ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
TRIBUNALUL UNIUNII EUROPENE
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

JUDGMENT OF THE GENERAL COURT (Eighth Chamber, sitting with five Judges)

8 July 2026 [*]

(Actions for annulment – Digital services – Regulation (EU) 2022/1925 – Designation of a gatekeeper – Opening of a market investigation – Closure of a market investigation – Interoperability – Core platform services – Online intermediation service – Software application store – Number-independent interpersonal communications service – Plea of illegality – Act not open to challenge)

In Cases T-1079/23, T-1080/23 and T-214/24,

Apple Inc., established in Cupertino, California (United States), represented by D. Beard, S. Love, J. Bourke, Barristers-at-Law, W. Knibbeler and T. van Helfteren, lawyers,

applicant in Cases T-1079/23 and T-1080/23,

Apple Inc., established in Cupertino,

Apple Distribution International Ltd, established in Cork (Ireland), represented by D. Beard, S. Love, J. Bourke, Barristers-at-Law, W. Knibbeler, T. van Helfteren and M. Lawton, lawyers,

applicants in Case T-214/24,

v

European Commission, represented, in Case T-1079/23, by P.-J. Loewenthal, L. Malferrari and I. Rogalski, acting as Agents, in Case T-1080/23, by P.-J. Loewenthal, L. Malferrari, I. Rogalski and E. Rousseva, acting as Agents, and, in Case T-214/24, by G. Conte, P.-J. Loewenthal and I. Rogalski, acting as Agents,

* Language of the case: English.

defendant,

supported by

French Republic, represented by T. Lechevallier, acting as Agent,

by

European Parliament, represented by M. Menegatti, L. Stefani and L. Taïeb, acting as Agents,

by

Council of the European Union, represented by A.-L. Meyer and N. Rouam, acting as Agents,

by

Free Software Foundation Europe eV, established in Hamburg (Germany), represented by M. Husovec, lawyer,

by

Coalition for App Fairness, established in Washington, DC (United States), represented by D. Geradin and K. Bania, lawyers,

interveners in Case T-1080/23,

and by

Federal Republic of Germany, represented by J. Möller and R. Kanitz, acting as Agents,

intervener in Case T-214/24,

THE GENERAL COURT (Eighth Chamber, sitting with five Judges),

composed of M. van der Woude, President, G. De Baere, K. Kecsmár (Rapporteur), S. Kingston and D. Petrlík, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure, in particular:

– the pleas of inadmissibility raised by the Commission by separate document lodged at the Registry of the General Court on 30 January 2024 in Case T-1079/23 and on 19 August 2024 in Case T-214/24,

– the decisions of 11 March and 2 October 2024 to reserve the decision on the pleas of inadmissibility for the final judgment,

– the written questions put by the Court to the parties in Case T-1080/23 and their replies to those questions lodged at the Court Registry on 28 and 30 July and 11 and 22 August 2025,

further to the hearing on 21 October 2025,

gives the following

Judgment

1 By their actions under Article 263 TFEU, the applicant in Case T-1079/23, Apple Inc., seeks the annulment of Commission Decision C(2023) 6077 final of 5 September 2023 opening a market investigation into Apple's iMessage pursuant to Article 16(1) and Article 17(3) of 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 DMA') ('the decision opening the market investigation'), the applicant in Case T-1080/23, Apple Inc., seeks the annulment in part of Commission Decision C(2023) 6100 final of 5 September 2023 designating Apple as a gatekeeper pursuant to Article 3 of the DMA ('the designation decision'), and the applicants in Case T-214/24, Apple Inc. and Apple Distribution International Ltd (together or separately, 'Apple'), seek the annulment of Commission Implementing Decision C(2024) 785 final of 12 February 2024 closing the market investigation opened by the decision opening the market investigation pursuant to Article 17 of the DMA ('the decision closing the market investigation').

Background to the dispute

2 On 3 July 2023, Apple notified the European Commission, pursuant to the first subparagraph of Article 3(3) of the DMA, that it met the thresholds set out in Article 3(2) of that regulation in respect of the following services:

– its online intermediation service iOS App Store;

– its operating system iOS;

– its web browser Safari; and

– its instant messaging service iMessage.

3 As regards the iMessage service, Apple submitted that, first, it could not be classified as a number-independent interpersonal communications service ('NIICS') and, therefore, did not constitute a core platform service ('CPS') within the meaning of the DMA. Second, in the event that the Commission were to consider iMessage to be an NIICS, Apple presented with its notification, in

accordance with Article 3(5) of the DMA, arguments to demonstrate that, exceptionally, although it met the thresholds set out in Article 3(2) of that regulation, due to the circumstances in which the iMessage service operated, it did not satisfy the requirements listed in Article 3(1) of the DMA with respect to that service.

4 On 5 September 2023, pursuant to Article 16(1) and Article 17(3) of the DMA, the Commission adopted the decision opening the market investigation. That investigation sought to examine Apple's arguments calling into question the presumptions set out in Article 3(2) of that regulation in relation to iMessage, which the Commission classified as an NIICS.

5 On the same date, the Commission also adopted the designation decision, by which, pursuant to Article 3 of the DMA, it designated Apple as a gatekeeper in respect of three CPSs, namely the online intermediation service App Store, the iPhone mobile phone operating system iOS and the web browser Safari.

6 The designation decision was notified to Apple on 6 September 2023. Accordingly, the relevant obligations laid down in the DMA began to apply to Apple with effect from 7 March 2024, in accordance with Article 3(10) of the DMA.

7 On 12 February 2024, pursuant to Article 17 of the DMA, the Commission adopted the decision closing the market investigation. By that decision, while the Commission considered that Apple was not to be designated as a gatekeeper in relation to iMessage, it nevertheless maintained that that service should be classified as an NIICS.

Forms of order sought

Case T-1079/23

8 Apple claims that the Court should:

– annul the decision opening the market investigation;

– order the Commission to pay the costs.

9 The Commission contends that the Court should:

– dismiss the action as inadmissible or, in any event, as unfounded;

– order Apple to pay the costs.

Case T-1080/23

10 Apple claims that the Court should:

– annul, wholly or in part, Article 2(b) of the designation decision which classifies Apple's operating system iOS as an important gateway for business users to reach end users, in so far as it requires Apple to comply with the interoperability obligations of Article 6(7) of the DMA;

– annul, wholly or in part, Article 2(a) of the designation decision which classifies Apple's online intermediation service App Store as an important gateway for business users to reach end users;

– annul the designation decision in so far as it concludes that iMessage is an NIICS;

– order the Commission to pay the costs.

11 The Commission contends that the Court should:

– dismiss the action;

– order Apple to pay the costs.

12 The European Parliament contends that the Court should:

– dismiss the plea of illegality raised under Article 277 TFEU;

– order Apple to pay the costs.

