

# ECLI:NL:GHAMS:2025:2886

Authority	Court of Appeal of Amsterdam
Date	October 28, 2025
Date of publication	October 28, 2025
Case	200. 360.457/01
Areas of law	Civil law
Special features	Appeal
Summary	Incident 351 Rv. Temporary suspension of enforcement of preliminary relief judge's orders to Meta to make adjustments to Facebook and Instagram.
References	Rechtspraak.nl

## Judgment

### COURT OF APPEAL AMSTERDAM

Civil and Tax Law Division, Team I  
(Commercial)

case number: 200.360.457/01

Case and roll number Amsterdam District Court: C/13/774725 / KG ZA 25-687 MK/JD

### **judgment of the civil chamber of 28 October 2025**

in the case of

the legal entity under foreign law

**META PLATFORMS IRELAND LTD.,**

established in Dublin, Ireland,

appellant, also claimant in the incident pursuant to Article 351 of

the Dutch Code of Civil Procedure, represented by J.J. Valk,

attorney at law in Amsterdam,

against

**STICHTING BITS OF FREEDOM,**

established in Amsterdam,

respondent, also defendant in the interlocutory proceedings pursuant to

Article 351 of the Dutch Code of Civil Procedure, represented by N.S.G.

de Bruijn, LLM, Amsterdam.

The parties will hereinafter be referred to as Meta Ireland and Bits of Freedom.

## **1 The appeal proceedings**

Meta Ireland has lodged an appeal against a judgment of the preliminary relief judge in Amsterdam dated October 2, 2025, under the above case and roll number, rendered between Bits of Freedom as plaintiff and Meta Ireland, among others, as defendant.

In the interlocutory proceedings, Meta Ireland requests, on the basis of Article 351 of the Dutch Code of Civil Procedure, that the court suspend the enforceability of the orders given in the contested judgment, as the court understands it, until January 31, 2026.

Bits of Freedom concludes that Meta Ireland's incidental claim should be rejected.

During the oral hearing on October 27, 2025, the parties had their lawyers and Messrs. T. Cohen Jehoram and D.J.B. Hereijgers (Meta Ireland) and Chr.A. Alberdink Thijm (Bits of Freedom) explain their positions on the basis of written notes.

Meta Ireland and Bits of Freedom submitted exhibits prior to the oral hearing.

Finally, a judgment was requested in the interlocutory proceedings.

## **2 Assessment**

2.1. In the contested judgment, Meta Ireland was ordered to do the following within two weeks of the judgment:

- the choice indicated by users of Facebook and/or Instagram websites and/or apps for a recommendation system, including the choice for a chronological or otherwise non--profiled recommendation system, meaning that a choice made by users for a non-profiled recommendation system is retained even if the user navigates to other sections within the platform, and also if the user has closed the apps and/or website of the platforms and then reopens them;
- make the choice for non-profiled recommendation systems directly and easily accessible make (i) the Instagram home page on the Android app, (ii) the Instagram reels section (all apps and websites), and (iii) the Facebook home page and reels section (all apps and websites);

all this on pain of a penalty payable to BoF of \$100,000.00 per day or part thereof that it fails to comply with these orders, up to a maximum total of

5,000,000.00.

2.2. Meta Ireland's incidental claim seeks to suspend the enforcement of the contested judgment until January 31, 2026.

Bits of Freedom opposes the granting of the incidental claim.

2.3. The court considers the incidental claim to be partially admissible and considers the following in this regard.

2.4. Contrary to what Bits of Freedom argues, the preliminary relief judge did not substantiate the decision on provisional enforceability. The preliminary relief judge assessed the case against the assessment framework for preliminary relief, including the urgency and a weighing of interests to be made in that context. There is no separate justification for the decision on the provisional enforceability of the judgment. This means that, in the context of this incident, a weighing of interests must take place, without the restriction that only facts and circumstances that the preliminary relief judge was unable to take into account can play a role. It is up to Meta to substantiate that its interest in the requested temporary suspension of the provisional enforceability outweighs the interest of Bits of Freedom in maintaining it ( cf. Supreme Court 20 December 2019, ECLI:NL:HR:2019:2026). The basic principle here is that a conviction that has been handed down, pending an appeal, must be enforceable and can be enforced. A deviation from this principle may be justified by circumstances that mean that the interest of the convicted person in maintaining the existing situation until a decision has been made on the legal remedy he has instituted outweighs the interest of the person who obtained the conviction in the judgment to be enforced in the enforceability of that judgment. In applying this criterion, the decisions in the judgment to be enforced and the findings and judgments on which they are based must be taken as a basis, and the likelihood of success of the legal remedy used against that decision is not taken into account, on the understanding that the court may take into account in its judgment whether the decision(s) to be enforced is (are) based on a manifest error.

