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

19 November 2025 (*)

(Digital services – Regulation (EU) 2022/2065 – Designation as a very large online platform – Plea of illegality – Admissibility – Article 33(1) and (4) of Regulation 2022/2065 – Right to respect for private and family life – Freedom to conduct a business – Right to property – Equal treatment – Freedom of expression – Data protection)

In Case T-367/23,

Amazon EU Sàrl, successor in law to Amazon Services Europe Sàrl, established in Luxembourg (Luxembourg), represented by A. Conrad, M. Frank, R. Spanó and I. Ioannidis, lawyers,

applicant,

supported by

Bundesverband E-Commerce und Versandhandel Deutschland eV (bevh), established in Berlin (Germany), represented by R. van der Hout and V. Lemonnier, lawyers,

intervener,

v

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

defendant,

supported by

European Parliament, represented by M. Menegatti, E. Ni Chaoimh and L. Taïeb, acting as Agents,

by

Council of the European Union, represented by E. Sitbon, N. Brzezinski and M. Moore, acting as Agents,

and by

Bureau européen des unions de consommateurs (BEUC), established in Brussels (Belgium), represented by A. Fratini, lawyer,

interveners,

THE GENERAL COURT (Seventh Chamber, Extended Composition),

composed, at the time of the deliberations, of S. Papasavvas, President, K. Kowalik-Bańczyk (Rapporteur), E. Buttigieg, I. Dimitrakopoulos and B. Ricziová, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure,

having regard to the order of the Vice-President of the Court of Justice of 27 March 2024 and the order of 27 September 2023 reserving the costs in Case T-367/23 R,

further to the hearing on 12 June 2025,

gives the following

Judgment

1 By its action under Article 263 TFEU, the applicant, Amazon EU Sàrl, successor in law to Amazon Services Europe Sàrl, seeks annulment of Commission Decision C(2023) 2746 final of 25 April 2023 designating Amazon Store as a very large online platform in accordance with Article 33(4) of Regulation (EU) 2022/2065 of the European Parliament and of the Council ('the contested decision').

I. Background to the dispute

2 The applicant operates the platform Amazon Store, an online store for the sale of consumer goods marketed by it or by third-party sellers. That store can be accessed via various websites, including 'www.amazon.fr', 'www.amazon.de', 'www.amazon.es', 'www.amazon.it', 'www.amazon.nl', 'www.amazon.pl', 'www.amazon.se' and 'www.amazon.com.be'.

3 On 17 February 2023, the applicant published on its websites, pursuant to Article 24(2) of Regulation (EU) No 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), information stating that the number of average monthly active recipients in the European Union (the 'AMAR') of the platform Amazon Store was higher than 45 million.

4 On 22 February 2023, first, the European Commission communicated to Amazon.com, Inc. and to the applicant its preliminary findings according to which the platform Amazon Store met the requirements for designation as a very large online platform pursuant to Article 33(1) of Regulation 2022/2065.

5 Second, pursuant to Article 33(4) of Regulation 2022/2065, the Commission informed the Grand Duchy of Luxembourg of its intention to designate the platform Amazon Store as a very large online platform.

6 On 27 February 2023, the Grand Duchy of Luxembourg informed the Commission that it had no objections to the proposed designation.

7 On 15 March 2023, the applicant submitted its observations on the Commission's preliminary findings and did not dispute the fact that the platform Amazon Store met the requirements for designation as a very large online platform within the meaning of Article 33(1) of Regulation 2022/2065.

8 By the contested decision, the Commission designated, pursuant to Article 33(4) of Regulation 2022/2065, the platform Amazon Store as a very large online platform within the meaning of Article 33(1) of that regulation.

II. Forms of order sought

9 The applicant and Bundesverband E-Commerce und Versandhandel Deutschland eV (bevh) claim, in essence, that the Court should:

– principally, annul the contested decision;

– in the alternative, annul the contested decision in part in so far as it imposes on the applicant, first, the obligation to provide users with at least one option for each recommender system which is not based on profiling under Article 38 of Regulation 2022/2065, and, second, the obligation to compile and make publicly available a repository under Article 39 of that regulation;

– order the Commission to pay the costs.

10 The Commission, the European Parliament and Bureau européen des unions de consommateurs (BEUC) contend that the Court should:

– dismiss the action;

– order the applicant to pay the costs, including those of the proceedings for interim measures.

11 The Council of the European Union contends that the Court should dismiss the action.

III. Law

12 In support of the action, the applicant raises three pleas in law, alleging the illegality of Article 33(1), Article 38 and Article 39 of Regulation 2022/2065, respectively.

A. The first plea in law, alleging the illegality of Article 33(1) of Regulation 2022/2065

13 The Commission, the Council and BEUC contend that the first plea in law is inadmissible.

1. The Council's plea of inadmissibility

14 The Council submits that the first plea in law must be rejected as inadmissible on the ground that the applicant did not include sufficient information to assess its merits. It states, in that regard, that there is a 'contradiction' between paragraphs 166 and 203 of the application and that, as a result, it is not possible to establish whether the applicant merely contests the lawfulness of the contested decision or whether it is also claiming that certain provisions of Regulation 2022/2065 are unlawful. Furthermore, it submits that, in the event that the applicant is claiming that such provisions are unlawful, it is not possible to determine whether that claim concerns Article 33 or Articles 34 to 43 of that regulation.

15 In that regard, it should be recalled that, under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to proceedings before the General Court in accordance with the first paragraph of Article 53 of that statute and Article 76(d) of the Rules of Procedure of the General Court, an application must contain the subject matter of the dispute, the pleas in law and arguments relied on and a brief statement of those pleas in law. Those elements must be sufficiently clear and precise to enable the defendant to prepare its defence and for the General Court to rule on the application, if necessary, without any further information. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order for an action to be admissible, that the essential matters of law and fact relied on should be stated coherently and intelligibly in the application itself (judgment of 29 March 2012, *Commission* v *Estonia*, C-505/09 P, EU:C:2012:179, paragraph 34).

16 In the present case, it should be noted that, on reading the application, the scope of the first plea can be determined with sufficient precision and it is therefore possible to assess its merits.

17 In paragraphs 10 and 12 of the application, the applicant states that, by its first plea, it seeks to challenge the lawfulness of Article 33 of Regulation 2022/2065 on the ground that that provision infringes Articles 7, 11, 16, 17 and 20 of the Charter of Fundamental Rights of the European Union ('the Charter'). Similarly, in the context of the arguments in support of the admissibility of its pleas, it states, in essence, in paragraphs 134 and 135 of the application, that the plea of illegality raised in the context of the first plea concerns Article 33 of that regulation. In addition, it is apparent from the title relating to that plea, as set

out in the application, that the applicant disputes the lawfulness of the criterion for designating very large online platforms referred to in Article 33(1) of that regulation. Last, it is clear in particular from paragraphs 166 to 169 and 187 to 189 of the application that the applicant challenges the lawfulness of that criterion and, consequently, that of Article 33(1) of the regulation at issue in so far as it imposes on it the obligations laid down in Articles 34 to 43 of that regulation.

18 Furthermore, the fact, relied on by the Council, that the applicant takes the view that the obligations laid down in Articles 34 to 43 of Regulation 2022/2065 are unlawful is not incompatible with the fact that, by its first plea, it claims that Article 33(1) of that regulation is unlawful on the ground that it imposes on it such obligations which are also unlawful.

19 In those circumstances, while it is true that the applicant states, in paragraph 203 of the application, that the contested decision imposes on it obligations which are contrary to the Charter, it must be held that it is in actual fact claiming that that decision is a measure implementing Article 33(1) of Regulation 2022/2065, which is itself unlawful in so far as it leads to such obligations being imposed on it.

20 It follows that, contrary to the Council's submissions, it is sufficiently clear from the application that, by its first plea in law, the applicant claims that Article 33(1) of Regulation 2022/2065 is unlawful. Moreover, it should be noted that the Council itself developed in its written pleadings an alternative line of argument seeking to reject that plea on the merits by relying on such an interpretation of that plea.

21 Consequently, the plea of inadmissibility raised by the Council must be rejected.

2. The plea of inadmissibility raised by the Commission and BEUC

22 The Commission and BEUC submit that the first plea in law must be rejected as inadmissible on the ground that, by that plea, the applicant claims that provisions of Regulation 2022/2065 which do not constitute the legal basis of the contested decision and do not have a direct legal connection with it are unlawful.

23 First, the Commission notes that the contested decision was adopted on the basis of Article 33(4) of Regulation 2022/2065 and that the applicant does not claim that that provision is unlawful. Furthermore, while the Commission contends that a plea of illegality of Article 33(1) of that regulation would have been admissible, it nevertheless states that, even though the first plea formally seeks to establish that that provision is unlawful, the applicant is in actual fact only disputing that marketplaces may be subject to the obligations laid down in Articles 34 to 43 of that regulation when their AMAR reaches 45 million. Articles 34 to 43 of that regulation have no direct legal connection with the contested decision.

24 Second, BEUC maintains that the applicant was entitled to challenge the applicability of the obligations laid down in Articles 34 to 43 of Regulation 2022/2065 to marketplaces. However, it submits that, by its first plea, the applicant is in fact challenging the lawfulness of those obligations as such, even though they have no direct legal connection with the contested decision.

