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-58/24,

TikTok Technology Ltd, established in Dublin (Ireland), represented by E. Batchelor and M. Frese, 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

Judgment

1 By its action under Article 263 TFEU, the applicant, TikTok Technology Ltd, seeks the annulment of 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 (‘the contested decision’).

Background to the dispute

2 The applicant is the main establishment in the European Union of the provider of the hosting

service, TikTok. That service, which was launched in the European Union, in its current version, in August 2018, allows its users to search for, view and distribute videos, as well as to interact, communicate and share content with other users.

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) 2720 final designating TikTok as a VLOP in accordance with Article 33(4) of the DSA.

6 On 26 April 2023, that decision was notified to the applicant as the main establishment in the European Union of the provider of TikTok. A copy of that decision was sent to ByteDance, the company controlling the group of legal entities to which the applicant belongs.

7 On 29 September 2023, the Commission communicated to the applicant the provisional determination of the amount of the annual supervisory fee in respect of TikTok, in accordance with Article 6(3) of Delegated Regulation 2023/1127, a copy of which was also sent to ByteDance. On 12 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 TikTok 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 ByteDance.

Forms of order sought

9 The applicant contends 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 appeal, the applicant raises, in essence, five pleas in law, alleging, (i) infringement of Article 43(5)(b) of the DSA and the illegality of Article 4(2) of Delegated Regulation 2023/1127; (ii) infringement of Article 43(5)(c) of the DSA and the illegality of Article 5(2) of Delegated Regulation 2023/1127; (iii) infringement of Article 43(5)(b) of the DSA and the illegality of Article 5(4) of Delegated Regulation 2023/1127; (iv) infringement of Article 43(2) of the DSA and the illegality of Article 2(2)(a) of Delegated Regulation 2023/1127; and, (v) infringement of the right to be heard, as enshrined in Article 41 of the Charter of Fundamental Rights of the European Union, and the obligation to state reasons.

The first plea, alleging an infringement of Article 43(5)(b) of the DSA and the illegality of Article 4(2) of Delegated Regulation 2023/1127

12 The applicant's first plea is divided, in essence, into five parts, alleging, first, that recourse to the common methodology is not permissible; second, an infringement of Article 43(5)(b) of the DSA, read together with Article 3(p) of the DSA, concerning the legal definition of the AMAR; third, that the methodology used in the contested decision to estimate the AMAR treats platforms in a discriminatory manner; fourth, that neither Article 43 of the DSA nor Article 4(2) of Delegated Regulation 2023/1127 provides a legal basis for the adoption of a methodology for the calculation of the AMAR in an implementing act, and; fifth, the illegality of Article 4(2) of Delegated Regulation 2023/1127.

13 The Court considers it appropriate to examine, first of all, the first and fourth parts together.

14 By the first part, the applicant criticises the Commission, in essence, for having determined the amount of the fee on the basis of an estimate of the AMAR which is not, according to it, provided for by the DSA, whereas, first, it should have based its determination on the figures reported by the providers themselves and, secondly, to the extent that those figures appeared to it to be incomplete or inaccurate, it should have exercised its powers under the DSA to obtain any additional information from those providers.

15 For its part, the Commission considers that nothing in the DSA prevents it from using, for reasons of transparency, equal treatment and confidentiality, data which it considers reliable, which had been collected by two independent third-party operators, in the brief period of time available to it for the adoption of the implementing acts relating to fees.

16 By the fourth part, the applicant argues that there is no legal basis for the Commission to adopt, by way of a delegated regulation or by means of a simple implementing act such as the contested decision, a methodology for calculating the AMAR within the context of Article 43 of the DSA. The Commission thus attempted to rewrite the DSA, circumvent the procedures for the adoption of delegated acts and create a second parallel methodology for calculating the AMAR which results in a figure different from that used for the purposes of designation of services (Article 24(2) of the DSA).

17 According to the applicant, in the interests of preserving consistency between the AMAR referred to in Article 24(2) and that referred to in Article 33 of the DSA, the Commission should have used the same AMAR that providers of designated services reported for the purposes of the application of Article 24 of the DSA.

