



Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber, Extended Composition)

10 September 2025 *

(Digital services – Regulation (EU) 2022/2065 – Commission decision determining the amount of the supervisory fee for 2023 – Article 43(3) to (5) of Regulation 2022/2065 – Article 4(2) of Delegated Regulation (EU) 2023/1127 – Method for calculating the number of average monthly active recipients – Temporal adjustment of the effects of an annulment)

In Case T-55/24,

Meta Platforms Ireland Ltd, established in Dublin (Ireland), represented by A. Komninos, G. Forwood, I. Sarvas and H. Gafsen, lawyers,

applicant,

v

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

defendant,

THE GENERAL COURT (First Chamber, Extended Composition),

composed of R. Mastroianni (Rapporteur), President, M. Brkan, I. Gâlea, T. Tóth and W. Valasidis, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure,

further to the hearing on 11 June 2025,

gives the following

* Language of the case: English.

Judgment

- 1 By its action under Article 263 TFEU, the applicant, Meta Platforms Ireland Ltd, seeks the annulment of Commission Implementing Decision C(2023) 8176 final of 27 November 2023 determining the supervisory fee applicable to Facebook and Instagram pursuant to Article 43(3) of Regulation (EU) 2022/2065 of the European Parliament and of the Council ('the contested decision').

Background to the dispute

- 2 The applicant is a company incorporated under Irish law, a subsidiary of the US undertaking Meta Platforms Inc., identified as the provider of Facebook and Instagram services in the European Union.
- 3 Pursuant to Article 43(1) to (3) of 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; 'the DSA'), the European Commission is to charge providers of very large online platforms ('VLOPs') and very large online search engines ('VLOSEs'), designated as such in accordance with Article 33 of that regulation, an annual supervisory fee for each of their services so designated, fixed by means of an implementing act, in order to cover the estimated costs incurred by the Commission in relation to the supervisory tasks conferred on it by the DSA. In accordance with Article 43(4) of that regulation, the Commission determines that fee by applying the methodology that it has laid down in a delegated act, respecting the principles set out in Article 43(5) of the regulation.
- 4 To that end, on 2 March 2023, the Commission adopted Delegated Regulation (EU) 2023/1127 supplementing Regulation 2022/2065 with the detailed methodologies and procedures regarding the supervisory fees charged by the Commission on providers of very large online platforms and very large online search engines (OJ 2023 L 149, p. 16).
- 5 On 25 April 2023, the Commission adopted Decision C(2023) 2756 final and Decision C(2023) 2734 final designating Facebook and Instagram respectively as VLOPs in accordance with Article 33(4) of the DSA.
- 6 On 28 April 2023, those decisions were notified to the applicant as the main establishment in the European Union of the provider of Facebook and Instagram. A copy of that decision was sent to Meta Platforms, the company controlling the group of legal entities to which the applicant belongs.
- 7 On 27 September 2023, the Commission communicated to the applicant the provisional determination of the amount of the annual supervisory fee in respect of Facebook and Instagram, in accordance with Article 6(3) of Delegated Regulation 2023/1127, a copy of which was also sent to Meta Platforms. On 13 October 2023, the applicant submitted its observations to the Commission.
- 8 On 27 November 2023, the Commission adopted the contested decision determining the amount of the annual supervisory fee applicable to Facebook and Instagram for 2023. That amount was determined, in accordance with the second subparagraph of Article 43(3) of the DSA, by following the methodology and procedures set out in Delegated Regulation 2023/1127, in

particular in Article 5 thereof. For the purposes of determining that amount, the Commission relied, in particular, on two third-party operators, SensorTower and Similarweb, and followed a methodology common to all VLOPs and VLOSEs, which it annexed to the contested decision, in order to calculate the number of average monthly active recipients in the European Union ('the AMAR') of the designated services and to divide between them the overall amount of the annual supervisory fee, in accordance with the principles set out in Article 43 of the DSA. A copy of that decision was also sent to Meta Platforms.