25 The applicant, supported by bevh, claims that the first plea is admissible.

26 Under Article 277 TFEU, notwithstanding the expiry of the period laid down in the sixth paragraph of Article 263 TFEU, any party may, in proceedings in which an act of general application adopted by an institution, body, office or agency of the Union is at issue, plead the grounds specified in the second paragraph of Article 263 TFEU in order to invoke before the Court of Justice of the European Union the inapplicability of that act.

27 That provision gives expression to a general principle conferring upon any party to proceedings the right to challenge incidentally, with a view to obtaining the annulment of a decision addressed to that party, the validity of acts of general application which form the legal basis of that decision (see judgment of

8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 67 and the case-law cited).

28 Since the purpose of Article 277 TFEU is not to allow a party to contest the applicability of any act of general application in support of any action whatsoever, the act the legality of which is called into question must be applicable, directly or indirectly, to the issue with which the action is concerned (see judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 68 and the case-law cited).

29 Thus, in an action for annulment brought against individual decisions, the Court of Justice has accepted that the provisions of an act of general application that constitute the basis of those decisions or that have a direct legal connection with such decisions may legitimately form the subject matter of an objection of illegality (see judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 69 and the case-law cited).

30 By contrast, the Court of Justice has held that an objection of illegality covering an act of general application in respect of which the individual decision being challenged does not constitute an implementing measure is inadmissible (see judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 70 and the case-law cited).

31 In that regard, first, it follows from paragraphs 17 to 20 above that the applicant claims, in the application, that Article 33(1) of Regulation 2022/2065 is unlawful, in so far as that provision makes certain marketplaces subject to the obligations laid down in Articles 34 to 43 of that regulation.

32 Second, it should be noted that the applicant is entitled to claim that Article 33(1) of Regulation 2022/2065 is unlawful, as acknowledged, in essence, by the Commission and BEUC.

33 Article 33(1) of Regulation 2022/2065 provides that the additional systemic risk management obligations laid down in Articles 34 to 43 of that regulation apply to online platforms which have an AMAR of 45 million or more and which are designated as very large online platforms under Article 33(4) of that regulation.

34 According to Article 33(4) of Regulation 2022/2065, the Commission is to adopt a decision designating an online platform as a very large online platform where its AMAR is equal to or higher than the number referred to in Article 33(1) of that regulation.

35 It follows that, while Article 33(4) of Regulation 2022/2065 empowers the Commission to designate an online platform as a very large online platform, Article 33(1) of that regulation specifies which online platforms must be designated as such for the purposes of applying Articles 34 to 43 of that regulation.

36 Thus, in the contested decision, the Commission took the view that the platform Amazon Store should be designated as a very large online platform ‘within the meaning of Article 33(1) of Regulation 2022/2065’.

37 In those circumstances, it must be found that the contested decision, although it was adopted on the basis of Article 33(4) of Regulation 2022/2065, applies the criterion set out in Article 33(1) of that regulation. Consequently, should the latter provision be unlawful, which would result in it being inapplicable pursuant to Article 277 TFEU, that would necessarily lead to the annulment of that decision.

38 Consequently, it must be held that the contested decision has a direct legal connection with Article 33(1) of that regulation.

39 It follows that the pleas of inadmissibility raised by the Commission and BEUC must be rejected.

3. Merits of the first plea in law

40 As stated in paragraph 31 above, by its first plea in law, the applicant claims that Article 33(1) of Regulation 2022/2065 is unlawful in so far as that provision makes certain marketplaces subject to the obligations laid down in Articles 34 to 43 of that regulation.

41 The first plea consists, in essence, of five parts, alleging that Article 33(1) of Regulation 2022/2065 infringes Article 7, Article 11(1), Article 16, Article 17(1) and Article 20 of the Charter, respectively.

(a) The first part of the first plea in law, alleging infringement of Article 16 of the Charter

42 The applicant, supported by bevh, claims that Article 33(1) of Regulation 2022/2065, in so far as it imposes on certain marketplaces the obligations laid down in Articles 34 to 43 of that regulation, infringes Article 16 of the Charter. More specifically, it maintains that those obligations place a considerable burden on it and that they constitute, therefore, interference with the freedom to conduct a business. It adds that those obligations are not appropriate for achieving the objectives of that regulation. It states, in that regard, that the obligations in question are designed to reduce systemic risks which are not caused by marketplaces. Moreover, it submits that marketplaces do not constitute a 'system' and that they are therefore not liable to give rise to 'systemic' risks. Last, it submits that the EU legislature could have adopted less restrictive measures in order to achieve its objectives.

43 The Commission, supported by the Parliament, the Council and BEUC, disputes the applicant's line of argument.

(1) Interference with the freedom to conduct a business enshrined in Article 16 of the Charter

44 The applicant maintains that Article 33(1) of Regulation 2022/2065, in so far as it imposes the obligations laid down in Articles 34 to 43 of that regulation on certain marketplaces, constitutes an interference with the freedom to conduct a business enshrined in Article 16 of the Charter.

45 Under Article 16 of the Charter, the freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

46 In accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, regard must be given to the Explanations relating to the [Charter] (OJ 2007 C 303, p. 17) in its interpretation.

47 In the Explanations relating to the Charter, it is stated that 'Article [16 of the Charter] is based on Court of Justice [of the European Union] case-law which has recognised freedom to exercise an economic or commercial activity … and freedom of contract … and Article 119(1) and (3) [TFEU], which recognises free competition', that 'this right is to be exercised with respect for Union law and national legislation' and that 'it may be subject to the limitations provided for in Article 52(1) of the Charter.'

48 Thus, it must be held that the protection afforded by Article 16 of the Charter covers the freedom to exercise an economic or commercial activity, the freedom of contract and free competition (see judgment of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 42 and the case-law cited).

49 The right of freedom to conduct a business includes, inter alia, the right for any business to be able to freely use, within the limits of its liability for its own acts, the economic, technical and financial resources available to it (judgments of 27 March 2014, *UPC Telekabel Wien*, C-314/12, EU:C:2014:192, paragraph 49, and of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraph 78).

50 Consequently, a measure which imposes on its addressee a constraint which restricts the free use of the resources at its disposal because it obliges him or her to take measures which may represent a significant cost for him or her, have a considerable impact on the organisation of his or her activities or require difficult and complex technical solutions, constitutes an interference with the freedom to conduct a business (see, to that effect, judgments of 27 March 2014, *UPC Telekabel Wien*, C-314/12,

EU:C:2014:192, paragraph 50, and of 27 June 2024, *Gestore dei Servizi Energetici*, C-148/23, EU:C:2024:555, paragraph 64).

51 In the present case, Article 33(1) of Regulation 2022/2065 imposes the obligations laid down in Articles 34 to 43 of that regulation on providers of very large online platforms, including marketplaces.

52 It follows from Articles 34 to 43 of Regulation 2022/2065 that providers of very large online platforms must identify, analyse and assess any systemic risks stemming from the design or functioning of their service (Article 34), that they may therefore have to adapt the design, features or functioning of their services, adapt their terms and conditions and adjust the presentation of advertisements (Articles 35 and 36), that they must, at their own expense, be subject to an independent audit (Article 37), provide an option for each of their recommender systems which is not based on profiling (Article 38), publish, on their interface, information relating to the advertisements they display (Article 39), allow access to some of their data to researchers (Article 40), establish an internal compliance function (Article 41), publish transparency reports (Article 42) and pay a supervisory fee to the Commission (Article 43).

53 In those circumstances, it must be held that Articles 34 to 43 of Regulation 2022/2065 require providers of very large online platforms to take measures which may represent a significant cost for them, have a considerable impact on the organisation of their activities or require difficult and complex technical solutions.

54 Consequently, it must be held that Article 33(1) of Regulation 2022/2065 constitutes an interference with the freedom to conduct a business enshrined in Article 16 of the Charter, since it requires providers of very large online platforms to comply with Articles 34 to 43 of that regulation.

(2) Justification for the interference with the freedom to conduct a business

55 Article 52(1) of the Charter provides that any limitation on the exercise of the rights and freedoms laid down by the Charter must be provided for by law, respect their essence and, subject to the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

56 In that regard, it should be recalled that, according to settled case-law, the principle of proportionality requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not exceed the limits of what is appropriate and necessary in order to achieve those objectives (see judgment of 8 April 2014, *Digital Rights Ireland and Others*, C-293/12 and C-594/12, EU:C:2014:238, paragraph 46 and the case-law cited).

57 As regards judicial review, the Court of Justice has acknowledged that, in the exercise of the powers conferred on it, the EU legislature has a broad discretion where its action involves political, economic and social choices and where it is called on to undertake complex assessments and evaluations (see judgment of 30 January 2019, *Planta Tabak*, C-220/17, EU:C:2019:76, paragraph 44 and the case-law cited). It has specified that the action of the legislature in the field of consumer protection involved such choices (see, to that effect, judgments of 17 December 2015, *Neptune Distribution*, C-157/14, EU:C:2015:823, paragraph 76, and of 8 June 2017, *Dextro Energy* v *Commission*, C-296/16 P, not published, EU:C:2017:437, paragraph 49).

58 In those circumstances, only the manifestly inappropriate nature of a measure adopted in an area such as that at issue in the present case, which entails a broad discretion in relation to the objective which the competent institution intends to pursue, can affect the lawfulness of such a measure (see, to that effect, judgments of 10 December 2002, *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, EU:C:2002:741, paragraph 123, and of 4 May 2016, *Poland* v *Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 79).

