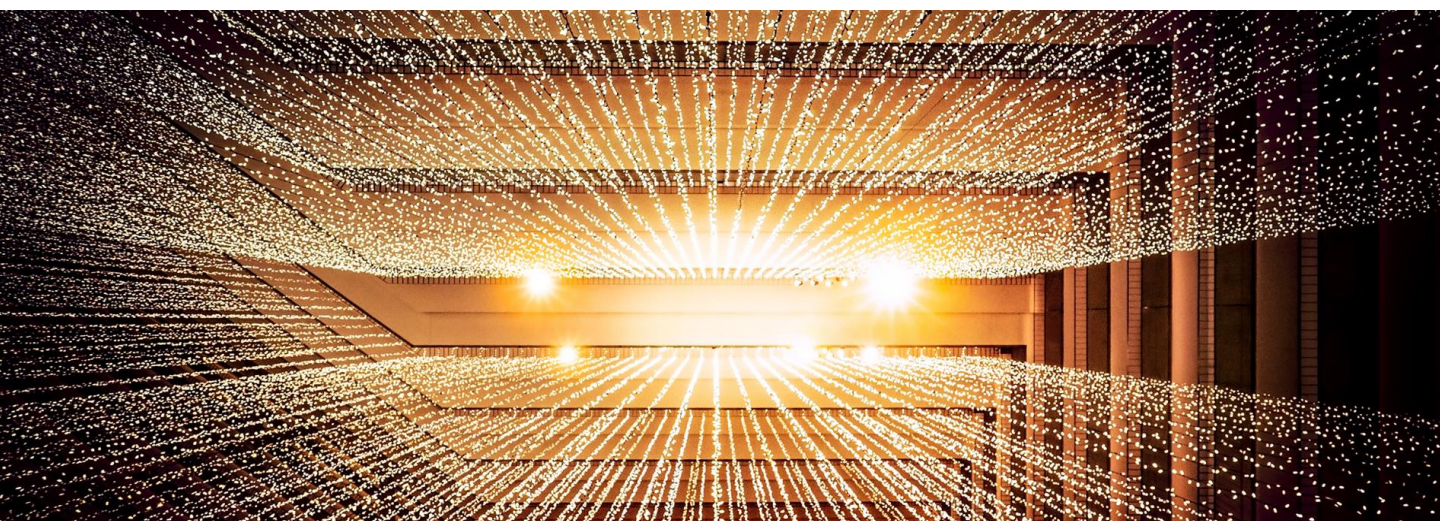
The Court found that this database had been populated, to a large extent, by decisions obtained unlawfully and unfairly. Doctrine was unable to prove that it had the necessary authorisations to collect decisions from court registries, contrary to the requirements of article R.123-5 of the Code of Judicial Organisation. Several courts (in particular the Paris, Nanterre and Toulouse courts) have confirmed that they have never transmitted the volumes identified on the platform. With regard to administrative decisions, the court found that Doctrine had re-used data from a partnership with the Conseil d'État without a written re-use agreement, in breach of the agreement entered into. In the case of commercial decisions, it had continued to disseminate them despite the termination of its agreement with GIE Infogreffe in 2018. All of this behaviour gave Doctrine an undue competitive advantage over its competitors, thereby constituting unfair competition.

The Court also penalised Doctrine for unlawful comparative advertising, broadcast in 2017 on its website and in 2019 in a television programme. In this communication, Doctrine claimed to offer access to 7 million decisions, compared with 2.9 million for LexisNexis and 2 million for Dalloz. However, as a substantial part of Doctrine's own collection had been compiled by mistake, this comparison was deemed unfair. In addition, Doctrine had failed to justify the material accuracy of the figures put forward within a short period of time, as required by article L.122-5 of the French Consumer Code.

On the other hand, the Court dismissed the charges of parasitism and misleading commercial practices, considering that the evidence provided was not sufficiently convincing, particularly with regard to the professional audience targeted. Doctrine was ordered to pay a total of €180,000 in damages to the five publishers and to publish the judgment on its website, as well as €30,000 under article 700 CPC to each publisher. The request for blanket deletion of the disputed decisions was rejected, as the Court considered that such a measure would be disproportionate to the issues of accessibility to the law.