Forms of order sought

- 9 The applicant claims, in essence, that the Court should:
 - annul the contested decision;
 - order the Commission to pay the costs.
- 10 The Commission contends that the Court should:
 - dismiss the action;
 - in the alternative, in the event that Article 5(2) or (4) of Delegated Regulation 2023/1127 or the contested decision is annulled, maintain its effects until such time as the Commission has taken the measures necessary to remedy the defects found;
 - order the applicant to pay the costs.

Law

- 11 In support of its action, the applicant relies on six pleas in law, the first two of which raise an objection of the illegality of, respectively, the second sentence of Article 5(2) of Delegated Regulation 2023/1127, in that it infringes Article 290 TFEU and Article 43(4) and (5) of the DSA, and Article 5(4) of Delegated Regulation 2023/1127, in that it infringes Article 290(1) TFEU and Article 43(5)(b) of the DSA and the principles of proportionality and equal treatment. The third plea alleges infringement of the applicant's right to be heard pursuant to Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, as regards the determination of the 'residual amounts' and the methodology for calculating the AMAR. The fourth plea alleges a failure to state reasons as regards the methodology for calculating the AMAR and the 'residual amounts'. The fifth plea alleges, in essence, that the methodology for calculating the AMAR is erroneous and unlawful, in that the Commission exercised its delegated power by means of individual implementing acts. Lastly, the sixth plea alleges that the determination of the applicant's supervisory fee was incorrect in that it infringes Article 43(5)(b) of the DSA.
- 12 The Court will first examine the fifth plea in law.

The fifth plea, alleging, in essence, that the methodology for calculating the AMAR is erroneous and unlawful, in that the Commission exercised its delegated power by means of individual implementing acts

- 13 By this plea, the applicant argues that the contested decision is erroneous and infringes Article 290(1) and Article 291(2) TFEU, Article 33(3), Article 43(4) and Article 87 of the DSA as well as Article 4(2) of Delegated Regulation 2023/1127 in that it goes beyond its purpose as an implementing act determining the amount of the fee by establishing a new common methodology for calculating the AMAR and impermissibly supplements the DSA.
- 14 In the first place, the applicant criticises the Commission for having established the methodology for calculating the AMAR in the annexes to each implementing act, rather than by means of a delegated act, as provided for by Article 33(3) of the DSA, in the absence of which the Commission could have used the data reported by the providers themselves pursuant to Article 24(2) of the DSA, instead of adopting a common methodology. The applicant submits that, in view of the importance of the methodology for calculating the AMAR in determining the supervisory fee, if the Commission wanted to establish a ‘detailed’ methodology without having recourse to a delegated act under Article 33(3) of the DSA, it should have included it in Delegated Regulation 2023/1127 and not annexed it to the implementing acts addressed to every provider, such as the contested decision.
- 15 In the second place, the applicant argues that that methodology is contrary to the principle of proportionality. More specifically, it submits that the Commission has adopted three definitions of AMAR and applied it differently, depending on whether the AMAR is used for transparency purposes (in accordance with Article 24 of the DSA), for designating services as a VLOP or a VLOSE (in accordance with Article 33 of the DSA) or for determining the amount of the supervisory fee for a given provider (in accordance with Article 43 of the DSA). Thus, the common methodology which was annexed to the contested decision led to AMAR that were significantly different from those reported by the applicant. However, according to the applicant, even assuming that it was necessary to adopt a common approach in order to avoid discrepancies in the calculation of the AMAR, the Commission could have introduced a common methodology by means of a separate delegated act pursuant to Article 33(3) of the DSA, which would have allowed providers to calculate their own AMAR, or, alternatively, in Delegated Regulation 2023/1127, in accordance with Article 43(4) of the DSA. Hence, the applicant concludes that the Commission cannot deprive those provisions of their effectiveness by adopting implementing acts that fully replace the role that the legislature intended for delegated acts.
- 16 The Commission submits, first, that, in so far as it lays down the method for calculating the coefficient (U) for the purpose of determining the fee for each designated service, Article 4(2) of Delegated Regulation 2023/1127 supplements Article 43(5)(b) of the DSA given that it requires only that the fees are proportionate to the AMAR of the designated services. Second, the Commission considers that Article 43(4) of the DSA does not require it to establish a common methodology for calculating the AMAR. Accordingly, the common methodology is nothing more than the choice made by the Commission, out of three possible choices, to rely on ‘any other information available to [it]’, as permitted by Article 4(2) of Delegated Regulation 2023/1127. Moreover, the Commission states that Article 33(3) of the DSA makes no reference to Article 43 thereof, which likewise does not refer to that provision, with the result that it cannot be asserted that the Commission circumvented the procedural formalities for adopting a delegated act, laid down in Article 87 of the DSA, by annexing the common methodology to the implementing acts.

