Case T-55/24

Meta Platforms Ireland Ltd

v

European Commission

Judgment of the General Court (First Chamber, Extended Composition) of 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)

1. *Approximation of laws – Digital services – Regulation 2022/2065 – Determination of the supervisory fee applicable to very large online platforms and very large search engines – Methodology for calculating the number of average monthly active recipients – Common methodology for very large platforms and very large search engines – Whether permissible*

   (European Parliament and Council Regulation 2022/2065, Arts 33(3) and (4), 43(3) to (5), 87(4) to (6); Commission Regulation 2023/1127, Art. 4(1) and (2))

   (see paragraphs 30, 32)

2. *Approximation of laws – Digital services – Regulation 2022/2065 – Determination of the supervisory fee applicable to very large online platforms and very large search engines – Methodology for calculating the number of average monthly active recipients – Adoption in an individual implementing act – Unlawfulness – Obligation to adopt such a methodology by means of a delegated act*

   (European Parliament and Council Regulation 2022/2065, Arts 33(3) and (4), 43(3) to (5), 87(4) to (6); Commission Regulation 2023/1127, Art. 4(1) and (2))

   (see paragraphs 35, 39-41, 43, 44, 48)

3. *Action for annulment – Judgment annulling a measure – Effects – Limitation by the Court – Commission implementing decision determining the amount of the supervisory fee – Annulment – Maintenance of the effects of the contested act until its replacement within a maximum reasonable time of 12 months – Justification on grounds of legal certainty and the proper implementation of the supervisory tasks conferred by Regulation 2022/2065 on the Commission*

   (Arts 264 and 266, first para., TFEU)

   (see paragraphs 58, 59, 61, 63, 64)

Résumé

Hearing two actions for annulment against decisions of the European Commission determining the amount of the supervisory fee applicable for 2023 to Facebook and Instagram, on the one hand, and TikTok, on the other, the General Court rules for the first time on the interpretation of provisions relating to the determination of the supervisory fee due from providers of very large online platforms (‘VLOPs’) ([1]) to fund the Commission’s supervisory tasks, which the DSA confers on it. The Court holds, in the two cases before it, that the Commission erred in law by adopting the common methodology for the calculation of the number of average monthly active recipients (‘the AMAR’) in an implementing act and not in a delegated act and, consequently, annuls the contested decisions.

The applicants, Meta Platforms Ireland Ltd for the Facebook and Instagram services, on the one hand, and TikTok Technology Ltd, for the TikTok service, on the other hand, are companies which provide services designated as VLOPs. In accordance with Article 43 of the DSA, they are required to pay an annual supervisory fee intended to cover the supervision costs incurred by the Commission.

By two implementing decisions dated 27 November 2023, the Commission set the amount of that fee applicable for 2023 to Facebook and Instagram, on the one hand, and to TikTok, on the other. ([2]) 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, ([3]) in particular in Article 5 thereof. For the purposes of determining that amount, the Commission followed a methodology common to all VLOPs and to all very large online search engines, which it annexed to each contested decision, in order to calculate the AMAR of the designated services and divide between them the annual supervisory fee, in accordance with the principles set out in Article 43 of the DSA.

The applicants challenged those decisions respectively before the Court by relying, among other pleas, on the illegality of the methodology for calculating the AMAR, in that the Commission exercised its delegated power by means of individual implementing acts.

Findings of the Court

The Court examines, first of all, 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.

In the first place, it observes 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 notes 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 in proportion to those of other designated services.

In the present case, the Court considers that 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 were not available to it. It follows that it had good reason to use a common methodology 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.

Furthermore, since it follows from the wording of the second paragraph of Article 4(2) of Delegated Regulation 2023/1127 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 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 that provision.

In the second place, the Court notes that it follows from the general scheme and objectives of the DSA that the concept of ‘AMAR’ must be understood in a uniform and consistent manner, irrespective of the context and purpose of its implementation. 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 very large online search engine or the determination of the supervisory fee, it would have expressly provided for that in clear and precise terms.

In the light of those considerations, the Court holds that, 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.

In that regard, while it is true 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.

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. Consequently, the methodology used 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.

In the third place, the Court considers that, since 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.

In any event, that provision 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. 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.

In those circumstances, the Court holds that, 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, 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. Consequently, it annuls the contested decisions.

However, the Court decides to maintain the effects of those decisions until the measures necessary to comply with the judgments of the Court are taken, which must occur within a reasonable period that cannot exceed 12 months from the day on which those judgments become final.

Taking into account the reasons underpinning the annulment of the contested decisions, the Court considers that the Commission will not be in a position to adopt new decisions requiring payment of the supervisory fee from the applicants without establishing, beforehand, the methodology for calculating the AMAR by means of a delegated act. Thus, new decisions determining the supervisory fees 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. Consequently, to reject the request for the effects of the contested decisions to be maintained would risk undermining legal certainty and the proper implementation of the supervisory tasks conferred by the DSA on the Commission.

([1]) Within the meaning of Article 33(4) 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').

([2]) 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, and Commission Implementing Decision C(2023) 8173 final of 27 November 2023 determining the supervisory fee applicable to TikTok pursuant to Article 43(3) of Regulation (EU) 2022/2065 of the European Parliament and of the Council.

([3]) Delegated Regulation (EU) 2023/1127 of 2 March 2023 supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council 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).