2.5. Meta Ireland argues that the contested judgment is based on a manifest error. The requirement of manifest error implies that it is immediately apparent, without further factual or legal investigation, that a factual or legal assessment in a particular legal consideration is incorrect. It has not been demonstrated that this is the case in this matter. The manifest error alleged by Meta Ireland concerns substantive objections to the contested judgment that must be assessed in the main proceedings.

2.6. It therefore comes down to weighing up the interests involved.

2.6.1. Meta Ireland argues that it has an interest in a temporary suspension of enforceability because the ordered adjustments require complex interventions in the existing systems of Facebook and Instagram. These adjustments affect the core of these systems, which must comply with applicable privacy and security rules, undergo testing procedures, and are subject to third-party approval procedures (Apple and Google). Meta Ireland has set to work with all its might. It is now in the construction phase and expects to have completed the necessary adjustments to the various components by January 31, 2026, at the latest.

2.6.2. The importance of Bits of Freedom lies in protecting the fundamental right to freedom of information gathering. This fundamental right is part of freedom of expression and is partly protected by the DSA provisions invoked by Bits of Freedom, which have applied to very large online platforms such as Facebook and Instagram since 2023. The social risks that the DSA aims to combat are particularly evident in periods such as now, around the Dutch parliamentary elections taking place on October 29, 2025.

2.7. The compelling interest of Bits of Freedom in the enforcement of the contested judgment requires that the ordered adjustments be implemented as soon as possible. Even if Bits of Freedom is correct in its position that a temporary solution would be (or would have been) quicker to implement, it is

It has become sufficiently plausible that the time savings involved will be limited, while it is plausible that the potential risks associated with this faster temporary solution are much greater. Furthermore, the orders of the preliminary relief judge to be taken as a starting point by the court of appeal serve to ensure that Meta implements these changes structurally as quickly as possible. After all, the preliminary relief judge considered that the DSA requires providers of very large online platforms to ensure that users can freely and autonomously choose whether or not to use a profiled recommendation system, even outside of elections. The orders also apply after the elections. See paragraphs 4.40-4.41 of the contested judgment. Partly against this background, in the current state of affairs, Meta Ireland's interest in more time to implement the ordered adjustments outweighs the interest served by the full enforcement of the contested judgment. The court suspends the enforcement of the contested judgment until December 31, 2025. In doing so, the court takes into account the three-month period mentioned by Meta in which all adjustments can be implemented on all platforms and all devices. The court takes the date of the contested judgment (October 2, 2025) as the starting point of that period.

2.8. To prevent enforcement problems, the court also considers the following. The penalty imposed by the preliminary relief judge is linked to "every day or part thereof that it fails to comply, in whole or in part, with the orders under 5.1 and/or 5.2." If the suspension to be ordered is exceeded, this order to pay a penalty will apply in full from January 1, 2026.

in the main action

2.9. The case is referred to the roll of November 11, 2025, for a statement of defense. If an incidental appeal is lodged, the statement of defense in the incidental appeal must be included in the roll of November 25, 2025. The court orders an oral hearing on January 26, 2026, at 2 p.m.

2.10. Any further decision is reserved.

### **3 Decision**

The court:

in the incidental appeal:

suspends the enforcement of the contested judgment until December 31, 2025;

reserves its decision on the costs of the proceedings until the final judgment in the main action;

in the main proceedings:

refers the case to the roll of November 11, 2025, for Bits of Freedom's statement of defense;

determines that, if an incidental appeal is lodged, a statement of defense must be submitted on the roll of November 25, 2025;

orders an oral hearing on January 26, 2026, at 2:00 p.m.;

reserves any further decision.

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 October 28, 2025, in the presence of the clerk.