- 17 As regards the alleged infringement of the principle of proportionality, the Commission contends that it opted for a common methodology for calculating the AMAR specifically to ensure transparency and equal treatment between providers in the setting of their fees. According to it, while that led to an approximation in the calculation of the AMAR, since it was not possible, without access to the infrastructure or internal data of each provider, to undertake a detailed counting, the Commission considered that it was preferable to compare, by means of that methodology, the AMAR of all designated services of the same or similar type, for the purpose of setting proportionate fees, rather than seek a precise absolute number. In that regard, the Commission recalls that it used a common methodology on the basis of Article 4(2) of Delegated Regulation 2023/1127, which lists the same sources of information for the calculation of the AMAR as those listed in the first paragraph of Article 33(4) of the DSA, with the aim of ensuring legal certainty. Moreover, according to it, it was entirely appropriate to rely on different data sources to designate services as VLOPs, on the one hand, and to determine the fees to be charged to the providers of those services, on the other hand.
- 18 Lastly, the Commission submits that, even if there were imperfections in the methodology used by independent third-party sources, any resulting inconsistencies would apply horizontally to all designated services, so that different services are equally affected, allowing the Commission to ensure a fair allocation of the supervisory fees.
- 19 It should be recalled that, pursuant to Article 33(3) of the DSA, as regards the designation of online platforms and online search engines as VLOPs or VLOSEs, ‘the Commission may adopt delegated acts in accordance with Article 87 [of the DSA], after consulting the [European Board for Digital Services], to supplement the provisions of [the DSA] by laying down the methodology for calculating the [AMAR] for the purposes of paragraph 1 of this Article and Article 24(2) [of the DSA], ensuring that the methodology takes account of market and technological developments’.
- 20 In addition, according to the last sentence of the first paragraph of Article 33(4) of the DSA, when taking a decision designating a VLOP or a VLOSE, ‘the Commission shall take its decision on the basis of data reported by the provider of the online platform or of the online search engine pursuant to Article 24(2) [of the DSA], or information requested pursuant to Article 24(3) [of the DSA] or any other information available to [it]’.
- 21 Furthermore, as regards determining the supervisory fee, Article 43(3) to (5) of the DSA provides as follows:

‘3. The providers of [VLOPs] and of [VLOSEs] shall be charged annually a supervisory fee for each service for which they have been designated pursuant to Article 33 [of the DSA].

The Commission shall adopt implementing acts establishing the amount of the annual supervisory fee in respect of each provider of [VLOPs] or of [VLOSEs]. When adopting those implementing acts, the Commission shall apply the methodology laid down in the delegated act referred to in paragraph 4 of this Article and shall respect the principles set out in paragraph 5 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88 [of the DSA].

4. The Commission shall adopt delegated acts, in accordance with Article 87 [of the DSA], laying down the detailed methodology and procedures for:

...

(b) the determination of the individual annual supervisory fees referred to in paragraph 5, points (b) and (c);

...