59 Furthermore, it follows from the wording of Article 16 of the Charter that the freedom to conduct a business may be subject to a broad range of interventions on the part of public authorities which may limit the exercise of economic activity in the public interest (judgment of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 46). Thus, it must be borne in mind that the freedom to conduct a business is not an absolute right and that it must, in a context such as that at issue in the present case, be reconciled with Article 38 of the Charter, which, like Article 169 TFEU, seeks to ensure a high level of consumer protection in EU policies (judgment of 23 March 2021, *Airhelp*, C-28/20, EU:C:2021:226, paragraph 49). More specifically, it should be noted that the importance of the objective of consumer protection may justify even substantial negative economic consequences for certain economic operators (judgments of 23 March 2021, *Airhelp*, C-28/20, EU:C:2021:226, paragraph 50, and of 2 September 2021, *Association of Independent Meat Suppliers and Cleveland Meat Company*, C-579/19, EU:C:2021:665, paragraph 97).

60 In the present case, the applicant does not dispute that Article 33(1) of Regulation 2022/2065 does not affect the essence of the freedom to conduct a business of marketplace providers. Incidentally, it must be stated that the obligations laid down in Articles 34 to 43 of that regulation do not prevent the exercise of the entrepreneurial activity as such of those providers, that is to enable consumers to conclude distance contracts with traders. Similarly, the applicant does not dispute that those obligations are provided for by a legislative act and that, consequently, they must be regarded as being provided for by law within the meaning of Article 52(1) of the Charter.

61 By contrast, the applicant submits that the interference with the freedom to conduct a business is manifestly disproportionate on the ground, first, that marketplaces do not give rise to systemic risks within the meaning of Regulation 2022/2065, second, that measures that are less onerous for the providers of those marketplaces would achieve the objectives of that regulation and, third, that the costs borne by those providers are significant.

(i) The existence of systemic risks caused by marketplaces

62 Article 1 of Regulation 2022/2065 provides that the aim of the regulation is to contribute to the proper functioning of the internal market for intermediary services by setting out harmonised rules for a safe, predictable and trusted online environment that facilitates innovation and in which fundamental rights enshrined in the Charter, including the principle of consumer protection, are effectively protected.

63 Recital 75 of Regulation 2022/2065 explains that ‘given the importance of very large online platforms, due to their reach, in particular as expressed in the number of recipients of the service, in facilitating public debate, economic transactions and the dissemination to the public of information, opinions and ideas and in influencing how recipients obtain and communicate information online, it is necessary to impose specific obligations on the providers of those platforms, in addition to the obligations applicable to all online platforms.’

64 Recital 76 of Regulation 2022/2065 adds that ‘very large online platforms … may cause societal risks, different in scope and impact from those caused by smaller platforms.’ That recital also states that ‘providers of such very large online platforms … should therefore bear the highest standard of due diligence obligations, proportionate to their societal impact’, that ‘once the number of active recipients of an online platform …, calculated as an average over a period of six months, reaches a significant share of the Union population, the systemic risks the online platform … poses may have a disproportionate impact in the Union’ and that ‘such significant reach should be considered to exist where such number exceeds an operational threshold set at 45 million, that is, a number equivalent to 10% of the Union population.’

65 In that regard, Article 34(1) of Regulation 2022/2065 contains a list of systemic risks which may be caused by very large online platforms.

66 First of all, Article 34(1)(a) of Regulation 2022/2065 provides that systemic risks include the dissemination of illegal content through very large online platforms. In accordance with point (h) of

Article 3 of that regulation, those risks are more specifically risks relating to the dissemination of ‘any information that, in itself or in relation to an activity, including the sale of products … is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law’.

67 Next, Article 34(1)(b) of Regulation 2022/2065 states that systemic risks include ‘any actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights to human dignity enshrined in Article 1 of the Charter, to respect for private and family life enshrined in Article 7 of the Charter, to the protection of personal data enshrined in Article 8 of the Charter, to freedom of expression and information, including the freedom and pluralism of the media, enshrined in Article 11 of the Charter, to non-discrimination enshrined in Article 21 of the Charter, to respect for the rights of the child enshrined in Article 24 of the Charter and to a [high level] of consumer protection enshrined in Article 38 of the Charter’.

68 Last, Article 34(1)(c) and (d) of Regulation 2022/2065 states that systemic risks include ‘any actual or foreseeable negative effects on civic discourse and electoral processes, and public security’ and ‘any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences [for] the person’s physical and mental well-being’.

69 In that regard, in the first place, the applicant submits that marketplaces do not give rise to systemic risks since they are not part of a ‘system’, unlike financial institutions. While the latter form a ‘global financial system’ due to the ‘interconnected nature of [their] businesses’, marketplaces are not interdependent and therefore do not constitute a system. It infers therefrom that marketplaces are not liable to give rise to systemic risks. It also maintains that marketplaces, social networks, content-sharing services and search services also do not constitute a ‘system’ and that there is no risk of contagion between them.

70 However, it is sufficient to note that, contrary to what the applicant suggests, Regulation 2022/2065 does not seek to prevent the systemic risks that marketplaces could pose in so far as they form part of a ‘system’. As is apparent from paragraph 64 above, the objective of that regulation is to mitigate systemic risks to society as a whole in so far as they could affect a significant part of the population of the European Union. It follows that the fact that marketplaces are independent of each other and of other types of online platforms and that they do not, together, constitute a system does not make it possible to preclude those marketplaces from giving rise to some of the systemic risks referred to in Article 34(1) of Regulation 2022/2065.

71 In the second place, the applicant submits that the advertisements and comments of customers displayed on marketplaces mainly concern the products marketed on those marketplaces. It infers therefrom that marketplaces do not give rise to risks related to democratic processes, public health, disinformation, human dignity, freedom of expression and information, the right to private life, data protection, the right to non-discrimination and the rights of the child. It adds that it has not been established that very large online platforms pose risks to consumers or that they play an important role in the illegal trade in animals or of counterfeit or dangerous products.

72 However, first, the applicant does not dispute that recipients of the service may use advertisements or comments to convey illegal content or content of a political or religious nature. On the contrary, the applicant itself submits that marketplaces have included, in their general terms and conditions, rules designed to prevent the dissemination of illegal content or content having a negative effect, inter alia, on the exercise of fundamental rights, civic discourse, electoral processes or the protection of public health and minors. It thus states that in its advertising terms and conditions, it expressly prohibited ‘advertisement[s] featuring: [c]hildren in dangerous situations, such as cycling without helmets; deceptive, false or misleading content; advertisements that are obscene, controversial, defamatory, libellous, illegal or invasive of another’s privacy; political content, such as campaigns for or against a politician or a political party, or related to an election, or content related to political issues of public debate; religious advocacy, either advocating or demeaning any religion; [and] discriminatory content’.

73 Second, the applicant acknowledges that illegal products could be marketed on marketplaces, although it considers that the marketing of such products is more likely on small marketplaces because large marketplaces are more mindful of protecting their reputation. In those circumstances, it must be held that marketplaces may be used to disseminate illegal content, in particular in connection with the sale of dangerous or non-compliant products, and that those marketplaces may therefore have a negative effect on consumer protection. Moreover, the applicant does not dispute the fact, noted by BEUC, that illegal content is indeed present on the platform Amazon Store, despite its efforts to remove it.

74 In addition, the applicant claims that dangerous products would not 'spread' more rapidly on an online platform with a high AMAR. However, it does not produce any evidence capable of substantiating that assertion. Furthermore, the fact that an online platform has a high AMAR is such as to increase the number of people who can obtain the products in question.

75 In the third place, bevh submits that the obligations laid down in Articles 34 to 43 of Regulation 2022/2065 do not serve to enhance consumer protection in order to offer consumers a level of protection comparable to that enjoyed offline or, consequently, to prevent systemic risks within the meaning of Article 34(1) of that regulation. More specifically, it contends that the obligations laid down specifically in Articles 34 to 37 of Regulation 2022/2065 'go beyond the provisions relating to the "*offline environment*"' and that they remain vague.

76 In this respect, it is true that recital 12 of Regulation 2022/2065 states that 'in order to achieve the objective of ensuring a safe, predictable and trustworthy online environment, for the purpose of this Regulation the concept of "illegal content" should broadly reflect the existing rules in the offline environment.' However, first, contrary to bevh's suggestion, it cannot be inferred therefrom that the legislature could not adopt more restrictive measures for marketplaces than for 'bricks and mortar' shops in order to protect consumers. Second, bevh has not produced any evidence capable of establishing that the lack of precision of Articles 34 to 43 of Regulation 2022/2065 does not allow those provisions to contribute to consumer protection.

77 In those circumstances, it should be noted that the legislature did not commit a manifest error of assessment in considering that marketplaces whose AMAR has reached 45 million may give rise to various systemic risks within the meaning of Article 34(1)(a) to (d) of Regulation 2022/2065.

(ii) The less restrictive alternative measures enabling the objectives of Regulation 2022/2065 to be achieved

78 The applicant submits that the legislature could have adopted less restrictive alternative measures to achieve the objectives of Regulation 2022/2065.

79 However, it follows from paragraph 58 above that the freedom to conduct a business is infringed only where the legislature adopts a measure which is manifestly inappropriate in relation to the objective pursued by the legislation in question. It follows that the mere fact that the legislature could have adopted less restrictive measures cannot suffice to establish an infringement of Article 16 of the Charter.

80 In addition, it should be noted that the less restrictive measures referred to by the applicant do not, in any event, make it possible to achieve the objectives of Regulation 2022/2065 as effectively.