13 The Council of the European Union contends that the Court should dismiss the plea of illegality raised under Article 277 TFEU.

14 The French Republic and Free Software Foundation Europe eV contend that the Court should dismiss the action.

15 Coalition for App Fairness contends that the Court should:

– dismiss the action;

– order Apple to pay the costs.

Case T-214/24

16 Apple claims that the Court should:

– annul the decision closing the market investigation, in so far as it is wrongly predicated on a finding that the iMessage service is an NIICS;

– order the Commission to pay the costs.

17 The Commission contends that the Court should:

– dismiss the action as inadmissible or, in any event, as unfounded;

– order Apple to pay the costs.

18 The Federal Republic of Germany contends that the Court should:

– dismiss the action;

– order Apple to pay the costs.

Law

19 After hearing the parties, the Court has decided to join the present cases for the purposes of the decision which closes the proceedings, pursuant to Article 68(1) of its Rules of Procedure.

20 In Case T-1079/23, in support of its action, Apple puts forward a single plea in law, alleging that the Commission misinterpreted and misapplied the DMA and Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ 2018 L 321, p. 36; 'the EECC'), and that it made material factual errors in concluding that iMessage was an NIICS.

21 In Case T-1080/23, in support of its action, Apple puts forward three pleas in law. The first plea alleges that Article 6(7) of the DMA is unlawful in the light of the Charter of Fundamental Rights of the European Union ('the Charter') and, therefore, that Article 2(b) of the designation decision is unlawful, in so far as the latter provision imposes on Apple the obligations laid down in Article 6(7) of the DMA. The second plea alleges misinterpretation and misapplication of the DMA and factual errors on the part of the Commission, in so far as the designation decision concludes that the five App Store software application stores constitute a single CPS. The third plea alleges misinterpretation and misapplication of the DMA and of the EECC, and factual errors on the part of the Commission, in so far as the designation decision concludes that iMessage is an NIICS.

22 In Case T-214/24, in support of its action, Apple puts forward a single plea in law, alleging that the Commission misinterpreted and misapplied the DMA and the EECC and that it made material factual errors in concluding that iMessage was an NIICS.

23 It is appropriate to examine, first, the action brought in Case T-1080/23 and, second, the actions brought in Cases T-1079/23 and T-214/24.

The action brought in Case T-1080/23

The first plea in law put forward in Case T-1080/23

24 By its first plea in Case T-1080/23, Apple submits that the designation decision imposes on it the obligations laid down in Article 6(7) of the DMA, since that decision designates it as a gatekeeper in relation to iOS, the iPhone mobile phone operating system. That provision does not ensure a proper application of the general principle of proportionality laid down in Article 52(1) of the Charter, or compliance with certain fundamental rights, foremost among which is the right to property. Accordingly, it argues, Article 6(7) of the DMA should be declared inapplicable under Article 277 TFEU. It maintains that, as a result, Article 2(b) of the designation decision should be annulled, at least in so far as that article imposes on Apple the obligations laid down in Article 6(7) of the DMA.

25 As regards the admissibility of the first plea, Apple submits that it would be denied effective judicial protection, contrary to Article 47 of the Charter, if it were not entitled to challenge the legality of Article 6(7) of the DMA, while the designation decision applies that provision to it. Apple argues that it should not be required to wait until it is faced with a finding that an obligation arising from that provision has been infringed in order to be able to challenge its legality before the Courts of the European Union. Furthermore, it maintains that Article 277 TFEU must be interpreted sufficiently broadly to enable effective judicial review of the legality of acts of general application adopted by the EU institutions in favour of persons who are not entitled to bring an action for annulment against such acts. In addition, it argues that the rules of a single regime, such as the DMA, cannot be artificially separated for the purpose of examining a plea of illegality. Article 6(7) of the DMA has a direct legal connection with the designation decision because that decision triggers the obligations laid down in that provision.

26 The Commission contends that the first plea in Case T-1080/23 is inadmissible and, in any event, unfounded.

27 The Parliament, the Council and the French Republic also contend that the first plea must be rejected as inadmissible.

28 In that regard, it should be recalled that, under Article 277 TFEU, any party may, in proceedings in which an act of general application adopted by an institution, body, office or agency of the European 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.

29 Article 277 TFEU 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).

30 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 in 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).

31 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 constituted the basis of those decisions or that had a direct legal connection with such decisions could legitimately form the subject matter of a plea 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).

32 A direct legal connection may arise, inter alia, from the fact that the provision the illegality of which is pleaded forms part of the reasoning of a contested decision, including if it is not referred to in the formal statement of reasons for that decision (see, to that effect, judgment of 16 March 2023, *Commission* v *Calhau Correia de Paiva*, C-511/21 P, EU:C:2023:208, paragraph 52).

33 By contrast, the Court of Justice has held that a plea 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).

34 In the present case, in the first place, it is common ground that the designation decision is based on Article 3 of the DMA and that Article 6(7) of that regulation, the legality of which Apple calls in question, does not constitute the legal basis of that decision.

35 In that regard, it must be pointed out that it is apparent both from the title of the designation decision and from the second citation therein that the legal basis of that decision is Article 3 of the DMA. In addition, Articles 1 and 2 of that decision provide, in essence, that Apple is designated as a gatekeeper pursuant to Article 3 of the DMA, and that the CPSs listed in that decision, including the operating system iOS, are identified as an important gateway for business users to reach end users, within the meaning of Article 3(1)(b) of the DMA.

36 In the second place, as regards the question whether, in the light of the case-law referred to in paragraph 31 above, Article 6(7) of the DMA has a direct legal

connection with the designation decision, it must be observed that that provision does not form part of the reasoning of that decision.

37 Article 6(7) of the DMA is not explicitly referred to in the statement of reasons for the designation decision.

38 Moreover, it is also not apparent from the reasoning of the designation decision, inter alia from recitals 72 to 100 thereof, which relate to the operating system iOS, that that decision is intended to implement the obligations arising from Article 6(7) of the DMA concerning, in particular, that CPS.

39 In the third place, the fact that, following the adoption of the designation decision, Apple is required to comply with the obligations laid down in Article 6(7) of the DMA does not follow from that decision itself, but rather from Article 3(10) of the DMA, read in conjunction with Article 6(1) of that regulation. Indeed, Article 6(1) of the DMA provides that the gatekeeper is to comply with all obligations set out in Article 6 thereof with respect to each of its CPSs listed in the designation decision pursuant to Article 3(9) of that regulation.

40 It is true that the designation decision is a precondition for the application of the obligations arising from Article 6(7) of the DMA, since, in the present case, if Apple had not been designated as a gatekeeper, it would not have had to comply with the obligations arising from that provision.