When adopting those delegated acts, the Commission shall respect the principles set out in paragraph 5 of this Article.

5. The implementing act referred to in paragraph 3 and the delegated act referred to in paragraph 4 shall respect the following principles:

...

(b) the annual supervisory fee is proportionate to the [AMAR] ... of each [VLOP] or each [VLOSE] designated pursuant to Article 33 [of the DSA];

...'

22 In accordance with Article 87(4) of the DSA, before adopting a delegated act, the Commission is to consult experts designated by each Member State. In addition, under Article 87(6) of that regulation, the European Parliament and the Council of the European Union may express an objection before the entry into force of such an act.

23 Lastly, regarding the determination of the basic amount per service, Article 4(1) and (2) of Delegated Regulation 2023/1127 provides as follows:

'1. In respect of each designated service subject to the supervisory fees pursuant to Article 3, the basic amount for the year n shall be calculated as the share of the overall annual costs estimated for the year $n+1$ in accordance with Article 2, proportionate to the [AMAR] of the designated service in line with the coefficient (U) referred to in paragraph 2 of this Article, and taking into account ... coefficient (T) ..., in accordance with the following formula:

$$\text{Basic_amount_in_year_n_for_designated_service}_x = \frac{\text{Overall_estimation_costs_in_year_n+1}}{\sum_{\text{for_all_designated_services_n}} (T_n \times U_n)} \times (T_x \times U_x)$$

2. The coefficient (U) for the calculation of the basic amount for each designated service shall have the value set out in Annex II corresponding to the [AMAR] in terms of millions of units, rounded down to the nearest hundred thousand.

The [AMAR] of each designated service determining the applicable coefficient pursuant to the first subparagraph of this paragraph shall be that resulting from data reported by the provider of the online platform or of the online search engine pursuant to Article 24(2) of [the DSA], or information requested pursuant to Article 24(3) of that Regulation or any other information available to the Commission, as available on 31 August of year n .

...'

- 24 In the present case, it is stated in recital 31 of the contested decision that the AMAR of each designated service, determining the applicable coefficient (U) for determining the supervisory fee, is to be that resulting from data reported by the service provider pursuant to Article 24(2) of the DSA, information requested pursuant to Article 24(3) of that regulation, or any other information available to the Commission.
- 25 Next, in recital 32 of the contested decision, it is indicated that, in view of the different methodologies, the different availability of public information on those methodologies, the different degrees of precision, and the different data sources used by providers of designated services to calculate the AMAR of their services, as well as the confidentiality claimed by certain providers, it is appropriate to rely on a common methodology and on common data sources to apply the coefficient (U) consistently across different designated services in accordance with Article 4(2) of Delegated Regulation 2023/1127. Based on the common methodology and the common data sources set out in the annex to the contested decision, the Commission therefore calculated the AMAR of Facebook and of Instagram and the corresponding coefficient (U) necessary for the determination of the supervisory fee charged to the applicant (see recital 33 of the contested decision).
- 26 Furthermore, in recital 37 of the contested decision, the Commission observes that there were difficulties, for various reasons, in obtaining information on the AMAR of VLOPs and VLOSEs as well as regarding the methodologies on the basis of which providers calculated their AMAR. In those circumstances, the Commission states that it was not possible for it, within the timelines laid down in Article 6(3) and (4) of Delegated Regulation 2023/1127, to perform a reliable comparison of the declared AMAR across the different designated services for the determination of the supervisory fee, as required by Article 43(5)(b) of the DSA. In addition, it justified reliance on third-party data sources by the different purpose and nature of the procedure relating to the supervisory fees compared with that for the designation of VLOPs and VLOSEs (see recital 37 of the contested decision).
- 27 Lastly, in response to the argument made by the applicant in the context of the procedure leading to the adoption of the contested decision criticising it for not having laid down the common methodology used to calculate the AMAR in a delegated act, the Commission stated, *inter alia*, in recital 40 of the contested decision, that Article 43(5) of the DSA did not impose any obligation on it to that effect for the purpose of determining the supervisory fee, nor, in the absence of a delegated act, for it to base that determination on data declared by the service providers pursuant to Article 24(2) of the DSA.
- 28 In that regard, the Commission also stated, in recital 41 of the contested decision, that the exercise of a power granted pursuant to Article 290 TFEU was generally discretionary and that it was for the Commission itself to decide whether it would exercise its power to adopt delegated acts, except where a provision of a basic legislative act imposes a clear, precise and unconditional obligation to adopt a specific delegated act by a specific date, which is not the case for the power laid down in Article 33(3) of the DSA. It adds that that provision merely laid down a power for it to adopt delegated acts to supplement the provisions of the DSA by laying down the methodology for calculating the AMAR. In concluding, the Commission recalled that, in any event, the adoption of a delegated act pursuant to Article 33(3) of the DSA would have required prior consultation with the European Board for Digital Services, which would not have been established until 17 February 2024.