81 First, the applicant submits that the legislature could have excluded marketplaces from the very large online platforms covered by Article 33(1) of Regulation 2022/2065 in order to restrict the application of Articles 34 to 43 of that regulation solely to services that typically cause the systemic risks referred to in Article 34(1) of that regulation.

82 However, as is apparent from paragraph 77 above, marketplaces may give rise to numerous systemic risks referred to in Article 34(1)(a) to (d) of Regulation 2022/2065. Consequently, excluding marketplaces from

the very large online platforms covered by Article 33(1) of that regulation could harm the ability of that regulation to mitigate those risks.

83 Second, the applicant and bevh submit that the legislature could have adopted ‘qualitative’ criteria, as it has done in other branches of EU law, including the telecommunications sector, or adopted a simple presumption system, as it has done in Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ 2022 L 265, p. 1). The applicant adds that designation as a very large online platform concerns only a limited number of online platforms. It infers therefrom that the additional effort required of the Commission to implement those criteria would not have been disproportionate in the light of the substantial costs incurred by those providers as a result of such designation.

84 In that regard, it is common ground that the Commission had indicated, in the impact assessment annexed to the proposal for Regulation 2022/2065, that it had considered criteria other than the sole AMAR criterion, including ‘qualitative’ criteria, taking into account the societal and economic effect of the online platform under consideration. However, it took the view that taking account of such qualitative criteria would require a case-by-case approach which could lead to legal uncertainty and a longer and costlier process for designating very large online platforms.

85 Neither the applicant nor bevh dispute that such a process would have been longer and costlier for the Commission. In those circumstances, it is sufficient to note that the criteria relied on by the applicant were such as to delay the implementation of the obligations referred to in Articles 34 to 43 of Regulation 2022/2065 and to deprive the Commission of some of the resources necessary to perform the tasks entrusted to it by that regulation.

86 Third, the applicant claims that the legislature could have made providers of very large online platforms subject, by means of Article 33(1) of Regulation 2022/2065, to the obligation referred to in Article 39 of that regulation only in so far as that obligation provided for the repository to be made available to researchers and authorities, but not to the public as a whole.

87 Article 39 of Regulation 2022/2065 provides that providers of very large online platforms are to compile and make publicly available in a specific section of their online interface, through a searchable and reliable tool that allows multicriteria queries and through application programming interfaces, a repository containing, inter alia, the content of the advertisement, including the name of the product, service or brand and the subject matter of the advertisement, the natural or legal person on whose behalf the advertisement is presented, the period during which the advertisement was presented, whether the advertisement was intended to be presented specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose including where applicable the main parameters used to exclude one or more of such particular groups and the total number of recipients of the service reached and, where applicable, aggregate numbers broken down by Member State for the group or groups of recipients that the advertisement specifically targeted.

88 In that regard, recital 69 of Regulation 2022/2065 specifies that recipients of the service are subject to ‘particularly serious negative effects’ when they ‘are presented with advertisements based on targeting techniques optimised to match their interests and potentially appeal to their vulnerabilities’. Recital 95 of that regulation adds that the advertising systems used by very large online platforms require ‘further public and regulatory supervision on account of their scale and ability to target and reach recipients of the service based on their behaviour within and outside [the] … online interface’ of those platforms and that the repository should ‘include both information about targeting criteria and delivery criteria, in particular when advertisements are delivered to persons in vulnerable situations, such as minors’.

89 In those circumstances, it must be held that the information published pursuant to Article 39 of Regulation 2022/2065 affords consumers access to information concerning the advertisements to which they are exposed. In addition, as the Council notes, they also enable the media and consumer protection

associations to control advertisements posted on very large online platforms, in particular with a view to preventing the promotion of illegal or inappropriate products to certain audiences, such as minors. Consequently, it must be held that that provision may, inter alia, limit the dissemination of illegal content, contribute to a high level of consumer protection and avoid negative effects linked to the protection of minors. It follows that it may prevent various systemic risks under Article 34(1) of that regulation. Such an objective would be more difficult to achieve if only researchers and authorities had access to the information concerned.

90 In those circumstances, it must be held that the applicant is not justified in claiming that the legislature could have adopted less restrictive alternative measures in order to establish an infringement of Article 16 of the Charter.

(iii) The extent of the costs borne by marketplace providers

91 The applicant claims that Article 33(1) of Regulation 2022/2065 imposes significant costs on marketplace providers by subjecting them to the obligations laid down in Articles 34 to 43 of that regulation.

92 In the first place, the applicant criticises the Commission for having used, in its impact assessment, unreliable economic assumptions and for failing to take into account certain costs resulting from the implementation of Articles 38 and 39 of Regulation 2022/2065. It submits that the Commission wrongly took the view, in the explanatory memorandum accompanying the proposal for Regulation 2022/2065, that 'with regard to service providers' freedom to conduct a business, the costs incurred on businesses [were] offset by reducing fragmentation across the internal market', that 'the proposal introduce[d] safeguards to alleviate the burden on service providers, including measures against repeated unjustified notices and prior vetting of trusted flaggers by public authorities', and that 'furthermore, certain obligations [were] targeted [at] very large online platforms, where the most serious risks often occur[red] and which [had] the capacity [to] absorb the additional burden.'

93 In that regard, it should be noted that the EU legislature is not required to have at its disposal an impact assessment in every circumstance, and that such an impact assessment is not, in any event, binding on it (see, to that effect, judgment of 4 October 2024, *Lithuania and Others* v *Parliament and Council (Mobility package)*, C-541/20 to C-555/20, EU:C:2024:818, paragraph 230). It follows that, even if it were established, the fact that the Commission relied, in its impact assessment, on overly optimistic economic assumptions and underestimated the costs to be borne by providers of very large online platforms is not sufficient, in itself, to demonstrate that the provisions of that regulation constitute, as such, a manifestly disproportionate interference with the freedom to conduct a business.

94 In the second place, the applicant argues that the obligation referred to in Article 38 of Regulation 2022/2065 limits its ability to inform its customers of offers made on its platform Amazon Store. It claims that that obligation (i) harms its customers by not allowing them to find easily the products most likely to be of interest to them and (ii) does not prevent a systemic risk within the meaning of that regulation. In addition, it takes the view that recommender systems based on profiling allow the products of small and medium-sized enterprises (SMEs) to be promoted and that, in their absence, it would be forced to promote those of more well-known undertakings. Moreover, it claims that it is apparent from the Communication of 26 April 2018 from the Commission to the Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled 'Tackling online disinformation: A European approach' (COM(2018)236 final), that that provision sought to ensure public access to various sources of information on social media, content-sharing services or search services. Such an objective is not relevant in the case of marketplaces.

95 In that regard, Article 38 of Regulation 2022/2065 provides that providers of very large online platforms that use recommender systems must provide at least one option for each of their recommender systems which is not based on profiling as defined in point 4 of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard

to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

96 Point 4 of Article 4 of Regulation 2016/679 defines profiling ‘as any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements’.

97 As regards recommender systems, recital 70 of Regulation 2022/2065 explains that ‘a core part of the online platform’s business is the manner in which information is prioritised and presented on its online interface to facilitate and optimise access to information for the recipients of the service’ and that ‘this is done, for example, by algorithmically suggesting, ranking and prioritising information, distinguishing through text or other visual representations, or otherwise curating information provided by recipients.’ That recital also states that ‘recommender systems can have a significant impact on the ability of recipients to retrieve and interact with information online, including to facilitate the search of relevant information for recipients of the service and contribute to an improved user experience’ and that ‘they also play an important role in the amplification of certain messages, the viral dissemination of information and the stimulation of online behaviour.’

98 First, it should be noted that Article 38 of Regulation 2022/2065 seeks to make it possible for recipients of very large online platforms to choose, to a certain extent, the information to which they are exposed, as is apparent from recital 70 of that regulation. More specifically, Article 38 of that regulation gives recipients the possibility of only being offered products which have been selected without any reliance on the collection of their personal data.

99 In those circumstances, it must be held that Article 38 of Regulation 2022/2065 does not prevent the recipients of a very large online platform from using a recommender system based on profiling. In addition, that provision allows those recipients to revert to an option based on profiling in the event that they are not satisfied with the recommendations made to them in the absence of such profiling.

100 Consequently, it must be held that, contrary to what the applicant claims, Article 38 of Regulation 2022/2065 cannot harm consumers of marketplaces.

101 It must also be held that Article 38 of Regulation 2022/2065 strengthens the rights of consumers by offering them the option to express a choice as to the products offered to them. That provision may therefore at the very least contribute to a high level of consumer protection and, consequently, prevent a systemic risk under Article 34(1)(b) of that regulation.

102 Second, it should be noted that the fact, relied on by the applicant, that Article 38 of Regulation 2022/2065 favours large undertakings to the detriment of SMEs on marketplaces is not such as to demonstrate an infringement of the freedom to conduct a business of the providers of those marketplaces.

103 In addition, in so far as it is apparent from the economic study in Annex A.2 to the application (‘the applicant’s economic study’) that recommender systems based on profiling allow better marketing of ‘niche products’, that does not explain why large undertakings are not capable of developing, among their range of products, such products aimed at a specialised public. Thus, even if recommender systems based on profiling promote the marketing of niche products, it cannot be inferred therefrom that such systems are, by their nature, favourable to SMEs.

104 Moreover, as the Commission observes, in essence, the applicant does not explain why marketplaces cannot provide consumers with the means to carry out criteria-based searches in their interface allowing niche products to be identified.