41 However, the fact that the designation decision renders obligations laid down in the DMA applicable, inter alia by starting the six-month period provided for in Article 3(10) of the DMA, within which the gatekeeper must have taken the necessary measures to comply with the obligations laid down in Articles 5, 6 and 7 of the DMA, does not mean that that decision constitutes an implementing measure in respect of those provisions within the meaning of the case-law cited in paragraph 33 above. Article 6(7) of the DMA does not govern the conditions for designating an undertaking as a gatekeeper, the assessment of which is the main subject of the designation decision, but merely defines the interoperability obligations to which that undertaking is subject only once such designation has occurred.

42 In the fourth place, it is necessary to distinguish the present case from the one which gave rise to the 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), on which Apple relies in maintaining that the rules of the DMA cannot be artificially separated for the purposes of examining a plea of illegality.

43 In that regard, it must be noted that, in that case, the decisions at issue were based on a transitional provision of the Staff Regulations of Officials of the European Union organising the progressive shift toward a definitive annual leave regime, the latter forming the subject matter of the plea of illegality. The Court of Justice held that plea to be admissible, on the ground that the transitional period was only justified by the adoption of the definitive regime and that the decisions at issue

thus constituted implementing measures in respect of that regime and had a direct legal connection with it; moreover, any interpretation to the contrary would mean artificially separating the definitive and transitional periods of that 'one single regime'.

44 It follows that the approach in the case which gave rise to the 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), was justified by the particular circumstances of that case, which, however, do not obtain in the present case.

45 The DMA does not provide for the successive establishment of a transitional regime and a definitive regime, but establishes a single regime of obligations applicable to undertakings designated as gatekeepers. It is true that that regime is structured in two distinct stages, namely, first, the designation of an undertaking as a gatekeeper and, second, the imposition of the obligations laid down in the DMA on that undertaking. However, the separation between those two stages stems directly from the very architecture of the DMA and, therefore, is inherent in the system thus established; moreover, that separation cannot be characterised as artificial.

46 In those circumstances, the conclusions drawn by the Court of Justice in its 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), cannot be applied to the present case.

47 Therefore, in the light of the case-law referred to in paragraphs 31 to 33 above, since Article 6(7) of the DMA does not constitute the legal basis of the designation decision and has no direct legal connection with that decision, it must be held that the plea of illegality raised against that provision is inadmissible.

48 That conclusion is not called into question by Apple's argument that, in such a case, it would be denied effective judicial protection in breach of Article 47 of the Charter.

49 The first paragraph of Article 47 of the Charter provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article.

50 According to the explanations relating to that article, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be taken into consideration for the interpretation of the Charter (judgment of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'*, C-490/20, EU:C:2021:1008, paragraph 60), the second paragraph of Article 47 of the Charter corresponds to Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (ECHR) (see judgment of 6 September 2012, *Trade Agency*, C-619/10, EU:C:2012:531, paragraph 52 and the case-law cited).

51 The principle of effective judicial protection of the rights which individuals derive from EU law comprises various elements; in particular, the rights of the defence, the principle of equality of arms, the right of access to a tribunal and the right to be advised, defended and represented (judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 48).

52 In that regard, it should be noted that it is apparent from the case-law that the right of access to a tribunal is not an absolute right and that, consequently, it may involve proportionate restrictions that pursue a legitimate aim and do not adversely affect the very essence of that right (see order of 6 April 2017, *PITEE* v *Commission*, C-464/16 P, not published, EU:C:2017:291, paragraph 31 and the case-law cited, and judgment of the ECtHR, 8 June 2006, *V.M. v. Bulgaria*, CE:ECHR:2006:0608JUD004572399, §§ 41 and 42 and the case-law cited). In accordance with Article 52(1) of the Charter, a limitation on the right to an effective remedy can be justified only if it is provided for by law, if it respects the essence of that right and, subject to the principle of proportionality, if it is necessary and genuinely meets objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (judgments of 4 May 2016, *Pillbox 38*, C-477/14, EU:C:2016:324, paragraph 160, and of 15 September 2016, *Star Storage and Others*, C-439/14 and C-488/14, EU:C:2016:688, paragraph 49).

53 First of all, as regards the condition that a limitation on the right to an effective remedy must be provided for by law, it is apparent from paragraphs 28 to 33 above that the possibility of raising a plea of illegality is, under Article 277 TFEU, limited to the provisions of an act of general application that constitute the basis of a contested decision or that have a direct legal connection with such a decision.

54 Next, such a limitation respects the essence of the fundamental right to effective judicial protection, as enshrined in Article 47 of the Charter. It is apparent from settled case-law that Article 47 of the Charter is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the Courts of the European Union, as is apparent also from the Explanation on Article 47 of the Charter, which must, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, be taken into consideration for the interpretation of the Charter. Accordingly, the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to effective judicial protection, but such an interpretation cannot have the effect of setting aside those conditions, which are expressly laid down in the FEU Treaty (see judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares* v *Commission*, C-456/13 P, EU:C:2015:284, paragraphs 43 and 44 and the case-law cited).

55 Furthermore, as regards the question whether such a limitation genuinely meets objectives of general interest, it must also be borne in mind that the Treaty has established, by Articles 263 and 277 TFEU, on the one hand, and Article 267

TFEU, on the other, a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Courts of the European Union (see judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 92 and the case-law cited).

56 Allowing the plea of illegality provided for in Article 277 TFEU to be raised in respect of provisions that have no direct legal connection with the designation decision would be liable to undermine the system of legal remedies established by the Treaty by altering the conditions for the admissibility of that plea, which, according to the case-law cited in paragraph 30 above, is reserved for acts of general application that are applicable, directly or indirectly, to the issue with which the action is concerned.

57 Lastly, it must be observed that such a restriction does not disproportionately affect the right to an effective remedy, since Apple retains the possibility of raising a plea of illegality in respect of the provision which it challenges in the present case in the context of other proceedings.

58 As the Commission correctly contends, Article 6(7) of the DMA may be implemented by means of a decision adopted, depending on the circumstances, on the basis of Articles 8, 13, 24, 29, 30 or 31 of the DMA.

59 For the purpose of addressing Apple's argument alleging infringement of Article 47 of the Charter, as set out in paragraph 25 above, it must be stated that the adoption of an implementing act by the Commission pursuant to Article 8 of the DMA does not necessarily mean that the Commission has found an infringement attributable to the gatekeeper in relation to the obligations laid down in Articles 5, 6 or 7 of the DMA, nor that that gatekeeper has deliberately put itself in such a situation in order to be able to plead the illegality of any of those provisions, pursuant to Article 277 TFEU, in the context of an action brought under Article 263 TFEU against such an act of the Commission.

60 Thus, according to Article 8(3) of the DMA, a gatekeeper may request the Commission to engage in a process to determine whether the measures that the gatekeeper intends to implement or has implemented to ensure compliance, inter alia, with Article 6 of the DMA are effective in achieving the objective of the relevant obligation in the specific circumstances of that gatekeeper.

