General Court annuls implementing decisions determining the supervisory fee applicable to certain online platforms under the DSA

IRIS 2025-8:1/4

Diego de la Vega
European Audiovisual Observatory

The General Court has delivered two judgments (cases T-55/24 and T-58/24) annulling the European Commission's Implementing Decision C(2023) 8176 final of 27 November 2023 and Implementing Decision C(2023) 8173 final of 27 November 2023 determining the supervisory fee applicable to Facebook, Instagram and TikTok pursuant to Article 43(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 – DSA).

Pursuant to Articles 43(1) to (3) of the DSA, the providers of very large online platforms (VLOPs) and of very large online search engines (VLOSEs) shall be charged annually a supervisory fee for each service for which they have been designated by the European Commission. Meta Platforms Ireland Ltd and TikTok Technology Ltd both run platforms that were designated in April 2023 as VLOPs: specifically, these are Facebook and Instagram, and TikTok respectively. Following these designations, the European Commission informed both companies of the amount of the annual supervisory fee applicable to the three platforms for 2023 in the two implementing decisions.

The companies contested these implementing decisions on the grounds of an erroneous calculation by the European Commission of the average monthly number of active recipients (AMAR) of each platform in the European Union. Also, the implementing decisions were contested on the grounds of an incorrect mechanism used by the European Commission to implement the supervisory fee. As a result, the General Court has annulled the two implementing decisions which will nevertheless remain in effect until the European Commission amends its procedure with a limit of twelve months from the two judgments. The General Court has found that, in any case, this is necessary to maintain transitorily the effects of the contested decision.

Based on the same fundamental reasons, the General Court has considered, in brief, that the European Commission should have adopted a delegated act instead of adopting implementing decisions when communicating the supervisory fee to the two companies. However, the General Court has upheld the European

© European Audiovisual Observatory (Council of Europe) 2026

Commission's right to adopt a common methodology for the calculation of the AMAR. Pursuant to Article 43(5) of the DSA, the supervisory fee should be proportionate to the AMAR, and according to the two judgements, the AMAR is "intrinsic to the determination of the supervisory fee and must be regarded as constituting an essential and indispensable element" of the supervisory fee. The General Court found, thus, that the use of the AMAR by the two third-party operators on which the European Commission relied for the calculation of the supervisory fee is not contrary to the provisions of the DSA.

Nonetheless, the General Court has found that the European Commission did not follow the legal procedure enshrined in Article 43(4) of the DSA. According to this article, the European Commission is required to adopt delegated acts to determine, *inter alia*, the individual annual supervisory fee applicable to the platforms concerned. Since the AMAR is, according to the General Court, "a concept which must be understood uniformly and consistently throughout the DSA", the European Commission infringed Articles 43(3) to (5) and Article 87 of the DSA. This is because, according to the General Court, the methodology detailed by the European Commission in its two implementing decisions, "has the characteristics of a document of a general nature which is intended to apply to all providers". Consequently, the AMAR should have been detailed in a delegated act rather than in an implementing decision. The General Court has therefore found that the use by the European Commission of an implementing act lacks legal basis.

The General Court's judgments should result in a new calculation of the supervisory fee for each of the companies, which should be included in a new delegated act. Alternatively, this could entail, according to both judgments, an amendment of Delegated Regulation 2023/1127 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 VLOPs and VLOSEs. This delegated regulation sets out the general rules for the calculation of the supervisory fees and it could, according to the General Court, include the methodology for the calculation of the AMAR which could avoid the adoption of a new delegated act.

Case T-55/24 – Meta Platforms Ireland v. Commission. ECLI:EU:T:2025:842

https://curia.europa.eu/juris/document/document.jsf;jsessionid=84712733253E0D26541799AD7E908152?text=&docid=304179&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=11189941

T-58/24 – TikTok Technology v. Commission. ECLI:EU:T:2025:843

https://curia.europa.eu/juris/document/document.jsf?text=&docid=304180&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=9887664

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026