105 Consequently, the applicant has not established that Article 38 of Regulation 2022/2065 is such as to give rise to significant costs for SMEs or, consequently, for providers of marketplaces.

106 Third, it must be held that the applicant cannot usefully rely on Communication COM(2018) 236, which emanates solely from the Commission and is not binding, in order to call into question the lawfulness of Regulation 2022/2065. Moreover, while it is apparent from that communication that the Commission wanted the 'users' of online platforms to be able to have access to 'tools enabling a customised and interactive online experience so as to facilitate content discovery and access to different news sources representing alternative viewpoints' and, thus, to tackle disinformation, it cannot be inferred therefrom that Article 38 of that regulation could not also improve consumer information on marketplaces.

107 In the third place, the applicant notes that Article 39 of Regulation 2022/2065 results in the disclosure of confidential information relating to advertisers' advertising activities on the platform Amazon Store. It infers therefrom that that platform will be less attractive to advertisers, in particular with regard to online platforms which are not designated as very large online platforms. Furthermore, it claims that the implementation of the obligation laid down in that provision gives rise to higher costs than those estimated by the Commission in its impact assessment.

108 As has been noted in paragraph 87 above, Article 39 of Regulation 2022/2065 provides for the dissemination of information to the public which includes, inter alia, the content of the advertisement, including the name of the product, service or brand and the subject matter of the advertisement, the natural or legal person on whose behalf the advertisement is presented, the period during which the advertisement was presented, whether the advertisement was intended to be presented specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose including where applicable the main parameters used to exclude one or more of such particular groups and the total number of recipients of the service reached and, where applicable, aggregate numbers broken down by Member State for the group or groups of recipients that the advertisement specifically targeted.

109 The applicant has not produced any evidence capable of establishing that the dissemination of the information referred to in Article 39 of Regulation 2022/2065 has a negative impact on the attractiveness of the platform Amazon Store for advertisers.

110 The applicant's economic study merely states that information relating to the content, targeting and success of an advertisement enables the advertiser's competitors to replicate its strategy. That study states, in that regard, that information relating to the 'success' of an advertisement is 'crucial'.

111 However, certain information, including that relating to the content of the advertisements, is, by its nature, accessible to the public, irrespective of Article 39 of Regulation 2022/2065. In addition, the applicant does not develop any arguments seeking to establish that the information relating to targeting cannot be inferred by looking at the platform concerned and by taking into account the nature of the product advertised. Moreover, unlike information relating to the success of an advertisement, it does not describe information relating to targeting as 'crucial'.

112 As for information relating to the success of an advertisement, the applicant's economic study refers to an earlier economic study of 1953; it is however unclear whether the conclusions of the latter study are applicable to online platforms. Furthermore, the applicant's economic study does not specify how it defines the success of an advertisement. If the applicant seeks to refer to a possible increase in sales of the product which is the subject of the advertisement in question, then it is sufficient to note that Article 39 of Regulation 2022/2065 does not provide for the dissemination of information in that regard.

113 In the fourth place, the applicant submits that Article 40(4) and (12) of Regulation 2022/2065 requires it to disclose data, the extent of which is unlimited, including confidential data, for the purpose of studying 'systemic risks', even though the existence of such risks has not been established.

114 Under Article 40(4) of Regulation 2022/2065, upon a reasoned request from the Digital Services Coordinator of establishment, providers of very large online platforms must, within a reasonable period, as specified in the request, provide access to data to vetted researchers who meet the requirements laid down in Article 40(8) of that regulation, for the sole purpose of conducting research that contributes to the

detection, identification and understanding of systemic risks in the Union, as set out in Article 34(1) thereof, and to the assessment of the adequacy, efficiency and impacts of the risk mitigation measures pursuant to Article 35 of Regulation 2022/2065.

115 Among the conditions set out in Article 40(8) of Regulation 2022/2065, researchers must demonstrate that they are capable of fulfilling the specific data security and confidentiality requirements corresponding to each request and of protecting personal data. In addition, they must describe in their request the appropriate technical and organisational measures that they have put in place to that end.

116 Furthermore, Article 40(5) of Regulation 2022/2065 states that providers of very large online platforms may request the Digital Services Coordinator of establishment to amend the request, where they consider that they are unable to provide access to the requested data on the ground, inter alia, that giving access to the data will lead to significant vulnerabilities in the protection of confidential information, in particular trade secrets.

117 Last, Article 40(12) of Regulation 2022/2065 adds that providers of very large online platforms must give access without undue delay to data, including, where technically possible, to real-time data, provided that the data are publicly accessible on their online interface by researchers, including those affiliated to not-for-profit bodies, organisations and associations, who comply with the conditions set out in Article 40(8)(b) to (e) of that regulation, and who use the data solely for performing research that contributes to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1) thereof.

118 In that regard, first, as noted in paragraph 77 above, marketplaces whose AMAR reaches 45 million may give rise to various systemic risks referred to in Article 34(1) of Regulation 2022/2065. It follows that, contrary to what the applicant claims, Article 40 of that regulation, which is intended to allow the conduct of research that contributes to the detection, identification and understanding of those systemic risks, is such as to contribute to reducing the systemic risks posed by those marketplaces.

119 Second, it should be noted that Article 40(5) of Regulation 2022/2065 provides the possibility, for the provider of a very large online platform, to request the amendment of the request for access to data for the purpose of protecting confidential data. In addition, if, despite the amendment of the request, that provider were to communicate such data, it should be noted that Article 40(8) of Regulation 2022/2065 requires the researchers concerned to demonstrate that they are in a position to preserve the confidentiality of the data they receive. In that regard, contrary to what the applicant claims, the legislature was not obliged to describe, in that regulation, the specific measures that researchers had to adopt in order to preserve the confidentiality of the data they receive. It could merely require researchers (i) to demonstrate that they were able, for each request for access, to preserve the security and confidentiality of the data covered by that request and (ii) to describe, themselves, the technical and organisational measures which they had taken to that end.

120 In the fifth place, the applicant and bevh submit that the implementation of the obligations set out in Articles 34 to 43 of Regulation 2022/2065 imposes significant burdens on marketplace providers, including burdens associated with making complex changes to their IT systems. However, they do not produce any estimate of the costs associated with those changes, including in the applicant's economic study. Furthermore, assuming that those costs are genuinely significant, including for providers of very large online platforms likely to have access to extensive resources, it should be noted that, as stated in paragraph 59 above, the importance of the objective of consumer protection can justify negative economic consequences, even if they are significant, for certain economic operators.

121 In those circumstances, the applicant and bevh are not justified in claiming that Article 33(1) of Regulation 2022/2065 is manifestly inappropriate for achieving the objectives of that regulation or, consequently, that it infringes Article 16 of the Charter.

122 Accordingly, the first part of the first plea in law must be rejected, without it being necessary to rule on the admissibility, disputed by the Commission, of certain arguments raised in its support in the reply.

(b) The second part of the first plea in law, alleging infringement of Article 17(1) of the Charter

123 The applicant, supported by bevh, maintains that Article 33(1) of Regulation 2022/2065, in so far as it imposes on certain marketplaces the obligations laid down in Articles 34 to 43 of that regulation, infringes Article 17(1) of the Charter. It claims that those obligations have a significant impact on its activities and that they therefore constitute an interference with its right to property.

124 The Commission, supported by the Parliament, the Council and BEUC, disputes the applicant's line of argument.

125 Article 17(1) of the Charter provides that 'everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions' and that 'no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss.' That article also provides that 'the use of property may be regulated by law in so far as is necessary for the general interest.'

126 The protection conferred by Article 17(1) of the Charter applies to rights with an asset value creating an established legal position under the legal system, enabling the holder to exercise those rights autonomously and for his or her benefit (judgment of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 34). Thus, the Court of Justice has held that administrative burdens do not constitute interference with the right to property (see, to that effect and by analogy, judgment of 11 July 1989, *Schräder HS Kraftfutter*, 265/87, EU:C:1989:303, paragraphs 16 and 17).

127 In the present case, it must be found, as the Commission has done, that the applicant does not put forward any arguments in support of its assertion that the obligations laid down in Articles 34 to 43 of Regulation 2022/2065 constitute an interference with its right to property.

128 In addition, it should be noted that it is true that the obligations, laid down in Articles 34 to 43 of Regulation 2022/2065 and described in paragraph 52 above, impose administrative burdens on providers of very large online platforms, but do not deprive those providers of the ownership of those platforms. Furthermore, even if those obligations were to be regarded as interferences with the right to property of the providers in question, it must be held that those interferences are, in any event, justified by reasons similar to those set out in paragraphs 62 to 120 above as regards Article 16 of the Charter.

129 It follows that the applicant and bevh are not justified in claiming that Article 33(1) of Regulation 2022/2065 infringes Article 17 of the Charter.

130 Consequently, the second part of the first plea in law must be rejected.

(c) The third part of the first plea in law, alleging infringement of Article 20 of the Charter

131 The applicant, supported by bevh, submits that Article 33(1) of Regulation 2022/2065, in so far as it imposes on certain marketplaces the obligations laid down in Articles 34 to 43 of that regulation, is in breach of the principle of equal treatment enshrined in Article 20 of the Charter. In that regard, it maintains that Article 33(1) of that regulation treats the different types of online platforms in the same way – as it does, moreover, online search engines – even though those search engines, social networks and content-sharing services give rise to specific risks which marketplaces do not give rise to. In addition, it observes that that provision treats comparable situations differently by excluding from its scope retailers and marketplaces whose AMAR is less than 45 million.