- 29 The Court will examine whether the DSA permits the use of a common methodology for calculating the AMAR before assessing whether, in the present case, the Commission infringed Article 43 of that regulation by adopting such a methodology in the context of an implementing act.
- 30 In the first place, it must be observed that no provision of the DSA or of Delegated Regulation 2023/1127 precludes the Commission from following a given methodology for the calculation of the AMAR. In addition, it should be borne in mind, as the Commission observed, that the relevant information for the needs of the application of Article 43 of the DSA is not the AMAR of each designated service in absolute terms, but its value relative to other designated services.
- 31 In the present case, the Commission could validly have doubts as to the consistency of all the methods of calculating the AMAR used by the various providers, all the more so since the data of some of them was not available to it.
- 32 It follows that it had good reason to use a common methodology also out of concern for transparency and the equal treatment of those providers, taking account of the fact that, pursuant to Article 43 of the DSA, the allocation of the supervisory fees must be proportionate to the AMAR of each designated service.
- 33 Furthermore, since it follows from the wording of the second paragraph of Article 4(2) of Delegated Regulation 2023/1127 (see paragraph 22 above) that that provision does not impose any hierarchy between the three sources of information indicated, which are clearly presented as being alternatives, the Commission was not required, in the present case, to give precedence to one or to disregard another of them. Therefore, the Commission was fully entitled to decide to rely on ‘any other information available to [it]’ within the meaning of the abovementioned provision.
- 34 In the second place, it follows from the general scheme and objectives of the DSA that the concept of the ‘AMAR’ must be understood in a uniform and consistent manner, irrespective of the context and purpose of its implementation, which is moreover confirmed by recital 77 of that regulation. If the intention of the legislature had been to lay down separate legal regimes depending on whether the purpose of the use of the AMAR was the designation of a service as a VLOP or a VLOSE or the determination of the supervisory fee, it would have expressly provided for that in clear and precise terms.
- 35 Thus, although it is certainly lawful for the Commission to adopt a common methodology for the calculation of the AMAR, it cannot, however, circumvent the scrutiny of the procedure for the adoption of delegated acts, as laid down, inter alia, in Article 87(4) and (6) of the DSA, by limiting itself to annexing that common methodology to each implementing act.
- 36 In accordance with Article 43(4) of the DSA, the Commission is required to adopt delegated acts laying down the detailed methodology and procedures to be used for the determination of the individual annual supervisory fees for each provider and, as stated in Article 43(5)(b) of that regulation, the fees must be proportionate to the AMAR of each VLOP or VLOSE.
- 37 In addition, Article 4 of Delegated Regulation 2023/1127 specifies the approach to determining the basic amount for each service by means of a formula containing, notably, the coefficient (U), the value of which corresponds to the AMAR of each service concerned, without, however, including within it the method for calculating the AMAR itself.