61 Should the Commission deem such measures to be insufficient, it may, in accordance with Article 8(2) of the DMA, after opening proceedings pursuant to Article 20 of that regulation, adopt an implementing act, which may specify the measures that the gatekeeper concerned would be required to implement in order to effectively comply with the obligations laid down in Article 6(7) of the DMA, without having to find an infringement of that latter provision. The gatekeeper in question could then, in an action for annulment brought against that act and based on Article 263 TFEU, raise a plea of illegality against Article 6(7) of the DMA.

62 It follows from the foregoing that, since the plea of illegality raised by Apple against Article 6(7) of the DMA is not admissible, the first plea in law in Case T-1080/23 must be rejected as inadmissible, without it being necessary to examine whether an application for annulment in part of Article 2(b) of the designation decision is admissible.

The second plea in law put forward in Case T-1080/23

63 By its second plea in Case T-1080/23, Apple disputes the Commission's assessment, set out in the designation decision, according to which its five software application stores, namely iOS App Store (for iPhone mobile phones), iPadOS App Store (for iPad electronic tablets), watchOS App Store (for Apple Watch watches), macOS App Store (for Mac computers) and tvOS App Store (for Apple TV television devices) (together, 'the App Stores'), constitute a single CPS.

64 In the present case, as a preliminary point, it should be recalled that, on 3 July 2023, in accordance with Article 3(3) of the DMA, Apple provided the Commission with the relevant information identified in paragraph 2 of that article by means of the Form ('the Form GD') set out in Annex I to Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to the DMA (OJ 2023 L 102, p. 6). In so doing, during the designation procedure, Apple submitted, inter alia, that it operated the App Stores, that those stores should be classified as online intermediation services within the meaning of Article 2(5) of the DMA, and that each of those stores constituted a distinct CPS, with the result that only the iOS App Store software application store met the thresholds laid down in Article 3(2) of the DMA.

65 First, the Commission considered, in recital 37 of the designation decision, that the service offered by the App Stores ('the App Store service') met both the definition of an online intermediation service under Article 2(2) of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ 2019 L 186, p. 57), to which Article 2(5) of the DMA refers, and the definition of a software application store under Article 2(14) of the DMA.

66 Second, in recitals 38 to 41 of the designation decision, the Commission considered that, irrespective of the device on which it was available, each of the App Stores was used for the same purpose, namely to intermediate between end users and business users in the distribution of applications and in-app digital content. The Commission also considered that, despite the differences between each of the App Stores, as relied on by Apple in order to justify the view that each of them had a different purpose, those differences related rather to the nature, function and usage of the various devices on which each of the App Stores could be accessed and to the related user experience, with the result that there was no justification for treating each of the App Stores as distinct CPSs.

67 Third, in recitals 43 to 47 of the designation decision, the Commission stated that online application developers and end users were subject to the same or very similar rules, policies, guidelines and technical specifications when using each of the App Stores on the five devices in question.

68 Fourth, in recitals 48 to 56 of the designation decision, the Commission found that, in relation to the applications distributed through each of the App Stores, Apple provided business users and end users with the same or very similar tools or services, including support services.

69 Fifth and lastly, in recitals 57 to 59 of the designation decision, the Commission stated that, in some of its publications, Apple presented the App Stores as one single service, irrespective of the device used to access them.

70 Consequently, in view of the fact that the thresholds laid down in Article 3(2) of the DMA were met, the Commission concluded, in recital 71 of the designation decision, that Apple was to be designated as a gatekeeper pursuant to Article 3(4) of the DMA, in relation to the App Store service as a CPS.

71 The second plea put forward in Case T-1080/23 is divided into four complaints, which it is appropriate to examine together. First, Apple submits that the App Stores have different principal purposes, namely intermediating the provision of applications on each type of device in question. Second, it maintains that each of those stores is used differently by end users and business users. Third, Apple claims that the additional arguments put forward in the designation decision are legally irrelevant because they do not concern the purpose of the App Stores. Fourth, it submits that the Commission's approach to future software application stores demonstrates the error made by it in the designation of the App Stores as a single CPS.

72 The Commission as well as the French Republic, Coalition for App Fairness and Free Software Foundation Europe dispute Apple's arguments. The Commission also contends that the second head of claim in Case T-1080/23 is inadmissible.

73 In that regard, it should be noted that, first, Article 2(2)(a) of the DMA states that online intermediation services are CPSs for the purposes of that regulation.

74 Second, as regards the definition of online intermediation services, Article 2(5) of the DMA refers to Article 2(2) of Regulation 2019/1150. Under the latter provision, these are services which, first of all, constitute information society services within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ 2015 L 241, p. 1); next, allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those businesses and consumers, irrespective of where those transactions are ultimately concluded; and, lastly, are provided to business users on the basis of contractual relationships between the

provider of those services and business users which offer goods or services to consumers.

75 Third, Article 2(14) of the DMA states that a software application store is a type of online intermediation services, which is focused on software applications as the intermediated product or service.

76 Accordingly, it follows from the provisions of Article 2(2), (5) and (14) of the DMA, read in conjunction, that, for the purposes of that regulation, a software application store is a CPS, in that, as an online intermediation service, it allows business users to offer software applications to end users, with a view to facilitating the initiating of direct transactions between them, irrespective of where those transactions are ultimately concluded, and that service is offered by a business providing CPSs on the basis of contractual relationships entered into with the business users in question.

77 Apple does not call into question the assessment that each of the App Stores constitutes a software application store, and therefore an online intermediation service, within the meaning of the DMA.

78 Nevertheless, Apple maintains that the Commission should not have considered all the App Stores to be a single CPS, given that each of those stores pursues a specific objective, which is to provide a service for online intermediation between business users and end users depending on the device on which the store operates. Apple also submits that the Commission should have taken into consideration Article 2(15) of the DMA, which defines a software application as any digital product or service that runs on an operating system.

79 In the first place, in that regard, it must be observed that the definition of a software application store for the purposes of the DMA, as set out in paragraph 76 above, does not make the classification of an online intermediation service dependent either on the device on which that store operates or on the operating system on which the software applications offered within that store run.

80 That assessment is supported by recital 14 of the DMA, from which it is apparent, inter alia, that, for the purposes of that regulation, the definition of CPSs should be technology neutral and should be understood to encompass those provided on or through various means or devices. It follows that the EU legislature intended to prevent the classification of a service under the DMA from varying according to the technological choices made by the gatekeeper and that the assessment of whether a software application store exists must be carried out, in the light of the definition provided in the DMA, irrespective of the operating system with which the software applications in question operate or the hardware platform on which their distribution is based.