132 The Commission, supported by the Parliament, the Council and BEUC, disputes the applicant's line of argument.

133 In that regard, it should be recalled that the principle of equal treatment is a general principle of EU law, enshrined in particular in Article 20 of the Charter, which provides that everyone is equal before the law.

134 It is apparent from settled case-law that the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgments of 14 September 2010, *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission and Others*, C-550/07 P, EU:C:2010:512, paragraph 55, and of 6 June 2023, *O.G. (European arrest warrant issued against a third-country national)*, C-700/21, EU:C:2023:444, paragraph 42). In order to be able to determine whether or not there is such a breach of that principle, it is necessary, in particular, to refer to the subject matter and aim pursued by the provision which is allegedly in breach of that principle (see judgment of 6 September 2018, *Piessevaux* v *Council*, C-454/17 P, not published, EU:C:2018:680, paragraph 79 and the case-law cited).

135 Moreover, in an area such as that at issue in the present case, in which the legislature has a broad discretion, there is a breach of the principle of equal treatment only where the legislature makes a distinction which is arbitrary or manifestly inappropriate in relation to the objective pursued (see, to that effect, judgments of 14 July 2022, *Commission* v *VW and Others*, C-116/21 P to C-118/21 P, C-138/21 P and C-139/21 P, EU:C:2022:557, paragraph 127, and of 9 March 2023, *Grossetête* v *Parliament*, C-714/21 P, not published, EU:C:2023:187, paragraph 48).

136 In the present case, in the first place, the applicant submits that marketplaces, on the one hand, and social networks, content-sharing services and online search engines, on the other, are not in a comparable situation for the purposes of applying the obligations laid down in Articles 34 to 43 of Regulation 2022/2065. More specifically, it notes that those obligations are intended to prevent risks that may be caused by social networks, content-sharing services and online search engines, but not by marketplaces. It infers therefrom that Article 33(1) of that regulation wrongly applies to the latter.

137 However, first, it should be noted that, as is apparent from paragraph 77 above, marketplaces whose AMAR reaches 45 million may give rise to numerous systemic risks referred to in Article 34(1)(a) to (d) of Regulation 2022/2065.

138 Second, in so far as the applicant claims, without further explanation, that ‘many’ of the obligations laid down in Articles 34 to 43 of Regulation 2022/2065 are not intended to protect consumers or prevent the marketing of counterfeit or dangerous products, it is sufficient to note that it does not identify the provisions to which it refers. In addition, although it also maintains that Article 38 of that regulation does not make it possible to reduce the likelihood of a consumer being exposed to offers for illegal products, it must be stated that that provision nevertheless contributes to strengthening the rights of consumers for the reasons set out in paragraph 101 above. Furthermore, it follows from paragraphs 71 to 74 and 77 above that, contrary to what the applicant suggests, the risks created by marketplaces are in any event not limited to those having a negative effect on consumer protection or those relating to the marketing of counterfeit or dangerous products.

139 Third, the applicant submits that, as regards ‘the dissemination of speech, content or information’, marketplaces should be treated in the same way as cloud computing services and web-hosting services, which do not constitute online platforms within the meaning of Regulation 2022/2065 and which, consequently, are not covered by Article 33(1) of that regulation.

140 In that regard, it should be noted that recital 13 of Regulation 2022/2065 states that ‘cloud computing or web-hosting services should not be considered to be an online platform where dissemination of specific information to the public constitutes a minor and ancillary feature or a minor functionality of such services’. The applicant does not dispute that the dissemination of information to the public at the request of a recipient of the service is not a minor and ancillary feature or a minor functionality of marketplaces. Consequently, it must be held that Article 33(1) of that regulation, in so far as it covers marketplaces and not certain cloud computing services and certain web-hosting services, does not make an arbitrary or manifestly inappropriate distinction for the purposes of preventing the systemic risks referred to in Article 34(1) of that regulation.

141 In those circumstances, it must be held that Article 33(1) of Regulation 2022/2065, in so far as it applies to marketplaces, social networks, content-sharing services and online search engines, does not appear to be manifestly inappropriate to prevent the systemic risks referred to in Article 34(1) of that regulation.

142 In the second place, the applicant claims that all marketplace providers, irrespective of their AMAR, should be treated in the same way for the purposes of applying the obligations laid down in Articles 34 to 43 of Regulation 2022/2065. It infers therefrom that Article 33(1) of that regulation wrongly applies to marketplace providers whose AMAR is 45 million or higher.

143 In that regard, first, the applicant submits that the risks relating to the dissemination of illegal content are greater on small marketplaces than on large marketplaces and that it is therefore paradoxical to impose additional obligations on providers of the latter. More specifically, it notes that illegal products, including dangerous or counterfeit products, are mainly marketed on small marketplaces, via social networks or on the darknet. It claims that the risk that such products may be marketed on large marketplaces is low. It adds that it follows from recital 72 of Regulation 2022/2065 that that regulation imposes on all marketplaces different obligations aimed at 'deter[ring them] … from selling products or services in violation of the applicable rules'. It infers therefrom that the legislature itself recognised that the risks associated with the marketing of illegal products did not constitute systemic risks and that they did not increase with the number of active recipients.

144 However, the applicant acknowledges that marketplaces, irrespective of their size, may be used to facilitate the marketing of dangerous or illegal products.

145 Moreover, even if it were established, the fact that the applicant or the other providers of marketplaces whose AMAR reaches 45 million have, until now, carried out effective checks of the information disseminated on their platforms is not such as to rule out that those platforms may, in future, expose a large number of persons to illegal content as long as their AMAR remains equal to or above 45 million. Consequently, and as is apparent from paragraphs 73, 74 and 77 above, it must be held that a marketplace whose AMAR reaches 45 million may expose a significant part of the European Union to illegal content and, consequently, may create a systemic risk within the meaning of Article 34(1)(a) of Regulation 2022/2065.

146 In those circumstances, it should be noted, as the legislature did in recital 76 of Regulation 2022/2065, that marketplaces whose AMAR reaches 45 million may give rise to risks for society which differ, in terms of their scale and impact, from those attributable to smaller platforms.

147 Furthermore, the fact – relied on by the applicant – that Regulation 2022/2065 imposes obligations on all marketplaces seeking to prevent the marketing of dangerous or illegal products is not sufficient to establish that the additional obligations imposed on marketplaces whose AMAR reaches 45 million are manifestly inappropriate to prevent the systemic risks referred to in Article 34(1) of that regulation.

148 Second, the applicant submits that, in order to reach an AMAR of 45 million, very large online platforms must, in practice, necessarily operate in several Member States. It infers therefrom that the obligations imposed on providers of those very large online platforms do not apply to providers of online platforms operating in a single Member State, including where a significant part of the population of that Member State is exposed to the content of those platforms. It notes, in that regard, that that difference in treatment is not justified by the prevention of certain systemic risks, including those relating to the democratic process, which are national in character.

149 However, the applicant does not explain why certain risks are merely national in character, even though there is, at EU level, a democratic process, as follows from Article 10 TEU and Article 22(2) TFEU.

150 In addition, it follows from Article 33(2) of Regulation 2022/2065 and recital 76 of that regulation that the legislature considered that an online platform may give rise to systemic risks at EU level where its AMAR reached or exceeded 10% of the population of the European Union. It should be noted that online platforms

which are present in only one Member State and whose AMAR is less than 45 million – even if a significant part of the population of that Member State is exposed to their content – are less likely to give rise to systemic risks at EU level than online platforms whose AMAR exceeds 45 million.

151 Consequently, it must be held that Article 33(1) of Regulation 2022/2065, in so far as it applies only to providers of marketplaces whose AMAR reaches 45 million, does not make an arbitrary or manifestly inappropriate differentiation for the purposes of preventing the systemic risks referred to in Article 34(1) of that regulation.

152 In the third place, the applicant submits that marketplace providers should be treated in the same way as retailers for the purposes of applying the obligations laid down in Articles 34 to 43 of Regulation 2022/2065. It takes the view that retailers, namely undertakings marketing only their own products on the internet, are not covered by Article 33(1) of that regulation, although, like marketplaces, they also allow consumers to conclude distance contracts with traders.

153 However, first, unlike retailers' websites, online platforms disseminate information provided by a recipient of the service. Therefore, while retailers' websites disseminate, in principle, only their own information, online platforms may disseminate information emanating from a large number of persons. Accordingly, it is apparent from the applicant's economic study that several million sellers market their products on the platform Amazon Store.

154 In those circumstances, it should be noted that, unlike retailers, providers of online platforms do not necessarily know all the information disseminated on their platforms. Moreover, it should be noted that, for that reason, they are granted the benefit of exemptions from liability, the legality of which the applicant does not dispute. Accordingly, it follows from Article 6 of Regulation 2022/2065 that those providers are not liable for the information stored at the request of a recipient of the service where they have no knowledge of illegal activity or illegal content. Article 8 of that regulation adds, in that regard, that there is no general obligation on those providers to monitor the information which they transmit or store, or actively to seek facts or circumstances indicating illegal activity.

155 Therefore, it should be noted that, unlike retailers, providers of large online platforms may facilitate the dissemination of illegal content without their knowledge and without them incurring liability.