18 In any event, the applicant maintains that the Commission conflated an implementing act with a delegated act and that it was not entitled to adopt that methodology in an implementing act without complying with Article 33(3) and Article 87 of the DSA. Moreover, according to the applicant, the Commission did not adopt Delegated Regulation 2023/1127 on the basis of Article 33(3) of the DSA and the methodology for calculating the AMAR was contained not in Delegated Regulation 2023/1127 but in the contested decision.

19 Finally, the applicant submits that the contested decision unlawfully refers to Article 4(2) of Delegated Regulation 2023/1127 in order to justify the Commission's use of 'any other information available to [it]' on 31 August of a given year to calculate the AMAR, since that article does not constitute a basis for determining supervisory fees in the contested decision and, in any event, Article 43(4) of the DSA does not allow the Commission to 'obtain new or different [A]MAR data' for the determination of the supervisory fees.

20 The Commission states that the designation procedures and the procedure for determining the fee are legally distinct and serve different purposes. According to the Commission, Article 43(5) of the DSA does not refer to Article 24(2) of the DSA and merely states that the fee must be proportionate to the AMAR. Accordingly, the DSA was in fact complied with. The Commission submits that it is therefore not required either under Article 43 of the DSA or under Article 4(2) of Delegated Regulation 2023/1127 to use the AMARs reported by providers, but has discretion in that regard also to make use of 'any other information available to [it]'.

21 The Commission explains that the sole purpose of the methodology annexed to the contested decision was to inform the providers with respect to the data and sources of information used, which subsequently culminated in the common methodology and had allowed the Commission to fulfil its obligation to state reasons. That methodology is therefore not 'a methodology for calculating the [AMAR], for the purposes of [Article 33(1) of the DSA] and Article 24(2) [of the DSA]', within the meaning of Article 33(3) of the DSA, but simply a methodology describing how the Commission processed and used the AMAR data which were available to it. The Commission next argues that it did not infringe Article 43 of the DSA but was required to 'process th[ose] data in some way' in order to comply with the DSA and Delegated Regulation 2023/1127.

22 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'.

23 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]'.

24 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];

…'

25 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.

26 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 number of [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.

…’

27 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.

28 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 TikTok and the corresponding coefficient (U) necessary for the determination of the supervisory fee charged to the applicant (see recital 33 of the contested decision).

29 Furthermore, in recital 38 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 39 of the contested

decision).

30 Finally, in response to the argument raised by the applicant during the procedure which led to the adoption of the contested decision, according to which the common methodology lacked a legal basis, the Commission made the observation, in recital 34 of the contested decision, that Article 4(2) of Delegated Regulation 2023/1127 empowers it to identify the AMAR, for the purposes of determining the supervisory fee, on the basis of data reported by the provider, information requested by the Commission or the Digital Services Coordinator, or any other information available to the Commission. On the basis of that provision and information available on 31 August of the current year, the Commission states that it had developed a common methodology for that purpose, as described in recital 32 of the contested decision.

31 The Court will examine whether the DSA permits the use of a common methodology for calculating the AMAR (the first part of the first plea) 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 (the fourth part of the first plea).

32 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.

33 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.

34 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, with the result that the first part must be rejected.

35 Furthermore, since it follows from the wording of the second paragraph of Article 4(2) of Delegated Regulation 2023/1127 (see paragraph 26 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.

36 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.

37 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.

38 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.

39 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.

40 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).

41 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.

42 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.

43 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.

44 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.

45 Hence, since, as recalled in paragraph 43 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.

46 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.

47 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.

48 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'.

49 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.

50 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 36 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.

51 That conclusion cannot be called into question by the Commission's other arguments.

52 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.

53 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.

54 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.

55 In the light of all of the foregoing considerations, the fourth part of the first 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

56 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.

57 The applicant submits that a temporal limitation of the possible annulment of the contested decision is not justified, to the extent that such an annulment would not give rise to serious negative consequences for the Commission or for the regime established by the DSA.

58 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.

59 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.

60 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).

61 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).

62 In the present case, while the contested decision was taken in breach of Article 43(4) of the DSA, as stated in paragraph 50 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.

63 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.

64 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, judgments 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 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 TikTok 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.

65 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.

66 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

67 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.

68 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) 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;

2. Maintains the effects of Implementing Decision C(2023) 8173 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 R. Mastroianni

Registrar President

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* Language of the case: English.