81 Moreover, it is apparent from Article 2(14) of the DMA that software applications are merely the subject matter of the transaction that a software application store is intended to enable, which is indicated by the phrase ‘as the intermediated product

or service'. Thus, that provision, which draws a distinction between the software application store as an online intermediation service and the software applications the distribution of which it enables, does not make the classification of the application store dependent on the operating system on which those applications are intended to run.

82 In so far as Apple claims that the Commission, in a manner inconsistent with the approach adopted regarding the App Stores, accepted that Apple's operating systems – including iOS, in respect of which it has been designated as a gatekeeper – constituted separate services according to the hardware on which each operating system ran, it suffices to note that Article 2(10) of the DMA defines an operating system as 'a system software that controls the basic functions of the hardware or software and enables software applications to run on it' and that, as the Commission pointed out in recital 83 of the designation decision, the purpose of an operating system had to be assessed from a technological perspective, taking into account that the concept of an 'operating system' was intrinsically linked to the hardware or software the basic functions of which the operating system was specifically designed to control and on which that operating system was intended to enable the functioning of applications. In principle, that is not the case with a software application store, the classification of which depends neither on the device on which that store operates nor on the operating system on which the software applications offered within that store run, as was stated in paragraph 79 above.

83 In the second place, in so far as Apple relies on the annex to the DMA, from which it allegedly follows that each of the App Stores should be regarded as a distinct CPS, it must be borne in mind that the Annex to the DMA has the same legal value as the DMA itself and forms an integral part of that regulation (see, to that effect and by analogy, judgment of 24 November 2010, *Commission* v *Council*, C-40/10, EU:C:2010:713, paragraph 61). Therefore, it may serve to clarify the scope of a definition set out in another provision of that act (see, to that effect and by analogy, judgment of 12 September 2019, *A and Others*, C-347/17, EU:C:2019:720, paragraphs 39 to 41 and 49).

84 According to Section A(1) of the annex to the DMA, the purpose of that annex is to 'specif[y] the methodology for identifying and calculating the "active end users" and the "active business users" for each [CPS] listed in Article [2(2) of the DMA]', in order to enable undertakings to assess whether their CPSs meet the quantitative thresholds set out in Article 3(2)(b) of the DMA and would therefore be presumed to meet the requirement in Article 3(1)(b) of that regulation.

85 Since the annex to the DMA is intended to enable undertakings to identify the active end users and active business users of each CPS listed in Article 2(2) of the DMA, it must be found that it contains information that is relevant for the delineation of CPSs offered by an undertaking. If the Commission were to apply criteria for the delineation of CPSs that are different from those applied by undertakings for the calculation of the active end users and active business users

of their CPSs, in order to assess whether the thresholds laid down in Article 3(2)(b) of the DMA are met, those undertakings would not be able to benefit from the legal certainty with which the annex to the DMA is to provide them, as foreseen in recital 20 of that regulation.

86 In addition, it is true, as Apple submits, that, where one or more CPSs belong to the same category among those listed in Article 2(2) of the DMA, as is the case with the App Stores, which belong to the same category of online intermediation services, Section D of the Annex to the DMA, entitled ‘Submission of information’, states, in paragraph 2(b) thereof, that the undertaking providing one or more CPSs is to consider as distinct CPSs those CPSs which are used for different purposes by either their end users or their business users, or both, even if their end users or business users may be the same.

87 However, Apple does not provide any evidence showing that each of the App Stores, depending on the device on which it is used, is used differently from the other App Stores, whether by end users or by business users. While Apple has relied on evidence relating, inter alia, to how often each of the App Stores is used over a given period, the type of applications downloaded, the breadth of the catalogue of applications offered and how each software application store is displayed on each of the devices in question, it must be stated that such evidence does not alter the fact that those users and businesses use all the App Stores for the same purpose, namely, in essence, to conclude a direct transaction in respect of the software applications at issue, in accordance with the definition of a software application store for the purposes of the DMA, as set out in paragraph 76 above. The Commission was therefore correct in considering that each of the App Stores was used for the same purpose and that they could therefore be regarded as a single CPS.

88 In addition, it should be noted that, as recalled in paragraphs 66 to 69 above, in the designation decision, the Commission addressed Apple’s line of argument according to which its App Stores had different purposes depending on the device on which they operated. Apple does not complain that the Commission failed to take into account some of those factors, but rather that it adopted an assessment different from the one which Apple put forward in its notification. Nevertheless, the Commission was fully entitled to consider that the evidence submitted by Apple related to the nature, function and usage of the various devices on which the App Stores were available, with the result that that evidence did not support a finding that end users and business users used the App Stores for different purposes.

89 In the third place, as regards Apple’s criticism of the Commission, which, it argues, should not have relied on the three sets of additional considerations set out in recitals 43 to 59 of the designation decision in order to find that the App Stores constituted a single CPS, it must be noted that the Commission’s assessment is based, first of all, on the considerations set out in recitals 37 and 39 of the designation decision, namely, in essence, the fact that the App Stores meet the

definitions laid down in Article 2(2), (5) and (14) of the DMA in order to be classified as CPSs under the DMA and that they are used for the same purpose – both from the perspective of the end user and that of the business user – on all the devices on which they are available, that is to say, in the present case, to ensure the distribution of software applications. It follows from paragraphs 71 to 88 above that those findings of the Commission were sufficient for the purpose of considering that the App Store service constituted a single CPS within the meaning of the DMA.

90 In any event, it must be observed that the three sets of additional considerations in question relate, first, to rules, guidelines and contractual provisions implemented by Apple vis-à-vis end users and business users of App Stores; second, to support services for end users and development services for business users provided by Apple in relation to the App Stores, and to the ability to use the same account to access the various App Stores or to use an application purchased through one of the App Stores on all devices; and, third, to aspects of Apple's publications concerning the use of the same App Store brand to designate all the App Stores.

91 It must be pointed out that the three sets of additional considerations in question relate to the conditions put in place by Apple for the use of the App Stores both by end users and by business users. Therefore, contrary to what Apple maintains, it must be held that those additional considerations are relevant for the purpose of demonstrating that the App Stores pursue the same objective, namely facilitating the conclusion of transactions between those users and businesses in respect of software applications.

92 It must also be observed that, although Apple contests the Commission's reliance on the additional considerations in question, it does not claim that the Commission made a material error in relation to them.

93 In addition, for the purpose of classifying CPSs in the light, inter alia, of the definitions laid down in Article 2 of the DMA and in order to ensure that an undertaking does not attempt to circumvent the provisions of the DMA, in accordance with the provisions of Article 13 thereof, the Commission cannot be criticised for taking into account all the relevant factors capable of demonstrating that a number of services in fact constitute a single CPS for the purpose of calculating the thresholds set out in Article 3(2) of the DMA. That power is all the more necessary where, as in the present case, the Commission does not intend to accept the presentation of those services as proposed by the undertaking concerned in the Form GD.

