JUDGMENT

AMSTERDAM COURT OF APPEAL

Civil Law and Tax Law Division, Team 1 (Commercial)

Case number: 200.360.457/01 **Amsterdam District Court case and docket number:** C/13/774725 / KG ZA 25-687

Judgment of the multi-member civil chamber of 10 March 2026

In the case of:

META PLATFORMS IRELAND LTD. Established in Dublin, Ireland *Appellant, also respondent in the cross-appeal* Attorney: Mr. J.J. Valk, Amsterdam

versus

STICHTING BITS OF FREEDOM Established in Amsterdam *Respondent, also appellant in the cross-appeal* Attorney: Mr. Chr.A. Alberdink Thijm, Amsterdam

The parties are hereinafter referred to as **Meta Ireland** and **Bits of Freedom**.

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1. Summary of the Case

This is the appeal of a preliminary injunction ruling in which the preliminary relief judge had ordered Meta to take measures regarding choices for a recommendation system on Facebook and Instagram, subject to penalty payments. In a judgment on the interlocutory application, the court had suspended enforcement of that ruling until 31 December 2025. By now, a large portion of the measures have been implemented. Meta has also announced substantive proceedings and has withdrawn its more fundamental grounds of appeal. This judgment is primarily concerned with the urgency of the matter and the penalty payments. The court raises the maximum penalty to **€10 million** and otherwise upholds the ruling.

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2. Further Progress of the Appeal Proceedings

On 28 October 2025, a judgment was rendered in the suspension interlocutory application raised by Meta Ireland. The procedural history up to that point was set out in that judgment. The parties subsequently submitted the following procedural documents:

- Statement of defence, also containing the cross-appeal with exhibits;
- Statement of defence in the cross-appeal.

Meta Ireland's conclusion is that the court should annul the contested ruling of the preliminary relief judge of the Amsterdam District Court of 2 October 2025, and dismiss the claims of Bits of Freedom, with a — immediately enforceable — decision on litigation costs.

Bits of Freedom concludes (in the cross-appeal) to annul the contested ruling and to re-decide as discussed in its grounds of appeal, and further (in the main appeal) to uphold the contested ruling, with a — immediately enforceable — decision on litigation costs.

At the oral hearing on 26 January 2026, the parties' attorneys presented their positions on the basis of speaking notes, including Messrs. T. Cohen Jehoram and D.J.B. Hereijgers (for Meta Ireland) and Mr. B.J. van Eijk (for Bits of Freedom).

Prior to the oral hearing, Meta Ireland submitted exhibits and a notice withdrawing part of its grounds of appeal. Bits of Freedom submitted a notice expanding its claim along with additional exhibits.

Finally, judgment was requested.

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3. Assessment

3.1. In the contested ruling, Meta Ireland was ordered to, within two weeks of the ruling:

1. Make persistent the choice made by users of Facebook and/or Instagram's websites and/or apps for a recommendation system, including the choice for a chronological or otherwise non-profiling-based recommendation system — meaning that a choice set by users for a non-profiling-based recommendation system is retained even when the user navigates to other sections within the platform, and also when the user has closed and subsequently re-opened the apps and/or websites of the platforms;
2. Make the choice for non-profiling-based recommendation systems directly and easily accessible on (i) the Instagram homepage on the Android app, (ii) the Reels section of Instagram (all apps and websites), and (iii) the homepage and Reels section of Facebook (all apps and websites);

all subject to a penalty payable to Bits of Freedom of **€100,000 per day** or part thereof that Meta fails to comply fully with these orders, up to a maximum total of **€5,000,000**. The

additional or alternative claims of Bits of Freedom were dismissed.

3.2. By judgment of 28 October 2025 in the suspension interlocutory application raised by Meta Ireland, enforcement of the contested ruling was suspended through 31 December 2025.

3.3. The parties' grounds of appeal are directed against the decision referred to in section 3.1 and the reasoning underlying it. Meta Ireland has withdrawn grounds 4 through 7, with the caveat that it maintains the argument raised under ground 4 as a defence in the cross-appeal. The remaining grounds are thus grounds 1 through 3 and ground 8 of Meta Ireland, the cross-appeal grounds of Bits of Freedom, and Bits of Freedom's expanded claim seeking full litigation costs from Meta Ireland. Meta Ireland's objection to that expansion of the claim was rejected at the hearing.

3.4. The request by Bits of Freedom to summon Meta Inc. (based in the US) and Meta Netherlands pursuant to Article 118 of the Dutch Code of Civil Procedure is not granted. The procedurally indivisible legal relationship on which Bits of Freedom bases this request arises when a dispute involves a legal relationship in which it is legally necessary that the ruling be identical for all parties involved in that relationship. The court does not find it necessary that the ruling on Bits of Freedom's claims against Meta Ireland, Meta Inc., and Facebook Netherlands be identical. The nature and content of the legal relationship does not require this. The fact that these three entities belong to the same corporate group is insufficient. The fact that Meta Ireland requires the assistance of Meta Inc. to effectuate the required changes is likewise insufficient in this context.

3.5. This also determines the fate of cross-appeal ground I. The court cannot (belatedly) grant the claims against Meta Inc. and Facebook Netherlands that were dismissed by the preliminary relief judge, since these entities are not parties to the appeal.

On the Main Appeal

3.6. As a result of withdrawing part of its grounds of appeal, Meta Ireland no longer contests in this appeal the preliminary relief judge's finding that Facebook and Instagram failed to comply with the DSA provisions invoked by Bits of Freedom. Meta Ireland has explained that it still disagrees with this finding but will pursue the matter in substantive proceedings.