156 Second, the Commission noted, in its impact assessment, that 'an important driver of the identified problems [was] the unique situation of the largest online platforms, such as social networks or online marketplaces', that 'a relatively small number of online platforms concentrat[ed] a very high number of users – consumers and traders alike' and that 'very large platforms represent[ed] a higher level of societal and economic risk because they [had] become de facto public spaces, playing a systemic role for millions of citizens and businesses.' The Commission also noted that, 'in other words, they [had] a significantly higher impact on society and the Single Market than smaller platforms because they reach[ed] a large audience.' The Commission had thus noted that very large online platforms played a significant role for both consumers and sellers marketing their products on those platforms. However, it is not disputed that retailers do not play such a role, at least as regards those sellers.

157 In those circumstances, it must be held that Article 33(1) of Regulation 2022/2065, in so far as it applies to marketplace providers and not to retailers, does not make an arbitrary or manifestly inappropriate differentiation for the purposes of preventing the systemic risks referred to in Article 34(1) of that regulation.

158 It follows that the applicant and bevh are not justified in claiming that Article 33(1) of Regulation 2022/2065 infringes Article 20 of the Charter.

159 Consequently, the third part of the first plea in law must be rejected.

(d) The fourth part of the first plea in law, alleging infringement of Article 11(1) of the Charter

160 The applicant, supported by bevh, maintains that Article 33(1) of Regulation 2022/2065, in so far as it imposes on certain marketplaces the obligation laid down in Article 38 of that regulation, infringes the freedom of expression and of information enshrined in Article 11(1) of the Charter. It states that that obligation consists in offering, for each recommender system, an option which is not based on profiling. Therefore, that obligation interferes with the freedom of commercial expression of marketplace providers inasmuch as it prevents them from offering the most relevant products to consumers. It also hinders the ability of third-party sellers active on marketplaces to promote effectively their products and communicate with their customers. Last, it is not justified for the purpose of preventing the systemic risks referred to in that regulation.

161 The Commission, supported by the Parliament, the Council and BEUC, disputes the applicant's line of argument.

162 Under Article 11(1) of the Charter, everyone has the right to freedom of expression. That right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

163 In the Explanations relating to the Charter, it is stated that Article 11 of the Charter corresponds to Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950.

164 It should be recalled, in that regard, that it is clear from the case-law of the European Court of Human Rights that Article 10 ECHR, which protects freedom of expression and information, applies in particular to the dissemination by a business of commercial information, including in the form of advertising (see judgment of 3 February 2021, *Fussl Modestraße Mayr*, C-555/19, EU:C:2021:89, paragraph 81 and the case-law cited).

165 As recalled in paragraph 95 above, Article 38 of Regulation 2022/2065 states that providers of very large online platforms that use recommender systems must provide at least one option for each of their recommender systems which is not based on profiling.

166 In that regard, first, it should be noted that the applicant does not explain why Article 38 of Regulation 2022/2065, which applies only to providers of very large online platforms, is such that it may restrict the way in which sellers marketing products on a marketplace may present their commercial information, including their advertising messages. It follows that the applicant is not justified in claiming that that provision constitutes an interference with the freedom of expression and information of those sellers.

167 Second, it should be noted that Article 38 of Regulation 2022/2065, in so far as it requires providers of very large online platforms to offer at least one option for each of their recommender systems which is not based on profiling, restricts the way in which those providers may present products marketed on their platforms in the event that the recipient chooses such an option.

168 Article 38 of Regulation 2022/2065 therefore constitutes an interference with the freedom of expression and information of marketplaces.

169 However, it must be recalled that the rights enshrined in Article 11 of the Charter are not absolute rights, but must be considered in relation to their function in society (judgment of 6 October 2020, *Privacy International*, C-623/17, EU:C:2020:790, paragraph 63). As is apparent from paragraph 55 above, any limitation on those rights must be provided for by law, respect their essence and, subject to the principle of proportionality, be necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

170 In the present case, first, it is not disputed that the limitation resulting from Article 38 of Regulation 2022/2065 is provided for by a legislative act and that it must, consequently, be regarded as being provided for by law.

171 Second, the essence of the freedom of expression and information of providers of very large online platforms is not affected. Article 38 of Regulation 2022/2065 does not contain rules limiting the freedom enjoyed by those providers to present products marketed on their platforms in the context of a recommender system which is not based on profiling. Moreover, that provision does not preclude those providers from offering recommender systems based on profiling as long as they also offer an option for each of those systems which is not based on profiling.

172 Third, the limitation stemming from Article 38 of Regulation 2022/2065 pursues an objective of general interest recognised by the Union. As noted in paragraph 101 above, that provision may contribute to a high level of consumer protection enshrined in Article 38 of the Charter.

173 Fourth, as regards the proportionality of the interference found, it is important to stress that it follows from the case-law of the European Court of Human Rights concerning Article 10(2) ECHR that the authorities concerned enjoy a certain margin of appreciation in determining whether there is a pressing social need which may justify a limitation on freedom of expression. According to that case-law, that is particularly important in commercial matters and especially in an area as complex and fluctuating as advertising (see, to that effect, judgment of 3 February 2021, *Fussl Modestraße Mayr*, C-555/19, EU:C:2021:89, paragraph 91).

174 In that regard, it should be noted that the obligation to offer at least one option for each recommender system which is not based on profiling, set out in Article 38 of Regulation 2022/2065, results from weighing up the freedom of commercial expression of providers of very large online platforms and consumer protection. Thus, the legislature was entitled to take the view, without exceeding its broad discretion, that consumer protection required consumers to be able to have access, if they so wished, to an option which was not based on profiling for each of the recommender systems used on very large online platforms.

175 Consequently, it must be held that the applicant and bevh are not justified in claiming that Article 33(1) of Regulation 2022/2065 infringes Article 11 of the Charter.

176 It follows that the fourth part of the first plea in law must be rejected.

(e) The fifth part of the first plea in law, alleging infringement of Article 7 of the Charter

177 The applicant, supported by bevh, maintains that Article 33(1) of Regulation 2022/2065, in so far as it imposes on certain marketplaces the obligations laid down in Article 39 and Article 40(4) and (12) of that regulation, infringes the protection of confidential information enshrined in Article 7 of the Charter. First, the disclosure to the public of the information referred to in Article 39 of that regulation may cause marketplace providers considerable commercial harm. Second, Article 40(4) and (12) of that regulation may lead to the provision of a large amount of information to researchers. Furthermore, that provision does not lay down sufficient guarantees to preserve the confidentiality of that information. Last, neither Article 39 nor Article 40(4) and (12) of the regulation at issue is appropriate for preventing the systemic risks targeted by that regulation.

178 The Commission, supported by the Parliament, the Council and BEUC, disputes the applicant's line of argument.

179 Under Article 7 of the Charter, everyone has the right to respect for his or her private and family life, home and communications.

180 In the Explanations relating to the Charter, it is stated that the rights guaranteed in Article 7 of the Charter correspond to those guaranteed by Article 8 ECHR. It follows that, in accordance with Article 52(3) of the Charter, the limitations which may legitimately be imposed on those rights are the same as those allowed by Article 8 ECHR.

181 It should be recalled, in that regard, that it follows from the case-law of the European Court of Human Rights that the concept of 'private life' does not exclude the professional or commercial activities of natural or legal persons (see, to that effect, judgments of 14 February 2008, *Varec*, C-450/06, EU:C:2008:91, paragraph 48, and of 29 July 2024, *Belgian Association of Tax Lawyers and Others*, C-623/22, EU:C:2024:639, paragraph 126).

182 In the present case, first, as is apparent from paragraph 87 above, Article 39 of Regulation 2022/2065 provides that providers of very large online platforms compile and make publicly available a repository containing the information relating to their advertisements for the entire period during which they present the advertisements in question and until one year after the advertisements were presented for the last time. That provision specifies, moreover, that those providers must ensure that that repository does not contain any personal data of the recipients of the service to whom the advertisements were or could have been presented.

183 Second, it follows from paragraphs 114 and 117 above that Article 40(4) and (12) of Regulation 2022/2065 provides that providers of very large online platforms may have to communicate different information, including confidential information, to vetted researchers upon reasoned request from the Digital Services Coordinator of establishment.

184 In those circumstances, it should be noted that Article 39 and Article 40(4) and (12) of Regulation 2022/2065, in so far as they oblige providers of very large online platforms to disclose information that may be confidential, constitute an interference with the right to respect for private life guaranteed in Article 7 of the Charter.

185 However, the rights enshrined in Article 7 of the Charter are not absolute rights, but must be considered in relation to their function in society (judgments of 16 July 2020, *Facebook Ireland and Schrems*, C-311/18, EU:C:2020:559, paragraph 172, and of 29 July 2024, *Belgian Association of Tax Lawyers and Others*, C-623/22, EU:C:2024:639, paragraph 134). As is apparent from paragraph 55 above, any limitation on those rights must be provided for by law, respect their essence and, subject to the principle of proportionality, be necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

186 In the present case, in the first place, it is not disputed that the limitations resulting from Article 39 and Article 40(4) and (12) of Regulation 2022/2065 are provided for by a legislative act and that, consequently, they must be regarded as being provided for by law.

187 In the second place, the essence of the right to respect for private life of providers of very large online platforms is not affected.