- 38 Since the calculation of the AMAR is necessary for the determination of the supervisory fee of each service pursuant to Article 43(5)(b) of the DSA, the Commission calculated it by relying on a ‘common methodology’ which it annexed to the contested decision and to the implementing acts addressed to the other providers of designated services (see recital 32 of the contested decision).
- 39 While it is true, as the Commission emphasises, that contrary to Article 33(3) of the DSA, Article 43 of that regulation does not expressly refer to the adoption of a delegated act in order to establish the methodology for calculating the AMAR, it remains the case that that article imposes on the Commission an obligation to ensure that the annual supervisory fees are proportionate to the AMAR of each designated service while laying down the method and procedure to be used for their determination in the context of a delegated act and not an implementing act.
- 40 To put it another way, it follows from a contextual and schematic interpretation of the relevant provisions of the DSA that, while Article 43 of the DSA does not expressly refer to the methodology mentioned in Article 33 of that regulation, that article creates an explicit link between the method of determining the annual supervisory fees, which can only be established by the adoption of a delegated act, and the AMAR of the designated services in the light of which those fees must be determined.
- 41 Consequently, the methodology for calculating the AMAR is intrinsic to the determination of the supervisory fee and must be regarded as constituting an essential and indispensable element of it.
- 42 In the third place, as regards the Commission’s argument alleging that the second paragraph of Article 4(2) of Delegated Regulation 2023/1127 provides sufficient detail regarding the calculation of the AMAR, it is true that, as the applicant observes, that provision does not contain more detail regarding that calculation than that set out in the DSA itself. Even though the second paragraph of Article 4(2) of Delegated Regulation 2023/1127 and the last sentence of the first paragraph of Article 33(4) of the DSA have different purposes, namely the calculation of the AMAR for the determination of fees and for the designation of VLOPs and VLOSEs respectively, it must be noted that the sources of information indicated in those two provisions for obtaining the AMAR are identical.
- 43 Hence, since, as recalled in paragraph 41 above, the calculation of the AMAR is an essential and indispensable element of the determination of the fee, the Commission’s obligation, provided for by Article 43(4) of the DSA, to establish in a delegated act the ‘detailed’ methodology and procedures for the determination of the fees entails, implicitly but necessarily, the obligation to establish in such an act, at the very least, sufficiently detailed elements of the method for calculating the AMAR.
- 44 In any event, Article 43(4) of the DSA requires the Commission, in essence, to elaborate and make specific the DSA by setting out in a delegated act the details which have not been defined by the legislature (see, to that effect and by analogy, judgment of 17 March 2016, *Parliament v Commission*, C-286/14, EU:C:2016:183, paragraph 50). To the extent that, in Delegated Regulation 2023/1127, the Commission restricts itself to indicating, generally, three sources of information, namely the data reported by the provider under Article 24(2) of the DSA, the information requested pursuant to Article 24(3) of the DSA or any other information available to it, the Commission cannot be considered to have complied with Article 43(4) of the DSA.