NEWS INTELLECTUAL PROPERTY



Disney and Universal file suit against Midjourney for massive infringement of copyrighted works

[United States District Court, Central District of California, 11 June 2025, no. 25-5275](#)

On June 11, 2025, Disney and Universal filed a joint complaint in a California federal court against Midjourney, a company specialising in the generation of images using artificial intelligence. The studios accuse Midjourney of having allowed the creation of massive numbers of images derived from their iconic characters, such as those from the Star Wars, Frozen, Shrek and Marvel universes, without authorisation.

They accuse Midjourney of training its models on works protected by copyright, and of deliberately ignoring requests to prevent the reproduction of specific content. The studios present comparisons illustrating the similarity between the images generated and the originals, arguing that this content constitutes unauthorised reproductions, in direct breach of copyright.

The plaintiffs are seeking damages of up to \$150,000 per infringing work, as well as a preliminary injunction prohibiting the generation of the content in question until technical filtering measures have been put in place.

The plaintiffs denounce a deliberate commercial strategy: Midjourney, which earned 300 million dollars in 2024, is said to have ignored the warnings and refused to adopt the technological filtering measures that other AI players are already applying. At the same time, Midjourney continues to promote its new image models and a future video generation service, also accused of being trained on protected works.

This trial could become a landmark case in the regulation of generative AI. It raises head-on the question of the legality of training and generating works from copyright-protected content. For Disney and Universal, it is a question of defending not only their licences, but more broadly the creative economy and the founding principles of copyright in the United States.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

Artificial intelligence and defamation

On 29 April 2025, Robert Starbuck, an American filmmaker and political activist, filed a defamation suit against Meta Platforms, Inc. in Delaware Superior Court. He accuses the company of publishing, via its Meta AI tool, information that is factually false and seriously damaging to his reputation.

According to the complaint, as early as August 2024, Meta AI, based on the LLaMA 3.1 model, allegedly told several users that Mr Starbuck had taken part in the attack on the Capitol on 6 January 2021, that he had been charged with these offences, that he had promoted Holocaust denial and that his behaviour justified the possible loss of his parental rights. Mr Starbuck claims that he was never present in Washington D.C. on that day, and that he has never been charged with or associated with such ideologies. Despite several alerts sent to Meta, these claims persisted for several months, including via a Meta AI voice function, before his name was deleted from the system's responses.

The complainant accuses Meta of having failed in its duty to verify and correct despite repeated warnings, and stresses that the incriminating statements had significant personal, professional, social and security consequences. He is seeking compensatory and punitive damages, as well as an injunction prohibiting any republication of the statements deemed defamatory.

This case is a first in the United States, raising questions about the legal liability of publishers of generative AI for erroneous or defamatory statements produced by their systems, particularly when these tools are integrated on a large scale into social networking platforms.

This case raises unprecedented legal questions about the liability of publishers of generative AI. In particular, it raises questions about the limits of section 230 of the Communications Decency Act, which is generally invoked to protect platforms against content published by third parties, but which may not apply in this case insofar as the comments originated from a tool developed and controlled by Meta itself.

Canal + obtains VPN blocking of illegal sports content sites

Paris Court of First Instance, 15 May 2025, no. 24/14722

In a ruling handed down on 15 May 2025, the Paris Court of First Instance upheld the claims of the Canal+ Group, Société d'Édition de Canal Plus (SECP) and Canal+ Rights. The latter accused several virtual private network (VPN) providers, NordVPN, Cyberghost, Surfshark, ProtonVPN and ExpressVPN, of facilitating access from France to streaming sites illegally broadcasting Premier League (EPL), Champions League (UCL) and Top 14 matches, over which they hold exclusive or related exploitation rights.

Based on Article L. 333-10 of the French Sports Code, the applications sought the adoption of measures to prevent or halt serious and repeated infringements of the plaintiffs' audiovisual rights. The Court recognised that VPN providers, although acting as technical intermediaries, can be considered as "persons likely to contribute" to these infringements, since they enable users to circumvent territorial restrictions through geo-blocking.

The judgment orders the defendant companies to block, within three days, access to a list of several hundred sites identified as broadcasting the competitions concerned without authorisation. It also provides for dynamic blocking measures for sites not yet identified, upon notification by ARCOM. The defendants are also required to publish the operative part of the decision on the home page of their websites for a period of three months.

The Court rejected the arguments that the measures did not comply with European Union law, pointing out that the measures imposed were proportionate, targeted and compatible with European legislation, in particular the e-commerce directive and the Digital Services Act.



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