188 First, Article 39 of Regulation 2022/2065 provides for the dissemination of information only for a limited period of time and only in respect of a limited part of the economic activity of marketplaces. In that regard, the applicant itself acknowledges that its advertising revenue represents only 7% of its total revenue. Furthermore, as has been observed in paragraphs 110 and 112 above, that provision does not provide for the disclosure of information relating to the success of an advertisement, which the applicant claims is the most commercially sensitive. In addition, part of that information, such as that relating to the content of the advertisements, products and brands which are the subject of the advertisements in question, is not confidential. Last, that provision precludes the disclosure of any personal data of the recipients of the service exposed to those advertisements.

189 Furthermore, it is true that the applicant stated, in response to a question from the Court at the hearing, that Article 39(2)(b) and (c) of Regulation 2022/2065 required the disclosure of the name of the natural person on whose behalf the advertisement is presented or who paid for it. However, it must be noted that such disclosure does not, in itself, make it possible to have an overview of the private and family life of that person. In those circumstances, it does not appear that the disclosure of the identity of an advertiser alone can constitute an interference with the essence of the rights guaranteed in Article 7 of the Charter

(see, to that effect and by analogy, Opinion 1/15 *(EU-Canada PNR Agreement)* of 26 July 2017, EU:C:2017:592, paragraphs 150 and 151; judgments of 22 November 2022, *Luxembourg Business Registers*, C-37/20 and C-601/20, EU:C:2022:912, paragraphs 50 to 52; and of 21 March 2024, *Landeshauptstadt Wiesbaden*, C-61/22, EU:C:2024:251, paragraphs 80 and 81).

190 Second, Article 40(4) and (12) of Regulation 2022/2065 provides for the provision of information only upon a reasoned request from the Digital Services Coordinator of establishment and for use by vetted researchers who have demonstrated, inter alia, in accordance with Article 40(8)(d) of that regulation, that they are capable of fulfilling the specific data security and confidentiality requirements.

191 In the third place, as regards observance of the principle of proportionality, it must be ensured, first, that the obligations laid down in Article 39 and Article 40(4) and (12) of Regulation 2022/2065 are appropriate for attaining an objective of general interest recognised by the European Union, second, that the interference with the fundamental right to respect for private life which may result from those obligations is limited to what is strictly necessary, in the sense that the objective pursued could not reasonably be achieved in an equally effective manner by other means less prejudicial to that right, and, third, provided that this is indeed the case, that that interference is not disproportionate and does not impose a burden that outweighs that objective, which implies, in particular, a balancing of the importance of the objective and the seriousness of the interference (see, to that effect, judgment of 29 July 2024, *Belgian Association of Tax Lawyers and Others*, C-623/22, EU:C:2024:639, paragraph 139). In that regard, it should be borne in mind, however, that the right of interference with private life is liable to be more far-reaching where professional or business activities are involved than would otherwise be the case (see, to that effect, judgments of 22 October 2002, *Roquette Frères*, C-94/00, EU:C:2002:603, paragraph 29, and of 29 July 2024, *Belgian Association of Tax Lawyers and Others*, C-623/22, EU:C:2024:639, paragraph 127).

192 First, contrary to bevh's submissions, the limitations resulting from Article 39 and Article 40(4) and (12) of Regulation 2022/2065 are appropriate for attaining an objective of general interest recognised by the European Union. As noted in paragraphs 89 and 118 above, those provisions are intended to reduce systemic risks in order, inter alia, to contribute to a high level of consumer protection enshrined in Article 38 of the Charter.

193 Second, as is apparent from paragraphs 86 to 89 above, the measures relied on by the applicant as an alternative to Article 39 of Regulation 2022/2065 do not make it possible to achieve the same level of consumer protection.

194 In addition, the applicant has not put forward any other argument capable of establishing that Article 39 of Regulation 2022/2065 goes beyond what is strictly necessary to make information available to consumers regarding the advertisements displayed on very large online platforms, including those to which they are not exposed in view of the targeting parameters used, and to understand the reasons why, in the light of those parameters, they are exposed to certain advertisements rather than others. Nor has it adduced any argument capable of establishing that that provision goes beyond what is strictly necessary to enable the media and consumer protection associations to monitor advertisements posted on very large online platforms, in particular with a view to preventing the promotion of illegal or inappropriate products to certain audiences, such as minors.

195 Similarly, the applicant has not submitted any argument to support the view that Article 40(4) and (12) of Regulation 2022/2065 goes beyond what is strictly necessary in order to be able to detect, identify and understand systemic risks in the European Union. Moreover, the applicant does not rely on the existence of measures alternative to that provision which would make it possible to achieve that objective.

196 Third, as has been noted in paragraphs 111 and 188 above, it should be noted that the information disseminated pursuant to Article 39 of Regulation 2022/2065 concerns only a limited part of the economic activity of marketplaces. Furthermore, part of that information, such as that relating to the content of the advertisements, products and brands advertised, is not confidential and the information which is the most

commercially sensitive for the applicant, namely information relating to the success of an advertisement, is not part of the information disseminated under that provision.

197 In addition, in so far as the applicant relied, at the hearing, on the disclosure of the name of the natural persons referred to in Article 39(2)(b) and (c) of Regulation 2022/2065, it should be noted that that disclosure concerns only advertisers who have chosen to display advertisements on a very large online platform. Furthermore, it follows from that provision that the repository does not contain information relating to a natural person where the advertisement has been presented and paid for by a legal person. Thus, it remains open to those advertisers to establish a legal person in order not to disclose their identity.

198 As for Article 40(4) and (12) of Regulation 2022/2065, it merely provides, in specific cases, for the provision of information to vetted researchers so as to preserve the confidential nature of that information.

199 Moreover, the Court of Justice has placed emphasis, in its case-law, on the nature and significance of the public interest constituted by the protection of consumers, who are in a position of weakness vis-à-vis sellers or suppliers (see judgment of 3 April 2019, *Aqua Med*, C-266/18, EU:C:2019:282, paragraph 43 and the case-law cited). The objective of protecting consumers is all the more important with regard to providers of very large online platforms, such as the applicant, which, as noted in paragraph 77 above, may give rise to systemic risks for society.

200 In those circumstances, it must be held that Article 33(1) of Regulation 2022/2065, in so far as it imposes on certain marketplaces the obligations laid down in Article 39 and Article 40(4) and (12) of that regulation, does not constitute a disproportionate interference with the right to respect for private life guaranteed in Article 7 of the Charter and does not impose a burden that outweighs the objectives pursued.

201 It follows that the applicant and bevh are not justified in claiming that Article 33(1) of Regulation 2022/2065 infringes Article 7 of the Charter.

202 Last, bevh submits that Article 33(1) of Regulation 2022/2065 infringes the protection of personal data protected in Article 8 of the Charter, in so far as it imposes on certain marketplaces the obligations laid down in Article 39 of that regulation. It submits that the information disseminated pursuant to the latter provision includes ‘the identity or legal person on whose behalf the advertisement is presented and paid’. It is sufficient to note that personal data may relate only to natural persons, and not to legal persons, as is apparent from the Explanations relating to the Charter and from Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), to which those explanations refer. In addition, even if bevh intended to refer to the natural persons covered by Article 39(2)(b) and (c) of Regulation 2022/2065, it should be noted that an infringement of Article 8 of the Charter would, in any event, be ruled out for the reasons set out in paragraphs 189 and 197 above.

203 Consequently, the fifth part of the first plea in law must be rejected, without it being necessary to rule on the admissibility, disputed by the Commission, of certain arguments raised in support of it in the reply.

204 Consequently, the first plea in law must be rejected in its entirety.

B. The second and third pleas in law, alleging the illegality of Article 38 and Article 39 of Regulation 2022/2065, respectively

205 By its second and third pleas in law, the applicant claims that Article 38 and Article 39 of Regulation 2022/2065, respectively, are unlawful.

206 The applicant submits that the arguments put forward in the second and third pleas must be understood as being also put forward in the context of the first plea.

207 More specifically, as noted in paragraphs 19 and 31 above, by its first plea, the applicant submits that Article 33(1) of Regulation 2022/2065 is unlawful on the ground that it imposes on certain marketplaces the obligations referred to in Articles 34 to 43 of that regulation, which are themselves unlawful. It follows from paragraph 32 of the reply that its arguments relating specifically to Articles 38 and 39 of that regulation, put forward in the context of the first plea, must be regarded as also having been put forward in the context of the second and third pleas and vice versa.

208 Consequently, since the first plea in law has been rejected as unfounded, the second and third pleas in law must therefore also be rejected as unfounded, without it being necessary to rule on their admissibility, which is disputed by the Commission, the Parliament, the Council and BEUC.

209 It follows from all of the foregoing that the action must be dismissed in its entirety, without it being necessary to rule on the admissibility, disputed by the Commission, of the second head of claim.

IV. Costs

210 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the Commission's costs, including those relating to the proceedings for interim measures, in accordance with the form of order sought by the Commission.

211 In addition, according to Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs. The Parliament and the Council shall therefore bear their own costs.

212 Likewise, pursuant to Article 138(3) of the Rules of Procedure, BEUC and bevh shall bear their own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders Amazon EU Sàrl to bear its own costs and to pay those incurred by the European Commission, including those relating to the proceedings for interim measures;

3. Orders the European Parliament, the Council of the European Union, Bureau européen des unions de consommateurs (BEUC) and Bundesverband E-Commerce und Versandhandel Deutschland eV (bevh) to bear their own costs.

Papasavvas Kowalik-Bańczyk Buttigieg

Dimitrakopoulos Ricziová

Delivered in open court in Luxembourg on 19 November 2025.

V. Di Bucci M. van der Woude

Registrar President

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* Language of the case: English.