- 45 Furthermore, by merely stating, at the hearing, that including an excessively detailed methodology for calculating the AMAR in a delegated act would not be appropriate and that such a solution would be ‘counter-productive’ as it would entail the risk of having to update that methodology from one year to the next, in particular in the light of new estimating solutions, the Commission has failed to demonstrate to the requisite legal standard how the common methodology annexed to the contested decision is excessively detailed having regard to the clear and precise wording of Article 43(4) of the DSA.
- 46 Moreover, that argument also contradicts recital 77 of the DSA, according to which ‘the determination of the [AMAR] can be impacted by market and technical developments and therefore the Commission should be empowered to supplement the provisions of this Regulation by adopting delegated acts laying down the methodology to determine the active recipients of an online platform or of an online search engine’.
- 47 Next, the argument advanced by the Commission at the hearing, according to which the decision not to include detailed information in Delegated Regulation 2023/1127 responds to a concern related to the protection of business secrets and confidential third-party company data used for calculating the AMAR, cannot succeed. First, the Commission has not shown how the confidentiality of certain data would be better protected in an implementing act such as the contested decision than in a delegated act. Second, it must be observed, in any event, that the confidential information to which the Commission refers does not appear either in Delegated Regulation 2023/1127 or in the common methodology annexed to the contested decision, with the result that that argument can only be rejected.
- 48 In those circumstances, since the AMAR is both an essential element of the methodology for determining the supervisory fee and a concept which must be understood uniformly and consistently throughout the DSA (see paragraph 34 above), it follows from Article 43(3) of the DSA, read in conjunction with Article 33(3) of that regulation that, by adopting the methodology for calculating the AMAR in an implementing act and not in a delegated act, the Commission infringed Article 43(3) to (5) and Article 87 of the DSA.
- 49 That conclusion cannot be called into question by the Commission’s other arguments.
- 50 First, contrary to the Commission’s arguments, the common methodology which was annexed to the contested decision cannot be regarded as a mere reasoned explanation of the manner in which the AMAR was calculated, but, as the title of that annex itself shows, is in fact a detailed methodology for that calculation.
- 51 Although it could serve the purpose of explaining the reasoning followed by the Commission and that it is common to all providers, as the Commission emphasised at the hearing, it remains the case that such a methodology, given its wording, its content and its length, has the characteristics of a document of a general nature which is intended to apply to all providers and not merely an element of the reasoning of the contested decision.
- 52 Secondly, it should be observed that, since there is no provision of the DSA or of Delegated Regulation 2023/1127 which lays down a power for the Commission to supplement or specify the methodology and procedures referred to in Article 43(4) of the DSA by means of an implementing act, the fact of having annexed the common methodology to the contested decision also lacks any legal basis.

- 53 In the light of all of the foregoing considerations, the fifth plea in law must be upheld and, consequently, the contested decision must be annulled, without it being necessary to examine the other arguments, complaints or pleas raised by the applicant, or to rule on its request for the adoption of measures of organisation of procedure.

Maintenance of the effects of the contested decision

- 54 The Commission asks the Court, in the event that Article 5(2) or (4) of Delegated Regulation 2023/1127 or the contested decision is annulled, to maintain the effects of that regulation or the contested decision until such time as the Commission has taken the steps necessary to remedy the defects found. That suspension is necessary, the Commission submits, since such an annulment would have an impact on the level of fees due and already paid for the year 2023 by other providers of designated services, as well as the overall level of resources available to it and which it has already used to perform its supervisory tasks.
- 55 The applicant submits that a limitation of the temporal effect of a possible annulment of the contested decision is not justified solely by the fact that the judgment to be delivered would have the retroactive effect of a reimbursement of the supervisory fee paid pending the adoption of a new decision. In addition, it considers that the judgment to be delivered would not directly affect the other implementing acts adopted by the Commission.
- 56 Under the first paragraph of Article 264 TFEU, if the action is well founded, the Court is to declare the act concerned to be void.
- 57 Pursuant to the first paragraph of Article 266 TFEU, the institution whose act has been declared void then has the task of taking the necessary measures to comply with the judgment annulling that act.
- 58 However, under the second paragraph of Article 264 TFEU, the EU Court may, if it considers it necessary, state which of the effects of an act which it has declared void are to be considered as definitive. In that regard, it is clear from the case-law that, in exercising the power conferred on it by that article, the EU Court is to have regard to respect for the principle of legal certainty and other public or private interests (see judgment of 25 February 2021, *Commission v Sweden*, C-389/19 P, EU:C:2021:131, paragraph 72 and the case-law cited, see also, to that effect, judgment of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraph 122).
- 59 Thus, the second paragraph of Article 264 TFEU has been interpreted, inter alia, as allowing, on grounds of legal certainty, but also on grounds seeking to prevent a lack of continuity or a decline in the implementation of policies conducted or supported by the European Union, the effects of an act declared void to be maintained for a reasonable period (see, to that effect and by analogy, judgment of 12 February 2025, *de Volksbank v SRB (Contributions ex ante 2018)*, T-406/18, EU:T:2025:151, paragraph 104 and the case-law cited).
- 60 In the present case, while the contested decision was taken in breach of Article 43(4) of the DSA, as stated in paragraph 48 above, the Court has not, by contrast, found that there was an error affecting the obligation in itself for the applicant to pay the supervisory fee for 2023.
- 61 In those circumstances, to annul the contested decision without providing for its effects to be maintained until it is replaced by a new decision could undermine the implementation of Article 43 of the DSA, which provides that the Commission is to charge providers of VLOPs and