94 In the last place, as regards Apple's complaint that the approach adopted by the Commission in the designation decision means that all future Apple software application stores will automatically be covered by that decision, irrespective of the device for which they are designed, it suffices to observe that that line of argument is based on an interpretation of the provisions of Article 2(2) of the DMA and of the Annex thereto according to which the Commission, in order to

classify the App Stores as a CPS for the purposes of the DMA, should have taken into consideration the device on which each of the App Stores is used. For the reasons set out in paragraphs 79 to 82 above, that line of argument is incorrect and must be rejected.

95 Furthermore, it should be borne in mind that, according to settled case-law, the legality of a measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (see judgment of 4 October 2024, *García Fernández and Others* v *Commission and SRB*, C-541/22 P, EU:C:2024:820, paragraph 327 and the case-law cited).

96 The information provided by Apple, during the designation procedure, concerning the forthcoming launch of a new Vision Pro device with its own software application store was not capable of altering the Commission's assessment in relation to the App Store service, for the same reasons as those set out in paragraphs 79 to 82 above.

97 In any event, it must be recalled that the designation decision relates to the designation of Apple as a gatekeeper only in respect of the CPSs submitted by Apple in its Form GD, which, in the present case, was limited, as regards the category of software application stores, solely to the App Stores. Moreover, it should be added that, at the request, inter alia, of the gatekeeper, the Commission may reconsider, amend or repeal at any moment a designation decision adopted pursuant to Article 3 of the DMA where there has been a substantial change in any of the facts on which the designation decision was based, or where that decision was based on incomplete, incorrect or misleading information, in accordance with Article 4(1) of the DMA.

98 In those circumstances, it follows from the foregoing that the Commission was entitled to find, in recital 38 of the designation decision, that the App Store service constituted a single online intermediation service, irrespective of the device through which that service could be accessed.

99 Accordingly, it follows from all of the foregoing that the second plea in law in Case T-1080/23 must be rejected, without there being any need to rule on the question whether an application for annulment of Article 2(a) of the designation decision, in its entirety, is admissible.

The third plea in law put forward in Case T-1080/23

100 By its third plea in Case T-1080/23, Apple complains that the Commission misinterpreted and misapplied the DMA and the EECC and made factual errors, in so far as the designation decision concludes that iMessage constitutes an NIICS.

101 The Commission disputes the admissibility of the third plea.

102 First, the Commission contends that the assessments set out in the recitals of the designation decision are capable, as such, of forming the subject matter of an

action for annulment only in so far as they constitute the necessary basis for the operative part of that decision. It argues that that is not the case with the contested finding that iMessage constitutes an NIICS.

103 Second, the Commission maintains that only measures intended to produce binding legal effects capable of affecting Apple's interests by bringing about a distinct change in its legal position may be the subject of an action for annulment. Apple has neither explained nor demonstrated how the finding in the recitals of the designation decision, according to which iMessage constitutes an NIICS CPS ('NIICS CPS'), brings about a distinct change in its legal position.

104 Apple submits that the case-law cited by the Commission, according to which an action for annulment cannot be brought exclusively against the recitals in the preamble to an EU act, is irrelevant.

105 Moreover, Apple maintains, in essence, that the NIICS classification by the Commission has the legal consequence of opening the market investigation on the basis of Article 17(3) of the DMA. That thereby makes Apple subject to regulatory processes provided for under the DMA. It argues, moreover, that if the Court were to consider that Apple is only entitled to challenge a decision that has the effect of classifying iMessage as an important gateway, this would mean that the Commission's decision to close the market investigation would also not be a challengeable act, with the result that Apple would be unable to challenge the NIICS classification.

106 The French Republic also contends that the third plea is inadmissible, in so far as the designation decision did not bring about a distinct change in Apple's legal position in relation to iMessage.

107 It is settled case-law that actions for annulment, provided for under Article 263 TFEU, are available in the case of all measures adopted by the institutions, whatever their form, which are intended to have binding legal effects (see judgments of 26 March 2019, *Commission* v *Italy*, C-621/16 P, EU:C:2019:251, paragraph 44 and the case-law cited, and of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 46 and the case-law cited).

108 Only measures intended to produce legal effects that are binding on, and capable of affecting the interests of, an applicant by bringing about a distinct change in his or her legal position are acts or decisions which may be the subject of an action for annulment (judgments of 17 July 2008, *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraph 29; of 26 January 2010, *Internationaler Hilfsfonds* v *Commission*, C-362/08 P, EU:C:2010:40, paragraph 51; and of 9 December 2014, *Schönberger* v *Parliament*, C-261/13 P, EU:C:2014:2423, paragraph 13).

109 In order to determine whether an act or decision produces binding legal effects capable of affecting the interests of an applicant by bringing about a distinct change in his or her legal position, it is necessary to look to its substance

(judgments of 22 June 2000, *Netherlands* v *Commission*, C-147/96, EU:C:2000:335, paragraph 27, and of 16 July 2015, *Commission* v *Council*, C-425/13, EU:C:2015:483, paragraph 27).

110 In that regard, according to the Court of Justice, examining the substance of an act involves assessing its effects on the basis of objective criteria, such as the content of the act in question, taking into account, as appropriate, the context in which it was adopted and the powers of the institution, body, office or agency of the European Union which adopted it, powers which should not be understood in the abstract but should be regarded as factors that inform the specific analysis of the content of that act, which is central and indispensable (judgment of 6 May 2021, *ABLV Bank and Others* v *ECB*, C-551/19 P and C-552/19 P, EU:C:2021:369, paragraph 41).

111 In the first place, it follows from settled case-law that only the operative part of a decision is capable of producing legal effects and, consequently, of adversely affecting a person's interests, regardless of the grounds on which such a decision is based. By contrast, the assessments made in the recitals of a decision are not in themselves capable of forming the subject of an application for annulment and can be subject to review by the Courts of the European Union only to the extent that, as grounds for an act adversely affecting a person's interests, they constitute the essential basis for the operative part of that act or if, at the very least, those recitals could change the substance of what was provided for in the operative part of the act in question (order of 28 January 2004, *Netherlands* v *Commission*, C-164/02, EU:C:2004:54, paragraph 21, and judgment of 26 February 2015, *Orange* v *Commission*, T-385/12, not published, EU:T:2015:117, paragraph 70). In that context, it must be borne in mind that, in principle, the operative part of an act is indissociably linked to the statement of reasons for it, so that, when it has to be interpreted, account must be taken of the reasons which led to its adoption (see judgment of 30 September 2003, *Cableuropa and Others* v *Commission*, T-346/02 and T-347/02, EU:T:2003:256, paragraph 211 and the case-law cited).