3.7. With grounds 1 and 2, Meta Ireland contests that Bits of Freedom has an urgent interest in its claims.

The court, like the preliminary relief judge, finds that the claims of Bits of Freedom are by their nature urgent, both at first instance and on appeal. After all, they are aimed at stopping

(alleged) ongoing unlawful conduct through violation of the DSA, and at protecting the freedom of information gathering of Facebook and Instagram users. This fundamental right is part of the freedom of expression and is also protected by the DSA provisions invoked by Bits of Freedom.

At first instance, when the case was brought on appeal, and when the judgment on the suspension incident was rendered, there was additionally an urgent consideration in that the societal risks the DSA seeks to protect against were particularly acute at the time, given that this concerned the period surrounding the Dutch parliamentary elections held on 29 October 2025. The fact that this period has now passed does not diminish the urgent interest arising from the nature of the claims.

The suspension of enforcement of the contested ruling until 31 December 2025 furthermore created a new situation. Meta Ireland states that the ordered changes were implemented on 6 January 2026. It further explained that for approximately 4% of Facebook and/or Instagram users, the changes will not yet be visible until mid-March 2026, due to ongoing identification of glitches, bugs, or other technical issues resulting from the implemented changes. It is undisputed that this is a small percentage but, in absolute terms, a significant number of users. Meta Ireland's interest in being granted additional time to bring its processes into conformity with DSA requirements carries insufficient weight in the given circumstances against Bits of Freedom's interest in an immediate provisional measure.

3.8. It follows from this that ground 3, in which Meta argues that Bits of Freedom no longer had an urgent interest in its claims after the parliamentary elections of 9 October 2025, also fails.

3.9. The decision in the interlocutory proceedings to suspend enforcement of the contested ruling implicitly acknowledged that the two-week deadline set in that ruling was not realistic. The balancing of interests regarding the measure to be taken on this point comes out the same as in the interlocutory proceedings, which the court considers repeated and incorporated herein. Meta therefore no longer has an interest in a further ruling on ground 8, which challenges the preliminary relief judge's finding that the changes had to be implemented within two weeks of the ruling.

On the Cross-Appeal (continued)

3.10. Meta Ireland argues that Bits of Freedom should be declared inadmissible in its claims because it did not comply with the consultation requirement (Article 3:305a(3)(c) of the Dutch Civil Code). This argument does not hold. It is established that the parties did consult. The specific points Meta Ireland raises in this context are elaborations of the subjects that are undisputedly covered in the consultations held. It is further rightly undisputed that the other admissibility requirements applicable to Bits of Freedom's

collective claims in preliminary relief proceedings were also met.

3.11. With cross-appeal ground II, Bits of Freedom argues that the choice for a non-profiling-based feed on the Instagram iOS app and the non-profiling-based comments section via the iOS app, Android, and website of Instagram are not directly and easily accessible. According to Bits of Freedom, it is insufficiently clear to Instagram users that they can navigate via the "v" symbol — next to the "For You" label on the Instagram homepage (the feed) in the iOS app and in the comments section of Instagram (iOS app, Android, and website) — to the non-profiling-based versions of the feed and the comments section.

The court does not follow this argument. Meta Ireland has, without contradiction, explained that the "v" symbol represents a downward arrow which, when clicked, opens the way to other option(s). It is sufficiently plausible that the "v" symbol is a commonly used symbol for a dropdown menu. This is not changed by the fact that dropdown menus can or tend to be indicated in ways other than this "v" symbol, or that it is (technically) possible for Meta Ireland to do so as well. It is therefore provisionally sufficiently plausible that Instagram users can clearly understand how to switch to the non-profiling-based recommendation system.

3.12. The court disregards the argument raised by Bits of Freedom under cross-appeal ground II regarding the removal of certain essential functionalities as a result of the interface changes when a user opts for a non-profiling-based feed. Bits of Freedom has not raised a recognisable ground of appeal against the preliminary relief judge's finding that it had not connected any claim to these concerns, nor has it supplemented its claims on this point on appeal.

3.13. Cross-appeal ground III of Bits of Freedom concerns the penalty payments attached to the order against Meta Ireland. The level of a penalty payment — which serves as an incentive for compliance — must be determined according to the nature and circumstances of the case, including in particular the financial situation and conduct of the debtor. The circumstances may also include the actual consequences for the debtor arising from the actual forfeiture of penalty payments. This applies fully on appeal, where — within the scope opened up by the grounds of appeal — a fresh assessment takes place. No ground of appeal has been raised against the amount per day of €100,000. Bits of Freedom disagrees with the preliminary relief judge's cap on the penalty at €5,000,000. Given the circumstances, including Meta Ireland's financial situation and in particular the period within which the maximum would be reached, the cap set by the preliminary relief judge constitutes an insufficient incentive for Meta Ireland to comply with the orders imposed. The court sees reason to raise the maximum penalty to **€10,000,000**. The court finds insufficient reason in the current situation to raise the maximum to €100 million as Bits of Freedom proposes. Cross-appeal ground III therefore partially succeeds.

4. Decision

The court:

- **Annuls** the contested ruling insofar as the penalty payments (under section 5.3) were capped at €5,000,000;

And, deciding anew in this respect:

- **Sets** the maximum of the forfeitable penalty payments referred to under section 5.3 at **€10,000,000**;
- **Upholds** the contested ruling in all other respects;
- **Orders** Meta Ireland to pay the litigation costs in the interlocutory proceedings and in the main appeal, assessed to date on the side of Bits of Freedom at **€827** in disbursements and **€3,870** in attorney's fees;
- **Determines** that each party shall bear its own costs in the cross-appeal;
- **Declares** these orders immediately enforceable;
- **Dismisses** any further or additional claims.

This judgment was rendered by Justices L. Alwin, J.W.M. Tromp, and P.F.G.T. Hofmeijer-Rutten, and pronounced in open court on 10 March 2026 in the presence of the court clerk.