VLOSEs an annual supervisory fee, the total amount of which is to cover the costs incurred by the Commission of fulfilling the supervisory tasks conferred on it by the DSA (see, to that effect and by analogy, judgment of 15 July 2021, *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 177). If the Commission was required to reimburse, with immediate effect, the amount of the supervisory fee of the applicant and the amounts of the fees of the other providers such as those which have brought a similar action based on the same pleas as those upheld in the present action, whilst the providers remain in principle subject to the obligation to pay those fees, such a reimbursement would be liable to deprive the Commission of the financial means necessary to fulfil the supervisory tasks conferred on it by the DSA.

- 62 Furthermore, it must be noted that, taking into account the reasons underpinning the annulment of the contested decision, namely the fact that the Commission used a common methodology for the calculation of the AMAR which it annexed to the implementing acts, the Commission will not be in a position to adopt a new decision requiring payment of the supervisory fee from the applicant without establishing, beforehand, the methodology for calculating the AMAR by means of a delegated act. The Commission is required, pursuant to the first paragraph of Article 266 TFEU, to take the necessary measures which are consequent upon the annulment of the contested decision, taking into account not only the operative part of the present judgment, but also the grounds which constitute its essential basis, in that they are necessary for the purpose of determining the exact meaning of what is stated in the operative part (see, to that effect, order of 29 November 2007, *Italy v Commission*, C-417/06 P, not published, EU:C:2007:733, paragraphs 50 and the case-law cited, and judgment of 14 July 2016, *Latvia v Commission*, T-661/14, EU:T:2016:412, paragraph 90). Thus, a new decision determining the supervisory fee applicable to Facebook and Instagram for 2023 cannot be taken, as the case may be, until after an amendment of Delegated Regulation 2023/1127 or the adoption of a new delegated act establishing the methodology for calculating the AMAR, which, as matters currently stand, could also have an impact on the determination of the supervisory fees in implementing acts adopted for 2024.
- 63 Consequently, to reject the request for the effects of the contested decision to be maintained would risk undermining legal certainty and the proper implementation of the supervisory tasks conferred by the DSA on the Commission.
- 64 In those circumstances, it is necessary to maintain the effects of the contested decision until the measures necessary to comply with the present judgment have been taken, which must occur within a reasonable period that cannot exceed 12 months from the day on which the present judgment becomes final.

Costs

- 65 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 66 Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition)

hereby:

- 1. Annuls Commission Implementing Decision C(2023) 8176 final of 27 November 2023 determining the supervisory fee applicable to Facebook and Instagram pursuant to Article 43(3) of Regulation (EU) 2022/2065 of the European Parliament and of the Council;**
- 2. Maintains the effects of Implementing Decision C(2023) 8176 until such time as the measures necessary to comply with the present judgment have been taken, which must occur within a reasonable period that cannot exceed 12 months from the day on which the present judgment becomes final;**
- 3. Orders the European Commission to pay the costs.**

Mastroianni

Brkan

Gâlea

Tóth

Valasidis

Delivered in open court in Luxembourg on 10 September 2025.

V. Di Bucci
Registrar

R. Mastroianni
President