112 In the designation decision, the Commission considered that iMessage was an NIICS CPS and that Apple met the thresholds set out in Article 3(2) of the DMA in respect of that CPS, which led it to presume that it constituted an important gateway for business users to reach end users within the meaning of Article 3(1)(b) of that regulation. However, given that Apple had presented sufficiently substantiated arguments that manifestly called into question the presumption in Article 3(2) of the DMA in relation to iMessage, the Commission decided to open a market investigation into that service, in accordance with Article 17(3) of that regulation, in order to determine whether that CPS should be listed in the designation decision. Consequently, iMessage is not referred to in the operative part of the designation decision as a CPS constituting an important gateway.

113 Accordingly, recitals 138 to 148 of the designation decision, which set out the reasons why iMessage must be regarded as an NIICS CPS, do not constitute the essential basis for the operative part of the designation decision.

114 In the second place, as regards the legal effects produced by the designation decision under the DMA, Apple submits that the Commission could not open a market investigation on the basis of Article 17(3) of the DMA without first classifying iMessage as an NIICS CPS. It argues that that classification makes it subject to the processes provided for under the DMA. However, it must be stated that Apple has not identified any binding and concrete legal effects, resulting from the opening of a market investigation, which would be capable of bringing about a distinct change in its legal position.

115 Moreover, as the Commission contends, the DMA does not provide for any obligation or entail any legal consequences solely on the basis of the classification of a service, so long as the service in question has not been referred to in the operative part of a designation decision as an important gateway for business users to reach end users within the meaning of Article 3(1)(b) of that regulation.

116 Indeed, as regards the obligation for gatekeepers on interoperability of NIICSs, Article 7 of the DMA applies only to '[NIICSs] that are listed in the designation decision pursuant to Article 3(9) [of that regulation]'. The same is true of the obligations laid down in Articles 5 and 6 of the DMA, which provide, respectively, in paragraph 1 thereof, that 'the gatekeeper shall comply with all obligations set out in this Article with respect to each of its [CPSs] listed in the designation decision pursuant to Article 3(9) [of that regulation]'. Lastly, Article 3(10) of the DMA provides that 'the gatekeeper shall comply with the obligations laid down in Articles 5, 6 and 7 within [six] months after a [CPS] has been listed in the designation decision pursuant to paragraph 9 of this Article.'

117 Therefore, it must be held that Apple is not subject to any of the obligations laid down by the DMA in respect of its iMessage service as a result of the adoption of the designation decision, even though that service is classified in that decision as an NIICS CPS.

118 Apple also submits that third parties could rely on the contested finding in order to request that the Commission designate iMessage in the future as an important gateway, provided that the relevant conditions have been met. Apple adds that the Commission would not be required to assess whether the iMessage service remains an NIICS CPS in any future reviews of whether that service is an important gateway, since that classification has been definitively adopted.

119 In that regard, Article 53 of the DMA provides that, by 3 May 2026, and subsequently every three years, the Commission is to evaluate the DMA and, inter alia, whether it is required to modify the list of CPSs laid down in Article 2(2) of that regulation, which includes NIICSs. In addition, it follows from Article 4(2) of the DMA, read in conjunction with recital 30 thereof, that the very rapidly

changing and complex technological nature of CPSs requires a regular review of the status of gatekeepers and of the list of CPSs which are, individually, an important gateway. However, there is nothing in the DMA to support a finding that the Commission, in the event of a review of a CPS as an important gateway, could rely on the analysis which it carried out when adopting a previous designation decision, without carrying out a fresh assessment of the circumstances which are the subject of that review.

120 Thus, it follows from Article 4(2) of the DMA that the classification of the iMessage service as an NIICS CPS cannot be regarded as definitively established for the future.

121 In the third place, it should be noted that Article 2(9) of the DMA defines NIICSs by reference to Article 2(7) of the EECC.

122 By way of a measure of organisation of procedure and at the hearing, the parties were asked whether the contested finding in the designation decision was capable of producing binding legal effects and of bringing about a distinct change in Apple's legal position as regards the application of the EECC in national proceedings.

123 Apple submitted that the Commission's classification of iMessage as an NIICS CPS in the designation decision could have, and had already had, consequences for the implementation of the EECC by the competent national regulatory authorities, other competent authorities and national courts.

124 On that point, first, it must be noted that the implementation of the EECC, once transposed into national law, falls within the responsibility of the national authorities designated as competent by the Member States. The obligation of a Member State to take all the measures necessary to achieve the result prescribed by a directive is a binding obligation imposed by the third paragraph of Article 288 TFEU and by the directive itself (see, to that effect, judgment of 18 December 1997, *Inter-Environnement Wallonie*, C-129/96, EU:C:1997:628, paragraph 40 and the case-law cited). In the present case, that transposition obligation is laid down in Article 124 of the EECC.

125 Second, it must be observed that the legislative and regulatory systems established by the Member States in order to comply with the EECC, on the one hand, and the DMA, on the other, are separate legal regimes. The EECC does not contain any provision stipulating that the national regulatory and other competent authorities, when implementing the powers and responsibilities granted to them by that directive, are bound by any NIICS classification made by the Commission for the purpose of implementing the DMA.

126 On the contrary, Article 1(4) of the DMA, read in conjunction with recital 64 thereof, states that, with regard to interpersonal communications services as defined in Article 2(5) of the EECC, '[the DMA] is without prejudice to the powers and responsibilities granted to the national regulatory and other competent

authorities by virtue of Article 61 of [the EECC].' It follows from that provision that the competent authorities under the EECC, when exercising their powers and responsibilities in relation to that type of service, are not bound by the provisions of the DMA.

127 Moreover, the EECC does not confer any express advisory or coordinating role on the Commission when it comes to assessing whether a particular service falls within its scope.

128 It follows that the exercise by the competent national authorities of the powers and responsibilities that they derive from the EECC in respect of an NIICS cannot be dependent on any classification which the Commission might previously have made as part of the implementation of the DMA.

129 Accordingly, it must be held that the NIICS CPS classification made by the Commission in the designation decision does not produce binding legal effects capable of affecting Apple's interests by bringing about a distinct change in its legal position within the meaning of the case-law referred to in paragraphs 108 and 109 above.

130 That assessment is not invalidated by Apple's argument that, if it were entitled to challenge a final decision of the Commission only on condition that that decision resulted in its designation as a gatekeeper, it would have no means of challenging the Commission's assessment that iMessage is an NIICS, which would be contrary to its right to an effective remedy and of access to a tribunal for the purposes of Article 47 of the Charter and Article 6 ECHR.

131 In that regard, it is apparent from paragraphs 49 to 52 above that, first, the right of access to a tribunal is not absolute and that, consequently, it may involve proportionate restrictions that pursue a legitimate aim and do not adversely affect the very essence of that right.

132 Second, as regards more specifically the conditions for the admissibility of actions for annulment, although the requirement as to the binding legal effects of the act being challenged must be interpreted in the light of the right to effective judicial protection as guaranteed in the first paragraph of Article 47 of the Charter, that right is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the Courts of the European Union, as is apparent also from the Explanation relating to the abovementioned Article 47, which must, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, be taken into consideration for the interpretation of the Charter. Thus, the interpretation of the concept of an actionable measure in the light of Article 47 of the Charter cannot have the effect of setting aside that condition on pain of exceeding the jurisdiction conferred by the Treaty on the Courts of the European Union (see judgments of 25 October 2017, *Slovakia* v *Commission*, C-593/15 P and C-594/15 P, EU:C:2017:800, paragraph 66 and the case-law cited, and of

9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraphs 52 and 53).

133 It follows that the classification of iMessage as an NIICS CPS in the designation decision does not produce binding legal effects capable of affecting Apple’s interests and, therefore, does not bring about a distinct change in its legal position. Consequently, the third plea in law must be rejected as inadmissible.

134 Since all the pleas in Case T-1080/23 have been rejected, the action brought in that case must be dismissed in its entirety.

The actions brought in Cases T-1079/23 and T-214/24

135 By its action in Case T-1079/23, Apple seeks the annulment of the decision opening the market investigation referred to in paragraph 4 above, in so far as that decision is based on the finding that the iMessage service constitutes an NIICS for the purposes of the DMA and the EECC.

136 By a plea of inadmissibility raised on the basis of Article 130 of the Rules of Procedure in Case T-1079/23, the Commission puts forward two grounds of inadmissibility. In essence, it contends, first, that the decision opening the market investigation is a preparatory act and is therefore not a challengeable act and, second, that, since that decision does not produce binding legal effects capable of affecting Apple’s interests, it cannot be the subject of an action for annulment before the Court.

137 By its action in Case T-214/24, Apple seeks the annulment of the decision closing the market investigation referred to in paragraph 7 above, in so far as the Commission concluded therein that iMessage was an NIICS CPS.

138 By a plea of inadmissibility raised on the basis of Article 130 of the Rules of Procedure in Case T-214/24, the Commission contends, in essence, that the decision closing the market investigation cannot be the subject of an action for annulment, since that decision, by which it concludes that Apple is not to be designated as a gatekeeper in relation to its NIICS CPS iMessage, does not bring about a distinct change in its legal position.

139 In both cases, the Commission argues, inter alia, that only measures the legal effects of which are binding on and capable of affecting the interests of Apple by bringing about a distinct change in its legal position may be the subject of an action for annulment.

140 In that regard, it maintains that the DMA contains no obligation or rule applicable to a service classified as a CPS, unless that service has been listed in the operative part of a designation decision as an important gateway for business users to reach end users within the meaning of Article 3(1)(b) of that regulation.

141 According to the Commission, it follows that Apple's actions for annulment against the decision opening the market investigation and the decision closing the market investigation should be dismissed as inadmissible, since those decisions do not bring about a distinct change in Apple's legal position.

142 Apple submits that the Commission is incorrect in claiming that the NIICS classification in the decision opening the market investigation and in the decision closing the market investigation is not capable of affecting its interests by bringing about a distinct change in its legal position. It argues that, by that finding, the Commission reached a definitive legal conclusion giving rise to obligations under the DMA which are capable of affecting its interests by bringing about a distinct change in its legal position.

143 According to Apple, third parties could, inter alia, rely on that finding in order to request that the Commission list iMessage in a designation decision. Moreover, for the purpose of applying the DMA, the Commission would no longer have to assess whether iMessage is indeed an NIICS CPS in the future, since that condition has been met.

144 Lastly, it submits that, if Apple were unable to challenge that finding in the designation decision, the decision opening the market investigation or the decision closing the market investigation, that would be contrary to its right to an effective remedy and access to a tribunal under Article 47 of the Charter and Article 6 ECHR.

145 In the present case, as Apple argues, and as is not disputed by the Commission, the decision opening the market investigation and the decision closing the market investigation reproduce the assessment set out in the designation decision, according to which iMessage should be classified as an NIICS. It must nevertheless be observed that, by the first of those decisions, the Commission confined itself to opening an investigation in order to examine whether the arguments put forward by Apple called into question the presumptions set out in Article 3(2) of the DMA and, by the second decision, it concluded that Apple was not to be regarded as a gatekeeper in relation to iMessage.

146 Thus, the contested finding in those decisions does not produce binding legal effects capable of bringing about a distinct change in Apple's legal position, in accordance with the assessment made in paragraphs 114 to 133 above.

147 It must therefore be concluded that the decision opening the market investigation and the decision closing the market investigation, like the designation decision, in so far as they classify iMessage as an NIICS CPS, are not capable of affecting Apple's interests by bringing about a distinct change in its legal position.

148 Consequently, and without it being necessary to examine whether the decision opening the market investigation is a preparatory act, the single pleas in law put forward in Cases T-1079/23 and T-214/24 must be declared inadmissible and, accordingly, the actions in those cases must be dismissed as inadmissible.

149 In the light of all of the foregoing, the actions must be dismissed.

Costs

150 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.

151 Since Apple has been unsuccessful, it must be ordered to pay the costs incurred by the Commission and Coalition for App Fairness, in accordance with the form of order sought by them.

152 Pursuant to Article 138(1) of the Rules of Procedure, the Member States and EU institutions which have intervened in the proceedings are to bear their own costs.

153 Similarly, pursuant to Article 138(3) of the Rules of Procedure, Free Software Foundation Europe is to bear its own costs.

On those grounds,

THE GENERAL COURT (Eighth Chamber, sitting with five Judges)

hereby:

1. **Joins Cases T-1079/23, T-1080/23 and T-214/24 for the purposes of the judgment;**

2. **Dismisses the actions;**

3. **Orders Apple Inc. and Apple Distribution International Ltd to bear their own costs and to pay the costs incurred by the European Commission in Cases T-1079/23, T-1080/23 and T-214/24;**

4. **Orders the European Parliament to bear its own costs in Case T-1080/23;**

5. **Orders the Council of the European Union to bear its own costs in Case T-1080/23;**

6. **Orders the French Republic to bear its own costs in Case T-1080/23;**

7. **Orders the Federal Republic of Germany to bear its own costs in Case T-214/24;**

8. **Orders Apple Inc. to pay the costs incurred by Coalition for App Fairness in Case T-1080/23;**

9. Orders Free Software Foundation Europe eV to bear its own costs in Case T-1080/23.

van der Woude	De Baere	Petrlík

Kecsmár	Kingston

Delivered in open court in Luxembourg on 8 July 2026.

V. Di Bucci	M. van der Woude
Registrar	President